

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BENCH- C, BANGALORE**

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

ITA No.295/Bang/2016 AY 2007-08
ITA No.296 /Bang/2016 AY 2008-09

Smt. Sudhabai C.Jain
No. 62, 3RD Cross, Arihant Nagar
Keshwapur,
HUBLI . Appellant

Vs.

The Income Tax Officer
Ward-3(2)
HUBLI . Respondent

ITA No.297/Bang/2016 AY 2007-08
ITA No.298 /Bang/2016 AY 2008-09

Shri Chandrakant C.Jain,
No. 62, 3RD Cross, Arihant Nagar
Keshwapur,
HUBLI . Appellant

Vs.

The Income Tax Officer
Ward-3(2)
HUBLI . Respondent

Appellant by : Shri HN Khincha, C.A.
Respondent by : Shri DK Jha, Addl. CIT

Date of Hearing : 31-08-2016
Date of Pronouncement : 16-09-2016

ORDER
PER ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER:

These appeals by the assessee are directed against the order
of Commissioner of Income-tax (Appeals), Hubli dated

30/11/2015 and it pertains to the assessment years 2007-08 and 2008-09.

2. The appellant is an individual. The assessment year under appeal is A.Y. 2007-08. The appellant has filed return of income 03/03/2008 declaring an income of Rs. 339901/-. The income consisted of:

Income from Business
449901.00

Capital gains:

Long Term Capital Gains on
Sale of Shares

1644890.00

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Less: Exempt u/s 10(38)

1644890.00

Income from other Source:

Dividend

287.00

Less: Exempt u/s 10(34)

287.00

449901.00

Less: Deduction u/s 80C Maximum

100000.00

Taxable Income

339901.00

***Short term capital loss on sale
of shares**

(4365)

3. The Long Term Capital Gain on sale of shares and short term Capital Gain on sale of shares was in respect of shares purchased through a broker latter demated and then sold through a broker on a

stock exchange and even payment were received through stock exchange via banking channel. Most of dealings were done through M/s Alliance Intermediary network(P) Ltd..

4. The return of income was processed u/s 143(1) accepting the returned income. Thereafter the assessee received notice u/s 148 issued on 22/03/2013. In response to the same the appellant vide her letter date 20/11/2013 submitted that the return of income filed on 03/03/2008 be treated as having been filed in response to notice u/s 148. The reasons were given vide letter Date 17/01/2014.

5. The reasons recorded were not furnished. According to the notices received for hearing the appellant has filed all the details called for and now the above impugned order is passed. In the assessment order the Assessing Officer has not accepted that the appellant had dealt in shares. On the other hand the entire sale consideration received on sale of shares is added to the income of the appellant as income from other source.

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1. the conclusion drawn by the Assessing Officer and not accepting that there are share transactions entered by the appellant are;

(a) That the contract notes submitted by the appellant are not genuine.

(b) The broker through whom the deal was done was not authorized to do the deal.

(c) There is no proof for payment of purchase of shares.

(d) Though the shares were demated the demating was used only as tool.

(e) The appellant has bought/purchased the profit.

6. Before CIT(A) it was contended by assessee as follows:

The assessment was re-opened supposedly on the basis of a sworn statement recorded from Shri Mukesh M Chokshi in connection with search action on Mahasagar Group of cases. It is also stated in the reasons recorded that certain information was received from director of Income-tax (Intelligence), New Delhi. The copy of the information and the type of information received were

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not made available to the appellant. Further, the copy of the sworn statement said to have been given by Mr. Mukesh M Chokshi was not given to the appellant. Further despite specific request, no opportunity was given to cross examine Mukesh Chokshi. According to assessment order the following information was gathered but no opportunity to verify the correctness or for rebuttal was given to appellant.

It is stated in the order that a letter was addressed to the secretary, Bombay Stock Exchange, Mumbai and to The Secretary, National stock Exchange, Mumbai along with contract notes and it seems that replies were received from these exchanges as Reduced on page 4 of the assessment order.

The so called replies were never put to the appellant for his rebuttal. The appellant was not aware of the receipt of the letters as stated in the assessment order till the assessment order was received. No opportunity to examine/cross examine the officials of these exchanges was given or allowed.

7. The CIT(A) held that following statements/observations made by the Assessing Officer in the Assessment orders are not verifiable.

(a) “During the course of search action u/s 132 of the Income-tax Act, 1961, in the case of Shri Mukesh M Chokshi, Director of Mahasagar securities, Mumbai and other companies conducted by investigation wing of The Income Tax Department, Mumbai, it was found that he was running a network on bank accounts in the names of various companies. These bank accounts were used for providing accommodation entries. Shri Mukesh M Chokshi was providing bills of profit/loss for either purchase of shares or sale of shares. Further, Shri Mukesh M Chokshi was charging commission of depending on the type of accommodation entries offered. In the first type, simple profit/loss entries for which commission of 0.15% is charged and in the 2nd type, Long term or Short term Capital gains entries for shares to be received on hire to give to the beneficiaries for which rates ranging from 2.25% to 3.5% and share application entries for which commission charged is 0.15%. Parties who want have bank entries in their books of accounts contact Shri Mukesh M Chokshi and obtain cheques from him or give cheque to him as per the requirements. Further, the bills given are not genuine and only accommodative fictitious entries

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because bills have been issued without actual transaction taking place. The data in respect of fictitious non genuine accommodation entries offered by Shri Mukesh M Chokshi and his various companies were extracted from the books of account of Shri Mukesh M Chokshi in two compact disc by the investigation wing. The evidence gathered on the bogus nature of transactions was confronted with Shri Mukesh M Chokshi and during the sworn statement before the authorized Officer of investigation wing; he has identified the beneficiaries from the data extracted from his group companies' books. Further, Shri Mukesh M Chokshi was subjected to oath statement on 16/01/2013 by Deputy Commissioner of Income Tax, Central Circle-46, Mumbai and during the recording of sworn statement Shri Mukesh M Chokshi had admitted the above facts. The list extracted from the books of accounts of Shri Mukesh M Chokshi was forwarded (through proper channel) by the Director of Income Tax (I & CI), New Delhi on 07/03/2013 and on verification of the same, it was found that Smt. Sudhabai C Jain, (PAN: ACJP5442N), who is assessed with the undersigned, has availed accommodation facilities bills from Shri Mukesh M Chokshi group of companies without actual

transaction taking place and profited to the tune of Rs. 183745/-. In view of the above facts and also after pursuing the information available with undersigned, I have reason to believe that the income chargeable to tax of Rs. 183745/- has escaped assessment for the A.Y. 2007-08 within the meaning of section 147 of the Income Tax Act 1961.

(b) “Kindly note that from the records available with the exchange M/s ALLIANCE INTERMEDIARIES AND NETWORK PVT LTD., is a registered sub broker (INS2307835347) affiliated to M/s. I.S.E. Securities and services, Limited (TM code. 10777) a registered trading member of the exchange. The date of registration of M/s ALLIANCE INTERMEDIARIES AND NETWORK PVT LTD., in the capital market segment is October 12, 2000. The registration was cancelled on February 19,2004. Hence no details are available with the exchange which can be furnished.”

“We refer to your letter no. SCJ/ITO W-3(2)/HBL dated February 12, 2014 on the above captioned matter. In this regard, we would like to state that M/s alliance intermediaries’ pvt Ltd is neither registered as a trading member, nor as a sub broker with any trading member of the exchange.

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8. The Assessing Officer has among other things failed to consider the fact that Shares were demated and that the demating of shares is a statutory activity. The demating is done after full verification and examination. The appellant has no role to play in the demating of shares. The assessing Officer has also failed to consider that the sale proceeds of shares were received through cheque issued by the stock exchange evidencing thereby , that the shares were registered; the shares were traded on stock exchange; and payments were received from stock exchange. This leaves no doubt about the genuinity of transaction.

9. The CIT(A) computed as follows:-

Income as pr return of income	349900.00
Add: Income from other source	2051305.00
TOTAL INCOME	2401205.00

10. Aggrieved assessee preferred an appeal before us.

11. We find that the assessee has claimed the exemption u/s 10(38) correctly since the shares sold were held by him for more than 12

months, the shares were dematerialized and subsequently sold through recognized stock exchange and amount received through banking channels.

12. The assessee had done all these transactions through his portfolio manager and has completely relied on him. As a common investor he was under the firm belief that once he has purchased shares – the brokers note and bills from the broker is sufficient evidence that the transaction is completed. If there is any delay in the process to dematerialize the shares it is only due to lack of proper knowledge, relying on the portfolio advisors and oversight and not at all intentional.

13. In a very similar case, where the broker is same and the transactions are also same, the appellant tribunal Mumbai 'J' Bench in the case of Suri Jafferli K Rattonsej (ITA No.5068/Mum/2009) has deleted all the additions made on the basis of the sworn statement of Sri Mukesh M Chowksi.

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14. Respectfully following the decision in the case of Suri Jafferli K Rattoney (Supra), we allow the appeals of the assessee.

15. In the result, appeals filed by the assessee are allowed.

Order pronounced in the open court on **16th September, 2016.**

**Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER**

Bangalore
Dated : 16/9/2016
Vms

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