

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 5442/DEL/2019**  
**[Assessment Year: 2014-15]**

Prateek Ajay Aggarwal, 803, Nirmal Towers, Barakhamba Road, New Delhi-110001 C/o mr. Sandeep bhatnagar, CA, Flat No. 12, 2 <sup>nd</sup> Floor, Sheel Tara House, 4866/24, Ansari Road, Darya Ganj, New Delhi. PAN- ARTPA9087F	<u>Vs</u>	ACIT Circle-52(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Sh. Om Prakash	
<b>Date of hearing</b>	17.08.2022	
<b>Date of pronouncement</b>	24.08.2022	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-18, dated 07.06.2019, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

*“1. The Ld. Commissioner of Income Tax (Appeals) - XVIII, New Delhi has erred in arbitrarily confirming the addition by the Ld. Income Tax Officer, without considering the facts of the case explained and submitted to him.*

2. *That the Ld. Commissioner of Income Tax (Appeals) - XVIII, New Delhi has confirm the addition made by Ld. ITO on account of long term capital gain of Rs. 17,52,930/- on sale of shares sold on recognized stock exchange and eligible for exemption u/s 10(38) of the Act and bringing to tax as unexplained cash credit u/s 68.*
3. *That the Ld. Commissioner of Income Tax (Appeals) - XVIII, New Delhi has confirm the addition despite the transaction having been done through proper banking channels and as per the rules and regulations of the stock Exchange. That the assessee had made investment in various share including M/s Sunrise Asian Limited.*
4. *That the Ld. Commissioner of Income Tax (Appeals) - XVIII, New Delhi has erred both on facts and in law in confirming the above addition despite the assessee place latest pronouncements of the jurisdictional CIT(A) decision as of the assessee and the same scrip M/s Sunrise Asian Limited which appended below:
  - a. *Appellate order dated 21.12.2017 in case of AY 2014-15 where the CIT (A)-5, Vikas Bhawan, New Delhi had allowed the exemption of capital gain in same scrip namely M/s Sunrise Asian Limited to the mother of the assessee Mrs. Sangeeta Ajay Agarwal on the similar facts as appearing in the assessee's case.**
5. *That the Ld. Commissioner of Income Tax (Appeals) - XVIII, New Delhi has erred both on facts and in law in confirming the above addition despite the assessee declaring the total consideration on sale of shares as his income exempt under section 10(38) of the Act, the addition amounts to double taxation on the same income.*
6. *That the Ld. Commissioner of Income Tax (Appeals) - XVIII, New Delhi has erred both on the facts and in law confirming the addition made Ld. ITO which is not verified all the aspects and details filed by the assessee during the assessment proceeding. As vide letter dated 17.11.2016 submitted by the assessee genuineness of Long term Capital gain along with Copy of purchase bills of M/s Sunrise Asian Limited, Copy of Dmat Statement, copy of Financial Ledger with Share Broker & copies of all contract note of brokers sold in Asst. Year 2014-15. That the appellant has filed the complete details of which shows genuineness of Long term capital gain u/s 10(38) as declared by the assessee in his return of income.*

7. *That the Ld. Commissioner of Income Tax (Appeals) - XVIII, New Delhi has also erred in relying on the report of Investigation Wing without applying his mind.*

8. *That the addition was made grossly indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.*

9. *That the Ld. Commissioner of Income Tax (Appeals) - XVIII, New Delhi has erred in not proving the evidence which were used against the assessee nor any opportunity for cross verification has been provided resulted into gross violation of natural justice to the assessee.*

10. *The Ld. Commissioner of Income Tax (Appeals) - XVIII, New Delhi has erred both on facts and in law in confirming the addition of Rs. 87,647/- made by Ld. ITO by presuming that the assessee had paid Commission of Rs.87,647/- without any basis and without any sources of such cash generation during the year.*

11. *The appellant craves leave to add, alter, modify, any other matter.”*

2. At the time of hearing no one attended the proceedings on behalf of the assessee. It is seen from the record that there is no representation on behalf of the assessee since 12.1.2021. Notices sent to the assessee were returned by the postal authorities, however, yet again the notice was sent. Despite having been given various opportunities there is no representation on behalf of the assessee. Moreover, the assessee has not provided any other address to the Registry. Therefore, the appeal was taken up for hearing in the absence of the assessee and is being disposed of on the basis of the material available on record.

3. The facts giving rise to the present appeal are that in this case the assessee filed his return of income declaring income of Rs. 23,47,755/-. Subsequently the case was selected for scrutiny assessment and assessment u/s 143(3) of the income-tax Act, 1961 (in short ‘the Act’) was framed vide order dated 21.12.2016. While framing the assessment the Assessing officer noticed that during the assessment

year under consideration the assessee claimed exemption of capital gain amounting to Rs. 17,52,930/- u/s 10(38) of the Act. The Assessing Officer after examining the issue made addition on the basis of the transaction being not genuine and, therefore, he made addition u/s 68 of the Act of Rs. 17,52,930/- and also made addition of Rs. 87,647/- being the commission paid for obtaining the accommodation entry. Hence, he assessed the assessee's income at Rs. 41,88,132/-

4. Aggrieved against this the assessee carried the matter before the learned CIT(Appeals) who also dismissed the appeal and sustained the addition. Now the assessee is in appeal before this Tribunal.

5. The assessee has assailed the impugned order by way of the grounds of appeal stating that the long term capital gain of Rs. 17,52,930/- was received on sale of shares sold on recognized stock exchange and thus was eligible for exemption u/s 10(38) of the Act, and, therefore, the addition made by the Assessing Officer was unjustified and arbitrary under the facts and circumstances of the present case. It is further contended that since it was not an accommodation entry, therefore, there was no occasion for payment of commission as alleged by the Assessing officer. It is further stated that the entire addition is made on the basis of conjecture and surmises.

6. On the contrary learned Sr. DR opposed the grounds of appeal and contents of the statement of facts. He further strongly relied on the orders of the authorities below and submitted that the assessee could not prove the genuineness of the transaction.

7. I have heard learned DR and gone through the material available on record. The submission of the assessee is that the transaction was carried out through recognized stock exchange and, therefore, it could not be termed as a bogus transaction of earning capital gain. However, looking to the facts of the present

case the authorities below have examined the issue elaborately. The assessee has not placed any adverse material rebutting the finding of the assessing authority. Under these facts, I do not see any reason to interfere in the finding of the authorities below. The same is hereby affirmed. Grounds of appeal are rejected.

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

Order pronounced in open court on 24<sup>th</sup> August, 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