

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1722/Chny/2017
निर्धारण वर्ष /Assessment Year: 2014-15

Smt. Pramila Jain,
No.144, Abhilasha Arcade,
Purasawakam High Road,
Kelly, Chennai.

v. The Asst. Commissioner-
of Income Tax,
Non-Corporate Circle-5(4),
Chennai.

[PAN: AAIPP 9062 F]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Yeshwanth Kumar, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.K.N.Dhandapani, Addl.CIT
सुनवाई की तारीख/Date of Hearing : 29.09.2022
घोषणा की तारीख /Date of Pronouncement : 14.10.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-5, Chennai, dated 02.06.2017 and pertains to assessment year 2014-15.

2. The brief facts of the case are that the assessee has filed her return of income for the AY 2014-15 on 24.03.2016 admitting total income of Rs.18,07,290/-. 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 derived from purchase and sale of shares

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and claimed exemption u/s.10(38) of the Act. Therefore, on the basis of information furnished by the assessee and also taken note of Investigation Report of Income Tax Department, Kolkata, came to the conclusion that long term capital gains derived from sale of shares of M/s.NCL Research & Financial Services Ltd., is an accommodation entry provided by a group of people in the guise of long term capital gains and thus, rejected the arguments of the assessee and made addition towards sale consideration received from sale of shares as income of the assessee. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their 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.

3. The Ld.AR for the assessee submitted that the issue involved in the present appeal is covered by the decision of ITAT Chennai Bench in the assessee's own case for the AY 2013-14 in ITA No.3067/Chny/2017, where under identical circumstances, the Tribunal has set aside the issue to the file of the AO to decide the issue in accordance with law. Therefore, this year also, the issue may be set aside to the file of the AO.

4. The Ld.DR, on the other hand, strongly supporting the order of the Ld.CIT(A), submitted that the AO has carried out detailed inquiry of modus operandi of entry providers in penny stocks and find that the assessee is also one of the beneficiaries of the accommodation entry provider and thus,

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made addition towards sale consideration u/s.68 of the Act. Therefore, there is no reason to set aside the issue to the file of the AO. In this regard, he relied upon the decision of the Hon'ble Madras High Court in the case of Smt. Tharakumar v. ITO in TCA No.128 of 2019 dated 11.02.2019.

5. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Although, the Hon'ble Madras High Court has taken a view against the assessee on the issue of long term capital gains derived from sale of penny stocks, but subsequent developments reveals that the AO has made additions towards sale consideration u/s.68 of the Act, as unexplained credit without providing the materials used against the assessee. Under these circumstances, various Courts, including the Hon'ble Karnataka High Court also taken a view that the issue needs to be set aside to the file of the AO to give one more opportunity to the assessee to collect necessary papers from the AO and submit the reply on the issue of Investigation Report relied upon by the AO to make additions. Further, in the assessee's own case, the co-ordinate Bench of the Tribunal, for the AY 2014-15 had considered a similar issue and after considering relevant facts set aside the issue to the file of the AO for further verification. Therefore, consistent with view has taken by the co-ordinate Bench in the assessee's own case for the earlier assessment year, we are of the considered view that this year also the appeal needs to go back to the file of the AO for verification. Hence, we set aside the issue to the file of the AO and direct the AO to re-do the

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assessment after considering relevant objections filed by the assessee regarding non-furnishing of relevant materials used against the assessee and deal with the said issue in accordance with law.

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

Order pronounced on the 14th day of October, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 14th October, 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