

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.6678/Del/2018
[Assessment Year : 2014-15]**

Vinod Kumar Garg, A/160, Gujranwala Town Part-I, New Delhi-110009. PAN-AAAPG4116B	vs	ITO, Ward-36(5), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Pranav Yadav, Adv.	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	26.06.2023	
Date of Pronouncement	25.07.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2014-15 is directed against the order of Ld. CIT(A)-12, New Delhi dated 12.07.2018.

The assessee has raised following grounds of appeal:-

1. *"On the facts and circumstances of the case and in law, the CIT(A) erred in confirming addition of Rs. 37,11,992/- made by the assessing officer on account of alleged unexplained cash credit u/s 68 of Income Tax Act.*
2. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming action of the assessing officer of disallowing exemption of long term capital gain of Rs. 37,11,992/-.*
3. *On the facts and circumstances of the case and in law, the various allegation made/remarks made/inferences drawn by the CIT(A) /assessing officer for confirming/making addition of Rs. 37,11,992/- are erroneous.*
4. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming action of the A.O. of applying provision of section 115BBE of the Income Tax Act, 1961.*

4. *The appellant craves leave to add, alter, modify or delete one or more ground of appeal before or at the time of hearing of appeal.*

The aforesaid ground of appeal are without prejudice to each other.”

2. The only effective ground raised in this appeal is against the sustaining of addition of INR 37,11,992/- made u/s 68 the Income Tax Act, 1961 (“the Act”).

3. Facts giving rise to the present appeal are that in this case, the assessee had filed its return of income through electronic mode on 24.03.2015 declaring total income of INR 2,43,960/-. The case was selected for scrutiny assessment on the basis of suspicious Long Term Capital Gain (“LTCG”) qua transacting in shares. Notice u/s 143(2) of the Act was issued and duly served upon the assessee. Thereafter, in response to the notice issued u/s 142(1) of the Act, Ld.AR of the assessee, Shri Pawan Bholusaria, CA attended the assessment proceedings. During the assessment proceedings, the Assessing Officer (“AO”) noticed that the assessee had claimed LTCG of INR 37,11,992/-. The AO further recorded that the statement of brokers at Kolkata were recorded by the Investigation Wing. The AO noticed that the assessee was one of the beneficiaries of LTCG, obtained by way of trading of shares of M/s. Blazon Marble and M/s HPCBL. It was noted by the AO that both those entities were suspended by the Securities & Exchange Board of India (“SEBI”). The AO did not accept the explanation offered by the assessee. After elaborately discussing the same, he made addition of INR 37,11,992/- u/s 68 r.w.s 115BBE of the Act.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, also declined the claim of the assessee regarding deduction u/s 10(38) of the Act and confirmed the view of the AO.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Ld. Counsel for the assessee submitted that the entire addition has been made on the basis of evidences recorded and collected at the back of the assessee. The assessee was not given opportunity of cross-examination. He submitted that the assessee should have been given opportunity for cross-examination. He further relied upon the decision of Co-ordinate Bench of the Tribunal in the case of ***Puneet Kulthia vs ITO in ITA No.2041/Del/2018*** order dated **30.09.2022**. He submitted that the issue may be restored to the AO in the interest of principles of natural justice.

7. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He submitted that it is the assessee who had claimed LTCG exemption u/s 10(38) of the Act. The primary onus was on the assessee to prove the genuineness of the transaction. There was credible information from Investigation Wing who had carried out certain inquiries which had direct link with the transaction made by the assessee. Further, analysis of facts and circumstances and financial scrip under consideration was done by the AO. He contended that all the adverse inputs available were not controverted by the assessee to substantiate the genuineness of its claim of exemption u/s 10(38) of the Act. In spite of various opportunities, the assessee failed to substantiate its claim and controvert adverse findings. He contended

that the case laws as relied by the AO as well Ld.CIT(A) may kindly be treated as relied by the Revenue. Ld. Sr.DR placed reliance on the judgement of Hon'ble Delhi High Court rendered in the case of **Udit Kalra vs ITO [ITA No.220/2019 & CM No.10774/2019]** order dated **08.03.2019**. He further placed reliance on the various case laws and to buttress the contention that the onus was on the assessee to prove the genuineness of the transactions.

8. I have heard Ld. Authorized Representative of the parties and perused the material available on record. I find that Ld.CIT(A) after considering the submissions of the assessee, decided the issue by observing as under:-

7.14. *"The Assessing Officer has recorded the facts of the instant case and even the Assessee has made them clearer in his submission. Just with the total investment of Rs.1,53,677/- the Assessee gains Rs.37,11,992/- in the span of less than 2 years. The Assessee purchased shares of M/s Blazon Marble @ Rs.0.40 per share (Rs.2/- per share as per Assessee) for a total consideration of Rs.27,677/- and M/s HPC Biosciences Ltd. @ Rs.35/- per share for a total consideration of Rs.1,26,000/- and sold them for a total consideration of Rs.59,33,132/-. The Appellant has failed to substantiate any of the arguments to support the price hike of the shares of M/s Blazon. Marble and M/s HPC Biosciences Ltd. by 38 times. There are no comprehensible market forces or international trends responsible for such fluctuation in the price of the shares of this company. Even the sensex was not so volatile during this period. The Appellant has argued that there are no direct or indirect evidences against him. To these arguments, it is observed that the purchase of the shares of M/s Blazon Marble and M/s HPC Biosciences Ltd. by the Appellant and its phenomenal price hike without any fundamental support speak a lot about the pattern of the investment and its so called yield. There are no sentimental,*

national or international factors responsible for the so called growth. Arguments of the Appellant do not help his case because there are no apparent reasons of any form which can give iota of phenomenal rise.

7.15 *The Appellant failed to rebut the observations of the Assessing Officer stated above. The Appellant rather beats about the bush to defend his case. With respect to the circumstantial evidence and in the matter related to the discharge of onus of proof and the relevance of surrounding circumstances of the case, the relevant observations and findings of Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More, are:*

"that though an appellant's statement must be considered real until it was shown that there were reasons to believe that the appellant was not the real, in a case where the party relied on self-serving recitals in the documents, it was for the party to establish the transfer of those recitals, the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals. Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probability. Human minds, may differ as to the reliability of piece of evidence, but, in the sphere, the decision of the final fact finding authority is made conclusive by law."

8.1. It is the case of Revenue that the assessee had purchased the shares related to suspected entities against whom SEBI and Investigation Wing of Revenue had carried out certain inquiries. The assessee purchased these shares at very nominal price and sold the same at very excessive price without being supported by any reasons. From the finding of lower authorities, it is

clear that same are based upon surrounding evidences. However, no direct evidence is placed on records.

9. On the other hand, the grievance of the assessee is that the assessee was not confronted with information gathered at his back. Ld. Counsel for the assessee has relied on the decision of Co-ordinate Bench of the Tribunal in ITA No.2041/Del/2018 wherein the Tribunal has restored the issue to the file of AO by observing as under:-

8. *“I have heard Ld. Counsel for the assessee & Ld. Sr. DR for the Revenue and perused the material available on record and gone through the orders of the authorities below. It is transpired from the assessment order that the AO has considered the evidences related to various parties. However, I find merit in the contention of the Ld. Counsel for the assessee that these evidences did not relate to the assessee and the assessee was not given opportunity to rebut these evidences. Therefore, looking to the material available on record, I am of the considered view that the AO ought to have brought specific evidences against the assessee and the evidences collected at the back of the assessee ought to have been confronted with the assessee. Therefore, I hereby set aside the orders of the authorities below and restore the issue to the file of AO to make assessment afresh after giving adequate opportunity of hearing to the assessee. Thus, Ground No.1 raised by the assessee is allowed for statistical purposes.”*

10. Therefore, considering the totality of facts and in the light of the decision of Co-ordinate Bench in ***Puneet Kulthia vs ITO in ITA No.2041/Del/2018*** order dated **30.09.2022** (supra), I hereby, set aside the impugned order and restore the issue to the AO for decision afresh. The AO would grant adequate

opportunity to the assessee for rebutting the evidences gathered at his back.
The grounds raised in this appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 25th July, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI