

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 6348/DEL/2019
[Assessment Year: 2015-16]

Sidharth Narang, C/o Kansal Kapoor, 7 Co. Kothiwal Nagar, Station Road, Moradabad-244001 PAN- ASFPN4682E	<u>Vs</u>	Income-tax Officer, Ward 2(2), Moradabad
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh. Om Prakash Sr. DR	
Date of hearing	11.05.2022	
Date of pronouncement	19.05.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Moradabad, dated 14.05.2019, pertaining to the assessment year 2015-16. The assessee has raised following grounds of appeal:

“1. That the Commissioner of Income Tax (Appeals) [‘CIT(A)’] erred on facts and in law in confirming addition made by the assessing officer in the assessment order passed under section 143(3) of the Income Tax Act, 1961 (The Act’).

2. That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in denying exemption of long term capital gain

(‘LTCG’) of Rs.34,27,017 on sale of equity shares of Esteem Bio Organic Food Processing Limited claimed by the appellant under section 10(38) and making addition of such LTCG under section 68 of the Act alleging the same to be bogus in nature.

3. That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in making aforesaid addition alleging that the appellant had obtained ‘accommodation entry’ in form of bogus LTCG through ‘penny stock companies’ solely on the basis of information received from the Investigation Wing without any independent application of mind by the assessing officer.

4. That the CIT(A) erred on facts and in law in confirming the addition made by the assessing officer on the basis on ‘preponderance of probability’ in supersession to the law of evidence.

5. That the CIT(A) erred on facts and in law for not appreciating that aforesaid addition was made merely on the basis of presumptions, conjectures & surmises and no documentary evidence was brought on record by the assessing officer before making such addition.

6. That the CIT(A) further erred on facts and in law in not appreciating that the appellant was legally entitled to claim exemption under section 10(38) of the Act qua aforesaid LTCG inasmuch as period of holding of shares was long term in nature and the same were sold by the appellant through recognized stock exchange on which Securities Transaction Tax (‘STT’) was also paid.

7. That the CIT(A) erred on facts and in law in not appreciating that all details and documentary evidences qua sale of shares were furnished before the assessing officer and no document was produced by the assessing officer to controvert such information/ evidences.

8. Without prejudice to above, the CIT(A) erred on facts and in law in upholding the action of the assessing officer in making addition under section 68 of the Act without appreciating that addition under that section was not sustainable in law.

9. The appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.”

2. No one appeared on behalf of the assessee at the time of hearing. It is seen from the record that the assessee has not been appearing since 20.01.2021 despite having been given opportunities. The notice of hearing sent to the assessee through speed post has been returned with remark “not traceable”. Therefore, the appeal is taken up for hearing in the absence of the assessee and is being decided on the basis of material on record.

3. The only effective ground is against declining the claim of exemption in respect of long term capital gain on sale of equity shares of Esteem Bio Organic Food Processing Limited and making the addition of such long term capital gain u/s 68 of the Income-tax Act, 1961 (“the Act” in short).

4. Facts giving rise to the present appeal are that in this case the assessee filed its return of income electronically on 11.08.2015 declaring total income of Rs. 2,87,910/-. Subsequently, the case was selected for complete scrutiny under Computer Assisted Scrutiny Selection (CASS). Accordingly, notice u/s 143(2) was issued, which was duly served upon the assessee and thereafter, a notice u/s 142(1) of the Act was issued and in response thereof the learned authorized representative of the assessee attended the proceedings. The Assessing Officer noticed that the assessee had claimed long term capital gain of Rs. 34,27,017/- on the sale of shares of Esteem Bio Organic Food Processing Limited. The Assessing Officer,

thereafter, examined the genuineness of this transaction and found that the long term capital gain claimed to have been earned by the assessee on the sale of shares of Esteem Bio Organic Food Processing Limited was accommodation entry arrangement. The Assessing Officer was not satisfied with the source of the capital introduced and he proceeded to make addition of this amount u/s 68 of the Act. Thus, the Assessing Officer assessed the assessee's income at Rs. 37,14, 927/- against the returned income of Rs. 2,87,910/-. Aggrieved against this, the assessee preferred appeal before the CIT(Appeals), who, after considering the submissions, sustained the finding of the assessing authority. Now the assessee is in appeal before this Tribunal.

5. At the outset learned DR submitted that the Assessing Officer has given a finding of fact regarding genuineness of the transaction. He contended that the transaction was accommodation entry arrangement. Therefore, the Assessing Officer was justified in making the addition u/s 68 of the Act.

6. I have heard learned DR and perused the material on record. I find that the learned CIT(Appeals) has sustained the finding of the Assessing Officer by observing as under:

“3.11 The appellant has mentioned that the report of Investigation Wing was general and did not concern with his case. No allegation is made against him in the report. This plea of the appellant is not acceptable because the Directorate of Investigation has carried out a detailed probe into a nation vide scam. Scripts have been identified, which have been used

for conversion of the black money. Therefore, even if, the specific name is not listed anywhere, the action of AO is justified based on the human conduct and preponderance of probabilities.

3.12 Also, it has been held by Hon'ble Apex Court in the case of Durga Prasad Mor and Sumati Dayal that the test of human probabilities has also to be applied by the authorities below. In the case of Sumati Dayal 214 ITR 801, it was held that during the year 1970-71 (pertaining to the assessment year 1971-72) between April 6, 1970, and March 20, 1971, the appellant claims to have won in horse race a total amount of Rs.3,11,831/- on 13 occasions out of which ten winnings were from jackpots and three were from treble events. Similarly in the year 1971-72, the appellant won races on two occasions and both times the winning were from a jackpot. These receipts were tested on the touch stone of human probability and it was found that apparent was not real. That it was contrary to statistical theory and experience of the frequencies and probabilities. The exceptional luck enjoyed by the appellant was held to be beyond preponderance of probability. Hence the Hon'ble Apex Court has affirmed the view that it would not be unreasonable to infer that the appellant had not really participated in any of the races except to the extent of purchasing the winning tickets after the events presumably with unaccounted funds. When the present case is examined on the touch stone of above case law, it is clear that these transactions of the appellant can by no stretch of imagination be considered as investment transactions.. They are only make believe transaction. Hence I do not find any infirmity in the AO taxing the receipt in this regard.

3.13 In view of the above discussion, it is apparent that lots of inquiries have been made by the AO and substantial material is collected by him. The following particular facts, which have been gathered by the AO are relevant for this case.

- i. The assessee is not a regular investor. However, she has invested in the scrip i.e. M/s Esteem Bio Organic Food Processing Ltd and hit the jackpot in the same. This is quite abnormal in view of the test of human probabilities laid down by Hon'ble Apex Court in the case of Durga Prasad Mor and Sumati Dayal.*
- ii. The investigation report of the Income Tax Department suggests that the scrip i.e. M/s Esteem Bio Organic Food Processing Ltd was pertaining to the paper companies, which were used for manipulation of shares in the LTCG Scam.*

- iii. *Unrealistic rise in the share price of M/s Esteem Bio Organic Food Processing Ltd as mentioned in the assessment order.*
- iv. *Poor financial health of the companies as mentioned by the AO in the assessment order.*

3.14 In view of the above facts, it is clear that the claim of LTCG of Rs. 34,27,017/- on the alleged sale of shares is basically accommodation entry from the entry operator. The appellant is involved in the scam of accommodation entry and there is no merit in his submission that the sale consideration has been received through banking channel and shares were sold in stock exchange. The shares in which he has invested belong to paper company. Its financial position is extremely poor and it does not seem to be carrying out a regular business. The exponential rise in its share price is nothing else but a manipulation by the syndicate of operators involved in the scam. In the present case, the appellant's explanation that the said receipt is on account of investment in shares, whereby shares of unknown company have jumped in no time has been totally rejected by the AO. The appellant has not at all been able to adduce cogent evidences in this regard. There is no economic or financial justification for the sale price of these shares. The fantastic sale price realization is not at all humanly probable, as there is no economic or financial basis that a share of little known company would jump so high. In these circumstances, I do not find any infirmity in the order of the AO. Also, the case laws on which appellant has relied have different set of facts. In view of the facts discussed in earlier paras, I am of the considered view that the AO was justified to disallow the claim of long term capital gain of Rs.34,27,017/- and to treat the total sale consideration as income from undisclosed sources.”

7. The above finding of fact of the learned CIT(Appeals) is not rebutted by the assessee by placing any contrary material on record. Moreover, the assessee has not furnished any material suggesting that the transaction in question was genuinely in normal course and was not accommodation entry arrangement as held by the authorities below. In the absence of any supporting evidence regarding

claim of the assessee I do not see any reason to interfere with the finding of the learned CIT(Appeals) and the same is hereby upheld.

8. In the result, assessee's appeal is dismissed.

Order pronounced in open court on 19th May, 2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI