

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE,  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.8344/Del/2019  
(ASSESSMENT YEAR 2014-15)**

Raj Kumar C/o Bhatia Sanjeev & Associates 6/21, 2 <sup>nd</sup> Floor, W.E.A, Karol Bagh, New Delhi-110 005 PAN-AAJPK 6840R <b>(Appellant)</b>	Vs.	Income Tax Officer Ward-50(3) New Delhi <b>(Respondent)</b>
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Appellant by	Sh. Mayank Maheshwari, Advocate and Sh. C.S. Anand, CA
Respondent by	Ms. Maimum Alam, Senior Departmental Representative ("Sr. DR" for short)

**ORDER**

**PER ANADEE NATH MISSHRA, AM:**

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-35, New Delhi ["Ld. CIT(A)", for short], dated 29/08/2019 for Assessment Year 2014-15.

Grounds taken in this appeal are as under:

"1. That on the facts of the case and under the law, the Id. CIT(A) had erred in approving the Id. AO's arbitrary and illegal action of doubting the genuineness of the LTCG which arose to the assessee on sale of 50000

shares (acquired on 22.11.2011) of Turbotech Engineering Limited and consequently rejecting the assessee's claim of exemption u/s 10(38).

2. That on the facts of the case and under the law, the Id. CIT(A) had erred in confirming the addition of Rs. 1,68,17,809/-, which was made by the Id. AO u/s 68.

3. That the Id. CIT(A) had erred in misdirecting herself, as if it was not a case of reopening, where sufficiency or correctness of the material at the stage of initiation of proceedings may be said to be not required to be looked into.

The Id. CIT(A) appears to have overlooked the fact that she was dealing with a case where the so called adverse material (including the statements recorded) was not confronted to the assessee during the course of assessment proceedings.

4. That in the given circumstances, the Id. CIT(A) ought to have provided copies of the entire so called adverse material (including the statements recorded) to the assessee, and also ought to have provided an opportunity to the assessee to cross examine the persons like Shalesh C. Shah, during the course of appellate proceedings.

5. That on the facts of the case and under the law, the addition of Rs. 1,68,17,809/- made u/s 68 deserves to be deleted because the principle of natural justice was violated.

6. That on the facts of the case and under the law, the addition of Rs. 1,68,17,809/- deserves to be deleted because no direct evidence, either to disprove the documentary evidences furnished by the assessee or to support the baseless presumptions/assumptions which resulted into addition of Rs. 1,68,17,809/-, was brought on record by the lower authorities.

7. That on the facts of the case and under the law, the addition made by the Id. AO u/s 68 deserves to be deleted because in the assessment order, the Id. AO had not at all recorded a factual finding that he had examined the books of account maintained by the assessee and during such examination he had found credited an amount of Rs. 1,68,17,809/- in such books of account.

As a matter of fact the sale proceeds of shares were credited in the SB account passbook of the assessee issued by SBI, which was certainly not the book of account of the assessee.

8. That on the facts of the case and under the law, the addition of Rs. 3,36,356/- made by the Id. AO u/s 69C deserves to be deleted because in the assessment order, the Id. AO had not at all recorded a factual finding that the assessee had paid Rs. 3,36,356/- to someone (???) who had arranged accommodation entry of Rs. 1,68,17,809/- for the assessee.

*The Id. AO had made such addition solely on presumption, by applying adhoc rate of 2% on the amount of LTCG of Rs.1,68,17,809/-”*

(B) In the course of appellate proceedings in Income Tax Appellate Tribunal (“ITAT”, for short) a letter was received from the assessee’s side, informing that the assessee has opted for Vivad se Vishwas Scheme, 2020 (“VSVS”, for short) and that the Designated Authority has already issued Form-5 under VSVS. A copy of Form-5 issued by the Designated Authority was also enclosed with the aforesaid letter. At the time of hearing, the learned Authorized Representative for the assessee submitted that the appeal has become infructuous in view of the assessee opting for VSVS; and that the appeal may be dismissed as withdrawn. Learned Senior Departmental Representative for Revenue was in agreement with this. After due consideration and in view of the foregoing, we are of the opinion that this appeal has become infructuous on account of aforesaid VSVS, and that this appeal may be treated as withdrawn on account of the aforesaid VSVS. Accordingly, this appeal having become infructuous, is treated as withdrawn and is hereby dismissed.

**(B.1) Before we part, we hereby clarify, by way of abundant caution, that if for some reason the disputes under this appeal before us are not settled under the aforesaid VSVS, then the assessee will be at liberty to approach ITAT for restoration of this appeal in accordance with law.**

(C) In the result, this appeal is dismissed.

This order was already pronounced orally on 21<sup>st</sup> September, 2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 21/09/2022.

Sd/-

**(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 21/09/2022

*Pk*

Copy forwarded to:

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

Sd/-

**(ANADEE NATH MISSHRA)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW, DELHI