

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE,
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.7768/Del/2019
(ASSESSMENT YEAR 2011-12)**

M/s Narayan Securities Ltd. E-1/7, 3 rd Floor East Patel Nagar New Delhi-110 008 PAN-AAACN 2728F	Vs.	Dy. CIT Circle-17(2) New Delhi
(Appellant)		(Respondent)

Appellant by	Ms. Manisha Lahoti, CA
Respondent by	Ms. Sarita Kumari, Commissioner of Income Tax, Departmental Representative ("CIT- DR" for short)

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-6, Delhi [Ld. CIT(A)", for short], dated 23/07/2019 for Assessment Year 2011-12. Grounds taken in this appeal are as under:

"1. That the Commissioner of Income Tax Appeals['CIT(A)]erred on facts and in law in upholding validity of reassessment proceedings initiated under section 147 through the issuance of notice under section 148 of the

Income Tax Act, 1961 ('the Act) and not quashing the same on the ground of being illegal, bad in law and void-ab-initio.

1.1 That the CIT(A) erred on facts and in law in not appreciating that reliance placed by the assessing officer on the report from investigation wing for alleging that the appellant had acted as an 'exit provider' for providing bogus entries of exempt Long term Capital Gain ('LTCG')/Short Term Capital Loss('STCL')/business loss to various beneficiaries from whom shares of M/s SVC Resources Ltd. ('SVC Ltd.) were purchased by the appellant, without any independent verification / satisfaction of the assessing officer, did not constitute valid "reason to believe" to assume jurisdiction under section 147 of the Act.

1.2 That the CIT(A) erred on facts and in law in holding that the appellant was precluded from raising objections to assumption/validity of reassessment proceedings in view of provisions of 292BB of the Act without appreciating that the said provision only precluded the assessee from raising objections relating to service of notice and not from raising legal objections qua assumption/validity of reassessment proceedings, which goes to root of the matter and could be raised at any stage.

1.3 Without Prejudice, that the CIT(A) erred on facts and in law in not appreciating that the appellant had duly objected against assumption of jurisdiction under section 147 during the course of assessment proceedings.

1.4 Without prejudice, that the order passed by the assessing officer is illegal, bad in law and void-ab-initio since the assessing officer proceeded to pass the re-assessment order without first disposing off the legal objections raised by the appellant."

(B) In this case, assessment order dated 23/12/2018 was passed by the Assessing Officer u/s 143(3) of Income Tax Act; wherein the assessee's total income was assessed at Rs.63,00,879/- (rounded off to Rs.63,00,880/-) as against the returned income of Rs.57,22,440/-. In the assessment order an addition of Rs.5,78,439/- was made on account of commission income, at the

rate of 5% on purchase of shares amounting to Rs.1,15,38,775/-.

In the aforesaid assessment order there is no discussion regarding the basis on which rate of commission income has been determined @ 5%; and the estimation of commission income has been made on *ad hoc* rate of 5% on the purchase amount of shares. The assessee filed appeal against the assessment order in the office of the Ld. CIT(A). Vide impugned appellate order dated 23/07/2019, the Ld. CIT(A) dismissed the assessee's appeal. The present appeal before us has been filed by the assessee against the aforesaid impugned appellate order dated 23/07/2019 of the Ld. CIT(A).

(B) At the time of hearing before us, Ms. Manisha Lahoti, CA, the Ld. Authorized Representative ("AR" for short) for the assessee submitted that the assessee was a share broker. She further submitted that the aforesaid purchase of shares amounting to Rs.1,15,38,775/- was made by the assessee on its own account; and not on behalf of any client. She contended that there was no question of receipt of any commission income in respect of the aforesaid purchases because purchases were made by the assessee on its own account and not on account of any client. The idea that the assessee has received commission from itself was ill-conceived,

she contended. She also submitted that the *ad hoc* rate of 5% adopted by the Assessing Officer was arbitrary, baseless and without any supporting material. The Ld. Departmental Representative did not dispute the submissions made by the AR for assessee, on facts; but however, relied on the assessment order.

(C) We have heard both sides. We have perused the materials on record. The relevant facts are not in dispute. It is not in dispute that the assessee is a share broker. It is also not in dispute that the aforesaid purchase of shares amounting to Rs.1,15,38,775/- has been made by the assessee on its own account and not on behalf of any client. It is, therefore, inconceivable that the assessee would receive commission from itself for purchases made on its own behalf. We agree with the submission of the Ld. AR of the assessee that the aforesaid addition of Rs.5,78,439/- on account of commission on shares purchased by the assessee on its own account, was ill-conceived. In view of the foregoing; and in the specific facts and circumstances of the present appeal before us, we set aside the impugned appellate order dated 23/07/2019 of the Ld. CIT(A) and we direct the Assessing Officer to delete the addition of the aforesaid amount of Rs.5,78,439/-.

(C.1) As we have directed the Assessing Officer, in foregoing paragraph (C) of this order, to delete the aforesaid addition of Rs.5,78,439/-, the grounds of appeal relating to merits of the addition are treated as allowed. The grounds of appeal relating to initiation of proceedings u/s 147 read with section 148 are not being adjudicated because these grounds are merely academic in nature and need not be decided, in view of the fact that on merits, the addition has already been deleted by us.

(D) In the result, this appeal is treated as partly allowed.

Order pronounced in the Open Court on 28/02/2023.

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 28/02/2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI