

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री गिरीश अग्रवाल, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1090/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2013-14

Smt.Damayanthi Devakinandan-  
Harlalka,  
No.6A, Govindan Street,  
Ayyavoo Colony, Aminjikarai,  
Chennai-600 029.  
[PAN: AABPH 2694 E]  
(अपीलार्थी/Appellant)

v. The Asst. Commissioner –  
of Income Tax,  
Non-Corporate Circle-10(1),  
Chennai-600 034.  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.2908 & 2909/Chny/2019  
निर्धारण वर्ष /Assessment Years: 2010-11 & 2011-12

Mr.Gheesulal Praveen,  
No.31, Krishna Tank Street,  
Sowcarpet,  
Chennai.  
[PAN: AZHPP 6990 Q]  
(अपीलार्थी/Appellant)

v. The Income Tax Officer,  
Non-Corporate Ward-5(4),  
Chennai.  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.3030/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2014-15

Mr.Kevalchand Manohar Chand,  
2/12, Gyan Towers,  
Gopala Krishnan Iyer Street,  
T. Nagar, Chennai.  
[PAN: ABTPD 0528 L]  
(अपीलार्थी/Appellant)

v. The Income Tax Officer,  
Non-Corporate Ward-1(3),  
Chennai.  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : None  
प्रत्यर्थी की ओर से /Respondent by : Mr.Chinthapalli Mehar Chand,  
JCIT  
सुनवाई की तारीख/Date of Hearing : 23.05.2022  
घोषणा की तारीख /Date of Pronouncement : 23.05.2022

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आदेश / ORDER

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

These bunch of four appeals by three different assesseees are taken up together for adjudication as common issues are involved. ITA No.1090/Chny/2019 is arising out of the order of the Commissioner of Income Tax(Appeals)-12, Chennai, in ITA No.78/CIT(A)-12/2017-18 dated 22.03.2019 for the AY 2013-14, against the assessment order dated 30.12.2017, passed u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), by the ACIT, NCC-10(1), Chennai. ITA Nos.2908 & 2909/Chny/2019 are arising out of the order of the Commissioner of Income Tax (Appeals)-5, Chennai, in ITA No.06/CIT(A)-5/2018-19 & ITA No.05/CIT(A)-5/2018-19 for the AYs 2010-11 & 2011-12, respectively, both even dated 30.07.2019, against the assessment order dated 28.12.2017, passed u/s.143(3) r.w.s.147 of the Act, by the ITO, NCW-5(4), Chennai. ITA No.3030/Chny/2019 is arising out of the order of the Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.344/CIT(A)-2/2016-17 for the AY 2014-15 dated 23.08.2019, against the assessment order dated 29.12.2016, passed u/s.143(3) of the Act, by the ITO, NCW-1(3), Chennai.

**2.** Common issue involved in all these four appeals is in respect of disallowance claimed u/s.10(38) of the Act, more particularly without

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application of mind and without providing the relevant materials relied upon by the authorities below in violation of principles of natural justice.

**3.** The brief facts of each appeal are discussed herein below:

**ITA No.1090/Chny/2019 for the AY 2013-14:**

**3.1** The assessee had filed her return of income on 19.06.2013 reporting total income of Rs.5,83,880/-. The assessment was completed u/s.143(3) r.w.s.147 of the Act, on 30.12.2017 by making an addition of Rs.44,90,000/- u/s.68 of the Act, to arrive at assessed total income at Rs.50,73,880/-. In this case, the Id.AO noted that the assessee had sold 5000 shares of NCL Research for a total consideration of Rs.44,90,000/- during the year. In this respect, it was submitted by the assessee that these shares were originally purchased on 11.03.2011 through the broker, M/s.Kunvarji Finstock Pvt. Ltd., Kolkatta, through open offer @ 51.08 per share. These were subsequently sold by the assessee @ Rs.898/- per share on 27.11.2016, through the same broker. Thus, there was a rise of more than 1653% in the price of these shares in a span of 20 months, which lead the Id.AO to arrive at conclusion of making the addition on the basis of doctrine of human probabilities. The Id.AO treated the transactions as sham transactions based on surrounding circumstantial evidences and added it as unexplained credits u/s.68 of the Act, and at the same time, disallowed the claim u/s.10(38) of the Act.

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**ITA No.2908/Chny/2019 for the AY 2010-11:**

**3.2** The assessee had filed return of income on 04.03.2017 reporting a total income of Rs.3,00,840/-. The assessment was completed u/s.143(3) r.w.s.147 of the Act, at total income of Rs.10,29,490/-, which included a disallowance of Rs.7,27,560/- u/s.10(38) of the Act, which was treated as unexplained credit u/s.68 of the Act. Also an addition of Rs.1,091/- was made towards commission @ 0.51% for providing long term capital gains to the assessee. Based on investigation carried by the Investigation Wing, Kolkatta of the Income Tax Department, the Id.AO noted that the assessee has claimed bogus Long Term Capital Gains for the sale of shares of M/s.Bakra Prathisthan Ltd., for Rs.7,27,560/-, for which the assessee had purchased 2064 shares for a sum of Rs.41,280/- from different companies on different dates and concluded the assessment by making the addition in this respect.

**ITA No.2909/Chny/2019 for the AY 2011-12:**

**3.3** In this case, the assessee had filed his return of income on 21.03.2017 reporting total income of Rs.3,00,940/-. Based on the investigation carried on by the Investigation Wing, Kolkatta of the Department, the Id.AO noted that the assessee had sold 5500 shares of M/s.Bakra Prathishan Ltd., for a sum of Rs.19,38,750/- in respect of which he disallowed the claim u/s.10(38) of the Act, and made the addition by

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treating it as unexplained credit u/s.68 of the Act. Also a sum of Rs.2,098/- was added towards commission @ 0.15% in respect of this alleged bogus Long Term Capital Gains.

**ITA No.3030/Chny/2019 for the AY 2014-15:**

**3.4** In this case, there is two days' delay in filing of the appeal. The assessee has placed on record an Affidavit along with application for condonation of delay for explaining these two days delay in filing of the appeal. On going through these records, we find it appropriate to condone this brief delay and admit the appeal for adjudication.

**3.5** In this case, the assessee has filed his return of income on 09.07.2014 reporting an income of Rs.3,78,040/-. The Id.AO noted that the assessee earned Long Term Capital Gains (in short "LTCG") on sale of 4000 shares of M/s.Kappac Pharma, for a consideration of Rs.28,02,160/- with a resultant capital gains of Rs.27,42,160/- which was claimed as exempt u/s.10(38) of the Act. The Id.AO made an addition of Rs.27,42,160/- by disallowing the claim u/s.10(38) of the Act, and treating it as unexplained credits u/s.68 of the Act.

**4.** In all the four cases above, considering the report of the Investigation Wing of the Department, statement recorded of certain persons, reports of SEBI, etc., the Id.AO held that the assessee had entered into an engineered transaction to generate artificial LTCG. The Id.AO treated the sale

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consideration of shares for these transactions as bogus/sham transactions. In all these cases, Id.AO extensively relied upon the above referred material which sets out the modus operandi adopted in the alleged business of providing entries of bogus LTCG, without these being confronted to the assessee for cross-verification and examination. In all these cases, the assessments were concluded by making the addition as unexplained cash credits, since explanation furnished by the assessee were found to be unsatisfactory in the opinion of the Id.AO.

**5.** Aggrieved, the assessees preferred appeals before the Ld.CIT(A), who sustained the additions made by the Id.AO. Aggrieved, now the assessees are in appeal before this Tribunal.

**6.** Before adverting on the merits of the case, at the outset, the Bench took note of the decision of the co-ordinate Bench of ITAT Chennai in the case of Smt. Vandana Jain v. ITO in ITA No.1903/Chny/2019 and others pronounced on 31.03.2022. In the said decision of the co-ordinate Bench of this Tribunal, on similar fact pattern as in the present four appeals before the Tribunal, the matter was extensively and elaborately discussed, which is re-produced here under:

*9. Before adverting on the merits of the case, at the outset, the Bench took note of Ground No. 6 in ITA Nos. 1903 to 1907/Chny/2019 and Ground Nos. 9 and 12 in ITA No.1970/Chny/2018 reproduced supra relating to non-confronting of evidences to the assessee for cross verification and cross examination, violating the principles of natural justice and raised a specific query before the Ld. Sr. DR to this effect in the light of provisions of section 142(3) of the Act. Ld. Sr. DR read out the provisions of section 142(3) before us which is reproduced as under for ease of reference –*

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*Inquiry before assessment.*

142(1)...

142(2)...

142(3) *The assessee shall, except where the assessment is made under section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry under sub-section (2) or any audit under sub-section (2A) and proposed to be utilized for the purposes of the assessment. Ld. Sr. DR did not controvert on the factual position vis-à-vis section 142(3) (supra) about non-supply of the relevant material to the assessee in the course of assessment proceedings for its cross verification and cross examination and urged before the Bench for liberty to file a written submission for his contentions along with relevant documentary evidences. In the light of this submission by the Ld. Sr. DR and provisions of section 142(3) of the Act, further specific query was raised by the Bench as to why this issue be not restored to the file of the Ld. AO for which the Ld. Sr. DR placed reliance on the decision of Hon'ble Jurisdictional High Court of Madras in the case of CIT, Chennai v. Mrs. Manish D. Jain (HUF) in TCA No. 223 of 2020, order dated 16.12.2020. Bench heard the matter and granted liberty to the Ld. Sr. DR for filing a written submission as requested along with providing a copy to the Ld. AR.*

10. *Ld. AR representing the matter before us in ITA No. 1970/Chny/2018 submitted that the Ld. AO had extensively relied upon the report of the Investigation Wing, Kolkata and certain statements recorded thereby on penny stocks, which sets out the modus operandi adopted in the alleged business of providing entries of bogus LTCG, without these being confronted to the assessee for cross verification and examination. He further submitted that similar issue was considered by the SMC Bench of Bangalore ITAT in the case of Sri Vinod Kothari (HUF) in ITA No. 698/Bang/2019, dated 03.07.2019 and the Tribunal had restored the issue to the file of Assessing Officer for examining it afresh as per directions issued by Hon'ble Karnataka High Court in the case of Chandra Devi Kothari v. ITO in writ petition no. 39370/2014 dtd 02.02.2015. Accordingly, the Ld. AR prayed that the issue under the present appeals may also be restored to the file of Assessing Officer with similar directions. Ld. AR also placed reliance on the decision of Hon'ble Delhi High Court in the case of PCIT-12 v. Smt. Krishna Devi & Others in ITA 125/2020 order dated 15.01.2021.*

11. *We heard the parties and perused the material available on record including the judgments cited before us. It is placed on record that Ld. Sr. DR filed a written submission through email dated 11.03.2022 / 15.03.2022 addressed to the Bench along with soft copies of relevant attachments comprising of –*

*a. Decision by coordinate SMC Bench of Chennai ITAT in Manish D. Jain (HUF) ITA No. 2982/Chny/2018 dated 04.09.2019*

*b. Decision by Hon'ble Madras High Court in the case of CIT, Chennai v. Manish D. Jain (HUF) TCA No. 223 of 2020 dated 16.12.2020*

*c. Investigation Report by Directorate of Income-Tax (Investigation) Kolkata in the case of Project Bogus LTCG/STCL through BSE Listed Penny Stocks comprising of 135 pages from Chapter 1 to 8 (annexure 'A' & 'B' not included in this submission though listed in the index of this report)*

12. *We find from the submission made by the Ld. Sr. DR that the factual position in the light of provisions of section 142(3) of the Act read out in the course of hearing before us is uncontroverted. Copy of investigation report has been made available by the Ld.*

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*Sr. DR for the first time before the Bench through the email as stated above. On perusal of the judgment of Hon'ble Madras High Court in the case of Mrs. Manish D. Jain (HUF) (supra), relied upon by the Ld. Sr. DR, it is noted from Para 27 of the judgment that the Hon'ble High Court stated, "As pointed out in the decision of this Court in the case of Cholamandalam MS General Insurance Co., we find in the instant case that there was no material, which necessitated the remand of the case to the Assessing Officer and it is a clear case where the Tribunal had failed to exercise its jurisdiction in the manner known to law. The Tribunal, being a last fact finding Authority, is under the legal obligation to record a correct finding of fact." [emphasis supplied by us].*

*In the present case before us, it is an uncontroverted factual position accepted by the Ld. Sr. DR on the material made available to the assessee vis-à-vis requirements of provisions of section 142(3) of the Act. Furthermore, copy of investigation report of the Investigation Wing, Kolkata extensively relied upon by the Ld. AO is furnished before the Bench and made available to the Ld. AR now, for the first time. We note that compliance of provisions of section 142(3) is a mandatory statutory requirement in completing the assessment proceedings failing which may vitiate the entire assessment itself since this sub-section uses the word 'shall'.*

*13. Per contra, the Ld. Counsel referred to another decision of Co-ordinate Bench, ITAT Bangalore in ITA No. 650/Bang/2019 for A.Y. 2015-16 in the case of Shri Suresh J. Kothari (HUF) v. ITO, Ward 2(2)(1), Bengaluru, dated 31.07.2019 which in turn has followed the directions issued in the case of Chandra Devi Kothari (supra) by Hon'ble High Court of Karnataka. Relevant portion of the said order of co-ordinate Bench of ITAT Bangalore is reproduced herein below for the sake of clarity and ease of reference:*

*"3. The learned Authorised Representative submitted that an identical issue was considered by the SMC bench of Bangalore Tribunal in assessee's brother case named Sri Vinod Kothari (HUF) in ITA No.698/Bang/2019 and the Tribunal, vide its order dt.03.7.2019, has restored the issue to the file of Assessing Officer for examining it afresh as per directions issued by Hon'ble Karnataka High Court, in the case of Chandra Devi Kothari Vs. ITA (Writ Petition No. 39370/2014 Dt. 2.2.2015). Accordingly, the learned Authorised Representative prayed that the issue contested in this appeal may also be restored to the file of Assessing Officer with similar directions.*

*4. The learned Departmental Representative did not object to the prayer put forth by the learned A.R.*

*5. We heard the parties and perused the record. We notice that the SMC Bench of Bangalore Tribunal has considered an identical issue in the case of Shri Vinod Kothari (HUF) (supra) and the matter has been restored to the file of Assessing Officer with the following observation:*

*4.3.1 I have considered the rival submissions and first of all, I reproduce Para No.8 of the judgment of Hon'ble Karnataka High Court rendered in the case of M/s. Chandra Devi Kothari (Supra) and this is as under:*

*"8. In the light of the facts and circumstances as adverted to above and as the petitioner has been denied an opportunity of fair hearing by providing copy of the statement and related details regarding the alleged share amount, I am of the view that the matter requires to be re-considered by the respondent by providing fair and reasonable opportunity of hearing to the petitioner and by furnishing the details / copy of the statement based on which the impugned assessment order has been passed." [emphasis supplied by us]*

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*4.3.2 From the above Para 8 of the judgment of Hon'ble Karnataka High Court in the case of Chandra Devi Kothari (supra) it is seen that matter was restored back to the file of the AO for fresh decision after providing copy of the statement and other related details relied upon by the AO); in this case copy of the Report of Kolkata Investigation Directorate and other attendant details. As per the facts noted by the High Court in the earlier paras of judgment (supra) and as per the facts of the case on hand, there appears to be no difference in facts and therefore by respectfully following this judgment in the case of Chandra Devi Kothari (Supra), I set aside the impugned order of learned CIT(A) for Assessment Year 2014-15 and restore the matters to the file of the AO for fresh decision with the same directions as were issued by the Hon'ble Karnataka High Court in the case as per Para No.8 of the judgment reproduced above. In view of this decision, no adjudication is called for at this stage regarding the merits of the addition."*

*ITA No.650/Bang/2019 As the facts prevailing In the instant case is identical nature, following the aforesaid decision of the Tribunal, we set aside the order passed by the learned CIT (Appeals) and restore all the issues to the file of Assessing Officer with similar directions mentioned in ITAT Order (supra) for examining them afresh.*

*6. In the result, appeal of the assessee is treated as allowed for statistical purposes."*

*14. Considering the uncontroverted factual position accepted by the Ld. Sr. DR on the material made available to the assessee vis-à-vis provisions of section 142(3) of the Act which casts a mandatory statutory procedural compliance requirement on the Ld. AO in completing the assessment proceedings which otherwise may vitiate the assessment itself, it necessitates us to remand back the present case to the Assessing Officer for its appropriate adjudication by respectfully considering the observation made by the Hon'ble Madras High Court in Para 27 in the case of Mrs. Manish D. Jain (HUF) (supra) on the availability of material to the assessee. Further, respectfully following the directions given in Para 8 in the judgment of Hon'ble Karnataka High Court in the case of Chandra Devi Kothari (supra) and the order of co-ordinate bench of ITAT, Bangalore in the case of Shri Suresh J. Kothari (HUF) (supra), we set aside the impugned order passed by Ld. CIT(A) and Ld. AO and restore the matter back to the file of the Ld. AO with the direction to comply with the mandatory statutory requirements of section 142(3) of the Act failing which may vitiate the assessment itself. We are of the considered view that the Ld. AO has to reconsider the issue afresh after furnishing to the assessee all the material relied upon by him/her while passing the assessment order. Since the matter is restored to the file of Ld. AO for fresh adjudication in terms of finding and observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the assessment procedure before the Ld. AO. The observations herein made by us in remanding the matter back to the file of Ld. AO will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee. Needless to say that assessee be given reasonable opportunity of being heard, who shall also cooperate by making all the required compliances for the completion of assessment proceedings. Accordingly, in terms of above, the appeal of the assessee is allowed for statistical purpose.*

**7.** Considering the fact pattern in these four appeals before us and the findings given by the co-ordinate Bench of this Tribunal in the decision

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referred to above, in view of judicial consistency, we find it appropriate to remit the matter back to the file of the Id.AO to re-consider the issue afresh after furnishing to the assessee all the materials relied upon by him/her while passing the impugned assessment orders. Our directions on setting aside the matter back to the file of the Id.AO is to be considered in light of Para No.14 of the decision given in the case of Smt. Vandana Jain v. ITO (supra). Accordingly, in terms of the above, by adopting the judicial consistency, these four appeals are set aside to the file of respective Id.AOs.

**8.** In the result, the appeals filed by the assesseees in ITA No.1090/Chny/2019, ITA Nos.2908 & 2909/Chny/2019 & ITA No.3030/Chny/2019 are allowed for statistical purposes.

Order pronounced on the 23<sup>rd</sup> day of May, 2022, in Chennai.

**Sd/-**  
**(महावीर सिंह)**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष /VICE PRESIDENT**

**Sd/-**  
**(गिरीश अग्रवाल)**  
**(GIRISH AGRAWAL)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 23<sup>rd</sup> May, 2022.  
**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF