

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'C', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3240/Del/2016: Asstt. Year: 2007-08

Sh. Tarunjit Tejpal, M-130, 1 st Floor, Greater Kailash-II, New Delhi-110048 (APPELLANT)	Vs.	DCIT, Central Circle-20, New Delhi (RESPONDENT)
PAN No. ACTPT7152P		

ITA No. 3241/Del/2016: Asstt. Year: 2007-08

Lt. Shakuntla Tejpal, M-130, 1 st Floor, Greater Kailash-II, New Delhi-110048 (APPELLANT)	Vs.	DCIT, Central Circle-20, New Delhi (RESPONDENT)
PAN No. ADCPS6893A		

ITA No. 3242/Del/2016: Asstt. Year: 2007-08

Lt. Inderjit Tejpal, M-130, 1 st Floor, Greater Kailash-II, New Delhi-110048 (APPELLANT)	Vs.	DCIT, Central Circle-20, New Delhi (RESPONDENT)
PAN No. ABQPT3063R		

**Assessee by : Sh. Satish Singh, CA
Revenue by : Sh. Anuj Garg, Sr. DR**

Date of Hearing: 16.02.2023	Date of Pronouncement: 25.04.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the different assesseees against the orders of the Id CIT(A)-27, New Delhi dated 31.03.2016. Since, the issue involved is similar in all the

appeals, the same are being adjudicated by this consolidated order.

2. In ITA No. 3240/Del/2016, the assessee has raised the following grounds of appeal:

"1. Mr. Tarunjit Tejpal promoter of Anant Media Pvt. Ltd. gifted 2000 equity shares to Mr. Shankar Sharma and 2125 equity shares to Ms. Devina Mehra wife of Mr. Shankar Sharma as a gesture of goodwill and keeping in view the past help the couple had extended to Tarunjit Tejpal. These shares were a gift with no consideration.

The assessing officer has made an assumption that these shares were not a gift but have been transferred at a premium of Rs. 20,00,000 by Mr. Shankar Sharma and Rs. 21,25,000 by Ms. Devina Mehra, a total of Rs. 41,25,000 which Mr. Tarunjit Tejpal must have received and therefore this amount was made taxable in the hands of Mr. Tarunjit Tejpal. The assessing officer has no evidence that Mr. Tarunjit Tejpal has received this consideration either in his bank or in cash and nor is this evidence there in the bank statements of the two individuals Mr. Shankar Sharma and Ms. Devina Mehra that this payment has been made by them. The assessing officer has simply made an assumption.

On receipt of these share certificates, both Mr. Shankar Sharma and Ms. Devina Mehra refused to accept the gift and returned the share certificates as it is. The return has been properly recorded in the secretarial records of the company.

It is significant to note that in the assessment order the assessing officer has alleged that the assessee has made a payment of this premium to Mr. Shankar Sharma and Ms. Devina Mehra for the purchase of the shares and has taxed the payment by Mr. Tarunjit Tejpal as income of Mr. Tarunjit Tejpal as undisclosed income. To quote the order

"Thus at least Rs. 41,25,000 at the minimum rate of premium must have been paid by the assessee to Sh. Shankar Sharma and Sh. Devina Mehra for purchase of above mentioned shares.

In view of the above facts and circumstances of the case I have reason to believe that the aforesaid income amounting to Rs. 41,25,000 has escaped assessment in the hands of the assessee for A.Y. 2007-08 within the meaning of sec. 147 of the Income Tax Act."

3. The assessee, Tarunjit Tejpal is the promoter, shareholder and Director of the Media Company "Tehelka". While Tehelka is a media brand, the brand is owned during the previous year by the company Anant Media Pvt. Ltd. The Tehelka Brand was initially owned by a company Buffalo Networks Pvt. Ltd.

4. In ITA No. 3241/Del/2016, the assessee has raised the following grounds of appeal:

"1. The assessee has during the previous year sold 1,000 no of shares at a premium of Rs.9,90,000 thereby making a long term capital gain. On the basis of a departmental enquiry on the purchaser of shares the share premium has been added back in the total income of the assessee as undisclosed income because the source of funds with the purchaser could not be established. On the part of the assessee they have disclosed complete identity of the purchaser giving name, address and PAN no.

If at all if the source of funds with the purchaser have not been established proceedings against the purchaser could have been initiated and not against the assessee."

5. In ITA No. 3242/Del/2016, the assessee has raised the following grounds of appeal:

"1. The assessee has during the previous year sold 1,000 no of shares at a premium of Rs.9,90,000 thereby making a long term capital gain. On the basis of a departmental enquiry on the purchaser of shares the share premium has been added back in the total income of the assessee as undisclosed income because the source of funds with the

purchaser could not be established. On the part of the assessee they have disclosed complete identity of the purchaser giving name, address and PAN no.

If at all if the source of funds with the purchaser have not been established proceedings against the purchaser could have been initiated and not against the assessee."

6. Heard the arguments of both the parties and perused the material available on record.

7. The order of the Id CIT(A) reads as under:-

"On perusal of the assessment order, it is found that the ECSPL acquired shares from 10 existing shareholders, including the assessee, which were purchased by ECSPL at varying amount of premium ranging from Rs.990/- to Rs. 11,564/- per share. However, in respect of direct and fresh allotment of equity to ECSPL, exorbitant premium of Rs. 13,189/- per share was charged by M/s Anant Media (P) Ltd. around the same time. It is revealed that ECSPL, acquired shares of AMPL at varying premium rates during approximately the same period. Vast and unexplained differences in rates of premium shown to have been paid by ECSPL during the same period raises serious doubts about the genuineness of the transactions and the real worth of shares of AMPL which were transferred to ECSPL. The Assessing Officer found the transaction highly unlikely and against the all business prudence as in a genuine transaction, the shares of the same company would be sold at a premium as low as Rs.990 and as high as Rs. 13,189/- on the same day or within a period of few months that too to an unrelated party. The Assessing Officer arrived an inescapable conclusion that the transactions of sale of shares of AMPL by its existing shareholders were not genuine transactions but are merely a ruse for introduction of their own unexplained/unaccounted income in their books through ECSPL. The identity of the creditor, its creditworthiness and the genuineness of the transactions has to be established by the assessee in whose books such credits are found. All the three conditions are required to be satisfied independently of each other. In view of these facts the Assessing Officer found that the transaction cannot be treated as genuine. From these facts, it was found that Sh. Inderjit Tejpal, the assessee, and the shareholder of AMPL routed his unaccounted and undisclosed income through Kolkata based accommodation entry provider company. It is

further strengthened by the fact that all the shareholders sold their shares of AMPL at different rates thereby leading to an inference that each shareholder routed unaccounted amount available with him or her to his or her account in the guise of alleged sale of AMPL and value of the shares of AMPL shown to have been sold was fixed according to the amount of unaccounted funds required to be laundered by each beneficiary. Therefore, according to the Assessing Officer, the premium part of the sale consideration received by Inderjit Tejpal, the assessee is nothing but his own unaccounted and undisclosed income.

6.1 On the basis of the above discussion it can be surely concluded that all ingredients i.e. identity, creditworthiness of the person and genuineness of the transactions has not been satisfied and any credit, in the books of the assessee, has to be treated as unexplained cash credit.

6.2 The appellant has raised the ground against the addition of Rs.9,90,000/- as undisclosed income the addition is made in the absence ingredients of proving the genuineness of the transaction i.e. identity, creditworthiness of the person and the genuineness of the transaction the Assessing Officer has made the addition. I have no reason to disagree with the Assessing Officer. Accordingly, the addition of Rs.9,90,000/- is confirmed. All the grounds are dismissed."

8. We find that the order of the Id CIT(A) is the reproduction of verbatim of the assessment order. The assessee acquired 1250 equity shares of 10 each on 20.07.2004. These shares were purchased by an entity namely ECSPL with a premium ranging from Rs. 990/- to Rs. 13189/-. The Id CIT(A) has not gone into the primary requirement of basic enquiry/investigation to bring the receipt of sale of shares to tax. The onus is on the revenue to bring evidences and invoke suitable statutory provisions to bring any amount to tax. It is the responsibly of the assessee to prove how the amounts received are beyond the purview of taxation. In the instant case, we find that the revenue has not brought the much needed evidence on record, hence, no facts on either side could

be established. Hence, in the interest of justice the matter is being remanded back to the file of the Id CIT(A) to pass a speaking order after taking into the entire material on record and to cause the investigations as deemed fit.

9. In the result, the appeals of the assesseees are allowed for statistical purposes.

Order Pronounced in the Open Court on 25/04/2023.

Sd/-

(C. M. Garg)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 25/04/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR