

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 2662/M/2023
(Assessment Year: 2012-13)**

Mr. Sajjan Kedia HUF 1004,K. Palam Court, Malad Link Road, Malad West, Mumbai- 400064 PAN No. AAMHS9553G	Vs.	The Income Tax Officer, Ward 30 (3) (4), Room No.604, C- 13, Pratyashkar Bhavan, Bandra Kurla Complex, Mumbai- 400 051.
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri. Prashant Mahajan - Sr. A.R.

Date of Hearing : 18 . 04 . 2024
Date of Pronouncement : 30 . 04 . 2024

ORDER

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the order of the Ld. CIT Appeal passed u/s. 250 of the Income Tax Act, 1961 [the 'Act' in short] vide its order no. ITBA/NFAC/S/250/2023-24/1053307386(1) dated 30/5/2023 for the assessment year 2012-13.
2. Following grounds of appeal have been raised by the assessee:

"1. The Ld. CIT(A) erred in confirming the addition made u/s. 68 of the Act of Rs. 15,32,850/- in respect of gain on sale of shares of M/s. Blue Circle Services Limited as non-genuine

long-term capital gain which was claimed by the appellant as exempt u/s. 10(38) of the act.

2.i. In doing so, the ld. CIT(A) did not appreciate that the initial onus which lay on the appellant to prove genuineness of long term capital gain in shares of M/s. Blue Circle Services Limited was duly discharged & the onus shifted to AO to bring on record some material to dislodge the evidence placed on record by the appellant which he miserably failed to do so.

2. The ld. CIT(A) erred in holding that the addition u/s. 69C of the Act of Rs. 76,650/- was reasonable which addition was made by the ITO without bringing any evidence on record.

Your appellant, therefore, submits that the order under appeal be quashed and in alternative the addition so made be deleted.

Your appellant craves leave to add to, delete, amend or alter all or any of the grounds of appeal at or before the date of hearing.”

3. However, the appellant, did not appear before this bench to argue his case on merit. Accordingly, the case is decided on the basis of material available on record.
4. In this case, the return of income was filed by the assessee for the assessment year 2012-13 and the same was processed u/s. 143(1) of the IT Act. Subsequently, information was received from the Investigation Wing of the Income Tax Department that the assessee has taken bogus entries from the entry operators without entering into actual transactions and the claim of the Long-Term Capital

Gains is bogus. Accordingly, the case was reopened u/s. 147 of the IT Act and notice u/s. 148 was issued and served on the assessee.

5. The Assessing Officer, during the assessment proceedings, found that the assessee had purchased 2,500 scrips of Blue Circle amounting to Rs.30,000 at the rate of Rs.12 and sold these scrips for an amount of Rs.15,62,850/- at the rate of Rs.62.51 per shares, earning thereby a capital gains of Rs. 15,32,850/-.
6. The assessing officer has noted in the assessment order that during the assessment proceedings the assessee could not explain the genuineness of the entire transactions and the same was found to be a sham transaction in which operators, intermediaries and the beneficiaries all are involved by rigging the entire process of purchase and sale of shares through stock exchange. The entire modus operandi has been described by the assessing officer in detail in the assessment order under consideration. The assessing officer, therefore, added the same u/s. 68 of the IT Act.
7. Further, the assessing officer also added a sum of Rs. 76,650/- being alleged commission paid at the rate of 5% on the alleged bogus long term capital gain as unexplained expenditure u/s. 69C of the IT Act.
8. Aggrieved by the order of assessing officer the appellant filed appeal before the Ld. CIT Appeal. However, the appellant did not pursue his pending appeal before the Ld. CIT Appeal who dismissed the appeal

of the assessee on the ground that the appellant was not interested in pursuing his appeal. The Ld. CIT Appeal based his order on the decision of the Hon'ble ITAT in ITA No. 1025-1027/CHD/2005 for the A.Y. 2002-03 in the case of M/s. Chhabra Land & Housing Ltd. which followed the decision of Hon'ble Supreme Court in the case of B. N. Bhattacharjee & other 118 ITR 461 [SC] and held that the appeal does not mean merely filing of the appeal but effectively pursuing the same.

9. During the course of hearing even before us, the appellant neither appeared nor filed any documents/evidence in support of its claim that the entire transaction is genuine.

10. We have carefully considered the facts of the case and the legal position and it is found that Ld. CIT Appeal has not gone into the merit of the case. We, therefore, remand the issue to the file of the Ld. CIT Appeal to decide the issue on merit by giving adequate opportunity of being heard to the assessee. The appellant is also directed to explain the genuineness of the entire transactions before the Ld. CIT Appeal.

11. In the result, appeal is dismissed.

Order pronounced in the open court on 30.04.2024.



Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai, Dated: 30.04.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.