

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

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.2058/DEL/2023
Assessment Year 2011-12

Shri Ishwar R Pujara, S-145 Greater Kailash Part-II, New Delhi.	Vs.	ACIT, Circle-30(1), Delhi
TAN/PAN: AKKPP3651L (Appellant)		(Respondent)

Appellant by:	Shri Sunil Kharbanda, CA Ms. Jyoti Gilotra, CA		
Respondent by:	Shri Om Prakash, Sr.DR		
Date of hearing:	22	11	2023
Date of pronouncement:	22	11	2023

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ('CIT(A)' in short) dated 31.05.2023 arising from the assessment order dated 25.12.2018 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. As per the grounds of appeal, the assessee has challenged the addition of Rs.23,67,786/- as unexplained investment under Section 68 of the Act in relation to transaction in scrip namely, M/s. SVC Resources Ltd.

3. When the matter was called for hearing, the ld. counsel for the assessee submitted that the assessee has entered into purchase transaction of the scrip namely, M/s. SVC Resources Ltd. aggregating to 1,45,000 shares at an aggregate purchase consideration of Rs.23,67,786/- during the Financial Year 2010-11 relevant to Assessment Year 2011-12 in question from registered share broker Systematic Shares and Stock India Ltd. The ld. counsel submitted that as against the total purchase of 1,45,000 shares, the assessee has sold only 87,301 shares and derived a meager profit of Rs.52,145.93 which was duly disclosed in the return of income. Remaining 57699 shares of the aforesaid scrip were not sold during the year at all and lying in the closing stock. The Assessing Officer has perfunctorily relied upon the *modus operandi* based on SEBI report which was for the period upto November, 2010 whereas the transactions in the instant case have been executed much later to such report. Intriguingly, the Assessing Officer has added the entire purchase transaction of Rs.23,67,786/- that too, with the aid of Section 68 of the Act which is not applicable at the first instance. On being inquired by the Bench, the ld. counsel fairly admitted that the order passed by the CIT(A) is *ex-parte* owing to non-attendance on behalf of the assessee. The ld. counsel thus sought an appropriate relief in the matter.

4. The ld. DR for the Revenue, on the other hand, relied upon the orders passed by the lower authorities and submitted that it was incumbent upon the assessee to attend the proceedings before the CIT(A) and therefore, the matter should be referred back to the CIT(A), if the Tribunal so considers it expedient.

5. I have carefully considered the rivals submissions and perused the assessment order and the first appellate order.

6. The Id. counsel for the assessee has painstakingly took me through the nature of transaction as discernible from the assessment order and the material placed on record. There appears to be apparent fallacy in the case made out by the Assessing Officer against the assessee. The Assessing Officer has added the purchase consideration while relying upon the alleged manipulations in the profits derived by certain class of investors as noted on behalf of the SEBI report. If that is so, the resultant capital gains on sale of shares can possibly be under scanner. The Assessing Officer has not cast doubt on the source of purchase of shares *per se* but however has resorted to additions of the entire purchase cost that too under Section 68 of the Act. Ostensibly section 68 is not applicable at the first instance for the simple reason that purchase cost which is subject matter of addition is an outflow as against the inflow which comes under the sweep of Section 68 of the Act. The whole basis of the addition by the Assessing Officer thus appears to be based on an unfounded premise.

7. Having noted such apparent fallacy, I simultaneously have to agree with the submission made on behalf of the Revenue that the statutory remedy available before CIT(A) cannot be by-passed. It was the duty of the assessee to attend the proceedings before the CIT(A) for disposal of appeal.

7. Under the circumstances, I am constraint to restore the mater back to the file of the CIT(A) for disposal of the appeal in

accordance with law after giving proper opportunity to the assessee.

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

Order pronounced in the open Court on 22/11/2023

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **/11/2023**

Prabhat