

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6235/Del/2017
Assessment Year: 2014-15

MEENU GOEL,
C-21, GROUND FLOOR,
SHIVALIK MALVIYA NAGAR,
NEW DELHI – 110 017
(PAN: AESPG3101Q)
(APPELLANT)

VS. ITO, WARD-31(1),
NEW DELHI

(RESPONDENT)

Assessee by : Sh. Ved Jain, Adv., Sh. Ashish Chadha, CA
Ms. Devina Sharma, CA
Revenue by : Sh. V.K. Jiwani, SR. DR

ORDER

The Assessee has filed the Appeal against the Order dated 14.1.2017 of the Ld. CIT(A)-11, New Delhi pertaining to assessment year 2014-15 and raised the following grounds:-

- 1. That the appellant is an Individual and filed its Income tax return during the Financial Year 2013-14 declaring income of Rs. 3,67,580/-. Later on the case was selected for scrutiny under section 142(1) of the Income Tax Act, 1961.*
- 2. That the Assessment framed is bad in the eyes of Law on the facts and circumstances of the case on the ground that the Learned Assessing Officer has assessed the income without*

considering the facts which has been submitted by the appellant. That it is pertinent to mention here that the entire addition has been created by the Assessing Authority only on the basis of presumption and presuppositions, instead considering the documents/ information and explanation provided by the appellant. Assessing Officer failed to appreciate the fact of the case that the appellant made genuine sale and purchase of share and without correctly appreciating and understanding the transaction has made addition of Rs. 18,46,600/- in the income of the appellant.

3. That the appellant has earn Long Term Capital Gain amounting to Rs. 18,46,600/- during the financial year 2013-14 which is exempt under Section 10(38) of Income Tax Act, 1961. That the appellant had purchased of 45,000/- shares of Unisys Software Holding Industries Ltd amounting Rs. 9,38,600/- at a premium of Rs. 20.85 per share in physical form. Out of the aforesaid 45000/- Shares appellant sold of 8000 Shares only i.e. 17.77%. Thus, the major part of the Shares i.e. 82.33% are still in the hand of the appellant. Point to be noted is that the appellant just wanted to

enter into the transaction to earn exempted capital gain, why the appellant did not sell all the share 45000 shares instead of sale of a part i.e. 8000 shares only when that time was the best price ever. That the sale and purchase of transaction had made through account payee cheque.

Appellant had purchase share in financial year 2009-10 and sold the same in the financial year 2013-14 resulting in Long Term Capital Gain.

Appellant has submitted the below mentioned documents/ evidence to prove the genuineness of the transaction of sale and purchase of shares at the time of hearing.

(i) A copy of purchase bill dated 22.02.2010.

(ii) A copy of share transfer form in the favour of the assessee.

(iii) Copy of bank statement highlighting the payment made against the share purchased.

(iv) Transaction statement of the stock broker i.e. Pace Stock Broking Services (P) Ltd., account.

(v) *Copy of bank statement in which sale proceed from the sale of shares received.*

(vi) *Copy of calculation of long term capital gain*

That the Assessing Authority has not considered the same just because the investigation was done against the stock broking entities, the assessee cannot be said to have entered into bogus transaction insofar as the assessee is not concerned with the activity of broker and has no control over the same. That it is submitted that a small amount invested in "penny" stocks gave rise to huge capital gains in a short period does not mean that the transaction is "bogus" if the documentation and evidences cannot be faulted. The nature of transaction does not change because there is an investigation.

4. *That it is stated that Assessing Officer has reach on conclusion of that transaction of sale and purchase was not genuine on the basis of trading volume in the shares of M/s. Unisys Software Holding Industries Ltd increased suddenly. That the appellant*

invested in penny stocks gave rise to huge capital gains in a short period does not mean that the transaction is bogus as the appellant has all the documents and evidence.

5. On the perusal of above grounds, it is stated the addition of Rs.18,46,600/- in the income of the appellant made by the Assessing Officer and confirmed by the Commissioner of Income Tax Appeal under Section 68 of the Income Tax Act, 1961 is not correct as the appellant has all the document by which it will proved that the appellant has entered into genuine transaction.

6. Your Petitioner craves leave to amend, modify and/or alter grounds and/or to adduce and rely upon such further evidence and /or to adduce and rely upon such further evidence and /or documents as may be required at any time before and during the time of hearing.

2. The brief facts of the case are that assessee filed her return of income for the assessment year 2014-15 on 30.9.2014 declaring income at Rs. 3,67,580/-. The case of the assessee was processed

u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) and was taken for scrutiny. Notice u/s. 143(2) dated 18.9.2015 was issued. Thereafter, statutory notice u/s. 142(1) of the Act alongwith questionnaire was issued on 05.2.2016. In response to the said notices, the AR of the assessee attended the proceedings. The assessee is an individual and during the relevant year, she has shown income " income from house property, income from business and profession and income from others sources". AO observed that assessee has shown long term capital gain of Rs. 18,46,600/- from sale of shares and claimed the same as exempted u/s. 10(38) of the Act. amounting to Rs. 18,46,600/- from sale of shares and Short Term Capital Gains on Sale of Shares. The AO has made the addition on account of Long Term Capital Gain by treating the same as unexplained cash credit of Rs. 18,46,600/- u/s. 68 of the Act by holding that the long term capital gain from sale of 8,000 shares of M/s Unisys Software and Holding Industries Ltd. out of 45,000 shares purchased by the assessee and the same has been claimed as exempt u/s. 10(38) of the Act which is not genuine and represents unaccounted income brought in the books of accounts by arranging bogus long term capital gain. In this regard, the AO has relied upon the various judgments and assessed the income at 22,14,180/- u/s. 143(3) of the Act. In appeal, Ld. CIT(A) has confirmed the action of the AO holding that the transactions are sham transaction.

3. Aggrieved with the impugned order, Assessee is in Appeal before the Tribunal.

4. At the time of hearing, Ld. Counsel of the assessee has stated that revenue authorities erred in passing the orders, without considering the facts that the entire addition has been created by the Assessing Officer only on the basis of presumption and presuppositions, instead considering the documents/ information and explanation provided by the assessee. It was further stated that Assessing Officer failed to appreciate the fact of the case that the assessee made genuine sale and purchase of share and without correctly appreciating and understanding the transaction has made addition of Rs. 18,46,600/- in the income of the assessee. It was further stated that assessee has earned Long Term Capital Gain amounting to Rs. 18,46,600/- during the financial year 2013-14 which is exempt under Section 10(38) of Income Tax Act, 1961 and the assessee had purchased of 45,000/- shares of Unisys Software Holding Industries Ltd amounting Rs. 9,38,600/- at a premium of Rs. 20.85 per share in physical form. Out of the aforesaid 45000/- Shares assessee sold of 8000 Shares only i.e. 17.77%. Thus, the major part of the Shares i.e. 82.33% are still in the hand of the assessee. It was further stated that the assessee just wanted to enter into the transaction to earn exempted capital gain, why the assessee did not sell all the share 45000 shares instead of sale of a part i.e. 8000 shares only when that time was the best price ever. It

was further stated that the sale and purchase of transaction had made through account payee cheque and assessee had purchased share in financial year 2009-10 and sold the same in the financial year 2013-14 resulting in Long Term Capital Gain. It was further stated that assessee before the lower authorities have submitted the following documents/ evidence to prove the genuineness of the transaction of sale and purchase of shares at the time of hearing

(i) A copy of purchase bill dated 22.02.2010.

(ii) A copy of share transfer form in the favour of the assessee.

(iii) Copy of bank statement highlighting the payment made against the share purchased.

(iv) Transaction statement of the stock broker i.e. Pace Stock Broking Services (P) Ltd., account.

(v) Copy of bank statement in which sale proceed from the sale of shares received.

(vi) Copy of calculation of long term capital gain

4.1 It was further stated that AO has not considered the aforesaid documents because the investigation was done against the stock broking entities, the assessee cannot be said to have entered into

bogus transaction insofar as the assessee is not concerned with the activity of broker and has no control over the same. It was the further contention that a small amount invested in "penny" stocks gave rise to huge capital gains in a short period does not mean that the transaction is "bogus" if the documentation and evidences cannot be faulted. The nature of transaction does not change because there is an investigation. It was further stated that Assessing Officer has reached on conclusion of that transaction of sale and purchase was not genuine on the basis of trading volume in the shares of M/s. Unisys Software Holding Industries Ltd increased suddenly. That the assessee invested in penny stocks gave rise to huge capital gains in a short period does not mean that the transaction is bogus as the appellant has all the documents and evidence. It was further stated that lower authorities rejected all the claims made by the assessee arbitrarily and without giving any cogent reasoning based on surmises and conjectures and relying solely on the report of the Investigation Wing and thereby made the addition, which is not tenable, hence, the claim of long term capital gain should be allowed. It was further stated by the Ld. Counsel of the assessee that the addition in dispute made by the AO and upheld by the Ld. CIT(A) u/s 68 as unexplained credit instead of long term capital gain as claimed by the assessee, however, the source identity and genuineness of the transaction having been established by documentary evidences and there is no case for making addition u/s

68. In support of his contention Ld. Counsel of the assessee has stated that the issue in dispute is squarely covered by the various decisions of the ITAT and the Hon'ble High Courts including the recent decision dated 18.1.2018 of the Jurisdictional High Court i.e. Hon'ble High Court of Punjab & Haryana in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi passed in ITA No. 95 of 2017.

5. On the contrary, Ld. DR relied upon the order passed by the lower authorities. He stated that from the records it is evident that the assessee has received accommodation entry during the year and any expenditure claimed to have been incurred in the earlier years is not genuine and cannot be claimed and allowed as expenditure during the current year. Hence, Ld. CIT(A) has rightly upheld the addition to Rs. 18,46,600/- by holding that sale proceeds of the shares are bogus, which does not need any interference and need to be upheld. In support of his contention he relied upon the following cases laws:-

- Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain vs. PCIT – Hon'ble Mumbai High Court ITA No. 18/2017.

- Chandan Gutpa vs. CIT – Hon’ble Punjab & Haryana High Court (2015 54 taxmann.com 10 (P&H)/ (2015) 229 Taxman 173.
- Balbir Chand Maini vs. CIT – Hon’ble Punjab and Haryana High Court (2011) 12 taxmann.com 276
- Usha Chandresh Shah vs. ITO, ITAT Mumbai 2014-TIOL-1459-ITAT-MUM.
- Ratnakar M Pujari vs. ITO, ITAT Mumbai 2016-TIOL-1746-ITAT-Mum.

6. I have heard both the parties and perused the relevant records available with me, especially the orders of the revenue authorities and the case law cited by both the parties. I note that assessee has earned Long Term Capital Gain amounting to Rs. 18,46,600/- during the financial year 2013-14 and the same has been claimed exempt under Section 10(38) of Income Tax Act, 1961. The assessee had purchased of 45,000/- shares of Unisys Software Holding Industries Ltd amounting Rs. 9,38,600/- at a premium of Rs. 20.85 per share in physical form. Out of the aforesaid 45000/- Shares assessee sold of 8000 Shares only i.e. 17.77%. Thus, the major part of the Shares i.e. 82.33% are still in the hand of the assessee. In my view the the assessee just wanted to enter into the

transaction to earn exempted capital gain, but the assessee did not sell all the share 45000 shares instead of sale of a part i.e. 8000 shares only when that time was the best price ever. All the transaction were made through account payee cheque / banking channel and assessee had purchased share in financial year 2009-10 and sold the same in the financial year 2013-14 resulting in Long Term Capital Gain. The assessee has submitted various documentary evidences to prove the genuineness of the transaction of sale and purchase of shares which includes a copy of purchase bill dated 22.02.2010; a copy of share transfer form in the favour of the assessee; Copy of bank statement highlighting the payment made against the share purchased; Transaction statement of the stock broker i.e. Pace Stock Broking Services (P) Ltd., account; copy of bank statement in which sale proceed from the sale of shares received; copy of calculation of long term capital gain, which was not faulted by the AO. However, the lower authorities have not considered the aforesaid documents and rejected all the claims made by the assessee by relying on the report of the Investigation Wing and thereby made the addition, which is not sustainable in the eyes of law. I further find that the AO has given detailed explanation in the order regarding the modus operandi of bogus LTCG scheme but failed to substantiate how the assessee fell in the purview of the same without bringing any material on record and proving that the assessee was directly involved in the so called bogus transaction. I

further note that the addition in dispute made by the AO and upheld by the Ld. CIT(A) u/s 68 as unexplained credit instead of long term capital gain as claimed by the assessee, however, the source identity and genuineness of the transaction having been established by documentary evidences and there is no case for making addition u/s 68 of the Act, hence, the same deserve to be deleted. I note that in most of the case laws of the Hon'ble High Courts referred by the Ld. DR the reason on the basis of addition was confirmed was that the assessee had not tendered cogent evidence with regard to share transaction, however, in the present the case assessee has submitted all the documents / evidences, therefore, the case laws relied by the Ld. DR are based on distinguished facts and circumstances, hence, the said case laws are not applicable in the present case. However, in my considered opinion, the issue in dispute is squarely covered by the various decisions of the ITAT and the Hon'ble High Courts including the recent decision dated 18.1.2018 of the Hon'ble High Court i.e. Hon'ble High Court of Punjab & Haryana in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi passed in ITA No. 95 of 2017.

Decision dated 18.1.2018 of the Hon'ble High Court of Punjab & Haryana in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi passed in ITA No. 95 of 2017 wherein it has been held as under:-

"2. The following questions of law have been raised:-

- (i) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in upholding the order of the CIT(A) deleting the addition of Rs. 4,11,77,474/- made by the AO on account of sham share transactions ignoring an important aspect that the transaction of shares showing their purchase price at Rs. 11,00,000/- and sale consideration at Rs. 4,23,45,295/- within a period of less than two years / purchases of shares made in cash not cheque that too before shares got dematerialized / worth of the company at the time of purchase / sale of shares not proved- All suggest non-genuineness of the said transaction?*

- (ii) *Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 4,11,77,474/- made by the AO on account of sham share transactions, whereas the CIT(A) himself had held that the assessee had not been able to substantiate the source of investment of Rs. 11,00,000/- in the said shares purchased during the financial year 2005-06 and the AO was directed to reopen the case of the assessee for the assessment year 2006-07 on this issue?*
- (iii) *Whether the Hon'ble ITAT has erred in ignoring an important aspect that in such cases of sham transactions of shares showing abnormal hike in their value,*

where the facts themselves speak loud and clear, the AO is justified to even draw an inference from the attendant circumstances?

- (iv) *Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 12,59,000/- made by the AO on the basis of seized document on the grounds that the AO has not pointed out as to how the figures of Rs. 12.59 lacs has been worked out ignoring the fact that the assessee himself in his reply to the AO had tried to explain the source of the receipts of Rs. 12,59,000/- instead of challenging the working out of the said figure by the AO?*

3. *The first three questions of law raised in this appeal are covered against the appellant by an order and judgment of a Division Bench of this Court dated 16.02.2017 in ITA-18-2017 titled as **The Pr. Commissioner of Income Tax (Central), Ludhiana vs. Sh. Hitesh Gandhi, Bhatti Colony, Chandigarh Road, Nawanshahar.***

4. *The issue in short is this : The assessee purchased shares of a company during the assessment year 2006-07 at Rs. 11/- and sold the same in the assessment year 2008-09 at Rs. 400/- per share. In the above case, namely, ITA 18-2017 also the assessee had purchased and sold the shares in the same assessment years. The AO in both the cases added the appreciation to the assessee's income on the suspicion that these were fictitious transactions and that the appreciation actually represented the assessee's income from undisclosed sources. In ITA-18-2017 also the CIT(Appeals) and the Tribunal held that the AO had not produced any evidence whatsoever in support of the suspicion. On the other hand,*

although the appreciation is very high, the shares were traded on the National Stock Exchange and the payments and receipts were routed through the bank. There was no evidence to indicate for instance that this was a closely held company and that the trading on the National Stock Exchange was manipulated in any manner.

5. In these circumstances, following the judgment in ITA-18-2017, it must be held that there is no substantial question of law in the present appeal.

6. Question (iv) has been dealt with in detail by the CIT(A) and the Tribunal. Firstly, the documents on which the AO relied upon the appeal were not put to the Assessee during the assessment proceedings. The CIT(A) nevertheless considered them in detail and found that there was no correlation between the amounts sought to be added and the entries in those documents. This was on an appreciation of facts. There is nothing to indicate that the same was perverse or irrational. Accordingly, no question of law arises.

7. In the circumstances, the appeal is dismissed."

7. Keeping in view of the facts and circumstances of the case as explained above and respectfully following the precedent, as aforesaid, the addition amounting Rs. 18,46,600/- made by the AO and confirmed by the Ld. CIT(A) is hereby deleted and ground raised by the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced on 19-03-2018.

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated : 19-03-2018

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.