

आयकर अपीलिय अधिकरण  
दिल्ली पीठ " जी ", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आअसं.105/दिल्ली/2020 (नि.व. 2015-16)

ITA NO.105/DEL/2020 (A.Y.2015-16)

Sandeep Kumar Jain,  
J-3/3, West Jyoti Nagar, Shahdara,  
Delhi 110094.

PAN No. AANPJ-1166-B

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer,  
Ward-56(2), New Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None  
प्रतिवादीद्वारा/ Respondent by : Shri Anuj Garg, Sr. DR  
सुनवाई की तिथि/ Date of hearing : 24/04/2024  
घोषणा की तिथि/ Date of pronouncement : 26/04/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the Assessee is directed against the order of Commissioner of Income Tax (Appeals) (37), New Delhi [in short 'the CIT(A)'] dated 30.10.2019, for the Assessment Year 2015-16.

2. A perusal of appeal file shows that the appeal was listed for hearing for the first time on 29.06.2022, notice of hearing of the appeal was issued to the assessee through RPAD on the address furnished by the assessee in Form No. 36.

Thereafter, the appeal was listed for hearing on eight occasions, despite repeated notices sent through RPAD/email as provided in the Form No. 36, none appeared to represent the assessee nor there is any request for adjournment. The notices sent through RPAD to the assessee have not been received back unserved from postal authorities. Thus, it is deemed that the notices sent to the assessee on the address mentioned in Form No.36 have been duly served. Even in the event of change in address, if any the assessee has not bothered to file fresh Form No. 36. Its seems that the assessee is not interested in prosecuting the appeal. In such circumstances, we take up this appeal for adjudication with the assistance of Id. Departmental Representative (DR) and on the basis of material available on record.

3. The assessee in appeal has raised following grounds:

***1. 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. 1,13,50,065/- 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 ITO (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. Pooia Agarwal (Appeal No. 385/2011) Order pronounced on 11-09-2017.

2. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 1,13,50,065/- 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 (STT). 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.

3. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 1,13,50,065/- 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 ITO Kolkatta, ITA No. 19/Kolkatta/2014. Order pronounced on 02-12-2016.

4. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 1,13,50,065/- 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.

5. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 1,13,50,065/- to the income, confirming the heavily reliance of Ld. A.O. on investigation done by SEBI and BSE suspending trading in these shares, ignoring the order of SEBI "Order No. SEBI/HO/EFD1/DRA2/OW/P/2017/24181/42 dated September 06,2017" in which it is clearly stated that violation of provisions of SEBI Act, 1992 are not observed in respect of the appellant and hence the directions issued earlier vide interim orders need not be continued and hence need to be revoked".

6. The Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 1,13,50,065/- and Rs. 5,67,503/- 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 Ld. CIT(A) has erred in law and on fact by confirming the addition of Rs. 5,67,503/-to the income, applying a hypothetical rate of 5% on Rs. 1,13,50,065/-, 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. 1,19,17,570/- @ 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.***

4. Shri Anuj Garg, Sr. DR, representing the Department, vehemently defended the impugned order and prayed for upholding the findings of CIT(A) in dismissing appeal of the assessee.

5. We have heard the submissions made by Id. DR and have examined the orders of authorities below. There is no material on record to controvert the findings of CIT(A). Hence, the same are upheld and appeal of the assessee is dismissed, being devoid of any merit.

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

Order pronounced in the open court on Friday the 26<sup>th</sup> day of April, 2024.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 26/04/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar) ITAT, DELHI