

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमारलेखा सदस्य एवं , श्री संजय शर्मा न्यायिक सदस्यके समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 621/Kol/2022
Assessment Year: 2014-15

M/s Vikash Lohia (PAN: AAXPL 3630 N)	Vs.	ITO, Ward-30(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी(

Date of Hearing / सुनवाई की तिथि	05.04.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	26.04.2023
For the Appellant/ निर्धारिती की ओर से	Shri K. M. Roy, A.R
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) – NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 15.09.2022 for the AY 2014-15.

- The only issue raised by the assessee is against the confirmation of addition of Rs. 37,87,500/- which was made by the AO on account of bogus long term capital gain on sale of equity shares which was claimed as exempt u/s 10(38) of the Act.
- At the outset, it was brought to our notice that the case is covered against the assessee by the decision of Hon’ble High Court in the case of PCIT Vs Swati Bajaj IA

No. GA/2/2022 and others however it was submitted that it needs to be examined as to how much is the correct amount of long term capital gain. It was brought to our notice that in the para 5 page 1 of assessment order, the AO has stated that the amount claimed u/s 10(38) of the Act as exempt long term capital gain was Rs. 36,77,667/- whereas on the last page of assessment order in para 2 the AO stated that bogus long term capital gain of Rs. 37,87,500/- which was ultimately added in the income of the assessee. Accordingly in our opinion, the issue needs to be examined at the level of the AO as to what is the amount of long term capital gain accruing to the assessee from sale of equity shares. Accordingly we restore the issue back to the file of AO with the direction to examine the issue and decide the same afresh.

4. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 26th April, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 26th April, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Vikash Lohia, 15A, Mandevilla Garden, Kolkata-700019
2. Respondent – ITO, Ward-30(3), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata