

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Income Tax Appeal No. 385 / 2011

Commissioner of Income Tax-I, New Central Revenue Building
Statue Circle, Jaipur

----Appellant

Versus

Smt. Pooja Agarwal, 1783, Telepada. Jaipur

----Respondent

Connected With

D.B. Income Tax Appeal No. 603 / 2011

Commissioner of Income Tax-I, New Central Revenue Building
Statue Circle, Jaipur

----Appellant

Versus

Shir Jitendra Kumar Agarwal, P/o M/s Garg Jewellers, 222, Johari
Bazar, Jaipur.

----Respondent

For Appellant(s) : Mr. Anuroop Singhi with Mr. Aditya Vijay

For Respondent(s) : Mr. N.L Agarwal with Mr. S.L.Poddar

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VIJAY KUMAR VYAS

Order

11/09/2017

1. Since both these appeals arise out of the same order, they are being decided by this common order.
2. By way of these appeals, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has dismissed the appeal of the department confirming the order of CIT(A).
3. This Court while admitting the Income Tax Appeal

No.385/2011 on 14.03.2012 has framed following substantial question of law:

"Whether the Tribunal as well as CIT(A) were justified in deleting the addition of Rs.98,56,872/- made by the Assessing Officer on account of bogus share transaction, which were nearly accommodation entries, made through one Shri P.K. Agarwal, who was found to be an entry provider, ignoring that the assessee in her deposition during survey specifically denying having made any share transactions in last 5 years?"



4. This Court also while admitting the Income Tax Appeal No.603/2011 on 03.07.2013 has framed following substantial question of law:

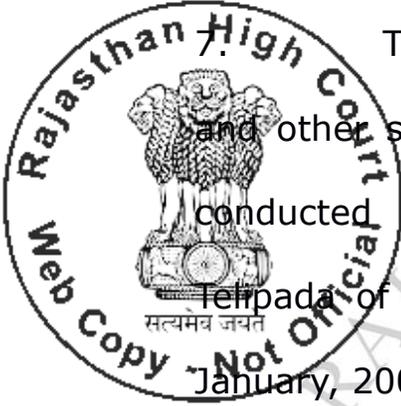
"Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs.1,06,34,000/- which was made by the Assessing Officer and confirmed by CIT(A) on account of undisclosed investment of assessee in land and simply directing to compute 10% profit on the said investment as income of the assessee, even after holding that the investment is assessee's own turnover in land dealing and not the investment made for others?"

5. However, subsequent to application which was moved by the Department, it was further amended by order dated 29.08.2017.

"1. Whether the Tribunal was justified in confirming the deletion of Rs.1,06,34,000/- which made by the Assessing Officer on account of undisclosed investment of the assessee, without giving any finding in respect of the same?

2. Whether the Tribunal as well as CIT(A) were justified in not confirming the addition of Rs.1,06,34,000/- ignoring that the said entries were merely accommodation entries in view of exchange of cash with broker Shri P.K. Agarwal?"

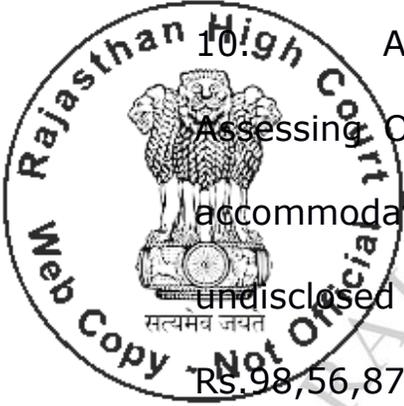
6. Counsel for the appellant has taken us to the order of AO stating that the assessee involved in jewelry business has taken entry for the purpose of converting the black money into white and referred this entry from broker, one Shri P.K.Agarwal. Entry provided from Calcutta has been taken.



The assessee derives income from salary, capital gains and other sources. A survey under Section 133A of the Act was conducted at the business premises of M/s Royal Jewellers, Telhpada, of which assessee is 50% partner, on 21st and 22nd of January, 2008, during which various incriminating documents were found and impounded wherein several unaccounted transaction were recorded. Reassessment proceedings were initiated by issuing notice under Section 147 R/W 148 of the Act. Vide Show Cause Notice the assessee was specifically asked as to why the amount of Rs.98,56,872/- should not be treated as an accommodation entry.

8. The assessee submitted reply to the Show Cause Notice contending therein that the share transactions are genuine and the 'Short Term Capital Gain' of Rs.98,56,872/- has been earned from the purchases and sales of shares of Konark Commercial Ltd. And Limtux Investment Ltd. Investigation revealed that the entire share transactions were bogus and mere accommodation entries obtained from an entry provider Shri P.K.Agarwal from Kolkata. The said fact was revealed during search carried out by the Investigation Wing, Jaipur in the case of B.C.Purohit Group.

9. It is pertinent to note that during the survey operation, it was admitted by the assessee that no investment in shares was made by him during the said period. It was further found that the company M/s Konark Commercial Ltd. Was never listed in Calcutta Stock Exchange and the assessee was never its shareholder.



10. After considering the entire factual matrix the Assessing Officer held that the assessee had arranged the said accommodation entries from entry providers for converting its undisclosed money into white money and thus the amount of Rs. 98,56,872/- was treated as undisclosed income of the assessee.

11. Counsel for appellant has taken us to the order of AO.

12. However, counsel for the respondent has taken us to the order of CIT(A) and also to the order of Tribunal and contended that in view of the finding reached, which was done through Stock Exchange and taking into consideration the revenue transactions, the addition made was deleted by the Tribunal observing as under:-

“Contention of the AR is considered. One of the main reasons for not accepting the genuineness of the transactions declared by the appellant that at the time of survey the appellant in his statement denied having made any transactions in shares. However, subsequently the facts came on record that the appellant had transacted not only in the shares which are disputed but shares of various other companies like Satyam Computers, HCL, IPCL, BPCL and Tata Tea etc. Regarding the transactions in question various details like copy of contract note regarding purchase and sale of shares of Limtex and Konark Commerce & Ind. Ltd., assessee’s account with P.K. Agarwal & co. share broker, company’s master details from registrar of companies, Kolkata were filed.

Copy of depository a/c or demat account with Alankrit Assignment Ltd., a subsidiary of NSDL was also filed which shows that the transactions were made through demat a/c. When the relevant documents are available the fact of transactions entered into cannot be denied simply on the ground that in his statement the appellant denied having made any transactions in shares. The payments and receipts are made through a/c payee cheques and the transactions are routed through Kolkata Stock Exchange. There is no evidence that the cash has gone back in appellants's account. Prima facie the transaction which are supported by documents appear to be genuine transactions. The AO has discussed modus operandi in some sham transactions which were detected in the search case of B.C. Purohit Group. The AO has also stated in the assessment order itself while discussing the modus operandi that accommodation entries of long term capital gain were purchased as long term capital gain either was exempted from tax or was taxable at a lower rate. As the appellant's case is of short term capital gain, it does not exactly fall under that category of accommodation transactions. Further as per the report of DCIT, Central Circle-3 Sh. P.K. Agarwal was found to be an entry provider as stated by Sh. Pawan Purohit of B.C. Purihit and Co. group. The AR made submission before the AO that the fact was not correct as in the statement of Sh. Pawan Purohit there is no mention of Sh. P. K. Agarwal. It was also submitted that there was no mention of Sh. P. K. Agarwal in the order of Settlement Commission in the case of Sh. Sushil Kumar Purohit. Copy of the order of settlement commission was submitted. The AO has failed to counter the objections raised by the appellant during the assessment proceedings. Simply mentioning that these findings are in the appraisal report and appraisal report is made by the Investing Wing after considering all thematerial facts available on record does not help much. The AO has failed to prove through any independent inquiry or relying on some material that the transactions made by the appellant through share broker P.K. Agarwal were non-genuine or there was any adverse mention about the transaction in question in statement of Sh. Pawan Purohi. Simply because in the sham transactions bank a/c were opened with HDFC bank and the appellant has also received short term capital gain in his account with HDFC bank does not establish that the transaction made by the appellant were non genuine. Considering all these facts the share transactions made through Shri P.K. Agarwal cannot be held as non-genuine. Consequently denying the claim of short term capital gain



made by the appellant before the AO is not approved. The AO is therefore, directed to accept claim of short term capital gain as shown by the appellant.”

13. The same was confirmed by CIT appeal, in view of this we are of the opinion that the view taken by the Tribunal as well as CIT is correct.

14. In that view of the matter, the issues are answered in favour of the assessee and against the department.

15. The appeals stand dismissed.



(VIJAY KUMAR VYAS),J.

(K.S. JHAVERI),J.

Chouhan/Dheeraj/40-41

