

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH: KOLKATA

श्री मनीष बोरड, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष

[Before Shri Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1324/Kol/2018

Assessment Year : 2014-15

Shri Avinash Patil (PAN: AKNPT 6241 R)	Vs.	ITO, Ward-43(4), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी(

Date of Hearing / सुनवाई की तिथि	22.09.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.11.2022
For the Appellant/ निर्धारिती की ओर से	None
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT, Sr. DR

ORDER / आदेश

Per Shri Sonjoy Sarma, JM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals) – 13, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 05.03.2018 for the AY 2014-15.

2. The brief facts of the case are that the assessee is an individual and the assessee filed his return of income for the assessment year 2014-15 at Rs. 3,58,270/-. The case of the assessee was selected for scrutiny under CASS and the notice u/s 143(2) and 142(1) were issued upon the assessee. In compliance of such notice, the AR of the assessee appeared time to time before the Assessing Officer. During the course of assessment proceeding, the AO noticed that the assessee had shown income from Long Term Capital Gain arising from sale of shares of SRK Industries which was sold through Upadan Securities for a total sale consideration of Rs. 52,85,206/- (trade value from ITS data is Rs. 53,04,659/-) and computed Long Term Capital Gain (LTCG) of Rs. 52,15,207/- and claimed such income as exempt income u/s 10(38) of the Act as those shares were held by the assessee for more than 12 months time. During the course of assessment proceeding, the AO after examination of the facts of

the case, he viewed that this sole purpose behind such transactions to deliver profit to the assessee in the form of gain from stock investment and to defraud the revenue by claiming exemption u/s 10(38) of the I.T. Act against such transaction. Accordingly, he added the entire amount of Rs. 53,04,659/- in the hands of the assessee and consider as unexplained cash credit u/s 68 of the Act in the hands of assessee.

3. Dissatisfied with the above order, assessee preferred an appeal before the Id. CIT(A) where the appeal of the assessee was dismissed.

4. Aggrieved by the order of Id. CIT(A), assessee preferred another appeal before the Tribunal by raising several grounds.

5. At the time of hearing of this appeal, no one appeared on behalf of the assessee although repeated notices were issued upon the assessee by the registry from time to time. However, no one turned up in compliance of such notices, therefore we have no other alternative but to decide the appeal ex-parte against the assessee and decide the same on the material available on record with the assistance of the Id. DR.

6. While going through the grounds of appeal, the main grievance of the assessee is relating to the disallowance of claim of exemption u/s 10(38) in respect of Long Term Capital Gain arising from the sale of shares. Therefore, we are going through to decide the same on the basis of material available on record. The assessee during the assessment year in question has claimed exempt income of Rs. 53,04,659/- from the sale of equity share of SRK Industries Ltd. and the share price of said company witnessed a drastic and sharp increase in a very short span of time without having sufficient reason for such increase in price. While framing the assessment referred to the information from Directorate of Income Tax (Investigation), Kolkata, which had unearthed a large economic scam of tax evasion in July 2013 conducting search and seizure operations. It was also found that the share brokers and entry operators were involved in manipulation of market price of such penny stock. Therefore, the AO added such exempted income in the hands of assessee. Similar view was taken by the

ld. CIT(A) while passing such order and the ld. CIT(A) did not interfere with the order passed by the ld. AO.

7. We after going through the facts and circumstances of the case and material available on record. We observe that share prices of alleged company witnessed a drastic and sharp increase in a very short span of time without having sufficient reason for such increase of price of such share and findings of authorities below on this issue. The Hon'ble Jurisdictional High Court in the case of *Swati Bajaj supra* under similar set of facts considering report of Directorate of Income Tax (Investigation), Kolkata and also poor financials of the penny stock companies but having sharp, drastic and abnormal increase in share price, held such long term capital gain from sale of such shares as bogus and confirmed the addition made by the ld. AO u/s. 68 of the Act and also confirmed the order passed by the AO thereby treating the assessment order is a valid one. We, therefore, of the considered view that since the ratio laid down by the Hon'ble Jurisdictional High Court in the case of *Swati Bajaj (supra)* is squarely applicable on the issue raised by the assessee in the instant appeal and the assessee having failed to controvert this finding by placing any other binding precedence of Hon'ble Supreme Court in its favour therefore we fail to find any infirmity in the finding of the authorities below and the assessment order passed u/s 143(3) of the Act dated 23.12.2016 and order passed by the ld. CIT(A). Therefore, we dismiss the appeal filed by the assessee. The other grounds are general and consequential in nature therefore need not required to be adjudicated.

8. In the result, the appeal of the assessee stands dismissed.

Order is pronounced in the open court on 9th November, 2022

Sd/-
(Manish Borad/मनीष बोरड)
Accountant Member/लेखा सदस्य

Sd/-
(Sonjoy Sarma/संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Dated: 9th November, 2022

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Avinash Patil, 43, Hariram Goenka Street, Kolkata – 700 007.
2. Respondent – ITO, Ward-43(4), Kolkata.
3. Ld. CIT(A)
4. The CIT
5. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata