

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'F' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 3137/Del/2019, A.Y. 2014-15

Randhir Singh Verma C/O Kapil Goel Adv. F-26/124 Sector 7 Rohini Delhi 110085 PAN : ABMPV2253R	Vs.	ITO, Ward 67(4), New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	None
Respondent by	Sh. Sanjay Tripathi, Sr. DR

Date of hearing:	09.05.2023
Date of Pronouncement:	23.05.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against the order dated 15.02.2019 of CIT(A)-28, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') Appeal No. 207/18-19/1235 arising out of an appeal before it against the order dated 30.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-67(4), New Delhi (hereinafter referred as the Ld. AO).

2. Assessee is in appeal raising following grounds :

“Jurisdictional Ground Notice u/s 143(2) is invalid

1. That order passed by Ld AO dated 30/12/2016 and further order passed by Id CIT A dated 15/02/2019 are bad in law in as much as mechanical notice u/s 143(2) on basis of CASS is not in accordance with jurisdictional conditions stipulated under the Act so it shows grave and patent non application of mind on part of Ld AO in issuing notice u/s 143(2) and accordingly all subsequent proceeding including orders passed by Ld AO and Ld CIT-A are void ab initio .

Other grounds on merits ana addition of Rs 21.56.261/-

2. That order passed by Ld AO dated 30/12/2016 and further order passed by Id CIT A dated 15/02/2019 are bad in law in as much as addition of Rs 21.56,261/- (break up : addition u/s 68 on a/c of alleged unexplained cash credit Rs 21,56,261/-) is made without appreciating that LTCG arising from share sales on floor of stock exchange after due payment of STT through recognized stock broker for which voluminous evidence of purchase and sale are no where contradicted and overruled as per law and on basis of stereotype narrative additions are made and even relevant assessment related office manual of revenue is not abided while making additions.

2.1 That order passed by Ld AO dated 30/12/2016 and further order passed by Id CIT A dated 15/02/2019 are bad in law in as much as addition of Rs 21,56,261/- is made violating principles of natural justice without confronting any investigation wing report relevant extract, statements recorded by investigation wing , etc and without offering cross examination of revenues witness whose statements is extensively relied in impugned orders, which is sufficient to quash the assessment order and order passed by Ld CIT-A. **even show cause notice dated 20.12.2016 reproduced at vases 30 to 34 of assessment order when compared with assessment order itself exposes that principle of natural justice are seriously violated in extant case as no statement annexed with assessment order has been shared with assessee which is sufficient to quash the assessment order and order of Ld CIT-a who has also not bothered to look into said aspect. We reply on revenue office manual to support our plea.**

3. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of Rs 21,56,261/- without

appreciating that burden to prove that transaction is bogus/sham has remained un-discharged from side of revenue.

4. That on the facts and in the circumstances of the case and in law, both Id CIT-A and Id AO erred in making subject additions without appreciating that the modus operandi relied extensively in impugned orders is never co-related even remotely to the facts of the present case as there is no iota of evidence brought on record which can display that assessee herein has inducted certain cash at the time of sale to certain indentified broker/middleman/syndicate member who has in turn introduced certain identified artificial paper company for alleged parking of said cash to buy the shares sold by the assessee which theoretical trail has remained inchoate completely nullifying the entire basis of the addition.

*5. That on the facts and in the circumstances of the case and in law, Id AO and Ld CIT-A erred in making and sustaining subject additions without appreciating that law gives discretion to the assessing officer in applying deeming fictions u/s 68 as applied by Ld AO as **firstly opinion and satisfaction u/s 68 as not been objectively arrived in facts of present case on due application of mind** secondly assessee has no economic capacity and source to generate given amount of unaccounted income, thirdly law requires that additions under said deeming fiction cannot be made sans incriminating material brought on record which is completely lacking in present case. **Lastly section 68 does not apply to sale of shares where no unexplained cash credit within meaning of section 68 can be said to have arisen therein. Significantly no books of assessee are there before Ld AO within meanins of section 68 of the Act, (refer vase I. vase 48 & 49. of assessment order & va2e 8 of CIT-A order)***

*6. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of **Rs 21.56.261/-** without appreciating that basis of findings of the lower authorities is “suspicion” and “human probabilities” only which is never converted to reliable and trustworthy material and entire assessment order is passed on sole basis of*

“borrowed satisfaction” and without any independent application of mind (like a rubber stamp order).

7. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of **Rs 21.56.261/-** without appreciating that no opportunity is given to the assessee to be confronted with back material relied extensively in impugned orders like investigation wing report etc and no opportunity to cross examine the revenue’s witness was given despite specific written request in this regard made to Ld AO/CIT-A.*

8. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of **Rs 21.56,261/-** without appreciating that in identical facts in various orders relief has been granted to assessee accepting LTCG (long term capital gains) as genuine.*

9. *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of **Rs 21.56.261/-** without appreciating spirit of law contained in section 10(38) and section 43(5)(d) where statutory status is provided to evidences generated from stock exchange system treating the same to be impeccable and only from finance act 2017 with prospective effective from AY 2018-2019, amendment is made in section 10(38), prior to which such gains would remain exempt.*

10. *That the appellant craves leave to add/ add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”*

3. Heard and perused the record.

4. As the case was called for hearing, non-appeared for the assessee. Record shows that in spite of issue of notices repeatedly none has appeared for assessee on nine occasions. No more opportunity is justified. Arguments of Ld. DR were heard who supported the findings of Ld. Tax Authorities below.

5. On perusal of the record it can be appreciated that primarily the assessee challenged the addition of Rs. 21,56,261/- u/s 68 of the Act on account of unexplained cash credit. The Ld. AO had found that the LTCG on sales of shares of M/s. Kappac Pharma Ltd. was not genuine transaction.

6. After examining the mode of acquisition of shares, unusual rise in the price and certain facts which show that the transactions of share was not governed by market factors, the cash trail in the accounts of the entry providers, the fact that the purchasers did not have any financial back up, the additions made were sustained. There is nothing on record to show that assessee/ appellant was able to discharge his burden u/s 68 of the Act by rebutting the suspicious circumstances raised by the Ld. AO. Mere transaction through DMAT account or sale of the shares on stock exchange cannot be considered to be evidences rebutting the circumstances. The modus operandi examined by the Ld. Tax Authorities remained unrebutted. The grounds raised have no substances. **The appeal of assessee is dismissed.**

Order pronounced in the open court on 23rd May, 2023.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Date:-23rd.05.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**