

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.901/PUN/2023

निर्धारण वर्ष / Assessment Year : 2012-13

Neena Kailas Jadhav, Vasan Vihar Row House Society, Vasant Vihar, Pokhran Road-2, Thane 400 610 Maharashtra PAN : AAFBPJ3950J	Vs.	ACIT, Circle-1, Aurangabad
Appellant		Respondent

Assessee by : None  
Revenue by : Shri Arvind Desai

Date of hearing : 18.04.2024  
Date of pronouncement : 19.04.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 01.11.2023 for the assessment year 2012-13.

2. Briefly, the facts of the case are that the appellant is an individual who filed Return of Income for the assessment year 2012-13 on 05.12.2012 disclosing total income of Rs.17,42,817/-. The appellant purchased and sold shares of M/s. KCL Infra Projects Limited and claimed exemption of long term capital gain

on shares of Rs.3,36,748/- u/s.10(3) of the Act. Against the said return of income, the assessment was completed by the Asstt. Commissioner of Income Tax, Central Circle-1, Aurangabad ('the Assessing Officer') vide order dated 23.12.2019 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.20,79,565/-. While doing so, the Assessing Officer analyzed the modus operandi adopted by the appellant. During the course of assessment proceedings, the appellant had failed to substantiate that the transactions of purchase and sales of shares as genuine one. In the circumstances, the Assessing Officer brought to tax the sale proceeds of the shares as unexplained cash credit and completed the assessment. Eventually, the Assessing Officer denied the claim for exemption of capital gains u/s 10(38) of the Act amounting to Rs.3,36,748/- by treating the same as unexplained cash credit u/s.68 of the Act.

3. Being aggrieved by the order of assessment, an appeal was filed before the Id. CIT(A) who vide impugned order confirmed the action of the Assessing Officer.

4. Being aggrieved by the decision of the Id. CIT(A), the appellant is in appeal before the Tribunal in the present appeal.

5. When the matter was called on for hearing, none appeared on behalf of the appellant-assessee despite due service of notice of hearing.

6. Since the issue in the present appeal is no more *res integra*, covered by several judicial precedents as well as the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj, 446 ITR 56 (Calcutta), I proceed to dispose of the same after hearing the ld. Sr. DR even in the absence of appellant.

7. The ld. Sr. DR placing reliance on the order of the ld. CIT(A) submits that the order of the ld. CIT(A) be upheld.

8. Heard the ld. Sr. DR and perused the material on record. The issue in the present appeal relates to whether or not the claim for exemption of capital gains u/s 10(38) of the Act is genuine. The material facts to be noted herein are as under :

During the course of assessment proceedings, the Assessing Officer noticed that the appellant had entered into a sale transaction of shares of M/s. KCL Infra Projects Limited and claimed exemption of Rs.3,36,748/- u/s 10(38) of the Act. The appellant purchased 5000 shares at Rs.20/- each of M/s. KCL Infra Projects Limited in 2009. The appellant sold 5920 shares at market price of Rs.62.40 per share resulting in capital gain of

Rs.3,36,748/-, which was claimed exempt u/s 10(38) of the Act. The case of the Assessing Officer is that M/s. KCL Infra Projects Limited is an established penny stock company used by the operators for the purpose of introducing unaccounted cash in the books of account or to create fictitious losses by evading taxes and explained the features of said penny stock company viz., the company does not have any business activity, the market price of the shares rose exponentially within a short period; the voluminous purchase and buyers/exit providers do not have any credit worthiness, etc.

In the First Appellate proceedings, the CIT(A) confirmed the action of the AO by holding that the appellant had failed to discharge the onus proving the transaction as genuine. While holding so, he relied on the following judgments :

1. Arun Kumar J, Muchhala (2017) 85 taxmann.com 306 (Bom) – Hon'ble Bombay High Court
2. Marg Projects and Infrastructure Ltd. (2023) 147 taxmann.com 130 (Madras)/448 ITR 649
3. ITO Vs. M/s. Pirai Choodi (SC) 334 ITR 262

9. In a case involving identical facts of the case, the Hon'ble Calcutta High Court after making reference to the decisions of Hon'ble Madras High Court in the case of CIT vs. Manish D. Jain,

120 taxmann.com 180 (Mad.) and PCIT vs. Prabha Jain, 439 ITR 304 (Mad.) had confirmed the action of the Assessing Officer by holding that the Assessing Officer had cogently brought out the factual scenario to establish machinations of fraudulent, manipulative and deceptive dealings and how the stock exchanges system was misused to generate bogus LTCG.

10. There is yet one more reason as to why I am inclined to confirm the addition made by Assessing Officer, in view of the well settled principle of law that fraud vitiates everything and even principle of natural justice have no application and such transaction is *void ab initio*. The Hon'ble Supreme Court in the case of Friends Trading Co. vs. Union of India in Civil Appeal No.5608 of 2011 vide order dated 23.09.2022 held in the context of availment of alleged forged DEPB under the Customs Act, wherein, it was found DEPB licenses were forged and it was held that the exemption benefit availed on such forged DEPB are *void ab initio* on the principle that fraud vitiates everything and the period of limitation was held to have no application and the Department was held to be justified in invoking the extended period of limitation and the fact that whether the beneficiary had no knowledge of about the fraud/forged and fake DEPB licenses have no bearing the

imposition of custom duty. The ratio of judgement is squarely applicable to the transaction under consideration before me. Further, the application of principle of the fraud under judicial Acts was considered by the Hon'ble Supreme Court in the case of Smt. Badami (Deceased) by her L.R. vs. Bhali in Civil Appeal No.1723 of 2008 dated 22.05.2012, wherein, the Hon'ble Apex Court held as follows :

*“20. In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others [AIR 1994 SC 853] this court commenced the verdict with the following words:-*

*““Fraud-avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”*

*21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.*

*22. In Smt. Shrist Dhawan v. M/s. Shaw Brothers [AIR 1992 SC 1555] it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in Roshan Deen v. Preeti Lal [AIR 2002 SC 33], Ram Preeti Yadav v. U. P. Board of High School and Intermediate Education and other [(2003) 8 SC 311] and Ram Chandra Singh v. Savitri Devi and others [(2003) 8 SCC 319].*

23. In *State of Andhra Pradesh and another v. T. Suryachandra Rao* [AIR 2005 SC 3110] after referring to the earlier decision this court observed as follows:-

*“In Lazars Estate Ltd. v. Beasley [(1956) 1 QB 702] Lord Denning observed at pages 712 & 713, “No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.” In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. ”*

24. Yet in another decision *Hamza Haji v. State of Kerala & Anr.* [AIR 2006 SC 3028] it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.”

11. In the present case also, the appellant deliberately withheld the information from the Assessing Officer as well as the Id. CIT(A) which is within exclusive knowledge of appellant to establish the genuineness of transactions of purchase of shares of that company. It is nothing but a fraud played by the appellant against the Assessing Officer as well as the Id. CIT(A) who are quasi judicial authorities employed for execution of the provisions of the Income Tax Act. Therefore, the principle of fraud can be squarely applied to the facts of the present case and principles of natural justice have no application. Applying the said doctrine, I have no hesitation to hold that the transaction of purchase and sale of shares of M/s. KCL Infra Projects Limited under consideration before us is *void ab-initio*, this is nothing but sham, make believe

and colourful device adopted with excellent paper work with intention to bring the undisclosed income into books of account. Accordingly, I confirm the orders of the Assessing Officer as well as the Id. CIT(A) and find no merit in the appeal preferred by the appellant.

12. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on this 19<sup>th</sup> day of April, 2024.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19<sup>th</sup> April, 2024.  
Satish

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.