

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No. 2529/Del/2022
(Assessment Year: 2015-16)

Subhash Chand Gupta B-41, Kailash Colony, New Delhi – 110 054	Vs.	ACIT, Central Circle – 29, New Delhi
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PAN: AAAPG 2554 K

(Appellant)

(Respondent)

And

ITA No. 1557/Del/2021
(Assessment Year: 2017-18)

ACIT, Central Circle – 29, New Delhi	Vs.	Subhash Chand Gupta 43/1M Rajpur Road, Civil Lines, North Delhi, New Delhi – 110 054
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PAN: AAAPG 2554 K

(Appellant)

(Respondent)

Assessee by :	Shri Sankalp Malik, Adv.
Revenue by:	Shri V. K. Dubey, Sr. D.R.

Date of Hearing	14/10/2024
Date of pronouncement	18/10/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeals in ITA Nos. 2529/Del/2022 and ITA No.1557/Del/2021 for AYs 2015-16 & 2017-18, arises out of the order of the Commissioner of Income Tax (Appeals)-30, New

Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal Nos. 10670/2014-15 (dated 22.09.2022) and 10258/2019-20 (dated 16.08.2021) against the orders of assessment passed u/s 147 of the Income-tax Act, 1961 (dated 24.01.2022) and u/s 143(3) of the Income-tax Act, 1961 (dated 11.12.2019) by the Assessing Officer, ACIT, Central Circle-29, New Delhi (hereinafter referred to as 'Id. AO').

2. Though the assessee has raised several grounds before us, he has challenged the assumption of jurisdiction for reopening of assessment under section 147 of the Act in addition to challenging the action of the lower authorities in denying claim of exemption under section 10(38) of the Act in respect of Long Term Capital Gain (LTCG) on sale of shares of Sunstar Realty Development Ltd. (SRDL).

3. We have heard the rival submission and perused the materials available on record. The assessee is an individual and had filed his original return of income for A.Y. 2015-16 on 30.09.2015 which was later revised on 15.09.2016 declaring total income of Rs.83,71,480/-. This return was duly processed under section 143(1) of the Act on 09.10.2016 accepting the return of income. In the said return, the assessee claimed exemption under section 10(38) of the Act totalling to Rs.7,24,42,009/- being Long Term Capital Gains (LTCG) arising on sale of shares of various listed companies on which Securities Transaction Tax (STT) had been duly suffered by the assessee. This sum of Rs.7,24,42,009/- included exemption under section 10(38) of the Act of

Rs.31,31,757/- being Long Term Capital Gains arising on sale of shares of SRDL. The assessee had actually bought the shares of SRDL in Initial Public Offer (IPO) and made payment for purchase of the shares by account payee cheque out of disclosed bank account and disclosed source of income in earlier years. These shares were held by the assessee for more than a year. The shares on its purchase, were immediately dematerialized and credited to the Demat account maintained by the assessee with the depository participant. These 18000 shares were sold by the assessee on various dates during 18.06.2014 to 24.06.2014 in 4 tranches at prevailing market prices in the secondary market through a registered share broker. The said sale of shares duly suffered STT. The relevant documents evidencing the purchase of shares in IPO, Dematting the same, payments being made by account payee cheque, contract notes issued by a registered share broker and sale proceeds of shares getting credited in assessee's bank account through regular banking channel are enclosed in pages 12-18 of the paper book of the assessee.

4. The learned AO in para 2 of the assessment order observed that an information was received through CRIU Module of insight portal that as per the enquiries conducted by Investigation Wing, Mumbai, it was established that shares of SRDL were used as accommodation entries to provide bogus Long Term Capital Gains to various beneficiaries and that assessee was also found to be one of the beneficiaries. Accordingly, the assessment of the assessee was sought to be re-opened vide issuance of notice

under section 148 of the Act dated 31.03.2021. The reasons recorded for reopening the assessment are as under:

"Reasons for reopening the case u/s 147 read with section 148 of the Income tax Act, 1961

Information has been received in the case of assessee of Sh. Subhash Chand Gupta for A.Y. 2015-16 from CRUI Module of Insight portal of Income Tax Department, details of which are as follows:

The assessee had earned bogus capital gain from the sale of following penny stock during the year under consideration:-

Sl. No.	Name of Script	FY	Information Value (Rs.)
1.	Penny Scrip of Sunstar Realty Development Limited	2014-15	35,01,600/-

2. From the e-filing portal of Income Tax Department it was observed that the assessee filed return income on 30.09.2015 which was revised at an income of Rs 83,71,480/- on 15.09.2016. The revised return was processed u/s 143(1) of Income Tax Act, 1961 on 09.10.2016 The undersigned has clearly analysed the ITR of the assessee for AY 2015-16, the assessee has not declared any capital gain in its return of income. Also assessee claimed an amount of Rs.7,24,42,009/- as "Long Term Capital Gains from transactions on which securities Transaction Tax is Paid" in Schedule "Details of Exempt Income". Information from the Insight portal revealed that the company M/s. Sunstar Realty Development Ltd. had issued shares to a few related persons and entities such as M/s. Sarvottam Advisory Pvt. Ltd. and M/s. Massive Massive Management Consultancy Pvt. Ltd. (now known as M/s. Chandanmal Bothara Jewellers Pvt. Ltd). These parties had then sold these shares to other parties, including the beneficiaries. The share were then heavily traded to artificially inflate the price. Also information obtained that the company SRDL had not performed any business even after its listing in BSE. Hence, in nut shell, information received that the shares of SRDL were issued in an arrangement to provide a channel to route the unaccounted money of the beneficiaries. It was observed that the unaccounted money of the beneficiaries was routed back to their accounts by the sale of shares of SRDI, at the

artificially inflated price which was exempt from taxation u/s 10(38) of the Act, 1961.

An opportunity of being heard was provided by this office on 25.03.2021 before reopening of case u/s 147/148 of the Income Tax Act, 1961. In response to which assessee has failed to furnish satisfactory reply.

3. Therefore, on the facts and case as stated above, I have reason to believe that income of Rs.35,01,600/- has escaped assessment. Therefore, I propose to reasons the aforesaid income chargeable to tax which has escaped assessment.

*Sd/-
(Vijay Singh)
Dy. Commissioner of income Tax
Central Circle-29,
New Delhi"*

5. From the facts narrated above, it is very clear that the assessee's case does not fall under the *modus operandi* stated by the learned AO in the aforesaid reasons. As stated earlier, the assessee has bought the shares in IPO by making payments through cheque. The assessee held the shares for more than a year and sold it in open market through a registered share broker by suffering STT. Due reduction of shares have also been made from the Demat statement of the assessee to the extent of sales made by the assessee. Hence, it could be safely concluded that the very basis of formation of belief of the learned AO that income has escaped assessment in the reasons recorded is fallacious. The learned Assessing Officer also refers to split of the shares of SRDL which had happened in the year 2015 so as to allege *malafide* motive on the part of the assessee. But it is pertinent to note that assessee herein had actually sold the

shares in June, 2014 itself much before the act of splitting of shares. Hence, we have no hesitation to hold that the case of the assessee does not fall under *modus operandi* mentioned in the reasons recorded by the learned AO thereby making his entire formation of belief *per se* fallacious. Accordingly, the reasons recorded does not have live link to the formation of belief of the learned AO vis-à-vis the facts of the instant case. Hence, the reopening made under section 147 of the Act is based on incorrect assumption of facts and accordingly, liable to be quashed. Since, the reassessment is quashed, the other ground raised by the assessee on merits need not be adjudicated and they are left open.

6. In the result, appeal of the assessee in A.Y. 2015-16 is allowed.

ITA No.1557/Del/2021

7. Though the Revenue has raised several grounds before us, the only effective issue to be decided in this appeal is as to whether the learned CIT(A) was justified in deleting the addition made on account of cash deposits made during the demonetization period in the sum of Rs.2,52,00,000/- in the facts and circumstances of the instant case.

8. We have heard the rival submissions and perused the material available on record. The assessee during the year under consideration had derived income from house property, income

from business and income from other sources. The return of income in A.Y. 2017-18 was filed by the assessee declaring total income of Rs.35,36,410/- on 26.10.2017. It is not in dispute that assessee had made cash deposits in bank during the period 09.11.2016 to 31.12.2016 in the sum of Rs.2,52,00,000/-. The assessee is engaged in the business of trading of tobacco and spices under the name and style of "M/s. Archit Sales". The learned AO sought for examination from the assessee with regard to source for cash deposits made during demonetization period in the sum of Rs.2,52,00,000/-. The assessee gave the detailed explanation which was not found satisfactory by the learned AO. The learned AO observed that in A.Y. 2016-17, the assessee had made cash sales of Rs.39,47,764/- whereas in A.Y. 2017-18 (i.e the year under consideration), the assessee had declared cash sale of Rs.7,59,60,175/- which is nothing but assessee was trying to convert his unaccounted income in to the accounted income due to demonetization period thereby resulting in sales being increased by 7200% when compared to earlier year. The assessee explained that during the year under consideration in June, 2016, he had got the business opportunity to become the consignment agent by entering in to an agreement with M/s. D.S. Chewing Products LLP and M/s. Dharmapal Satyapal Ltd. In view of the said agreement, the sales of the assessee grew manifold in cash during the year under consideration. Hence, it was submitted that cash sales declared during the year would not be comparable with that of the earlier year. Further, the assessee

submitted that he has deposited cash in the Bank account during the year under consideration as under:

S. No.	Month	Amount of Cash deposited
1.	June, 2016	1,43,00,000/-
2.	July, 2016	1,10,00,000/-
3.	August, 2016	10,00,000/-
4.	September, 2016	2,10,00,000/-
5.	October, 2016	1,31,50,000/-
6.	November, 2016 till 08.11.2016	40,00,000/-
7.	From 09.11.2016 to 31.12.2016	2,52,00,000/-

9. The above table implies that assessee on entering to the fresh agreement of aforesaid two parties in June, 2016 started making huge sales in cash which eventually stood deposited in the Bank account. It could be seen from the above table that huge cash stood deposited by the assessee even before the commencement of demonetization period and also during the demonetization period. Hence, there is absolutely nothing unusual in the act or conduct of the assessee during the demonetization period. Further, the entire cash sales made by the assessee were duly reflected in the VAT returns of the assessee. The assessee had indeed sufficient cash balance in its kitty to make the cash deposits throughout the year and also during the demonetization period. The assessee also submitted the entire sale bills before the learned AO. The assessee also furnished the details of cash sales made as under:

Month	Cash Sales
June, 2016	1,63,21,141.80

July, 2016	85,82,015.40
August, 2016	98,72,207.00
Sep, 2016	2,13,21,457.00
Oct, 2016	1,85,21,099.60
01.11.2016 to 08.11.2016	1,64,44,931.00
09.11.2016 to 30.11.2016	88,708.00

10. These facts were duly appreciated by the learned CIT(A) and accordingly the addition made by the learned AO under section 69A of the Act stood deleted by the learned CIT(A). We do not find any infirmity in the said action of the learned CIT(A). Accordingly, the grounds raised by the Revenue are dismissed.

11. To sum up, the appeal of the assessee for A.Y. 2015-16 is allowed and the appeal of the Revenue for A.Y. 2017-18 is dismissed.

Order was pronounced in the open court on 18/10/2024.

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 18/10/2024

*Priti Yadav, Sr. PS**

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi