

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

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

**ITA No.496/Mum/2024
Assessment Year: 2009-10**

Sunil Sumermal Bhutoria HUF 224, Yugdharma, Link Road, Opp. Inorbit Mall, Goregaon West Maharashtra-400090. PAN: AAUHS 0957 A	Vs.	ITO-31(3)940, Kautilya Bhavan, BKC, Bandra East, Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mukesh Jain
Revenue by : Shri R.R. Makwana, SR. DR

Date of Hearing : 12.06.2024
Date of Pronouncement : 19.08.2024

ORDER

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:

1. ITA 475/Mum/2024 is filed by Mr. Sunil Sumermal Bhutoria HUF [the Assessee/ Appellant] against the appellate order passed by the National Faceless Appeal Centre, Delhi ('Id. CIT(A)') for A.Y. 2009-10 dated 07.12.2023 wherein the appeal filed by the assessee against the assessment order passed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 ('the Act') by the Income-tax Officer, Ward-31(3)(4), Mumbai ('the AO') was partly allowed.
2. The assessee is aggrieved with that order and is in appeal before us raising the solitary ground of appeal about addition confirmed u/s 68 of the Act of Rs. 12,13,150/-

3. The brief fact of the case shows that assessee is a Hindu Undivided Family. It filed its return of income on 24.04.2010 at a total income of Rs. 3,56,900/-. The return was processed u/s 143(1) of the Act.
4. Subsequently, the case was reopened by issue of notice u/s 148 of the I.T. Act for the reason that there is a bogus Long Term Capital Gain earned by the assessee in BSR Finance & Construction Ltd. of Rs. 21,16,800/-. Notice u/s 148 was issued on 30.03.2016. Assessee replied on 17.06.2016 reiterating the original return filed. Subsequently, notice u/s 142(1) and 143(2) were issued on 17.06.2026. The objections were raised by the assessee against reopening of the assessment which were disposed of on 29.06.2016.
5. During the course of assessment proceedings, assessee was asked to explain the genuineness of the Long Term Capital Gain earned by the assessee. Assessee filed a reply submitting his bank statement with AXIS Bank and submitting that assessee has neither claimed nor earned any such long term capital Gain. Further, notice u/s 133(6) of the Act was issued on 21.11.2016 to BSR Finance & Construction Ltd. to show the shareholding and transaction of the assess. No reply was received. Thus, on 18.10.2016 once again the assessee was given an opportunity but none attended. Therefore, the Id. Assessing Officer made an addition of Rs. 21,16,800/- u/s 68 of the Act holding that the Long Term Capital Gain exemption claimed by the assessee of Rs. 21,16,800/- is bogus.
6. The AO further found that there are unreconciled entries in his bank account with AXIS Bank amounting to Rs. 12,13,150/-. Those were also added consequently, the assessment order was passed u/s 143(3) of the Act r.w.s. 147 of the Act on 22.12.2016 determining the total income of the assessee at Rs. 36,89,900/-.

7. Assessee preferred an appeal before the Id. CIT(A) wherein the assessee filed written submission which were considered and thereafter, the Id. CIT(A) deleted the addition of Rs. 21,16,800/- for the reason that assessee has produced his bank statement copy of the return etc. which itself proved that neither the assessee has claimed any Long Term Capital Gain nor has received any such gain. Accordingly, the addition was deleted.
8. However, the Id. CIT(A) confirmed the addition of Rs. 12,13,150/- for the reason that assessee has failed to prove the receipt of Rs. 12,13,150/-. Therefore, the appeal of the assessee was partly allowed.
9. Assessee is in appeal before us against the addition of Rs. 12,13,150/- as well as the reopening of the assessment.
10. We have heard the rival contentions. In the present case, the case of the assessee was reopened for the reason that assessee has earned a bogus Long Term Capital Gain of Rs. 21,16,800/-. This information was found to be incorrect. Assessee has produced his bank account and there is no such amount received by the assessee. Assessee has also not claimed any exemption in his return of income based on this, the Id. CIT(A) has deleted the addition of Rs. 21,16,800/-. However, when the reopening was challenged before him, he confirmed the same. We find that in the reasons for reopening of the assessment itself, the Assessing Officer has recorded that assessee has filed the return of income on 24.04.2010 declaring total income of Rs. 3,56,900/-. This return of income was processed. Assessee has neither claimed any exemption u/s 10(38) of the Act nor has also shown any transaction of the shares. The assessee has also produced the bank statement to show that he has not received any such sum towards the sale of the shares. The Assessing Officer

should have carried out at least some enquiry and have also verified the return of income that whether the assessee has claimed any such benefit of exemption u/s 10(38) of the Act or not. Therefore, the AO failed to carry out any enquiry despite return of income having in front of him. Therefore, the reasons recorded by the Id. Assessing Officer cannot be upheld. This is also for the reason that the Id. Assessing Officer did not have any information about the number of shares, the amount of capital gain, the purchases or sales of the shares of BSR Finance & Construction Ltd and dates on which such transactions are carried out. When the AO received any information, he should have at least verified that what kind of transaction, assessee has entered into. In this case, the reopening is without application of mind and, therefore, deserves to be quashed.

11. As the reopening of the assessment is quashed, no addition can be sustained. Even otherwise on the grounds of which reopening is made, does not survive the Id. Assessing Officer could not have made any other addition other than the issue for which assessment is reopened. Even on this ground, the addition u/s 68 of Rs. 12,13,150/- deserves to be deleted.
12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 19.08.2024.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Mumbai, Dated: 19.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:

2. The Respondent:

3. The CIT,

4. The DR

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By Order

Assistant

Registrar

Mumbai

ITAT, Mumbai Benches,