

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)**

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.6354/Del./2019
(ASSESSMENT YEAR : 2010-11)**

Sushila Devi Khandelwal,
H-87, Ashok Vihar Phase – I,
New Delhi – 110 052.

vs.

ITO, Ward 34 (3),
New Delhi.

(PAN : AAJPK2875L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 07.03.2023
Date of Order : 13.03.2023

ORDER

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-12, New Delhi dated 14.08.2018 pertaining to Assessment Year 2010-11.

2. The grounds of appeal taken by the assessee read as under :-

“1 That both the lower authorities were not justified in making and confirming the reassessment order u/s 147 r.w.s 143(3) since the same was not in accordance with the Provisions of the Income Tax Act, 1961 and is illegal on account of various grounds.

2 That under the facts and circumstances of the case, the Ld. CIT (A) was not justified in passing the order on back date and also not supplying the copy to assessee.

3 That under the facts and circumstances of the case, an addition of Rs.7,05,000/- made by the Ld. AO u/s 68 of the I

Tax Act, 1961 and subsequently confirmed by the CIT (A) deserves to be deleted.

4. That under the facts and circumstances of the case, an addition of Rs.7,050/- made by the Ld. AO u/s 69C of the I Tax Act, 1961 and subsequently confirmed by the CIT (A) deserves to be deleted.”

3. Brief facts of the case are that this case pertains to penny stock transactions. Upon AO's addition, ld. CIT (A) has elaborately referred to the AO's order and assessee's submissions and has decided the issue against the assessee by holding as under :-

“8.1 I have considered the observations of the Assessing Officer and submission of the Appellant and have also gone through the relevant decisions of the Courts. Briefly, the facts of the case are that Assessee has not declared long term capital gain from the sale of the scrips of M/s Bakra Pratisthan Ltd. (hereinafter called as BPL for the sake of brevity) in her return of income. On the receipt of the information from the Pr. DIT (Investigation), Kolkata, it came to the light that various entry operators and stock brokers were involved in providing entries for bogus long term capital gain. The Assessee was found one of the beneficiaries by investing in a penny stock company namely BPL. The Investigation Wing, Kolkata investigated share brokers and companies involved in the business of accommodation entry and covered them u/s 133A of the I.T. Act. The persons were investigated U/S 131 of the I.T. Act as well.

8.2 The case of the Appellant was reopened U/S 147/148 of the Act on the basis of the information received from Pr. DIT(Investigation), Kolkata after recording the reasons and obtaining satisfaction of the competent authority u/s 151 of the Act. In response to above notice, return of income was filed by the Appellant wherein no such long term capital gain was declared and understandably there was no claim for exemption u/s 10(38) of the Act. During impugned reassessment proceedings, the Appellant stated that she has not dealt in the

scrips of BPL. To verify the above facts, the Assessing Officer made inquiry from Calcutta Stock Exchange and the Calcutta Stock Exchange vide e-mail communication dated 29.12.2017 confirmed the facts that the Appellant had sold 2000 shares through order no. 181533069 and there was a settlement of 1000 shares each vide settlement no. 4973 & 4974. The name of the Appellant alongwith the PA is mentioned in the statement provided to the Assessing Officer by the Calcutta Stock Exchange. The record of the Assessing Officer was requisitioned to verify the facts. The communication received from the Manager (Surveillance) from the Calcutta Stock Exchange is scanned and produced below:

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8.3 From the above third party information provided by the Calcutta Stock Exchange it is evident that the Appellant had sold 2000 shares of BPL during the year under reference. Therefore, in agreement with the Assessing Officer that it is a case of non disclosure of receipt of sale consideration of Rs.7,05,000/- and it is a case of unaccounted income, the addition made by the Assessing Officer is confirmed.

8.4 The information in the possession of the Assessing Officer was further fortified by the cross verification from the Calcutta Stock Exchange. Considering the original information and the confirmation of the same received from Calcutta Stock Exchange, it is found that the Appellant has concealed the income earned from the long term capital gain. The Appellant has also concealed the particulars about bank account through which transactions had taken place. In view of above I am of the view that the Assessing Officer is justified in making addition of Rs.7,05,000/- as income from undisclosed sources. Therefore, this ground of appeal is decided against the Appellant.

8.5 I also confirm the addition of Rs.7,050/- being the commission paid to the brokers for getting the entry because that is based on the very logic of whole of the discussion. If it is once established that the Assessee converted its unaccounted money into long term capital gain by the said devices, the same is not possible unless commission is paid.”

4. Against this order, assessee is in appeal before me. Nobody is appearing on behalf of the assessee despite several notices. Hence, I proceed to decide the appeal after hearing the Id. DR for the Revenue and perusing the records.

5. Upon careful consideration, I find that there is no infirmity in the order of Id. CIT (A) and does not need any interference on my part. Accordingly, I uphold the same.

6. Before parting, I am add that assessee has taken ground no.2 that Id. CIT (A) has passed back-dated order. In this regard, Revenue has submitted that there is no evidence as such, hence this plea of the assessee without any corroborating evidence is also dismissed.

7. In the result, this appeal of the assessee stands dismissed.

Order pronounced in the open court on this 13th day of March, 2023.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 13th day of March, 2023

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**