

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3513/Chny/2018
निर्धारण वर्ष /Assessment Year: 2015-16

Smt. Prabha Srisrimal,
No.4B,
The Heritage Ormes Road,
Kilpauk, Chennai.
[PAN: AAHPP 0307 N]
(अपीलार्थी/Appellant)

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

अपीलार्थी की ओर से/ Appellant by : Mr.Uttamchand Jain, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.P. Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 14.09.2022
घोषणा की तारीख /Date of Pronouncement : 21.09.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-12, Chennai, dated 31.10.2018 and pertains to assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:

1 For that the order of the learned Commissioner of Income tax (Appeals) is contrary to law, facts and circumstances of the case and in any case is opposed to the principles of equity, natural justice and fair play.

2 For that the Learned Commissioner of Income Tax (Appeals) has erred in confirming that the order of the Assessing Officer was not "bad in law" under the facts and circumstances of the case

3 For that the Learned Commissioner of Income Tax (Appeals) has erred in confirming invocation of Section 68 under the facts and circumstances of the case

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4 For that the Learned Commissioner of Income Tax (Appeals) has erred in confirming Disallowance of claim made U/s. 10(38) (Long Term Capital Gain on account of sale of shares) under the facts and circumstances of the case.

5 For that the Learned Commissioner of Income tax (Appeals) has erred in confirming the additions without providing an opportunity of being heard under the facts and circumstances of the case.

6 For that the Learned Commissioner of Income Tax (Appeals) has erred in not considering the cost of the shares paid through banking channels under the facts and circumstances of the case.

7 For that the Learned Commissioner of Income Tax has erred in confirming the addition made by the Assessing Officer based on realm of surmises, conjectures and suspicion.

8 For that the Learned Commissioner of Income Tax (Appeals) has erred in not considering the oral submissions made.

9 For that the Learned Commissioner of Income Tax (Appeals) has erred in not passing a speaking order on all the grounds of appeal before him.

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Honourable Income Tax Appellate Tribunal may be pleased to

a. Direct the Assessing Officer to delete the additions made in respect of unexplained cash credit to the tune of Rs.20,85,000/- under the head "Income from Other Sources".

b. Pass such other orders as the Honourable Appellate Tribunal may deem fit.

3. The brief facts of the case are that the assessee is an individual and derived income from house property, income from business, income from capital gains and income from other sources, filed her return of income for the AY 2015-16 on 22.09.2015, declaring total income of Rs.29,31,200/-. The case has been selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has declared long term capital gains on sale of shares exempted u/s.10(38) of the Act, to the tune of Rs.19,85,000/-. Therefore, called upon the assessee to file necessary details. In response, the assessee has filed various details

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including contract note, Demat account details, broker details, name of scrip purchased and mode of payment, etc. The AO after considering relevant submissions of the assessee and also taken note of information received from the Directorate of Investigation Income Tax, Kolkata, opined that M/s.Kailash Auto Finance Ltd., is a penny stock, which has been used by many people for claiming bogus long term capital gains for the purpose of exemption u/s.10(38) of the Act. Therefore, after analyzing various details including report of the Directorate of Income Tax (Investigation) opined that consideration received for sale of shares of M/s.Kailash Auto Finance Ltd., is unexplained credit, which needs to be taxed u/s.68 of the Act, and accordingly, made addition of Rs.20,85,000/-. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeeded. The Ld.CIT(A) for the reasons stated in his appellate order, sustained the additions made by the AO. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that Ld.CIT(A) erred in sustaining the additions made by the AO towards consideration received for transfer of shares of M/s.Kailash Auto Finance Ltd., u/s.68 of the Act, without appreciating the fact that the assessee has furnished all evidences to prove that said transaction is genuine, which is carried out through proper channel. The Ld.AR further submitted that the AO has made addition towards consideration u/s.68 of the Act, without providing a reasonable opportunity of hearing to the assessee to justify her case, which

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is evident from the fact that so called Investigation Report relied upon by the AO was not shared with the assessee to make her rebuttal. Therefore, the issue may be set aside to the file of the AO to give one more opportunity of hearing to the assessee.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the Ld.CIT(A) has brought from clear facts in light of various reasons given by the AO and also in light of the report of Directorate of Investigation Income Tax, Kolkata & Delhi, that long term capital gains derived by the assessee from sale of shares of M/s.Kailash Auto Finance Ltd., is bogus which is used for converting unaccounted income of the assessee. Therefore, there is no reason to set aside the issue to the file of the AO.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The AO has made addition towards sale proceeds of shares of M/s.Kailash Auto Finance Ltd., u/s.68 of the Act, as unexplained credit on the ground that M/s.Kailash Auto Finance Ltd., is a penny stock company, which fact has been established by the report of the Directorate of Investigation, Kolkata & Delhi, where the modus operandi of penny stock companies have been unearthed. The AO has discussed the issue in light of origin of the shares subsequent conversion and listing to the end point and opined that these are circular trading within known people to jack up sale price of the share

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to give benefit to certain persons for commission. This fact has been strengthened by the fact of admission of certain persons in the statement recorded u/s.132(4) of the Act, during the course of investigation by the Directorate of Investigation, Kolkata & Delhi. It was the explanation of the assessee that M/s.Kailash Auto Finance Ltd., may be a penny stock, but the assessee has carried out purchase and sale transaction through registered stock exchange and shares were demated in Demat A/c. Further, consideration for purchases has been paid through proper banking channel. The assessee has filed all details including progress note, share certificate, contract note, bank details, etc. The AO ignored all details furnished by the assessee and has made additions only on the basis of report of the Directorate of Investigation, Kolkata & Delhi, without providing details of said report and also opportunity of cross-examination of persons who gave statement against the assessee. Therefore, requested to set aside the appeal to the file of the AO to justify her case.

7. Having heard both the sides, we find merits in the arguments of the Id.Counsel for the assessee for the simple reason that there is no dispute with regard to the details filed by the assessee. Further, transaction has been carried out through registered stock exchange. Therefore, when you relied upon the documents furnished by the assessee, there cannot be any doubt of genuineness of transaction. However, the investigation carried out by the Directorate of Investigation, Kolkata & Delhi, reveals that M/s.Kailash Auto Finance Ltd., is a penny stock, which has been used to

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provide bogus long term capital gains to various persons. The AO has relied on the report of the Directorate of Investigation, Kolkata & Delhi, and statement recorded from certain persons without providing details of report and statement of some persons. It is a well settled principle of law that if any third party information relied on by the AO to take an adverse inference against the assessee, then, it is the duty of the AO to share such information to assessee for her rebuttal. In this case, the AO does not shared information to the assessee. Therefore, we are of the considered view that the issue needs to be go back to the file of the AO to give one more opportunity of hearing to the assessee to justify her case. Hence, we set aside the issue to the file of the AO and direct the AO to re-do the assessment after providing reasonable opportunity of hearing to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 21st day of September, 2022, in Chennai.

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

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 21st September, 2022.
TLN

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

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