

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'C' : NEW DELHI)

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.576/Del/2019
(Assessment Year : 2010-11)

Gaurav Singhal 149, Tarun Enclave, Pitampura, New Delhi-110034 PAN : AOHPS3787D	Vs.	ITO, Ward-17(4), C.R.Building, New Delhi-110002
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. R.R.Singla, CA
Revenue by	Smt. Sunita Singh, CIT(DR)

Date of hearing:	05.01.2023
Date of Pronouncement:	18 .01.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Assessee against order dated 27.12.2018 in Appeal No. 74/18-19 assessment year 2010-11 passed by Commissioner of Income Tax (appeals), Ghaziabad (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 22/12/2017 u/s 147/143(3) of the Income Tax Act, 1961 passed by the Income Tax Officer,

Ward-17(4), New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

2. The facts of the case are assessee Gaurav Singhal filed his return of income for the assessment year 2010-11 on 31.03.2011 with ward 25(1)55(1), Delhi at a total income of Rs. 2,03,985/- comprising of income from salary, income from business and income from other sources. Besides these, he had also claimed Rs. 2,17,773/- as exempt income u/s 10(38) on account of long term capital gains from sale of listed shares amounting Rs. 3,50,280/- on which STT was paid and including brokerage expenses etc total sale expenses of Rs. 637/- were incurred by the assessee. These shares were purchased by the assessee on 07.07.2005. A notice u/s 148 of Income Tax Act, 1961 dated 28.03.2017 was received from Income Tax Officer, Ward 40(3), Delhi. In response to this the assessee filed reply dated April 5, 2017 that his original return may be taken as return filed pursuant to the provisions of section 148 of the Act. Assessee was provided with copy of the reasons recorded on 8.5.2017 against which he has filed the objection on June 5, 2017. He was then served with notice u/s 143(2) dated 03.05.2017 by the Income Tax Officer, Ward 40(3), Delhi. On 8.8.2017, the assessee received a notice u/s 148 of the Act and then notice u/s 143(2) dated 04.09.2017 from ward 17(4), Delhi. A final notice dated 24/27-11-2017 was issued to the assessee, wherein it was informed that the income Tax Officer, Ward 40(3) has transferred the assessment proceedings to Ward 17(4) on 18.07.2017. This show cause notice was duly replied by the assessee vide reply letter dated 01.12.2017. The ld. Assessing Officer has treated the sale price of shares amounting Rs. 3,50,280/- to be income from other sources u/s 68 of the Income Tax Act. Apart from this, ld. Assessing Officer has taken

amount of commission paid Rs. 17,514/- as undisclosed income u/s 68 of the Income Tax Act. Finally the assessment was framed at a total income of Rs. 5,71,690/-.

2.1 The Ld. AO had observed that information was received from Pr. DIT (Inv.), Kolkata that Ashok Kumar Kayan and Sunil Kumar Kayan were share brokers at the CSE and BSE and were involved in providing bogus LTCG through penny stocks. A survey was conducted in the premise of Ashok Kumar Kayan and it was found he was involved in providing accommodation entry in the form of bogus long term capital gains in connivance with entry operators and promoters of scrips at Calcutta Stock Exchange as well. He named penny stocks at BSE and CSE which were used for the purpose of providing accommodation entry in the form of long term capital gains. The assessee has invested in scrip i.e. Konarak Commerce Industries Limited and claim LTCG of Rs. 3,50,280/- . Ld. AO in the assessment order observes that the perusal of ITR filed by the assessee for the A.Y. 2010-11, it reveals that the assessee has shown income of Rs. 2,03,895/- and tax liability created of Rs. 4,882/- which show that the financial position is not very sound.

2.2 Therefor after recording the reasons and taking necessary approval from the pr. CIT, Delhi-14, New Delhi, notice u/s 148 of the I.T.Act, 1961 dated 28.03.2017 was issued & served upon the assessee.

2.3 In reply to the same, assessee had filed a letter dated 01.12.2017 in which it was stated that the assessee was not able to submit the Statement of Affairs as on 31.03.2009. No details of Depository and also filed justification regarding the Long Term Capital Gains. It was also submitted

that the assessee had not received any amount from Mr. Ashok Kumar Kayan or Mr. Sunil Kumar Kayan but it was from Mr. S.K.Khemka. However it is important to Note that No details of purchase of Shares were filed by the assessee and it was only stated that since the assessee had Long Term Capital Gains being Exempt from Tax u/s 10(38), the same were not disclosed by the assessee in the ITR. The plea of the assessee regarding no transactions with Mr. Ashok Kumar Kayan or Mr. Sunil Kumar Kayan was considered to be not relevant as in the reasons recorded, it was clearly mentioned that the case of the assessee was reopened on the basis information received from Investigation Wing which includes other brokers also.

2.4 Thus Ld. AO was not satisfied with the submissions of assessee and after discussing the *modus operandi* and the Investigation Wing's findings made an addition of Rs. 3,50,280/- considering this amount to be introduced / credited by the assessee in the books of accounts out of these purported share sales receipts.

3 Ld. CIT(A) had sustained addition and assessee is in appeal raising following grounds :-

“1. The ld. CIT(A) has erred in law and on facts by upholding the re-opening the assessment.

a. Even if the reasons were not recorded by the ld. AO i.e. ITO Ward 17(4) himself.

b. Even if the ITO recording the reasons i.e. ITO Ward 40(3) was not having the jurisdiction of the assessee.

c. Even if the ld. ITO recording the reasons had not applied his mind independently.

2. *The Id. CIT(A) has erred in law and on facts by upholding the re-assessment.*

a. Even if the Id. AO has assumed the jurisdiction on transfer of case without following set of procedure prescribed by law.

b. Even if the Id. AO has assumed the jurisdiction by issuing a time barred notice u/s 148 of the Act.

c. Even if the Id. AO had failed to comply with the set procedure of law for disposal of objections against the re-assessment proceedings.

d. Even if the Id. AO had failed to apply his mind based on the facts and circumstances of the case.

3. *The Id. CIT(A) has erred in law and facts while upholding the assessment on the basis of a statement even if the confrontation/cross examination of the same was denied to the assessee.*

4. *The Id. CIT(A) has erred in law and on facts while upholding the additions made by invoking the provisions of section 68 of the Income Tax Act.*

5. *The Id. CIT(A) has grossly erred in facts and failed in distinguishing the present case with the hypothecations and presumptions relied upon by the Id. AO.*

6. *The Id. CIT(A) has erred in law and facts while upholding the addition of gross sale value of shares as undisclosed income.*

7. *The Id. CIT(A) has erred in law and facts while upholding the addition based on his own whims and surmises.*

8. *The assessee may please be allowed to add, later, amend its ground of appeal at any time before or during the course of hearing of the appeal."*

5. Heard and perused the record.

6. Ld. AR made submissions with regard to exercise of jurisdiction and re-assessment by ITO, Ward 17(4), New Delhi submitting that notice u/s 148 dated 28.03.2017 was issued by ITO, Ward-14(3) and no notice was issued by ITO, Ward 17(4) within the statutory period as the notice was issued u/s 148 on 08.08.2017 followed by notice u/s 143(2) on 04.09.2017 and both were time barred. Ld. AR relied judgment of Hon'ble Kerala High Court in P.A.Ahammed vs. Chief Commissioner of Income Tax(2006) 282 ITR 334 Kerala and Hon'ble Delhi High Court in Sunworld Infrastructure Pvt. Vs. ITO, Ward 24(3), New Delhi and Co-ordinate Bench judgment in Hari Das Singla vs. ITO, Ward-50(4), New Delhi and submitted that such re-assessment has to be considered to be without notice.

6.1 It was further submitted that the reasons recorded u/s 147/148 have no substance and are merely reproduction of the information received from Investigation Wing. It was pointed out that the reasons available at page no. 29-30 of the paper book when read as a whole would show that in regard to assessee there is no observations of any transaction being investigated and found suspicious. It was submitted that the satisfaction recorded is without application of mind and factually incorrect information incorporated as the money was not received from the two named suspect Kayan brothers but the transactions were effected with from one S.K.Khemka.

6.2 Referring to contract note of the purchase of shares it was submitted that assessee had purchased the shares on 07.07.2005 for 1,31,870/- and sold the shares on 12.03.2010 for 3,49,643/- and the circumstances nowhere indicates, assessee being involved into the changing the colour of his money.

7. On the other hand Ld. DR submitted there is no error in the findings of the Ld. Tax authorities below who have sufficiently examined the modus operandi and the material collected by investigation wing. It was submitted that the reasons if read as a whole would show that independently of the investigation's wings material and information Ld. AO had considered the circumstances.

8. The bench is of considered opinion that the matter can be disposed off by a discussion on ground no. 1(c) and 2(d) by which the exercise of jurisdiction of reopening has been challenged and also on the merits covered by ground no. 4 and 5.

9. At the outset, the reasons as stand recorded are reproduced below for convenience :

“Reasons

*“In this case an information has been received from Pr.DIT (Inv) Kolkata that **Ashok Kumar Kayan and Sunil Kumar Kayan** were share brokers at the CSE and BSE and was involved in providing bogus LTCG through penny stocks. A survey was conducted in the premise of Ashok Kumar Kayan and it was found he was involved in providing accommodation entry in the form of bogus long term capital gains in connivance with entry operators and promoters of scrips at Calcutta Stock Exchange as well. He named penny stocks at BSE and CSE which were used for the purpose of providing accommodation entry in the form of Long term capital gains. 10 penny stocks were identifies which were used for providing bogus LTCG at the CSE which are as below:*

<i>S.No.</i>	<i>Name of the scrip</i>	<i>Scrip Code</i>
1.	<i>Blue Print Securities Limited</i>	<i>12630</i>
2	<i>Konarak Commerce Industries Limited</i>	<i>21155</i>
3	<i>Shardaraj Tradefin Limited</i>	<i>29209</i>
4	<i>Access Global Limited</i>	<i>29096</i>
5	<i>Bakra Pratisthan Limited</i>	<i>12133</i>
6	<i>Coronet Industries Limited</i>	<i>13165</i>
7	<i>Concrete Credit Limited</i>	<i>29396</i>
8	<i>BSR Finance and Constructions Limited</i>	<i>12226</i>
9	<i>Multiplus Resources Limited</i>	<i>23483</i>

The investigation directorate has also covered other share brokers u/s 131 or 133A of the Income Tax Act, 1961 who are involved in providing accommodation entry in the form of bogus LTCG. In this exercise, it was also found that the brokers were active at the CSE for the same purpose.

On analysis of trade data taken from the Calcutta Stock Exchange, it was found that the above mentioned brokers traded in the 9 penny stocks at the platform of CSE for providing bogus LTCG to clients. It is known that out of the total trade volume at the platform of CSE for these 9 scrips, more than 85% of the trade has been carried out by these 10 brokers.

Apparently, from the trade patterns it is evident that while trading is done in a time in synchronised way, it has also been observed that trading is done in a syndicate which comprises of promoter of the company/stock, broker and entry operators. Though on SEBI's directions, CSE has stopped trading on C-Star (the fully computerised online trading system) since 2013, yet trading in all penny stocks prior to that period have yielded huge long term capital gains to the beneficiaries and it is very much possible that the assesses would have taken it as exempt income u/s 10(38) of the Income Tax Act, 1961.

The assessee has invested in scrip i.e. Konarak Commerce Industries Limited, and claim LTCG of Rs.3,50,280/- and on the perusal of ITR filed by the assessee for the AY 2010-11, it reveals that the assessee has shown income of Rs.2,03,895/- and tax liability created of Rs.4,882/- which shows that the financial position is not very sound.

Keeping in view of the facts mentioned above , I have reason to believe that the income of Rs. 3,50,280/- has escaped assessment on the reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment as per provision of the section 147 of the I.T. Act, 1961. In this case, escaped income is more than one lakhs and within the meaning of section 149 of the IT Act' 1961.

In view of above, it is a fit case for issuance of notice u/s 148 of the Income Tax Act, 1961.

Dated 23/3/2017

*Sd/-
(ATUL KUMAR SINGH)
Income Tax Officer,
Ward-40(3), New Delhi””*

9.1 Appreciating the aforesaid it comes that while recording the reasons ITO, Ward-40(3), New Delhi has grossly reproduced the information which was received from the Investigation Wing and refers to the 10 penny stocks, and from which in one Konarak Commerce Industries Limited, assessee has invested and claimed LTCG of Rs. 3,50,280/-. However, in the reasons there is not iota of words of assessee having transactions with Kayan brothers. There is no discussion as to how the investment of assessee in the scrip has resulted into escaping income. Merely it is observed in the concluding part of the reasons that;

“The assessee has invested in scrip i.e. Konarak Commerce Industries Limited, and claim LTCG of Rs.3,50,280/- and on the perusal of ITR filed by the assessee for the AY 2010-11, it reveals that the assessee has shown income of Rs.2,03,895/- and tax liability created of Rs.4,882/- which shows that the financial position is not very sound”.

These observations are mere expression of Ld. AO's perspective on financials of the assessee and do not have any reasons to show that there is live link between the information reproduced and the failure of assessee to disclose fully and truly all material facts necessary for assessment. Apparently the Ld. AO has merely expressed reason to suspect and not cited reason to believe that income chargeable to tax has escaped assessment. The Assessing Officer has no power to review; he has the power to re-assess. The part of reasons reproduced above show that there was merely an attempt to review on basis of view that 'financial position of assessee is not very sound'. This, however, was not a valid ground for invoking the provisions of section 147 of the I. T. Act.

9.2 Then what is important is that the assessee had taken a specific plea that he has not dealt with tainted Kayan brothers and the transaction was effected on 12.03.2010 with S.K.Khemka in regard to whom there was no word in the reasons that if he was also engaged in alleged bogus transactions generating LTCG. That shows that the information received from the investigation wing as reproduced in the reasons had no substance qua the assessee and there was non application of mind by Ld. AO, away and apart from the information.

10. Furthermore, the computation of income available at page no. 24 of the paper book show that while claiming the LTCG, assessee had mentioned that the scrip was purchased on 07.07.2005 for a sum of Rs. 1,31,870.69/- and was sold on 12.03.2010 for Rs. 3,49,643.46 thus generating LTCG of 2,17,772.77/-. The Ld. AO has not paid any heed these aspects and being driven by presumption arising out of Investigation Wings findings concluded that there was a bogus LTCG claim. Ld. CIT(A) also approached to decide the issues that whatever is suggested by Investigation Wings is gospel truth and no attempt was made to go on the facts of assessee.

11. The bench is of considered view that tax authorities below have fallen in error as Ld. AO recorded reasons without applying mind independently but based on surmises and conjectures out of financial status of the assessee. While Ld. CIT(A) and Ld. AO have both ignored the factual aspects of purchase of shares five years prior to the sale for substantial amount and have tried to paint its findings based on modus operandi of tainted Kayan brothers, with whom actually there was no dealing by the assessee. The grounds ground no. 1(c) and 2(d) and no. 4 and 5 raised are allowed and

remaining are superfluous so not required to be adjudicated. **The appeal of assessee is allowed.**

Order pronounced in the open court on 18th January, 2023.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date: .01.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**