

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

I.T.A. No. 554/Kol/2020
Assessment Year : 2015-16

Rina Begum (PAN: AFJPB 4015 J)	Vs.	ACIT, Circle-1, Burdwan
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	20.04.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	16.06.2023
For the Appellant/ निर्धारिती की ओर से	Shri Somnath Ghosh, Advocate
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR

ORDER / आदेश

Per Shri Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals)-Burdwan (hereinafter referred to as the Ld. CIT(A)"] dated 14.09.2020 for the AY 2015-16.

2. The issue raised in ground nos. 1 to 3 is relating to the disallowance of claim of exemption u/s 10(38) of the Act in respect of long-term capital gains arising from the sale of shares.

3. At the outset, we note that the issue is relating to the penny stock and the same is squarely covered against the assessee by the recent decision of the Calcutta High Court vide common order dated 14.06.2022 in a batch of 90 appeals with a lead case titled as PCIT vs. Swati Bajaj in IA No.GA/2/2022 and Others in which the Hon'ble Calcutta High Court vide its decision dated 14.06.2022 (supra) has affirmed the additions made by the Assessing Officer u/s 68 of the Income Tax Act in respect of bogus long-term capital gains. In view of this, ground nos. 1 to 3 raised by the assessee are hereby dismissed.

4. Issue raised in ground nos. 4 & 5 is against the confirmation of addition of Rs. 76,49,430/- by Ld. CIT(A) as made by AO u/s 68 of the Act in respect of sundry creditors.

5. Facts in brief are that the AO observed from the records that the assessee has shown sundry creditors of Rs. 78,50,994/- in the balance sheet and accordingly called upon the assessee to furnish party-wise details of sundry creditors with PANs and addresses. The assessee submitted the details before the AO vide letter dated 10.11.2017 by submitting that all the creditors were related to purchases made by the assessee during the year from the said parties. The AO also issued notices u/s 133(6) of the Act for cross-verification to his creditors which were duly served but no reply was received from these parties. Finally the AO vide letter dated 4.12.2017 giving a show cause notice to the assessee to explain and justify the purchases from these parties and as to why the same should not be added to the income of the assessee. The AO has received only one reply from Ganga Kaveri which has confirmed the supply of materials. Accordingly the AO treated the remaining creditors which pertain to material purchased during the year as non-genuine and added the same u/s 68 of the Act to the income of the assessee in the assessment framed vide order dated 02.03.2015.

6. The Ld. CIT(A) simply dismissed the appeal of the assessee by holding that the assessee has failed to prove identity and creditworthiness of the parties and

genuineness of the transactions despite several opportunities given to the assessee and thus confirmed the same.

7. After hearing the rival contentions and perusing the material on record, we observe that the addition which was made by the AO u/s 68 of the Act is in respect of sundry creditors which were on account of purchases made by the assessee during the year from these parties. The AO issued notices u/s 133(6) of the Act to the sundry creditors but only one party Maa Ganga Kaveri responded to the said notice and consequently the AO added the remaining sundry creditors as non-genuine to the income of the assessee u/s 68 of the Act. Similarly the Ld. CIT(A) confirmed the addition by holding that the assessee has failed to prove identity and creditworthiness of the parties and genuineness of the transactions. We have observed on the basis of facts before us and also from the arguments by the Ld. A.R with evidences filed before us that there is no dispute about the fact that the assessee has purchased the material from the impugned parties and these were not paid during the year. We have also examined the confirmations placed before us and also copies of accounts of these suppliers and find that the assessee was having running account/business dealings on regular basis with these parties. A perusal of these accounts reveals that purchases of material were done during the year whereas the payments were against the opening balances. Further purchases during the year were also made at frequent intervals and payments were made by cheques to these parties with aggregate outstanding balances of Rs. 76,49,430/- at the year end which was paid in a next year through account payee cheques. In our opinion, the addition in respect of sundry creditors cannot be made u/s 68 of the Act and if the purchases are found to be non-genuine, the AO could have rejected the books of account and trading result as shown by the assessee during the year and also verified whether there was no corresponding sales made by the assessee against these purchases but we find that both the authorities below have failed to examine this issue in an objective manner. Accordingly we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

8. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 16th June, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated:16th June, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rina Begum, C/o, S.N. Ghosh & Associates, Advocates “Seven Brothers’ Lodge, P.O-Buroshibtala, P. S. Chinsurah, Dist. Hooghly, WB-712105.
2. Respondent – ACIT, Circle-1, Burdwan
3. Ld. CIT(A)- Burdwan (sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata