

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM AND SHRI PAVAN KUMAR GADALE, JM

ITA No. 6972/Mum/2019

(Assessment Year 2014-15)

Mr. Ajay Shyamsunder Agarwal 10a/1 Prithvi Apartments 21, Alt, Mount Road near Giriraj Cumbala Hill, Mumbai-400 026	Vs.	The Income Tax officer, Ward, 17(1)(4), Kautilya Bhavan BKC, Mumbai-400 051
(Appellant)		(Respondent)
PAN No. AABPA6690F		

Assessee by	:	None
Revenue by	:	Shri Rajesh Kumar Yadav, DR

Date of hearing:	24.03.2022
Date of pronouncement :	31.05.2022

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by the assessee against the order of the Commissioner Of Income Tax (Appeals) – 55, Mumbai dated 30/8/2019 for assessment year 20 14-15 raising following grounds of appeal

"The following grounds of appeal are independent of, and without prejudice to, one another:-

1. The Commissioner of Income-tax (Appeals) - 55, Mumbai (hereinafter referred to as the CIT(A)) erred in upholding the action of the Income-tax Officer - 17(1)(4), Mumbai (hereinafter referred to as the Assessing Officer) in making an addition of a sum of

Rs 10,07,858 under section 68 of the Act holding the capital gains on sale of long-term capital assets being, shares of Mishka Finance & Trading Limited to be non-genuine and thereby not allowing exemption under section 10(38) of the Act.

The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in considering the capital gains on sale of long-term capital assets being, shares of Mishka Finance & Trading Limited to be non-genuine inasmuch as the said shares have been purchased during an earlier year are investments; the same being sold shall necessarily give rise to capital gains and the impugned shares being long-term capital asset, the capital gains Rs 10,00,358 are long-term capital gains in respect of which the Assessing Officer ought to have allowed exemption of section 10(38) of the Act; accordingly, the impugned addition under section 68 of the Act is not justified.

The appellant further, contends that the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as the assessment order has been framed in violation and utter disregard to the principles of natural justice inasmuch as, amongst others, the Assessing Officer has not given the documents/ statements on oath to the appellant for rebuttal, which are in his possession and on which he has relied. upon and has not given an opportunity to the appellant to cross examine the

persons whose statement the Assessing Officer has relied upon.

The appellant further, contends that the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as the Assessing Officer has not proved that the cash emanated from the coffers of the appellant.

2. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs 30,236 under section 69C of the Act, being commission at 3% for obtaining the alleged accommodation entries for capital gains Rs 10,07,858 on sale of long-term capital asset being shares of Mishka Finance & Trading Limited.

The appellant contends that on facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as there is no accommodation entry availed by the appellant and the Assessing Officer has failed to bring any evidence on record to make the impugned addition; hence, the impugned addition ought to be deleted.

The appellant craves leave to add to, alter or amend the aforestated grounds of appeal.”



2. At the time of hearing of the appeal the assessee submitted a letter dated 25th of March 2022 stating that assessee has applied for settlement of dispute Under Vivad se Viswas scheme and paid all taxes for the same assessment year. Further form number 4 has also been issued to the assessee. Therefore assessee requested for the withdrawal of the above appeal.
3. The learned departmental representative did not object to the same.
4. In view of the application of the assessee dated 21st March 2022 stating that the dispute involved in the above appeal has been settled Under the VSV scheme and therefore the appeal is required to be withdrawn. Request of the assessee has been acceded to.
5. In the result appeal filed by the assessee is treated as withdrawn and hence dismissed.

Order pronounced in the open court on 31.05.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.05.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai



6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai