

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**Before Sh. C. M. Garg, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 281/Del/2021 : Asstt. Year : 2015-16**

ACIT, Circle-59(1), New Delhi	Vs	Sanjay Singhal & Sons (HUF), 9-110, Saraswati Kunj, 8, Alipur Road, Delhi-110054
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAIHS6800C</b>		

**Assessee by : Sh. Amit Goel, CA**

**Revenue by : Sh. Amit Katoch, Sr. DR**

**Date of Hearing: 17.07.2023**

**Date of Pronouncement: 16.10.2023**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-37, New Delhi dated 22.09.2020.

2. The assessee filed return of income on 26.08.2015 showing total income of Rs.39,50,140/-. The assessee had shown interest income from bank and Capital gain income. Income from LTCG was shown at Rs.35,02,300/- and income from other sources was shown at Rs.6,07,838/- resulting in total income of Rs.39,50,140/-.

3. The assessment was completed u/s 143(3) of the Act at Total income of Rs.2,82,67,840/-. The AO made addition of Rs.2,78,20,000/- u/s 68 of the Act.

4. The gist of addition made by the AO is as under:- [from the order of the Id. CIT(A)]

"Appellant has claimed exemption of 54 against LTCG from sale of shares of SMS IT Solutions Pvt. Ltd. (SMS ITS PL). Appellant held 200 shares of this company at face value of Rs.100 per share. These shares were purchased by appellant on 30.03.2010 and sold on 30.04.2014 at value of Rs.1,39,200/- per share. As a result appellant offered to tax LTCG of Rs.2,77,87,600/- after claiming indexation of Rs.32,400/- on total sale consideration of shares of Rs.2,78,20,000/- Against these gains the appellant has claimed exemption u/s 54 of Rs.2,42,85,300/- on account of Investment in NHAI bonds dated 15.09.2014, Investment in House Property and Deposits under Capital Gain Account with IDBI Bank Ltd.

6.3 The AO analyzed the said transaction and held that the real nature of these transactions was not what was disclosed by the appellant. This has been discussed in detail by the AO in para 3 of assessment order which is briefly as under

**Financial Credentials of SMS IT Solutions Pvt. Ltd.**

This company was set up on 21.06.2005 with stated objects as per MOA being to carry on business of manufacturing and trading of CD and DVD products and IT related products. The P&L account, Balance Sheet filed with ROC and IT Department were scrutinized for F.Y. 2011-12 to F.Y. 2014-15 and same was tabulated on page 3 of assessment order. There was no actual business in the company. The AO held that this gives rise to strong suspicion that company was a front or a shell company and existed on paper only. AO issued summons u/s 131 to Director of this company but none appeared and only written submissions like Balance Sheet, P&L Account and other documents were filed before the AO. The name of SMS ITS PL. did not figure in list of shell companies as per ROC. The AO noted that the recent list of shell companies released by ROC is inclusive list and not exhaustive list. Merely because SMS ITS PL's name does not appear in this list cannot be a ground that it is not a shell company. Appellant became shareholder on 30.03.2010 and shares were sold on 30.04.2014 but consideration was paid before 30.04.2014 to appellant as observed by the AO.

b) Shreyans Vyapaar Pvt. Ltd. (SVPL) - Buyer of Shares

- *This is the company who purchased these 200 shares of SMS ITS PL. The AO issued commission u/s 131(i)(d) of the Act on 15.05.2017 to ADIT (Investigation), Kolkata. The ADIT (Investigation) reported that summons u/s 131 dated 25.07.2017 were issued to SVPL but same could not be served at address given in ITR and he has explored all active address available of SVPL. Thus, the ADIT (Investigation) stated that it cannot be ruled out that SVPL being a paper company only.*
- *The AO held that such a paper/shell company is unlikely to possess resources to pay Rs.41.76 Cr for acquisition of 100% share in a company.*
- *Thus as per the AO the entire transaction appears as a dubious transaction.*

*c) The AO found that Narender Kumar Jain has made statement on 11.04.2017 before DDIT (Investigation), Kolkata claiming that he was managing network of shell companies who are providing accommodation entries. One of the companies managed by him was Shreyans Vyapaar Pvt. Ltd. In his statement he has mentioned dummy directors appointed by him namely Rajesh Kumar Jain.*

*d) Copy of statement of Narender Kr. Jain is reproduced by the AO on page 9 to Page 23 of the assessment order.*

*e) Statement of Rajesh Kumar Jain is reproduced on Page 24-25 of assessment order.*

*f) The AO held that the transaction of the appellant involving sale of shares to SVPL is an arranged transaction and appellant obtained benefit of lower rate of taxation as LTCG from this transaction.*

*g) Bank statement of SVPL was accessed by notice u/s 133(6) issued to HDFC Bank Kolkata. It was found that immediately before any payment was made to appellant as consideration on transfer of shares, large amounts were received from certain other parties to provide buyer with sufficient funds to purchase shares from appellant.*

*h) ITR's filed by SVPL show that company has been running huge losses for several years till 2014. Thus, it will be extraordinary for such a company to buy shares of SMS IT with no operations at huge premium.*

*i) SVPL claims to be company trading in Shares/Securities and Shares purchased become stock in trade. In ITR for A.Y. 2015-16, SVPL declared total purchases of Rs.45.37 Cr out of which Rs.41.76 Cr is towards shares of SMS IT. This amount has been paid in advance substantially. The AO held that any reasonable person would draw inference that accommodation entries were provided to counter party under the garb of sale/purchase of shares.*

#### **6.4 Valuation**

*a) Appellant claimed that Shares of SMS IT were sold at high premium because it owns a prime residential property i.e. 4A Hailey Road, Delhi. Valuation report of property was filed before the AO. As per AO on the first page of report the date was modified from 2017 to 2014 i.e. 29.05.2014 whereas shares of SMS IT were transferred on 30.04.2014. The AO held that Valuation report be disregarded on this ground alone.*

*b) Details of ownership of this property was obtained by AO from Delhi Municipal Council u/s 183(6) vide letter dated 28.09.2017. Information was submitted about a certain deed registered in name of SMS IT on 05.08.2010. Details did not match with valuation report filed by appellant. When confronted, the appellant filed copy of another deed registered on a different date i.e. 10.10.2005 in respect of another part of same property 4A, Hailey Road, Delhi in name of SMT IT. In view of these facts the AO held that appellant purchased shares of SMS IT on 30.03.2010 and at that time shares were issued at face value of Rs.100 with no premium. Thus it cannot contended that at time of sale of shares in 2014 an "appreciated" value of property claimed to have been purchased in 2005 was taken into consideration for valuation. However at time of issuance of shares to appellant in 2010 the said property was never considered at all.*

*c) Valuation report dated 29.05.2014 could not have been basis for arriving at FMV of shares sold before that date. The Finance Act, 2014 relevant of AY. 2015-16 prescribes only one method of valuation of shares i.e. at Book Value. By this method the net worth of the entity would be same as its share capital is Rs.3,00,000/- only and not Rs.41.76 Cr as claimed by appellant. Even if other methods of valuation are used, then also, shares will be valued at face value alone. In view of these facts the AO held that appellants plea about fair valuation of shares before selling*

*them appears to be without any basis and is an attempt to impact legitimacy to otherwise unexplained transaction.*

*6.5 Onus on appellant to prove Identity, Creditworthiness and genuineness*

*a) The AO vide letter dated 23.11.2017 show caused the appellant as to why sum shown as LTCG be not taxed as Unexplained credits at MMR.*

*b) The appellant stated that full consideration for shares sold was received by banking channel and same is verifiable from bank account of appellant and copies of bank statement was filed. It was contended that u/s 68 appellant is only bound to prove source of credits and not the source of source of credits.*

*c) The AO held that as per Section 68 the appellant must prove the identity and creditworthiness of other party and genuineness of transaction.*

*d) Identity*

- The AO held that appellant and other entities sold all 3000 shares accounting for entire share capital of SMS IT to another corporate entity. The value of this transaction was Rs.41.76 Cr. The AO held it not conceivable that appellant had no details about the person behind SVPL with whom such negotiations were made.*
- Sh. Sanjeev Singhal the oldest Director and Signatory in SMS IT was issued summons u/s 131. He appeared but could not provide any information about any such Individual/entity behind SVPL to whom shares of SMS IT were sold. Statement of Sanjeev Singhal is reproduced on Page 33-38 of assessment order.*
- In view of these facts the AO held that the Identity of purchasing party is not satisfactorily explained. Reliance was placed on judgment of Hon'ble Delhi High Court in CIT Vs NR Portfolio and Hon'ble Allahabad High Court in Prem Castings (P) Ltd Vs. CIT(Appeal).*

**Creditworthiness and Genuineness**

- *The AO held that when bank account of M/s SVPL was analysed it was evident that money was received in the bank account of SVPL through network of shell companies most of which were named in statement of Sh. Narendra Kr. Jain before making payment to the appellant*
- *Merely using not establish creditworthiness/genuineness. Reliance was placed on judgment of Hon'ble Delhi High Court in CIT Vs Nipun Builders & Developers, The AO held it to be rather outlandish claim that appellant as one party to the transaction was completely blind about the party at other end of transaction i.e. SVPL.*
- *The AO held that this transaction also fails the "human probability test" as laid down by Hon'ble Apex Court in Sumati Dayal vs CIT 214 ITR 201 and CIT vs Durga Prasad More 82 ITR 540.*

6.6 *In view of the above facts outlined in para 6.2 to 6.5 above the AO held that appellant had failed to prove to the satisfaction of the AO the genuineness of transaction with M/s SVPL. Thus, the income shown under LTCG was taxed u/s 68 as per provisions of Section 115BBE of the Act. The exemptions claimed u/s 54F /54EC were not allowed as they are available only against genuine LTCG. As a result the addition of Rs.2,78,20,000/- was made by the AO u/s 68 of the Act."*

5. The addition was made based on following findings of AO in Assessment Order:

- The company whose shares were sold i.e. SMS ITS PL is a shell company.
- The company who purchased the shares i.e. SVPL is a shell company Sale price of shares of SMS ITS PL has been calculated after considering the market price of property (4A, Hailey Road, Delhi) held by SMS ITS PL. The value of Shares has to be calculated on basis of book value.

- Shares were sold on 30.04.2014 but sale consideration was paid before 30.04.2014 to assessee. Entire transaction appears to be dubious transaction.
  - M/s SVPL is one of the companies managed by Narender Kr. Jain who manages networks of shell companies and whose statement was recorded by DDIT (Investigation), Kolkata on 11.04.2017.
  - This transaction is an arranged transaction and assessee obtained benefit of lower rate of taxation under LTCG.
  - In the case of SVPL it was found that immediately before any payment was made to appellant as sale consideration for shares these were large amount received by SVPL from other parties. Why would SVPL buy shares of SMS ITS PL with no operations at such a high premium.
6. The Id. CIT(A) deleted the addition.
  7. Aggrieved, the revenue filed appeal before us.
  8. Before us, the Id. DR argued that Sh. Narendra Kumar Jain admitted that he is managing a network of Shell Company and Sh. Rajesh Kumar is a dummy Director. The Id. AR supported the of the Id. CIT(A).
  9. Heard the arguments of both the parties and perused the material available on record.
  10. Before the revenue authorities the assessee had furnished the following documents before the AO regarding the transaction of sale of shares of SMS ITSPL.

- Evidence of acquisition of these shares by the appellant in earlier AY'S.
- Copy of Share Certificate and Share Transfer Deed.
- Sale bill of shares. Confirmation of Buyer i.e. SVPL.

11. The Id. CIT(A) held that the AO has not pointed out any discrepancy in these documents. Thus the holding of shares of SMS ITS PL and the sale of shares by the assessee is not disputed by the AO. The assessee also furnished the Valuation Report of shares before the AO.

12. The Id. CIT(A) held that the AO has alleged that SMS ITS PL is a shell company. However, nothing has been brought on record nor any evidence has been brought on record in support of such allegation. It is a matter of record that SMS ITS PL has been regularly filing its ITRs and has been regularly filing its Annual Returns and Balance Sheets with ROC. The said company has not been classified or alleged to be shell company by ROC, MCA, SEBI or any other Government Authority. The status of the company on website of ROC/MCA is 'Active'. The name of the company i.e. SMS ITS PL never appeared in the cases of entry operators or shell companies or in the cases of accommodation entry providers. The AO has merely relied on statement of Narender Kr. Jain an entry provider whose statement was recorded by DDIT (Investigation), Kolkata on 11.04.2017.

13. The name of the company i.e. SMS ITS PL does not appear in the network of shell companies operated and outlined by him in the statement. Thus, these facts show that the finding of the AO that SMS ITS PL is a shell company is not backed by any supporting evidence.

14. M/s SMS ITS PL owned a valuable immovable property located at 4A, Hailey Road, Delhi. The registration papers regarding acquisition of property were filed before the AO. Valuation report of the property was filed before the AO where FMV of property was determined by valuer.

15. The AO has made independent verification regarding the said property from NDMC which showed that said property is owned by SMS ITS PL. The FMV of shares has been calculated after considering the Market Value/FMV of the said property owned by M/s SMS ITS PL. The high price of the share of SMS ITS PL is due to the high value of the underlying asset i.e. immovable property at Hailey Road, KG Marg, New Delhi.

16. There is no dispute by the AO regarding the market price/FMV of property as shown by the assessee. It is a fact that FMV of shares in unlisted company will derive its value based on the market price of the assets owned by it less its liabilities. These facts show that the FMV of shares adopted by the assessee was correct after taking the market value of underlying asset and this FMV of shares shall be higher than the book value of unlisted shares. Thus, the observation of AO that value of shares of SMS ITS PL should have been computed on book value is not factually correct. On the contrary the AO should have an objection if according to him the sale consideration of shares was shown lower than the Market Value/FMV of the property owned by SMS ITS PL.

17. The Id. CIT(A) held that in the assessment order the AO has relied upon the statement recorded by DDIT (Investigation), Kolkata on 11.04.2017 of Narendra Kumar Jain stated to be an entry operator who managed a net work of shell companies which provided accommodation entries. However, in

the said statement there is no reference to the assessee or the company SMS ITS PL whose shares have been sold.

18. In the said statement there is reference to SVPL i.e. the company who purchased the shares. However, there is no reference to the transaction of sale of shares of SMS ITS PL by the assessee to SVPL in the said statement. On examination of statement it was found to be in context with accommodation entries given by Narendra Kumar Jain to SESA group. There is no linkage between SESA group and assessee or and SMS ITS PL or SESA group and SVPL in the statement.

19. Thus, in the statement recorded of Narendra Kr. Jain there is no reference to assessee, no reference to SMS ITS PL and no reference to transaction between assessee and SVPL.

20. The AO has also reproduced the statement of Rajesh Kumar Jain in the assessment order stated to be a Dummy Director appointed by Narender Kr. Jain. In the said statement also there is no reference to the assessee or SMS ITS PL or about the transaction of sale of shares of SMS ITS PL by assessee to SVPL.

21. The AO has also given a finding that SVPL is a shell company. SVPL is a company who purchased the shares of SMS ITS PL from the assessee. No adverse inference can be drawn against the assessee on basis of doubtful credentials of SVPL as the assessee has parted away with a valuable asset i.e. shares of a company having prime immovable property at Hailey Road Delhi and in lieu thereof, the assessee had received sale consideration at market price/fair market value.

22. In view of the above facts and the ratio given by the Id. CIT(A), no interference is called in the well reasoned order of the Id. CIT(A).

23. In the result, the appeal of the Revenue is dismissed.  
Order Pronounced in the Open Court on 16/10/2023.

Sd/-

**(C. M. Garg)**  
**Judicial Member**

**Dated: 16/10/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**