

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 447/JP/2022
निर्धारणवर्ष/AssessmentYear : 2012-13

Smt. Meena Agarwal R/o 41/405, New Mandi, Station Road, Bharatpur-321 001	बनाम Vs.	The ITO Ward -1 Bharatpur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABCPA 6243 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajendra Agrawal, CA
राजस्व की ओर से / Revenue by: Mrs. MonishaChoudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 08/02/2023
उदघोषणा की तारीख / Date of Pronouncement: 20/02/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 28-10-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 wherein the assessee has raised the following ground of appeal.

- ‘1. The ld. CIT(A) erred in dismissing the ground of appeal that the AO erred in reopening the assessment.
2. The ld. CIT(A) erred in dismissing the ground of appeal that the AO erred in making huge addition of Rs.6,12,367/- stating bogus LTCG

claimed u/s 10(38) in the ROI held to be income from undisclosed sources.”

2.1 Apropos Ground No. 1 and 2 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“6. I have carefully considered the grounds of appeal, statement of fact, the contents of assessment order and written submissions filed by the appellant. There is no dispute on the fact that M/s.Blueprint Securities Ltd. was a penny stock company. The assessee had purchased 50 shares of RanisatiCommotrade Pvt. Ltd. for a consideration of Rs.500/- in cash from PushpanjaliCommotrade Pvt. Ltd. Purchase of penny stock shares in cash at abnormally low consideration is generally a part of overall pre-planned scheme to convert unaccounted money into tax exempt income by taking bogus entry of LTCG which is visible in this case. Another step in the pre-planned scheme is to amalgamate the private limited company whose shares were already acquired by the beneficiaries with accompany whose shares are listed on recognized stock exchange. This part of modus operandi is also visible in this case when RanisatiCommotrade Pvt. Ltd. was amalgamated with M/s. Blueprint Securities Ltd. The broker M/s. Badri Prasad & Sons was also barred by SEBI for following modus operandi of artificially jacking up the price of shares. The appellant does not have a history of making share trading or investment in any other shares. There is no justification for abnormal increase of price of shares from Rs.500 to Rs.6,12,867/- Therefore, the re-opening on the basis of aforesaid information is very much justified and considering the entirety of facts of the case mentioned above, it is held that the AO has correctly treated Rs.6,12,367/- as income from undisclosed sources by denying exemption u/s.10(38) and hence the same is upheld. All grounds of appeal are hereby dismissed.

7. Accordingly, the appeal is treated as dismissed.”

2.2 During the course of hearing, the ld. AR of the assessee prayed that ld. CIT(A) is not justified in dismissing the ground of the assessee as to reopening the assessment made by the AO and also not justified in confirming the addition of Rs.6,12,367/- treating bogus LTCG claimed u/s 10(38) of the Act by the assessee from undisclosed sources. To this effect, the ld. AR of the assessee filed a detailed written submission countering the action of the ld. CIT(A) on the issue in question.

“Ground No.1:On perusal of the reasons recorded u/s 148(2) it appears that before re-opening of the assessment the Ld.AO had not applied his mind and there was no information before him for any escaped assessment as in these reasons recorded the Ld.AO has stated that the assessee was beneficiary of receiving bogus short term/long term capital gain entries from the bogus/fake entry providers ie., M/s Blue Prints Securities Ltd. as no transaction was made by the assessee with M/s Blue Prints Securities Ltd, and no bogus/ fake entry was provided by this e company.The re-opening of the assessment was made in suspicion and on whims only.No needful enquiry or investigation was made by the Ld AO before re-opening the assessment hence, the Ld. AO erred in re-opening the assessment, which is unjustified and bad in law.During the course of assessment proceedings, detailed computation of income (PB-2 to 3). explaining all the sources of income and various activities done by the assessee, datewise statement of long term capital gain on sale of shares (PB-3) having the complete datewise details of purchases, copy of bank statement (PB-6 to 7) alongwith copy of account payee cheque (PB-4) evidencing the receipt of sales consideration of sales of shares through banking channel, complete details STT paid on sale of shares (PB-5) & party combined bill of settlement for sale of shares (PB-5) were furnished before the Ld. AO.Reliance has been placed on the following judgements:-

- (1) (JP-Trib) 2021 ITL 2057 Nilesh Agrawal HUF v.ITO ITA No.222-223/JP/2020 Dt. of Order 09.02.2021
2. DBIT No. 209/2018, PCIT vs Pramod Jain (date of order 24-07-2018, Raj. High Court)
3. ITA No. 125/2020, PCIT vs Smt. Krishna Devi (date of order 15-01-2021, Raj. High Court)
4. M/s. Shree Silika Product Pvt. Ltd. 2020 ITL 162 (date of order 07-01-2020, ITAT Jaipur Bench)
5. CIT Vs. Pooja Agarwal (DB ITA No. 385 dated 11-09-2017, Raj. High Court)
6. MeghrajShekhawat vs DCIT (ITA No. 443 & 444/JP/2017 dated 07-03-2018, ITAT, Jaipur Bench)
7. DCIT vs Saurabh Mittal (ITA No.16/JP/2018 dated 29-08-2018, ITAT, Jaipur Bench)

But it is very unfortunate that the Ld.CIT(A) without considering the detailed written submissions and judicial pronouncements relied in the appeal, has very arbitrarily decided that "it was as sham transaction whci cannot stand and the test of human probability and therefore, addition so made by the AO is hereb confirmed, but the Ld.CIT(A) has not decided the ground of appeal of the assessee that "the ld.AO erred in re-opening the assessment. The Ld.CIT(A) relied upon the various judgements of bombay high court, P & H Highcourt and ITAT. Mumbai as mentioned by him in his appeal order page No. 8 & 9 but the facts of these cases are different and not applicable when the issue is already covered by the various decisions of Hon'le ITAT bench and Hon'leRajasthat High Court.

Ground No.2:-The Ld AO arbitrarily alleged that the humonogous gains ie., Rs.6,12,367/- (Rs.6,12,867/-minus Rs.500/-), which is around 1224.70 times of the original investment, made by the assessee in a penny scrip defies any logic or human probabilities and therefore cannot be genuine Further the id AO hold that the amount of Rs.6,12,367/-

introduced/credited by the assessee out of these purported share sale receipts during the FY 2010-11 (AY 2011-12) as his income from other sources and added the same to the total income of the assessee. During the course of assessment proceedings, detailed computation of income (PB-2 to 3) explaining all the sources of income and various activities done by the assessee, datewise statement of long term capital gain on sale of shares (PB-3) having the complete datewise details of purchases and sales of shares, copy of bank statement (PB-6 to 7) alongwith copy of account payee cheque (PB-4) evidencing the receipt of sales consideration of sales of shares through banking channel, complete details STT paid on sale of shares, party combined bill of settlement for sale of shares (PB-5) were furnished before the Ld. AO. The Ld. AO examined the same in depth and no adverse inference was drawn by him. The assessee submitted all the documentary evidences and information in evidence of his claim which are probable and expected from a human being and proved his onus to prove. But the Ld. AO arbitrarily disallowed the claim of the assessee and made a very huge addition of Rs.6,12,367/- stating bogus LTCG claimed u/s 10(38) in the return of income held to be income from other sources without any cogent evidence, inquiry, investigation or information, which is unjustified, bad in law and needs deletion. Reliance has been placed on the following judgements:

1. (JP-Trib) 2021 ITL 2057 Nilesh Agrawal HUF v. ITO ITA No.222-223/JP/2020 Dt. Of Order 09.02.2021
2. (Rajasthan High Court) DBIT No.209/2018 PCIT v. Pramod Jain Dt. of Order 24.07.2018
3. Delhi High Court) ITA No.125/2020 PCIT v. Smt. Krishna Devi Dt. of Order 15.01.2021
4. (ITAT, Jaipur bench) in the case of M/s Shree Silika Product Pvt.Ltd. (JP-ITAT)2020 ITL 162 dt.of order 07.01.2020
5. CIT v/s Pooja Agrawal DB ITA No.385/2011 Hon'le Rajasthan High Court dt.of decision 11.09.2017

6. MeghrajShekhawat v/s DCIT in ITA No.443& 444/JP/2017 Hon'le ITAT, Jaipurbench 07.03.2018

7. DCIT v/s Saurabh Mittal in ITA No.16/JP/2018 Hon'le ITAT, Jaipur bench29.08.2018

8. Smt. Manju Agarwal vs ITO (ITA No. 249/JP/2022 dated 11-01-2023, ITAT''SMC'', Jaipur Bench)

But it is very unfortunate that the Ld.CIT(A) without considering the detailed written submissions and judicial pronouncements relied in the appeal, has very arbitrarily decided that "it was as sham transaction which cannot stand and the test of human probability and therefore, addition so made by the AO is hereby confirmed.We pray to your honor to please consider the above submissions and please allow the appeal."

2.3 On the other hand, the ld. DR supported the order of the ld.CIT(A) and simultaneously relied upon the following decisions.

(1) Pr.CIT vs Swati Bajaj [2022] 139 Taxmann.com 352 (Calcutta)

(2) Jawari Lal Lunia vs Union of India [2022] 139 Taxmann.com 406 (Raj.)

2.4 We have heard both the parties and perused the materials available on recording including the case laws cited by both the parties. Brief facts of the case are that the assessee had purchased 50 shares of M/s. RanisatiCommotrade Pvt. Ltd. for a consideration of Rs.500/- in cash from PushpanjaliCommotrade Pvt. Ltd. During the hearing the bench has asked the ld. AR of the assessee to submit the copy of the bills for purchase of shares under dispute and copy of the demate account specifying the proof when the questions shares in fact purchased and

received in the demate account of the assessee. In response the ld. AR of the assessee vide letter dated 10.02.2003 only submitted the purchase bill, ongoing through the copy of the bill it is not cleared that the shares of that company named PushpanjaliCommod Trade Private Limited in fact purchased in physical form or in demate, what are the distinctive number of shares if the shares in physical and on what date the assessee got the shares of that private limited company transferred in her name. The ld. CIT(A) noted that purchase of penny stock shares in cash at abnormally low consideration is generally a part of overall preplanned scheme to convert unaccounted money into tax exempt income by taking bogus entry of LTCG which reveals in this case. The ld. CIT(A) further noted that another step in the preplanned scheme is to amalgamate the private limited company whose shares were already acquired by the beneficiaries with a company whose shares are listed on recognized stock exchange and this part of modus operandi is visible in this case when RanisatiCommotrade Pvt. Ltd. was amalgamated with M/s. Blueprint Securities Ltd. Therefore, the ld. CIT(A) found that the increase in the share price from Rs.500/- to Rs.6,12,867/- is not justifiable and he confirmed the action of the AO as to reopening of the assessment and also confirmed the addition of Rs.6,12,367/- as income from undisclosed sources by denying exemption u/s 10(38) of the Act. The Bench taking into consideration of all the aspects discussed by the lower authorities hereinabove finds that the assessee has neither furnished

any details of purchasing of shares nor details of the source of such purchases alongwith copy of demat account when the shares came into demate account of the assessee in order to justify the claim u/s 10(38) of the Act. Hence, in the absence of these details, the Bench feels to restore the issue to the file of the AO to decide the same as per law but by providing adequate opportunity of being heard to the assessee. The assessee is also directed to produce all the relevant details so as to justify her claim u/s 10(38) of the Act. Thus the appeal of the assessee is allowed for statistical purposes.

4.0 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 20-02-2023

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member
जयपुर / Jaipur

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

दिनांक / Dated:- 20 /02/2023

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt. Meena Agarwal, Bharatpur
2. प्रत्यर्थी / The Respondent-The ITO, Ward 1, Bharatpur Jaipur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.447/JP/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar