

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA
[Before Shri Rajesh Kumar, AM& Shri Sonjoy Sarma, JM]

I.T.A. No. 670/Kol/2022
Assessment Year: 2014-15

Malvika Perival 12E, Judges Court Road, Alipore, West Bengal-700027. (PAN: AOXPP5298Q)	Vs.	Income Tax Officer, Ward-29(4), Kolkata
Appellant		Respondent

Date of conclusion of Hearing	22.05.2024
Date of Pronouncement	03.06.2024
For the Assessee	Shri Soumitra Choudhury, Advocate & Shri Pranabesh Sarkar, Advocate
For the Respondent	Shri Kapil Mondal, Addl. CIT, DR

ORDER

Per Shri Rajesh Kumar, AM

Appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 27.09.2022 for AY 2014-15.

2. The only issue raised by the assessee in various grounds of appeal is against the confirmation of addition of Rs.18,98,479/- by Ld. CIT(A) as made by the AO on account of long term capital gain on sale of equity shares as unexplained cash credit u/s. 68 of the Act.

3. Brief facts are that during the year the assessee has claimed long term capital of Rs.18,94,479/- as exempt u/s. 10(38) of the Act. The said gain has accrued from the sale of shares of M/s. Kailash Auto Finance Ltd. According to Ld. AO, the said capital gain is bogus and is only an accommodation entry though the assessee has filed all the evidences before the AO comprising copies of contract notes, de mat account, payment through banking channel etc. AO issued summon u/s. 131 of the Act to M/s. Kanyakumari Suppliers Pvt. Ltd. requiring personal attendance to examine the genuineness of the share transactions as claimed by the assessee. However, the said summons could not be served as no company existed on that address and Inspector deputed by the AO submitted a report that there is no such company at the given address. Finally, the AO after discussing the modus operandi that the shares have earned more than 18 times of gain in a short span of time and added the same u/s. 68 of the Act. In the appellate proceeding, the same was confirmed by the Ld. CIT(A).

4. After hearing the rival parties and perusing the material available on record, we find that undisputedly the transactions in respect of sale of equity shares of M/s. Kailash Auto Finance Ltd. was executed on the registered exchange platform through registered broker and the documents concerning the sale and purchase of share and payments in respect thereof were also filed by the assessee along with copy of de mat account. However, the summons issued u/s. 131 of the Act to M/s. Kanyakumari Suppliers Pvt. Ltd., intended to do verification by the Ld. AO, could not be served on account of the non-availability of the said company on the given address. Under these circumstances, we are of the considered view that the issue of sale of shares needs to be examined at the level of the AO. Accordingly, we restore the issue back to the file of the Ld. AO with direction to issue summon u/s. 131 of the Act to M/s. Kanyakumari suppliers Pvt. Ltd. and do the necessary verification and assessee is also directed to furnish the correct address before the Ld. AO or produce the said party for verification before the AO. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 3rd June, 2024

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 3rd June, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), NFAC, Delhi
4. CIT,
5. DR, ITAT, Kolkata, True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata