

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'SMC' BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.463/PUN/2019
(A.Y. 2014-15)

Smt. Kirti Bipin Thorat, Sr.No.1, Plot No.1, Shriman Society, Karve Nagar, Pune.	vs	ITO, Ward-3(3), Pune.
PAN: AEOPT 8890 B		
Appellant		Respondent

Assessee by	:	Shri Rishab Jain, CA
Revenue by	:	Shri Ganesh Budruk, DR
Date of hearing	:	04/09/2023
Date of pronouncement	:	20/09/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Commissioner of Income Tax [Appeals]-3, Pune (for short, 'CIT(A)'), dated 23.01.2018 for A.Y.2014-15 as per the grounds of appeal on record.

2. That, on perusal of the grounds of appeal, though descriptive and elaborate, there are broadly two issues for which assessee is aggrieved i.e. (i) reopening of assessment u/sec. 147/148; and (ii) the disallowance of addition of Rs. 26,68,060/- made by the AO and as upheld by the Id. CIT(A).

3. That, with regard to the re-assessment proceedings, there is a precise and clear finding by the Id. CIT(A) that as per record, assessee

was given full opportunity to defend his case before the AO and that the re-assessment proceedings have been conducted u/sec. 147/148 by the AO after proper recording of the reasons. It is further noted that even Id.AR during the appellate proceedings before the Id. CIT(A) has agreed that AO did provide adequate opportunities in the assessment proceedings. Even before us also, at the time of hearing, even though this has been raised in the grounds of appeal, but the Id.AR did not submit any submission regarding this ground. We do not find any infirmity with the findings of the Id. CIT(A) on this issue and the order of the Id. CIT(A) is upheld.

4. With regard to the other issue of addition of Rs. 26,68,060/- received as unaccounted income in cash towards the sale of shares.

5. The relevant facts of this issue are that there was a search and seizure action u/sec. 132 of the Act conducted upon Sinhgad group of cases on 06/08/2013, wherein one of the groups was Jay Shriram Sugar and Agro Products Ltd. (JSAPL), which was also searched. Certain loose papers were found and seized in the said premises, which contained some transactions related to the assessee and her family members, who were in fact the major shareholders of the company-JSAPL and the company was primarily run by Shri G.S. Thorat, a relative of the assessee. That, as per the submissions of the assessee, the said company i.e. JSAPL had incurred huge loss and, therefore 43,934/- shares held by the assessee in JSAPL were sold by

the assessee and transferred to Shri Maruti N. Navale and group at a price of Rs. 60/- per share for a total amount of Rs. 26,36,040/-. The seized document in bundle No.4 and page No.20 revealed that for such transaction of shares, Navale & Group has paid the assessee an additional amount of Rs. 17,76,960/- by cash in F.Y. 2013-14 relevant to the present A.Y. 2014-15 and this payment receipt was not disclosed by the assessee. The AO had added the same as assessee's unaccounted income during the year. The AO had also extracted the findings of the Investigation Wing in the assessment order. In order to verify the issue of cash receipt of Rs. 17,76,960/- in share transactions, summons were issued u/sec. 131 of the Act to the assessee and also to Maruti N. Navale, who had purchased the shares of JSAPL. The hearing was fixed on 02/12/2016, however, the assessee did not attend the office of AO. In response to the summons, the CA of Maruti N. Navale had appeared and submitted ledger of the assessee in the books of Maruti N. Navale (individual) and M/s. JSAPL. The issue was discussed with the CA of Maruti N. Navale, who had admitted that the issue of cash payment to shareholders has been decided by DCIT, Central Circle-2, Pune wherein various additions have been made on account of cash payments to 28 persons mentioned in the papers. Therefore, all that transpires from the entire proceedings is that as per the self-admission of CA of Maruti N. Navale, there had been similar transaction whereas shares were purchased by Navale group and payments were also made in cash

forming unaccounted income in the hands of the recipients for which even adequate action has been taken by the Department in respect of various other such recipients. The essential fact is, an opportunity was provided to the assessee to cross-examine Maruti N. Navale by the AO. But as observed, the assessee has not attended the proceedings and, therefore she lost the opportunity of such cross-examination for her own absence. There are no materials/documents on record to show that such unaccounted cash payments were not paid to the assessee. On the contrary, there is a self-admission of payment of cash (unaccounted) by the CA of Maruti N. Navale, who had purchased the shares from the assessee in the said company of JSAPL. As per the admission, there has been natural practice of payment in cash for which additions have been made by the Department in case of several shareholders who have entered into transaction with Navale group. Even at the time of hearing also, the Id.AR for the assessee could not justify this cash receipt in lieu of sale transactions of shares. The Id.AR could not deny nor place on record any evidence in support of the assessee to counter the stand of the Revenue. Considering these facts and circumstances of the case, we do not find any infirmity with the findings of the Id. CIT(A) and the said addition sustained by the Id. CIT(A) is upheld.

6 Further, the Id. CIT(A) has observed that as per para 6.1 of the assessment order, the AO has referred to the submission of the

assessee wherein it was stated that the purchase and selling price of share was Rs. 100 per share and this was not disputed by the AO. Therefore, it is a position that the shares were purchased at Rs.100 and were also sold for Rs.100. Therefore, there cannot be any capital gain or loss in the hands of the assessee. However, from the copy of return furnished by the assessee during the appellate proceedings, it was noticed by the Id. CIT(A) that assessee has claimed loss of (-) Rs.26,48,463/- under the head 'capital gains', which was disallowed by the Id. CIT(A), since as observed, the position was such as per the self-declaration by the assessee that question itself does not arise for any loss occurrence in such sale transactions where the shares were purchased and sold at the same price. This finding of the Id. CIT(A) is also upheld. The grounds of appeal of the assessee stands dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in open Court on 20th September, 2023.

Sd/-
(G.D. PADMAHSHALI)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 20th September, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "B" Bench.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.