

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1089/Chny/2019**
निर्धारण वर्ष / Assessment Year: 2013-14

Shri. Narendra Devakinandan
Harlalka,
No. 6A, Govindan Street,
Ayyavoo Colony, Aminjikarai,
Chennai – 600 029.

Income Tax Officer,
v. Non-Corporate Ward -10(3),
Chennai.

[PAN: AAPPH-5530-H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.02.2023

घोषणा की तारीख/Date of Pronouncement

: 04.05.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-12, Chennai, dated 22.03.2019 and pertains to assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:

"1. The order of the learned Commissioner Of Income (Appeals)-12, is wrong, illegal and opposed to facts of the instant case.

2. The learned Assessing officer erred in re-opening the assesses case only on the basis of suspicion and surmise and not the basis of any specific information or belief that income has escaped assessment.

3. Both the Assessing officer and the CIT(A)-12 in total non-application of mind to the facts of the appellants case erred in law in disallowing the claim of appellant claim of relief under section 10(38) of the Income Tax Act.

4. The learned Assessing officer and the CIT(A)--12 erred in assessing the income from purchase and sale of shares under the head $\pm i9$ explained credit under section 68 and not as income exempt under section 10(38) of the Income Tax Act as claimed by the appellant despite the fact that the appellant produced salient evidences to prove the genuineness of the transaction. The said uncontroverted evidences are overlooked both by the assessing officer and CIT(A) without any rhyme of reason and orders passed in a stereo typed manner on the basis of suspicion and surmise without application of mind to the facts of the appellants case.

5. The learned CIT(A)-12 ought to have seen that the case laws relied or by the learned CIT(A) to affirm the assessment order arc clearly distinguishable on fact and law. In the instant case of the appellant the transaction of purchase and sale of shares are through recognized stock exchange which is fully supported by uncontroverted Documentary evidences and payment of STT which establish the bonafide of the appellants claim.

6. The learned CIT(A)-12 erred in law in not following the decision of the Jurisdiction Tribunal where in transactions through stock exchange after paying the requisite STT have been treated as genuine transaction entitled for claim under section 10(38).

7. The learned assessing officer as well as the CIT(A) erred in relying on a certain pattern of bogus claim which is totally irrelevant to facts of the appellants case. The learned lower authorities erred in relying on investigation in the case of third party which has no bearing on the appellants transaction to disallow the claim of the appellant under section 10(38).

*8. The learned CIT(A)-12 appeals erred in disallowing the claim of the appellant under section 10(38) of the Income Tax Act. and consequently failed to follow the dictum laid by the supreme court in the case of **TEJUA ROHITKUMAR KAPADIA** while confirming the addition made under section 68.*

9. The learned assessing officer as well as the CIT(A) have not followed the doctrine of Res inter alios acta alteri nocere nocere non debet and have, without any evidence to the same, held a valid transaction of the appellant as an unexplained credit.”

3. The brief facts of the case are that, the assessee is an individual deriving income from business or profession and income from long term capital gains. The assessee has filed his return of income for the assessment year 2013-14 on 20.06.2013, admitting a total income of Rs. 13,36,520/-. The assessment has been subsequently reopened on the basis of information received from the DIT (Investigation), Kolkata, which revealed that trading in penny stock was manipulated to generate bogus long term capital gains/ short term capital gains to facilitate tax evasion. The case was selected for scrutiny and during the course of assessment proceedings, the

Assessing Officer noticed that the assessee has purchased and sold shares of M/s. NCL Research & Financial Services Ltd and Tuni Textiles, the penny stock companies, in connection with entry providers operating in Kolkata to derive the benefit of exemption of long term capital gains as per provisions of section 10(38) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). Therefore, by taking note of investigation report received from DIT (Investigation), Kolkata and also after analysis of various details, denied deduction claimed u/s. 10(38) of the Act and made additions towards consideration received for sale of shares as unexplained credit u/s. 68 of the Act.

4. Being aggrieved by the assessment order, assessee preferred appeal before the CIT(A). Before the Id. CIT(A), the assessee submitted that purchase and sale of shares of both companies is through registered stock exchange and the assessee has transacted through proper banking channel. Further, merely because some people were engaged in fraudulent activities of manipulating stock price of company, it cannot be alleged that the assessee was also part of said fraudulent activities and long term capital gains derived from

sale of said shares is non-genuine in nature. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of various facts opined that the assessee could not satisfactorily explain the nature of transactions undertaken for purchase and sale of shares of penny stock companies. Although, the assessee has purchased and sold shares through registered broker and paid consideration through proper banking channel, but fact remains that those two companies are treated as penny stock companies and are operating for the purpose of facilitating bogus long term capital gains to various parties. Therefore, rejected arguments of the assessee and sustained additions made towards consideration received for sale of shares u/s. 68 of the Act.

5. The Ld. Counsel for the assessee, submitted that the Assessing Officer has made additions towards consideration received for sale of shares of M/s. NCL Research & Financial Services Ltd, only on the allegation of some fraudulent activities carried out by third party, on the basis of report submitted by the DIT (Investigation), Kolkata, without providing copies of said statement and the opportunity to the assessee to cross examine those parties in violation of

principle of natural justice. The Ld. Counsel for the assessee, further referring to various documents including contract note for purchase and sale of shares through registered stock broker Kunvarji Finstock Pvt Ltd, submitted that purchase and sale of shares is through registered stock brokers. The assessee has paid consideration through proper banking channel. Further, the Assessing Officer has filed to link the transactions of the assessee to the report of DIT (Investigation), Kolkata. Unless, the Assessing Officer brings on record some evidences which can be linked to the transactions of the assessee to alleged fraudulent activities carried out by the third party, it cannot be said that transactions for purchase and sale of shares are non-genuine in nature and bogus. In this regard, he relied upon the decision of Hon'ble Delhi High Court in the case of PCIT vs Smt. Krishna Devi & Ors. In ITA 125/2020 dated 15.01.2021. The Ld. Counsel for the assessee had also relied upon the decision of ITAT Benches in the case of Mrs. Neeta Bothra vs ITO in ITA no. 2504 & 2508/Chny/2018.

6. The Id. Senior AR, D. Hema Bhupal, referring to various facts brought by Assessing Officer submitted that, it is a

matter on record that two companies script dealt by the assessee are classified as penny stock companies by the Income Tax Department. Further, the DIT (Investigation), Kolkata, brought out modus operandi of entry providers and dealing of penny stock companies for facilitating bogus long term capital gains. The assessee could not explain how the person staying in Chennai was dealing with a stock broker operating at Ahmadabad. The sequence of events and modus operandi employed by entry providers clearly indicates various persons including the appellant is beneficiary of bogus long term capital gains derived through transactions of penny stock companies. The Assessing Officer and Id. CIT(A), after considering relevant facts has rightly made additions towards consideration received from sale of shares and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer had made additions towards consideration received for sale of shares of two companies u/s. 68 of the Act, on the ground that the assessee may be one of the beneficiary of fraudulent activities carried out by entry

providers operating at Kolkata, on the basis of investigation report submitted by DIT (Investigation), Kolkata, where a scam has been unearthed. As per report of DIT (Investigation), Kolkata, entry providers are facilitating bogus long term capital gains to various beneficiaries through trading in specific script of certain companies. The report has disclosed the modus operandi employed by entry providers in light of financial of these companies and came to the conclusion that said companies are penny stock companies, merely operating for the purpose of facilitating bogus long term capital gains/short term capital gains. The Assessing Officer, has treated transactions of the assessee as bogus in nature on the basis of said report. However, the Assessing Officer has failed to give a convincing reason as how and why transactions of the assessee are bogus in nature in light of various evidences filed by the assessee which clearly shows that the assessee has transacted in said script through proper banking channel. In fact, the assessee has filed various documents including contract note and bank statement which clearly prove that purchase and sale of shares is through registered stock brokers and the assessee has paid consideration through proper banking channel. From the

above it is very clear that additions made by the Assessing Officer towards consideration received for sale of shares of two companies is only on the basis of report of DIT (Investigation), Kolkata. But fact remains that, the Assessing Officer neither gave a copy of the said report to the assessee for his benefits nor provided an opportunity to the assessee to cross examine the third parties on whose statement the Assessing Officer has drawn the adverse inference against the assessee. In our considered view, the Assessing Officer has grossly violated the principle of natural justice by not providing copies of said statement and also an opportunity to the assessee to cross examine the said parties. Therefore, we are of the considered view that the issue needs to go back to the file of the Assessing Officer for fresh consideration. Thus, we set aside the order passed by the Id. CIT(A) and restore the issue back to the file of the Assessing Officer and direct the Assessing Officer to re-examine the case of the assessee in light various averments made including violation of principle of natural justice and providing necessary information to the assessee and also if assessee seeks to examine the parties, the Assessing Officer must provide an opportunity to the assessee to cross examine those parties before deciding the issue.

8. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the court on 04th May, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 04th May, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF