

**IN THE INCOME TAX APPELLATE TRIBUNAL,
SMC, BENCH 'C', BANGALORE**

BEFORE SHRI AK GARODIA, ACCOUNTANT MEMBER

ITA No.1425/Bang/2016
(Asst. Year – 2006-07)

Shri Kamlesh H Shah (HUF),
E-501, Renaissance Temple Bell,
No.25/1, Yeshwanthpur,
Bengaluru. . Appellant
PAN No. – AAEHK0217R.

Vs.

The Income-tax Officer,
Ward-6(2),
Bangalore. Respondent

Appellant by : Shri H Nagin Khincha, C.A

Respondent by : Shri A.R.V Sreenivasan, JCIT

Date of Hearing : 13-3-2017

Date of Pronouncement : 17-3-2017

ORDER

PER SHRI AK GARODIA, ACCOUNTANT MEMBER :

This appeal is filed by the assessee which is directed against the order of learned Commissioner of Income-tax (Appeals) Bangalore dated 25/5/2016 for assessment years 2006-07.

2. The grounds raised by the assessee are as under:

1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The impugned orders being bad in law, void ab-initio are required to be quashed.

2.1 In any case, the conditions precedent for the issue of notice u/s. 148 of the Act being absent, the re-opening of assessment becomes bad in law and consequently the order as passed/confirmed being also bad in law is required to be quashed.

2.2 In any case, the basis of reasons recorded for re opening being contrary to the available facts of the case, renders the entire reopening and consequent assessment bad in law and the impugned order is liable to be quashed.

3.1 In any case the order passed in gross violation of the principles of natural justice and fair play, especially in the absence of opportunity of cross examination of the persons whose averments are sought to be relied upon by the Assessing Officer while reopening and passing the order, makes the order totally bad in law and liable to be cancelled.

3.2 The learned Commissioner of Income tax (Appeals) has erred in sustaining the order instead of quashing the impugned order on the above grounds, The action of Commissioner of Income tax without considering the fact and circumstances of the case, arguments of the appellant and the law applicable is bad in law and is to be quashed.

4. The assessing officer has in any case, erred in treating the Long Term Capital Gain earned on sale of shares amounting to Rs. 10,16,975/- as 'Income from other sources' and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The actions of authorities below have no support in law; are contrary to facts and evidence available and such a treatment deserves to be rejected totally and the addition so made is to be deleted.

5.1 In any case and without further prejudice, the authorities below have erred in:

- a) Holding that the appellant has transacted through M/s. Mahasagar group;
- b) Holding that the appellant has failed to provide explanation with respect of the alleged transaction;
- c) Taxing/confirming the Long Term Capital Gain on sale of shares as income of the appellant under the head Income from Other Sources.

The conclusions / observations of authorities below being totally erroneous and without basis both on facts and law are to be disregarded.

5.2 The several observations made and various conclusions drawn by the lower authorities in the course of order are without basis and evidence and are made/drawn on surmises, probabilities and conjectures. Such observations and conclusions by quasi-judicial authorities have no support in law and deserve to be rejected in toto.

6. The appellant had actually sold shares and had earned Capital Gain and same needs to be accepted as such.

7. The appellant denies the liability to pay interest. The interest having been levied erroneously is to be deleted.

8. In view of the above and other grounds to be adduced at the time of hearing it is requested that the impugned order be quashed or atleast the income from capital gain as returned be accepted, the assessment of Long Term Capital Gain on sale of shares as Income from Other Sources be deleted and the interest levied be also deleted.

3. It was submitted by the Id AR of the assessee that as per ground No.5 raised before the Id CIT(A), the assessee has objected to the validity of the reassessment proceedings but this aspect of the matter was not decided as per impugned order and therefore, the matter should be restored to the Id CIT(A) for a fresh decision including a decision on this aspect.

4. Ld DR of the Revenue supported the order of Id CIT(A).

5. I have considered the rival submissions. I find that the issue of validity of reassessment proceedings was very much raised by the assessee before the Id CIT(A) but this was not decided by the Id CIT(A) as per impugned order and, therefore, I feel it proper to restore back the entire matter to the file of the Id CIT(A) for fresh decision. The Id CIT(A) is directed to decide the issue in respect of validity of reassessment proceedings and if the reassessment proceedings are found to be valid then he should decide the issue on merit also afresh. In view

of this decision, no adjudication is called for on merit of addition made by the AO at this stage.

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

Order pronounced in the open court on **17th March, 2017.**

**Sd/-
(AK GARODIA)
ACCOUNTANT MEMBER**

Vms.

Bangalore

Dated : 17/03/2017

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Asst. Registrar, ITAT, Bangalore.