

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.-4322/DEL/2019

[Assessment Year: 2012-13]

Anil Kumar Aggarwal HUF, H-22, Phase-1, Ashok Vihar, New Delhi. PAN- AAAHA3821M	<u>Vs</u>	Income-tax Officer, Ward-34(3), New Delhi
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh. Om Prakash, Sr. DR	
Date of hearing	11.08.2022	
Date of pronouncement	25.08.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-12, New Delhi, dated 23.01.2019, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

"1. That on the facts and in the circumstances of the case & in Law, both the lower authorities ie Ld. AO as well as the Ld CIT (A) has erred in assessing the income of the appellant at Rs. Rs.35,85,620/- instead of Rs. 4,90,640/- as returned. As such, the aggregate additions of Rs.30,94,980/- may please be deleted. (Total Tax Effect of all the disputed additions is Rs. 9,56,349/-).

2. That on the facts and in the circumstances of the case and in Law, the assumption of jurisdiction by issuance of notice under Section 148 is vitiated, incorrect, bad in law and purely based on conjectures and surmises. There were no valid reasons, dehors any tangible information and as such the issuance of notice under Section 148 of the Act may be held bad in law.

3. That on the facts and in the circumstances of the case and in Law, the issuance of notice under Section 143(2) of the Act on the date of filing the return itself is bad in law and against the ratio of the judgments of coordinate Benches of Hon'ble ITAT. As such, the notice under section 143(2) suffers from non-application of mind and is liable to be quashed and the consequential additions may kindly be deleted.

4. That on the facts and in the circumstances of the case and in Law, the AO had erred in making an addition of Rs.30,64,338/- by treating the legitimately earned Long Term Capital Gains as unexplained credits u/s 68 of the Act and thereby confirmed by the Ld. CIT(A). As such the addition of Rs. 30,64,338/- may please be deleted. (Tax effect of this ground of appeal is Rs. 9,46,880/-).

5. That on the facts and in the circumstances of the case and in Law, the AO and CIT(A) had erred in making an addition of Rs.30,643/- (1% of Long Term Capital Gain) in respect of commission deemed to have been paid by the appellant for getting the accommodation entry i.e. long term capital gain is arbitrary, illegal, unjust and against facts and circumstances of

case. As such the addition of Rs.30,643/- may please be deleted. (Tax effect of this ground of appeal is Rs. 9,469/-)

6. That on the facts and in the circumstances of the case and in Law, the AO had erred in making additions purely on surmises, conjectures and whims without bringing on record any material evidencing any purported involvement of the appellant in any alleged circular trading or price rigging of shares on account of whom long term capital gain have been added/ assessed. As such aggregate additions of Rs. 30,94,980/- may please be deleted. (Tax effect of this ground of appeal is Rs. 9,56,349/-).

7. That on the facts and in the circumstances of the case and in Law, the AO had disregarded the detailed submissions filed by the appellant and had brushed them aside. The AO had merely relied upon the purported information by investigation wing without even making available to the appellant, the copy of material relied upon, and without appreciating the online trading mechanism on stock exchange. As such, the aggregate additions made of Rs. 30,94,980/- is bad in law. (Tax effect of this ground of appeal is Rs. 9,56,349/-).

8. That on the facts and in the circumstances of the case and in Law, the AO had disregarded the detailed submissions filed by the appellant and had brushed them aside. The AO had merely relied upon the purported information by investigation wing without even making available to the appellant, the cross examination of the person on whose testimony the AO had relied upon. As such, the aggregate additions made of Rs.

30,94,980/- is bad in law. (Tax effect of this ground of appeal is Rs. 9,56,349/-).

9. That on the facts and circumstances of the case and in Law, the AO and CIT(A) had erred in totally relying upon the report/information given by the investigation wing of the department. The initiation of proceedings were incorrect, mechanical and without application of any mind and is in complete accordance with the directions/information as investigation wing. As such, the aggregate addition of Rs. 30,94,980/- deserves to be deleted and the initiation of the proceedings may kindly be held as bad in law. (Tax effect of this ground of appeal is Rs. 9,56,349/-).

10. That not prejudice, the Order passed is vitiated on the grounds of natural justice & established canons of Law in so far as the A.O. had sacrosanctly relied upon the purported information without independent verification of the same. As such, the proceedings may be held as bad in law and aggregate addition of Rs. 30,94,980/- may kindly be deleted. (Tax effect of this ground of appeal is Rs. 9,56,349/-).

11. We crave leave to add, alter, delete or modify or withdraw any of above grounds of appeal at the time of hearing.”

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that there is no representation on behalf of the assessee since 21.04.2021 despite various opportunities were given to the assessee. It is also

transpired from the record that the notice sent through speed post is returned back unserved with remark “*left*” by the Postal Authority. The assessee has not provided any new address to the Registry. Therefore, the appeal of the assessee is taken up for hearing in the absence of the assessee and being disposed off on the basis of material available on record.

3. The assessee has assailed the re-opening of the assessment, addition of Rs.30,64,338/- on account of unexplained credits u/s 68 of the Income Tax Act, 1961 (“the Act”) and commission paid on long term capital gain of Rs.30,643/- in this appeal.

4. Facts giving rise to the present appeal are that the Assessing Officer [“AO”] re-opened the assessment u/s 147 of the Act on the basis of the information received from Directorate of Investigation, Kolkata on account of bogus Long Term Capital gain [“LTCG”] pertaining to the assessee. The AO therefore, issued a notice u/s 148 of the Act to the assessee. In response thereto, the assessee filed his reply, stating that the original return filed u/s 139(1) of the Act, may be treated as having been filed in response to notice u/s 148 of the Act. It is recorded by the AO that the original return was filed on 29.03.2013 declaring income of Rs.4,90,640/-. Thereafter,

notice u/s 143(2) of the Act was issued on 24.10.2017 to the assessee. In response thereto, the Ld.AR of the assessee attended the proceedings. The AO noticed that the assessee during the year, has claimed of having earned LTCG in respect of the sale of shares of Blue Print Securities Ltd. The AO found that the transaction was not genuine. Therefore, he was of the view that the assessee has taken it as an accommodation entry and paid commission for such entry. Thus, he made addition of Rs.30,64,340/- in respect of LTCG and Rs.30,643/- in respect of the commission paid on such transactions.

5. Aggrieved against this, the assessee carried the matter before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

6. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

7. Ld. Sr. DR supported the orders of the authorities below and submitted that the assessee failed to prove the genuineness of the transaction. He contended that the authorities below have elaborately examined this issue and have rightly made addition.

8. I have heard Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. The grievance of the assessee is in respect of treating the LTCG as not a genuine transaction. It is also a grievance of the assessee that the assumption of jurisdiction u/s 148 of the Act, is not in accordance with law hence, vitiated. The assessee has not filed any supporting evidences regarding notice u/s 148 of the Act, being defective and also in respect of the transaction which is treated to be not genuine by the authorities below. In the absence of any supporting evidences by the assessee, I do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby affirmed hence, rejected. Thus, grounds raised by the assessee are dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 25th August, 2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**