

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'G' : NEW DELHI)

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.8909/Del/2019, A.Y. 2014-15

Smt. Surajmukhi Sharma C/o. Dinesh Mohan Sinha, Advocate, Office No. 108, Plot No. 20, Parmesh Business Centre, Community Centre Karkardooma, Delhi-110092	Vs.	Income Tax Officer, Ward No. 56(4), New Delhi
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Assessee by	Shri Dinesh Mohan, Adv.
Revenue by	Ms. Sangeeta Yadav, Sr. DR

Date of hearing:	19.01.2023
Date of Pronouncement:	23.01.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been filed by the Assessee against order dated 29.08.2019 in Appeal No. CIT(A), Delhi-37/10185/2019-20 assessment year 2014-15 passed by Commissioner of Income Tax (appeals)-37, New Delhi (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 29/12/2016 u/s 143(3) of the Income Tax Act, 1961 passed by the Income Tax Officer, Ward-56(4), New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

2. The assessee filed return of income of Rs. 5,22,490/- showing long term capital gain of Rs. 68,56,408/- as exempt income u/s 10(38) of the Act. The Ld. AO taking into account certain information with him from Directorate of Investigation, Kolkata regarding bogus entries of LTCG took into consideration the modus operandi and held the long term capital gain claim of assessee to be outcome of accommodation entries and made the addition u/s 68 of the Act and further invoking section 115 BBE of the Act.

2.1 Ld. CIT(A) confirmed the same, therefore, assessee is in appeal raising following grounds :

“1. The order is bad in law and facts of the case.

i. Because the Ld. CIT has confirmed the addition even that all documents related to transaction were submitted and without verification the same were disbelieved amounting to Rs. 6856408/-.

ii. Because the Ld. CIT has confirmed the addition even no opportunity of cross examination were provided to the assessee on the material available on record, which are the basis of addition of Rs. 6856408/-.

iii. Because Ld. CIT has confirmed the additions in the income of the assessee while the additional income are contrary to each other additions.

iv. Because the Ld. CIT has confirmed the concealment of penalty proceedings.

2. That the assessee reserve his right to file details / more grounds of appeal at the time of hearing.”

2.2 Further on 26.10.2022 application for admission of additional grounds was filed and following additional grounds were raised :

“a) That the contents of the additional submissions so made along with this affidavit are true and best to my knowledge and belief and the same has been drafted by my counsel on my instructions.

b) That no material information has been concealed or nothing has been wrongly mentioned.”

3. Heard and perused the record.

4. On behalf of the assessee, three fold arguments were raised **first** about the fact that no notice u/s 143(2) of the Act was issued. **Second** that as the Ld. AO had accepted the return of income of the assessee with the claim of not maintaining books of accounts, then no addition can be made an addition u/s 68 of the Act. In this context special reference was made to a co-ordinate Bench judgment in **ITA No. 5430/Del/2011, Smt. Babbal Bhatia vs. ITO decided on 08.06.2018**. **Thirdly**, it was submitted on behalf of the assessee that at no point of time during assessment, Ld. AO had confronted and sought response of the assessee with regard to the information which Ld. AO had relied to conclude that the LTCG claim of assessee was the outcome of any fraudulent and bogus entry operations.

4.1 On the other hand, on the basis of assessment record Ld. DR submitted that notices were duly issued and the record reflected the same. It was submitted that additions have been made on the basis of bank account statements which do not form part of the books of accounts and that during assessment sufficient opportunity was given to the assessee, as reflected in the assessment order. Accordingly, it was submitted that there is no error in the findings of Ld. Tax Authorities below.

5. At the outset, it is relevant to observe that as the additional grounds raised are in regard to questioning the exercise of very jurisdiction itself by the Ld. AO, the same being of legal nature stand admitted.

6. Further on perusal of the assessment record as produced on behalf of the revenue, the bench observes that the notice u/s 143(2) were issued by Ld. AO and the service was effected through speed post. The receipts of same were on record. The presumption of truth is attached to the official records and the same is required to be rebutted by evidences. There is no evidences of the assessee to

controvert the same. Thus, in regard to the issue of non-issuance of statutory notice u/s 143(2) of the act the assessee has no case.

7. However, with regard to the substantial ground no. 1(ii), about not giving assessee an opportunity of hearing, there appears to be substance as Ld. AO seems to have taken into cognizance the detailed investigation report of the Investigation Wing and the *modus operandi* providing LPCG/STCL. Certainly the assessee needed an opportunity to explain that the investments in the scrips were outcome of wisdom and financial expediency. Thus, on that basis the issue requires to be restored to the files of Ld. AO and further determination of grounds is not necessary.

8. **Consequently** the issue is restored to the files of Ld. AO to give an opportunity of hearing to the assessee to explain the material with Ld. AO of the Investigation wing and explain the transactions of LTCG. Pertinent to observe here is that the assessee will also be at liberty to also take the legal question that no addition in income can be made under the provisions of Section 68 of the Act, where assessee is not maintaining any books of accounts. **The appeal is allowed for statistical purposes**

Order pronounced in the open court on 23 January, 2023.

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Date:- 23.01.2023

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