

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No. 5154/DEL/2019
Assessment Year: 2014-15**

Pooja Jain, J-3/3, West Jyoti Nagar, Shahdara, Delhi-110094. PAN-AEKPJ2802F	<u>Vs</u>	Income-tax Officer, Ward-56(4), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Sh. Vivek Vardhan, Sr. DR	
Date of hearing	31.07.2023	
Date of pronouncement	02.08.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, preferred by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-37, New Delhi, dated 27.03.2019, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

*“1. The Ld. CIT(A) has erred in law and on fact by confirming the carrying out by Ld. AO the complete scrutiny despite the case was selected for limited scrutiny under CASS. The Ld. CIT (A) ignored the facts of the case and also the notice of Ld. A.O. dated 30-10-2015 requiring complete details, documents and explanations from the appellant considering it as complete scrutiny. The Ld, CIT (A) has erred in law and on fact stating in his order that the case was selected for limited scrutiny and that the Ld. A.O. examined only the issue on which selection of case for scrutiny was made, ignoring the fact that questionnaire of Ld. A.O. dated 30-10-2015 issued making the assessment proceedings as complete scrutiny. This was outside the jurisdiction of the Ld. A.O. regarding the assessment proceedings of the case selected under CASS for limited scrutiny. On this count, the present case before your honor is squarely covered by the **CBDT Instruction No. 5/2016 dated 14-07-2016 (F.N. 225/269/2015-ITA.II)***

2. The impugned order passed by the Ld. CIT(A) is completely bad in law and wrong on facts. The Ld. CIT (A) has only gone by surmises, conjuncture and guess work in drawing inference and in recording his conclusion, it is pertinent to mention here that the entire addition has been made by the A.O. only on the basis of presumptions and presuppositions, instead considering the following documents/informations and explanations provided by the appellant during the course of the assessment;

- a. Copy of contract notes cum bill of transactions for the verification of sale.*
- b. Copy of bank statement of the assessee evidencing the purchase and sale of shares through regular banking channels.*
- c. Copy of dmat account and share certificates.*
- d. Statement of appellant /assessee on oath in response to summon u/s 131.*

*The Ld. CIT(A) failed to appreciate the facts of the case that the appellant made genuine sale and purchase of shares and without correctly appreciating and understanding the transaction, he has made addition of Rs. 23,12,642/- in the income of the appellant. On this count, the present case before your honor is squarely covered by the verdict of the honorable jurisdictional ITAT in the case of **Meenu Goyal vs ITO, (New Delhi), ITA No, 6235/Del/2017. Order pronounced on 19-03-2018.***

Further relying upon the **verdict** of the Kolkatta ITAT in the case of Navneet Agarwal vs (TO (Kolkatta) ITA No. 2281/Kolkatta/2017, Order pronounced on 20-07-2018. in addition, same views has been expressed by the honorable Rajasthan High Court after considering all the verdict in the case of CIT vs Smt. Pooja Agarwal (Appeal No. 385/2011) Order pronounced on 11-09-2017

3. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 23,12,642/- to the income, ignoring the basic fact that the sale and purchase of share transactions has been made through account payee cheques by the assessee after paying the security transaction tax (SIT). Further the Ld. A.O. has not disputed the purchase and sale of equity shares, holding thereof, price thereof and the amount received through the banking channel. Instead, based **on** some information received and statements recorded in some other cases, the exemption claimed by the assessee under section 10(38) has been denied. On this count, the present case before your honor is squarely covered by the verdict of the honorable ITAT Kolkatta in the case of **Surya Prakash Toshniwal (HUF) vs ITO Kolkatta, ITA No. 1213/Kolkatta/2016. Order pronounced on 11-01-2017**

4. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 23,12,642/- to the income, without identifying any defect over the documentary evidences furnished during the course of assessment and even without conducting any enquiry, just by quoting some other cases to which the assessee has nothing to do with. Further, the findings of SEBI cannot be the sole reason for disapproving the claim of the assessee without bringing any adverse material on record to reject the details, documents and explanations submitted during the course of the assessment proceedings. On this count, the present case before your honor is squarely covered by the verdict of the honorable ITAT Kolkatta in the case of **Dolar Rai Himani vs ITQ Kolkatta/2014. Order pronounced on 02.12.2016**

5. The Id. CIT(A) has erred in law and on fact by confirming the addition of Rs. 23,12,642/- to the income, treating the transaction as an accommodation entry with a particular broker in relation to the equity share of a particular company, merely because the investigation was done by income-tax department or the SEBI against brokers or the companies or their promoters, assessee cannot be said to have entered into in-genuine transaction, in so far as assessee is not concerned or connected in any manner whatsoever, with the company or its promoters or employees or

activity of the broker and have no control over the same. On this count, the present case before your honor is squarely covered by the verdict of the honorable ITAT Mumbai in the case of ITO Mumbai vs M/s Arvind Kumar Jain (HUF), ITA No. 4862/Mumbai/2014. Order pronounced on 18-09-2017.

6. *The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 23,12,642/- and Rs. 70,130/- to the income, on the basis of material gathered in some other cases, outside the jurisdiction of the assessee, as an evidence, without affording any opportunity of cross examination of the person/persons whose statements are sought to be relied upon. Thus, this is a case of gross violation of principle of natural justice.*

7. *The Id. CIT(A) has erred in law and on fact by confirming the addition of Rs. 70,130/- to the income, applying a hypothetical rate of 3% on Rs. 23,27,642/-, being charges or commission paid for accommodation entries, without any basis or material placed on record, just on suspicious surmises and conjectures.*

8. *The Ld. CIT(A) has erred in law and on fact by confirming the invocation of section 115BBE of the act and taxing the whole addition made for Rs. 23,82,770/- @ maximum slab against the facts and circumstances of the case.*

9. *The appellant carves leave to add, alter or amend any grounds of appeal before or during the course of appeal and all the above grounds of appeal are without prejudice to each other.”*

2. At the time of hearing no one attended the proceedings. It is seen from the record that no one has been attending the proceedings on behalf of the assessee despite various opportunities given. Notice of hearing sent to the assessee has been served upon the assessee as acknowledgment due is on record. Therefore, it is presumed that the assessee is not interested in prosecuting the present appeal.

Hence, the same is being decided ex parte to the assessee, on the basis of the material available on record.

3. Facts giving rise to the present appeal are that assessee filed its return of income declaring income of Rs. 5,27,290/-. The case was taken up for scrutiny under CASS. During the course of assessment proceedings the AO noticed that the assessee had claimed long term capital exemption u/s 10(38) of the Income-tax Act, 1961 (the "Act") in respect of sale of shares of M/s Esteem Bio Organic Food Processing Ltd. of Rs. 23,12,642/-. The AO rejected the claim of the assessee and added the long term capital gain in the income of the assessee. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who also sustained the addition and dismissed the assessee's appeal. Now the assessee is in appeal before this Tribunal.

4. Learned DR supported the orders of the authorities below and submitted that the assessee failed to justify the transaction and the authorities below have rightly treated the same as non-genuine transactions and added the long term capital gain to the income declared by the assessee. He submitted that learned authorities below have given finding of fact that the impugned transaction being sham. Hence, AO

was justified for making addition and the learned CIT(Appeals) rightly sustained the same.

5. We have heard the learned DR and perused the material available on record. We find that the learned CIT(Appeals) has given a finding of fact in his order in paras 5.26 to 5.29, as reproduced below:

“5.26.I find that on similar facts and circumstances. Hon'ble High Court Bombay(Nagpur Bench) while dismissing the appeal of the assessee in the case of Sanjay Bimalchand Jain vs CIT-1. Nagpur m ITA No. 18/2017 has expressed the view that the undisclosed income in the garb of LTCG has to be assessed as undisclosed credit u/s 68 by holding as under:-

" The authorities have recorded a dear finding of fact that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing , the authorities held that the assessee has not tendered cogent evidence to explain as to how the shares in a unknown company worth Rs. 5/- had jumped to Rs.485/- in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no financial basis as how a share worth Rs.5/- of a little known company would jump from Rs.5/- to Rs.485/~. The findings recorded by the authorities are pure findings of the fact based on proper appreciation of the material on record. While recording the said findings, the authorities have followed the test laid down by the Hon'bie Supreme Court and this court in several decisions....”

5.27 All these above mentioned cases are applicable to the facts and circumstances of the present case in which the various judicial authorities have decided the cases in favour of revenue after going through the entirety of the facts and circumstances. The case laws relied upon by the by the

appellant are apparently in favour of the assessee but probably the role of human conduct, surrounding circumstances and preponderance of probabilities were either not brought to the notice of the Hon'ble Judicial Authorities or were not as dominant or deciding factors as these are found to be in the present case. In addition, the AO, in this case, has very clearly segregated the apparent from the real by using various evidences gathered from reliable sources of information and report.

5.28 in view of the facts and circumstances come out of the assessment order and legal precedents as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that Sale of shares are arranged transactions to create bogus profit in the garb of tax exempt LTGC by well organized network of entry providers with the sole motive to sell such entries such entries to enable the beneficiary to account for the undisclosed income for a consideration or commission.

5.29 In view of the above discussion, I am of the considered view that share transactions leading to LTCG by the appellant are sham transaction entered into for the purpose of evading tax. Accordingly, it is held that the AO has rightly added the said amount of Rs. 23,12,642/- as unexplained income of the appellant u/s 68 r.w.s 115BBE of the Act, Since arranging such accommodation entry necessarily entails payment of commission to entry providers, the AO's action in quantifying and adding such unexplained expenditure u/s 69C at Rs 70,130/- based on statements of brokers/entry providers is also upheld for the reasons recorded in the assessment order. Since the total income of the appellant includes income referred in Sect 68 and Section 69C, therefore, charging of tax as per 115BBE is mandatory. The AO has correctly applied section 115BBE of the Act. Accordingly, additions made by the AO are confirmed and the grounds of appeal including additional grounds are dismissed.”

6. The above finding of fact given by the learned CIT(Appeals) is not controverted by the assessee by placing any contrary material on record. We,

therefore, do not see any reason to interfere in the finding of learned CIT(Appeals).

The same is hereby affirmed. Grounds of appeal raised by the assessee are dismissed.

7. Appeal of the assessee is dismissed.

Order pronounced in open court on 02.08.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI