

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “A” BENCH, BENGALURU**

**Before Shri Chandra Poojari, Accountant Member
and**

Shri George George K., Judicial Member

ITA No. 337/Bang/2020 (Assessment Year: 2014-15)		
Shri Sunil Kumar Jalan No.703, 7th Floor, Ebony A Wing, Godrej Woods Apts Near Hebbal Flyover Bangalore 560024 PAN – ACDPJ0966D (Appellant)	vs	The Income Tax Officer - 6(3)(1) BMTC Building, 80ft Road 6th Block, Koramangla Bengaluru 560095 (Respondent)

Assessee by:	Shri P.K. Prasad, Advocate
Revenue by:	Dr. Sankar Ganesh K., Addl. CIT-DR

Date of hearing:	23.02.2023
Date of pronouncement:	28.02.2023

ORDER

Per: George George K., J.M.

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 25.11.2019. The relevant assessment year is 2014-15.

2. The brief facts of the case are as follows: -

The assessee is an individual engaged in granite business. For the assessment year (AY) 2014-15 return of income was filed on 28.11.2014 declaring total income of Rs.13,52,370/- consisting of income from house property, capital gains and business income. The assessment was selected for scrutiny and notice under Section 143(2) of the Income Tax Act, 1961 (the Act) was issued on 18.09.2015. The assessee's AR attended hearing on 30.12.2016 and

produced the books of accounts and other details. The Assessing Officer (AO) concluded the assessment under Section 143(3) of the Act vide order dated 30.12.2016 making the following addition: -

(a) After verification of the books of accounts and vouchers the AO noted that the assessee did not produce vouchers for certain expenditure and therefore the same was added to the total income of the assessee (Rs.5,57,900/-).

(b) During the year, the assessee transferred a Plot No. 212-J of Hassan Growth Centre I.A measuring 3944 sq. mtrs. of commercial land situated at S.Nos. 8 & 61-P of Nagathavalli villate, Kasabahobli, Hassan Taluk, Hassan District allotted by the Karnataka Industrial Area Development Board for a consideration of Rs.39,95,990/- and on which, the assessee admitted long term capital gain (LTCG) of Rs.10.03,600/-. The AO held that the property that was transferred by the assessee was a depreciable asset and therefore, the profit on transfer of property was assessable under the head short term capital gain.

(c) During the year, the assessee transferred shares for a consideration of Rs.2,10,91,591/- and on which, LTCG was computed at Rs.1,82,93,301/- and claimed as exempt under Section 10(38) of the Act. As per the computation of income statement, 5,000 shares were purchased on 28.03.2012 for Rs.198.36 per share and 7,000 shares were purchased on 30.04.2012 at Rs.258.07 per share out of which the assessee transferred 8,400 shares for a consideration of Rs.2,10,91,591/- during the year under appeal. In spite of opportunities provided, the assessee did not furnish the purchase details of shares and therefore, a proposal under Section 144 of the Act was sent to the assessee as well as assessee's representative on 12.12.2016 asking to explain, why the exemption claimed under Section 10(38) of the Act should not be disallowed. On 30.12.2016 the assessee's representative appeared and filed the details

such as contract note, bank account, etc. The AO noted that though the assessee claimed that the shares were purchased in March and April, 2012, the investments were not reflected in the balance sheet as at 31.03.2013 filed by him for the proprietary concerns, J.J. Granites and A-One Granites. The assessee did not file any personal capital accounts drawn as on 31.03.2013 & 31.03.2014 either. Holding that the investment made in shares itself was not proved by the assessee the AO considered the assessee's transactions in the shares of NCL Research and Services as a sham transaction and disallowed the assessee's claim of LTCG exempt under Section 10(38) of the Act.

3. Aggrieved by the assessment, assessee filed appeal before the first appellate authority. The assessee raised technical issues as well grounds on merits. The CIT(A) rejected the contentions of the assessee except with regard to the issue whether the commercial property transferred in Hassan, the profit from the same is to be assessed under the head LTCG or short term capital gain. The CIT(A) held reversing the AO's finding that the same should be assessed as LTCG. Consequently appeal of the assessee was partly allowed.

4. Aggrieved by the order of the CIT(A) the assessee filed the present appeal before the Tribunal raising 10 grounds. The ground read as follows: -

“Ground of Appeal No.- 1 :

Learned Commissioner of Income - Tax (Appeals) erred in not holding that the Assessment Order passed by the Assessing Officer at Madurai was a nullity because the inherent and the substantive jurisdiction over the Appellant vested with the Assessing Officer at Bengaluru and not with the Assessing Officer at Madurai.

Ground of Appeal No.- 2 :

Learned Commissioner of Income - Tax (Appeals) erred in not recognising that the Assessing Officer at Madurai, having been fully aware that the inherent and the substantive territorial jurisdiction over the Appellant was with the relevant Assessing Officer at Bengaluru, and, on him being not satisfied on this, should have referred the matter under section 124(4) of the Income

- Tax Act for determination of the inherent and the substantive jurisdiction in terms of section 124(2) of the Income - Tax Act, before continuing with the Assessment Proceeding and before completing the Assessment Proceeding.

Ground of Appeal No.- 3 :

Learned Commissioner of Income - Tax (Appeals) erred in not recognising and not holding that the act of completion of the Assessment Proceedings by the Learned Assessing Officer at Madurai was without the inherent and the substantive jurisdiction, causing grave prejudice to the Appellant in many ways.

Ground of Appeal No.- 4 :

Learned Commissioner of Income - Tax (Appeals) erred in not recognising that once the inherent and the substantive jurisdiction itself did not exist with the Assessing Officer at Madurai he could not have conferred jurisdiction upon himself as in such situation there was no requirement for the Appellant to object to the jurisdiction within the meaning and scope of section 124(3) of the Income - Tax Act.

Ground of Appeal No.- 5 :

Learned Commissioner of Income - Tax (Appeals) erred in not recognising that the Assessing Officer at Madurai, prima facie lacked inherent and substantive jurisdiction, consequently, there was no requirement for the Appellant to object to his jurisdiction, within the meaning and scope of section 124(3) of the Income - Tax Act, and therefore, mere attendance under pressure before the Assessing Officer at Madurai was neither a concurrence nor any "Concurrence cannot Confer Jurisdiction".

Ground of Appeal No.- 6 :

The Learned Commissioner of Income - Tax (Appeals) erred in confirming the position taken by the Assessing Officer that the Appellant was not entitled to the exemption under section 10(38) of the Income - Tax Act on the Long Term Capital Gain determined on the purchase and sale of shares of the Company NCL Research and Financial Services to the tune of Rs. 1,82,93,301 only on the basis of unauthenticated audit report of the said Company and on the basis of unsubstantiated and unreasoned presumption of human probability, thereby ignoring the facts, evidences and cogent reasons while promulgating the theory of preponderance of probability in an erroneous and wrong manner.

Ground of Appeal No.- 7 :

The Commissioner of Income - Tax (Appeals) erred in confirming the position taken by the Assessing Officer in invoking section 68 of the Income - Tax Act and treating the entire consideration on sale of shares as income amounting to Rs. 2,10,91,591, which was the basis for claim of exemption on Long Term Capital Gains under section 10(38) of the Income - Tax Act by disregarding the facts, evidences and reasons and merely on the basis of suspicion, presumptions and without due and independent application of mind on the generalised report of the Investigation Wing of Kolkata, in total defiance of natural justice by denying sharing of the information and evidences collected behind the back of the Appellant.

Ground of Appeal No.- 8 :

The Commissioner of Income - Tax (Appeals) erred in confirming the position taken by the Assessing Officer in disallowing the claim of Business Expenditure to the tune of Rs. 5,57,900 on the misplaced basis that vouchers for such expenditures were not produced for verification without being specific and in a sweeping manner and on the basis of conjectures and surmises and presumptions and assumptions.

Ground of Appeal No.- 9 :

The Learned Commissioner of Income - Tax (Appeals) erred in confirming the charging the interest under section 234B of the Income - Tax Act,

Ground of Appeal No.- 10 :

The Learned Commissioner of Income - Tax (Appeals) erred in confirming the intimation of Penalty under section 271(1)(c) of the Income - Tax Act.”

5. No contentions were raised with regard to ground Nos. 9 & 10, hence the same are rejected. By Ground Nos. 1 to 5 assessee has raised technical grounds that the AO who passed the assessment order at Madurai did not have inherent and substantive jurisdiction over the assessee and consequently the assessment completed is void-ab-initio and the same is to be quashed. Ground Nos. 6 & 7 relate to the issue of addition of a sum of Rs.2,10,91,591/- as income under Section 68 of the Act. Ground No. 8 relates to the issue of

disallowance business expenditure to the tune of Rs.5,47,900/-. We shall adjudicate the above issues as under.

Grounds 1 to 5 (Technical Grounds)

6. In the above grounds, the assessee contends that the AO who passed the assessment order at Madurai does not have inherent jurisdiction, since the assessee is residing in Bangalore. The CIT(A) rejected the contentions of the assessee by observing as under: -

“5. I will first address the technical objections raised by the appellant. During the appellate proceedings, the AR submitted copies of the notice u/s 143(2) dated 18/09/2015, the subsequent notices u/s 142(1) dated 20/10/2016 and 12/07/2017, letters of the AO dated 02/12/2010 and 12/12/2016 and the appellant's reply dated 30/12/2016. It is seen from these copies that in the computer-generated notice u/s 143(2) the appellant's Bangalore address has been mentioned as follows:

*Shri Sunil Kumar Jalan
Ebony A Wing 204 2nd
Godrej Woodsman Estate
New Airport Road,
Hebbal.
Bangalore, Karnataka 560094*

The subsequent notices u/s 142(1) were sent to the appellant's Madurai address given below:

*Shri Sunil Kumar Jalan,
Prep: A One Granites,
66/3-7, Eslani Village,
Thachandal Road,
Varichiyur
Madurai 625020*

However, in the letters of the AO dated 02/12/2016 and 12/12/2016, both the Madurai and Bangalore addresses were mentioned. The appellant has also not disputed the service of these letters. A copy of the letter dated 02/12/2016 was also endorsed to the appellant's Authorized Representative who also participated in the assessment proceedings. The appellant's representative attended on 30/12/2016 and submitted a reply from the appellant,

which bears his Madurai address. Thus it is apparent that the appellant had received the communication from the AO and had also responded to the same from his Madurai address. From the assessment order, it is evident that the appellant participated in the assessment proceedings through his authorized representative who responded to the notice u/s 142(1) dated 20/ 10/2016 and sought adjournment. Later the AR filed the submission dated 30/12/2016 and also produced the books of accounts before the AO. The letter from the PAN services division of NSDL also does not bear any date hence it is unclear as to when the appellant's address was updated in the PAN database. The appellant has also mentioned his Madurai address on the Form No. 35 while filing the present appeal, which was after the impugned assessment order was passed. Given the above factual background, there is no merit in the appellant's contention that he was prevented from responding to the AO's notices.”

7. The learned A.R. reiterated the submission made before the CIT(A) and relied on certain case laws.

8. The learned D.R., on the other hand, placed on record a copy of the acknowledgement of the return filed by the assessee before the AO at Madurai. The learned D.R., by placing reliance on the order of the ITAT in Ram Bhaj & Sons (P) Ltd. vs. ITO reported in (2006) 102 ITD 93 (Amritsar) submitted that when the assessee discloses his address at Madurai in the return of income and did not raise objections to jurisdiction of the said AO within the time allowed under Section 124(3) of the Act, the AO cannot be found fault in assuming jurisdiction and completing the assessment.

9. We have heard the rival contentions and perused the material on record. Admittedly, the return of income for the relevant assessment year has been filed by the assessee before the AO at Madurai. It is also admitted position that the assessment in previous year was completed at Madurai. The assessee submitted his reply to 142(1) notice from Madurai address. Thus it is apparent that the assessee had received communication from the AO in his Madurai

address and responded to the same. The assessee has not objected to the inherent jurisdiction of the AO at Madurai at any point of time during the assessment proceedings. On the other hands the assessee participated in the assessment proceedings. Even before the Tribunal the assessee has not placed any letter written to the AO at Madurai questioning the inherent jurisdiction to complete the assessment, for the reason that the assessee has shifted to Bangalore. The letter from the PAN Service division of the NSDL also does not clearly bear any date, hence it is not clear as to when the assessee's address was updated in PAN database. The Hon'ble Apex Court in the case of PCIT vs. Iven Interactive Ltd. reported in (2019) 311 CTR 165 held that mere mentioning of new address in the return of income is not enough. It was stated by the Hon'ble Apex Court the if change of address is not specifically intimated to the AO he is justified in sending the notices at the address mentioned in the PAN database. It was further held by the Hon'ble Apex Court that if the notice is sent within the time prescribed under Section 143(2) of the Act, actual service of notice upon the assessee is immaterial. Similar view has also been taken by the Hon'ble Apex Court in the case of PCIT vs. Mahagun Realtors P. Ltd. reported in (2022) 443 ITR 194 (SC). In the instant case there is nothing on record to suggest that the assessee has updated his address in the PAN database during the relevant assessment year. On the contrary, the conduct of the assessee suggested the opposite. Therefore, the technical grounds, namely grounds 1 to 5 are rejected.

Grounds 6 & 7 (Addition of Rs.2,10,91,591/-)

10. The assessee during the relevant assessment year had sold 8400 shares of NCL Research and Financial Services Ltd. for a consideration of Rs.2,10,91,591/-. The assessee had computed the LTCG and claimed exemption under Section 10(38) of the Act amounting to Rs.1,82,93,301/-. It has been claimed by the assessee that 5000 shares were purchased on

28.03.2012 for Rs.198.36 per share and 7000 shares were purchased on 30.04.2012 at Rs. 258.67 per share (out of the above said shares purchased, 8400 shares were sold during the relevant assessment year for a consideration of Rs.2,10,91,591/-). The assessment was selected for scrutiny for the reason that information was received from the Investigation Wing of Kolkata that the price of some the shares of penny stock companies which included the company NCL Research and Financial Services Ltd. were artificially rigged to benefit the shareholders to raise bogus claim of LTCG. The AO after discussing the modus operandi of providing of such accommodation entries as detailed in the report of the Investigation Directorate undertook an analysis of the financials of NCL Research and Financial Services Ltd. The AO observed that the said company does not have necessary financials to justify the huge increase in share value that was claimed. Further the AO observed that the assessee has not furnished the purchase details of the shares during the assessment proceedings. The AO held that the shares which were claimed to have been purchased in March and April, 2012, has not been reflected in the Balance Sheet on 31.03.2013 with regard to assessee's proprietary concern. It was further observed by the AO that the assessee did not have personal capital account drawn on 31.03.2013 and 31.03.2014 and therefore the AO concluded that the investments made in the shares itself is not proved by the assessee. Hence, the addition was made with reference to the entire sale consideration amounting to Rs.2,10,91,591/- as unexplained cash credit and brought to tax under Section 68 of the Act.

11. Aggrieved, assessee raised this issue before the first appellate authority. The CIT(A) confirmed the view taken by the AO. The CIT(A) relied on the following Tribunal orders to decide the issue against the assessee. [The tribunal orders had followed the judgements of the Hon'ble Apex Court in the

cases of CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC) and Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC)]: -

- i) Rajkumar B. Agarwal vs. DCIT - ITA Nos. 1643 to 1652/PUN/2014 (order dated 04.01.2019)
- ii) Pankaj Agarwal & Sons & Ors vs. ITO – ITA Nos. 1413 to 1420/CHNY/2018 (order dated 06.12.2018)
- iii) Smt M.K. Rajeshwari vs. ITO (2018) 99 taxmann.com 339 (Bang-Tirbe)

12. Aggrieved by the order of the CIT(A) the assessee raised this issue before the Tribunal. The learned A.R. has filed two set of paper books, one enclosing the case law relied on and the other enclosing revised ground, a brief written submission etc. The learned A.R. submitted that all the requisite details such as the contract note, bank accounts, etc. were produced before the AO during the course of assessment proceedings and it is very evident that purchase and sale of shares of company NCL Research and Financial Services Ltd. are through banking channel. The learned A.R. submitted that the AO has never shared with the assessee any specific information collected behind the back of the assessee. Therefore, it was contended that there is violation of principle of natural justice thereby rendering the assessment order bad in law and same needs to be quashed.

13. The learned D.R., on the other hand, relied on the judgement of the Hon'ble High Court of Calcutta in the case of PCIT vs. Swati Bajaj reported in 446 ITR 56 (Kolkata) and contended that the assessee had received abnormal increase in share price which is against the fundamentals and the financial of NCL Research and Financial Ltd. Therefore, it was submitted that the entire capital gains claimed should be disbelieved and addition under Section 68 of the Act ought to be sustained.

14. We have heard the rival contentions and perused the material on record. We find that on identical facts with regard to claim of LTCG on sale of shares of NCL Research Financial Ltd., the following orders of the coordinate bench of the Bangalore Tribunal had restored the case to the files of the AO: -

- i) Sanjiv Bhutra/Rajiv Kumar Bhutra ITA Nos. 43 & 44/Bang/2021 (order dated 23.04.2021)
- ii) Ms. Sonal Ramesh Shah ITA No. 597/Bang/2018 (order dated 05.12.2018)
- iii) Ms. Ujwala Ramesh Shah ITA No. 596/Bang/2018 (order dated 05.12.2018)
- iv) Shri Karamjeet Singh (HUF) ITA No. 63/Bang/2019 (order dated 24.05.2019)
- v) Smt. Kanchan Ashok Shroof ITA No. 3394/Bang/2018 (order dated 19.07.2019)

In the above orders, the Tribunal has directed the AO to provide an opportunity to the assessee to rebut the evidences/findings relied on by the AO for treating the LTCG declared by the assessee as bogus in nature. We notice from the assessment order that the AO has not discussed about the opportunity, if any, given to the assessee to re butt the evidenced he had relied on. The relevant finding of the Bangalore Bench of the Tribunal in the case of Sanjiv Bhutra/Rajiv Kumar Bhutra (supra) reads as follows: -

“11. Having heard the rival submissions, I am of the view that the assesseees should be provided with an opportunity to rebut the evidences/statements relied upon by the A.O. for treating the long term capital gain declared by the assesseees as bogus in nature. From the assessment order, I notice that the A.O. has not discussed about the opportunity, if any, given to the assessee to rebut the evidences. Accordingly, I set aside the orders passed by Ld. CIT(A) in the hands of both the assesseees and restore all issues to the file of the A.O. for examining them afresh. After affording adequate opportunity of being heard to the assesseees, the A.O. may take appropriate decision in accordance with law.”

15. Similar view has been taken by the other coordinate benches of the Bangalore Tribunal cited supra. Therefore, in view of the above orders of the Tribunal (for purpose of consistency) we restore the matter to the file of the AO to provide the assessee an opportunity to rebut the evidences relied on by the AO for treating the LTCG declared by the assessee as bogus in nature. It is ordered accordingly.

Ground No. 8 (Addition of Rs.5,57,900/-)

16. The AO added a sum of Rs.5,57,900/-. The relevant findings of the AO read a follows: -

“Verification of books of accounts and vouchers shows that the assessee did not produce vouchers for the following expenditure:

<i>Labour & wages</i>	<i>Rs.3,15,200</i>
<i>Breaking expenses</i>	<i>Rs. 51,500</i>
<i>Edge cutting charges</i>	<i>Rs. 50,300</i>
<i>Repair and maintenance</i>	<i>Rs.1,29,000</i>
<i>Packing expenses</i>	<i>Rs. 11,900</i>
	<i>-----</i>
	<i>Rs.5,57,900</i>
	<i>-----</i>

Therefore, the quantum of above said expenses are considered as not proved and it was pointed out to assessee’s representative, he agreed to disallowo the same. Hence, the above said expenses are disallowed and added to total income. 5,57,900”

17. The CIT(A) confirmed the view taken by the AO. The relevant finding of the CIT(A) reads as follows: -

“6.2 The next issue for adjudication is disallowance of Rs.5,57,900/- on account of expenses claimed for which no documentary evidence was submitted. From the assessment order, it is evident that the AO had granted opportunity to the appellant to produce the same. The appellant’s AR attended on 30/12/2016 and produced the books of accounts and vouchers but was unable to produce the relevant vouchers for this amount. During the appellate proceedings too, no attempt was made to submit the relevant documentary evidence. In light of the same, the addition

made by the AO of this amount is confirmed. Ground of appeal no. 4 raised in this connection is therefore dismissed.”

18. We have heard the rival contentions and perused the material on record. The assessee has not furnished any evidence/vouchers even before the Tribunal for claiming the above mentioned expenses as a deduction. Since the learned A.R. was not able to produce necessary vouchers he has conceded and agreed before the AO for adding the above expenditure claimed as deduction to the total income of the assessee. Therefore, we sustain the addition of Rs. 5,57,900/-. Hence, ground No. 8 is rejected.

19. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 28th February, 2023.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Bengaluru, Dated: 28th February, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -6, Bengaluru*
4. *The Pr. CIT - 6, Bengaluru*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru

n.p.