

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.106/Del./2020  
(ASSESSMENT YEAR : 2015-16)**

Pooja Jain,  
J-3/3, West Jyoti Nagar, Shahdara,  
Delhi – 110 094.

vs.

ITO, Ward 56 (2),  
New Delhi.

**(PAN : AEKPJ2802F)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None  
REVENUE BY : Shri K.K. Mishra, Sr. DR

Date of Hearing : 15.02.2023  
Date of Order : 14.03.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-37, New Delhi dated 30.10.2019 pertaining to the Assessment Year 2015-16.

2. The assessee has taken the following grounds of appeal :-

“1. The impugned order passed by the Ld. CIT(A) is completely bad in law and wrong on facts. The Ld. CIT (A) has only gone by surmises, 'conjuncture and guess work in drawing inference and in recording his conclusion. It is pertinent to mention here that the entire addition has been made by the A.O. only on the basis of presumptions and presuppositions, instead considering the following documents/informations and

explanations provided by the appellant during the course of the assessment:

- a. Copy of contract notes cum bill of transactions for the verification of sale.
- b. Copy of bank statement of the assessee evidencing the purchase and sale of shares through regular banking channels.
- c. Copy of dmat account and share certificates
- d. Statement of appellant/assessee on oath in response to summon u/s 131.

The Ld. CIT(A) failed to appreciate the facts of the case that the appellant made genuine sale and purchase of shares and without correctly appreciating and understanding the transaction, he has made addition of Rs. 63,27,566/- in the income of the appellant. On this count, the present case before your honor is squarely covered by the verdict of the honorable jurisdictional ITAT in the case of Meenu Goyal vs ITO, (New Delhi), ITA No. 6235/Del/2017. Order pronounced on 19-03-2018.

Further relying upon the verdict of the Kolkatta ITAT in the case of Navneet Agarwal vs ITO (Kolkatta) ITA No. 2281/Kolkatta/2017, Order pronounced on 20-07-2018. In addition, same views has been expressed by the honorable Rajasthan High Court after considering all the verdict in the case of CIT vs Smt. Pooia Agarwal (Appeal No. 385/2011) Order pronounced on 11-09-2017.

2. Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 63,27,566/ to the income, ignoring the basic fact that the sale and purchase of share transactions as been made through account payee cheques by the assessee after paying the security transaction tax (SIT). Further the Ld. A.O. has not disputed the purchase and sale of equity shares, holding thereof, price thereof and the amount received through the banking channel. Instead, based on some information received and statements recorded in some other cases, the exemption claimed by the assessee under section 10(38) has been denied.

On this count, the present case before your honor is squarely covered by the verdict of the honorable ITAT Kolkatta in the case of Surya Prakash Toshniwal (HUF) vs ITO Kolkatta, ITA No. 1213/Kolkatta/2016. Order pronounced on 11-01-2017.

3. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs.63,27,566/- to the income, without identifying any defect over the documentary evidences furnished during the course of assessment and even without conducting any enquiry, just by quoting some other cases to which the assessee has nothing to do with. Further, the findings of SEBI cannot be the sole reason for disapproving the claim of the assessee without bringing any adverse material on record to reject the details, documents and explanations submitted during the course of the assessment proceedings. On this count, the present case before your honor is squarely covered by the verdict of the honorable ITAT Kolkatta in the case of Dolar Rai Himani vs ITO Kolkatta, ITA No. 19/Kolkatta/2014. Order pronounced on 02-12-2016.

4. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs.63,27,566/- to the income, treating the transaction as an accommodation entry with a particular broker in relation to the equity share of a particular company, merely because the investigation was done by income-tax department or the SEBI against brokers or the companies or their promoters, assessee cannot be said to have entered into in-genuine transaction, in so far as assessee is not concerned or connected in any manner whatsoever, with the company or its promoters or employees or activity of the broker and have 'no control over the same. On this count, the present case before your honor is squarely covered by the verdict of the honorable ITAT Mumbai in the case of ITO Mumbai vs M/s Arvind Kumar Jain (HUF), ITA No. 4862/Mumbai/2014. Order pronounced on 18-09-2017.

5. Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 63,27,566/- and Rs.3,16,378/- to the income, on the basis of material gathered in some other cases, outside the jurisdiction of the assessee, as an evidence, without affording any opportunity of cross examination of the person/persons whose statements are sought to be relied upon.

Thus, this is a case of gross violation of principle of natural justice.

6. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs.3,16,378/- to the income, applying a hypothetical rate of 5% on Rs. 63,27,566/-, being charges or commission paid for accommodation entries, without any basis or material placed on record, just on suspicious surmises and conjectures.

7. The Ld. CIT(A) has erred in law and on fact by confirming the invocation of section 115BBE of the act and taxing the whole addition made for Rs.66,43,944/- @ maximum slab against the facts and circumstances of the case.”

2. Brief facts of the case are that assessee has shown Long Term Capital Gains (LTCG) of Rs.62,92,565/- as exempt income under section 10(38) of the Income-tax Act, 1961 (for short 'the Act'). During the year under consideration, assessee has claimed LTCG by way of sale of 14000 equity shares of M/s. Esteem Bio Organic Food Processing Ltd. (EBFL) at the consideration of Rs.63,27,565.90. The cost price of the shares was Rs.35,000/-. The assessee has sold 14000 shares of EBFL @ 451.91 per share for a consideration of Rs.63,27,565.90. The cost incurred for acquisition was Rs.2.5 per share. Thus, the assessee has earned a phenomenal return of 17,960% in a short time period. Thereafter, AO referring to the report received from the office of Pr. DIT, Investigation, Kolkata informing that various BSE listed penny stock companies have been used for providing LTCG and the judgments of Hon'ble Apex Court in CIT vs. Durga Prasad More 82 ITR 540 and Sumati Dayal vs. CIT 214

ITR 801, held that it is a clear-cut case of LTCG obtained through brokers and assessee has used colorable device for avoidance of tax and therefore, treated the LTCG of Rs.62,92,565/- as not genuine.

3. Upon assessee's appeal, ld. CIT (A) noted the assessee's submission and referred to case laws and finally concluded as under :-

“5.24I find that on similar facts and circumstances, Hon'ble High Court Bombay (Nagpur Bench) while dismissing the appeal of the assessee in the case of Sanjay Bimalchand Jain vs. CIT-1, Nagpur in ITA No.18/2017 has expressed the view that the undisclosed income in the garb of LTCG has to be assessed as undisclosed credit u/s 68 by holding as under :-

“.....The authorities have recorded a clear finding of fact that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing, the authorities held that the assessee has not tendered cogent evidence to explain as to how the shares in a unknown company worth Rs.5/- had jumped to Rs.485/- in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no financial basis as how a share worth Rs.5/- of a little known company would jump from Rs.5/- to Rs.485/-. The findings recorded by the authorities are pure findings of the fact based on proper appreciation of the material on record. While recording the said findings, the authorities have followed the test laid down by the Hon'ble Supreme Court and this court in several decisions .....

5.25 All these above mentioned cases are applicable to the facts and circumstances of the present case in which the various judicial authorities have decided the cases in favour of revenue after going through the entirety of the facts and circumstances. The case laws relied upon by the appellant are apparently in favour of the assessee but probably the role of human conduct, surrounding circumstances and prepondence of probabilities were either not brought to the notice of Hon'ble Judicial

Authorities or were not as dominant or deciding factors as these are found to be in the present case. In addition, the AO, in this case, has very clearly segregated the apparent from the real by using various evidences gathered from reliable source of information and report.

5.26 In view of the facts and circumstances borne out of the assessment order and legal precedents as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that purchase and sale of shares are arranged transactions to create bogus profit in the garb of tax exempt LTCG by well organized network of entry providers with the sole motive to sell such entries to enable the beneficiary to account for the undisclosed income for a consideration of commission.

5.27 In view of the above discussion, I am of the considered view that share transactions leading to LTCG by the appellant are sham transaction entered into for the purpose of evading tax. Accordingly, it is held that the AO has rightly added the said amount of Rs.63,27,566/- as unexplained income of the appellant. Since arranging such accommodation entry necessarily entails payment of commission to entry providers, the AO's action in quantifying and adding such unexplained expenditure at Rs.3,16,378/- based on statements of brokers/entry providers is also upheld for the reasons recorded in the assessment order. Accordingly, additions made by the AO are confirmed and these grounds of appeal are dismissed.”

4. Against this order, assessee is in appeal before us. We have heard the Id. DR of the Revenue. None appeared on behalf of the assessee despite notices. Hence, we are proceeding to decide the appeal after hearing the Id. DR of the Revenue and perusing the records.

5. Upon careful consideration, we note that the assessee was engaged in penny stock transactions wherein phenomenal return of 17,960% was

obtained in a short time period and this is only possible through a colorable device. The orders of AO and Id. CIT (A) are quite speaking and elaborate and we do not find any infirmity in the same. Hence, we uphold the order of the Id. CIT (A).

6. In the result, the assessee's appeal stands dismissed.

**Order pronounced in the open court on this 14<sup>th</sup> day of March, 2023.**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

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

**Dated the 14<sup>th</sup> day of March, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-37, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**