

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “A” BENCH: HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

ITA. No.1614/Hyd/2017
Assessment Year: 2007-2008

Income Tax Officer, Ward-14(2), Hyderabad. (Appellant)	vs.	Shri K. Ramakrishna Reddy, Hyderabad. PAN:ANJPK 1981 A (Respondent)
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For Assessee:	None
For Revenue :	Shri D. Prasad Rao, DR

Date of Hearing :	29.05.2018
Date of Pronouncement :	29.05.2018

ORDER

PER D. MANMOHAN, VP.

This is an appeal filed at the instance of the Revenue and it pertains to Assessment Year 2007-2008. Following grounds were urged by the Revenue:

- “1. *Ld. CIT(A) erred in treating the income offered by the assessee under the head “income from capital gains” as against under the head “income from other sources” as assessed by the Assessing Officer treating the same as income from undisclosed sources.*
2. *The Ld. CIT(A) failed to appreciate the facts that the demat account of the assessee has not shown the transactions of the alleged purchases and no Security Transaction Tax was paid on these purchases. Further the broker / sub-broker, M/s. Alliance Intermediaries and Networks (P) Limited is not recognised by NSE leads to the conclusion that the income shown by the assessee under the guise of capital gains is nothing but income from undisclosed income.”*
2. None appeared on behalf of the assessee.
3. We have heard the Learned Departmental Representative and carefully perused the record. According to the information received by

the Assessing Officer, the assessee had taken accommodation bills on sale of shares whereby he has received benefit to the tune of Rs. 1.52 Crs and in the return filed he had shown Long Term Capital Gains of Rs. 25,17,768/- on sale of shares at Rs. 26,04,687/- and Short Term Capital Gains of Rs. 7,12,398/- on sale of shares of Rs. 68,39,340/-.

4. A.O. was of the opinion that capital gains declared by the assessee was bogus. In this regard, A.O. also observed that he received information from the office of Chief Commissioner of Income Tax, Mumbai that M/s. Alliance Intermediaries and Network Pvt Ltd., one of the group companies of Mr. Mukesh Choksi, and also other companies of this group have provided accommodation entries to various persons, including the assessee. Though the assessee has furnished purchase bills of shares, cash receipts for payment of share purchases, account copies of M/s. Alliance Intermediaries and Network Pvt Ltd, the A.O. noticed that the Intermediary i.e., M/s. Alliance Intermediaries and Network Pvt Ltd., was proved to have neither affiliated to Mumbai Stock Exchange nor affiliated to National Stock Exchange which clearly indicates that the transactions were never carried out.

5. On an appeal filed by the assessee, Ld. CIT(A) observed that on identical facts, the ITAT Hyderabad Bench in the case of Smt. Sarita Devi vs. ITO and Ms. Nikita Kumar vs. ITO (ITA No.1228 and 1229/Hyd/2016, dated 05.05.2017) allowed a similar contention of the other assesseees, mainly on the ground that neither the statement of Mr. Mukhesh Choksi was provided to the assessee nor the cross-examination was allowed and it was not even placed on record. Considering the similarity of facts and circumstances and binding nature of decision of the ITAT, the action of the A.O. in treating the LTCG and STCG as income from other sources was held to be not warranted.

6. Aggrieved, Revenue is in appeal before the Tribunal.

7. As stated earlier, none appeared for the assessee and the notice could not be served through the Departmental Representative apart from the fact that no material whatsoever could be placed to highlight the factual matrix and to contradict the findings of the Ld. CIT(A). Apparently the Ld. CIT(A) followed the decision of the ITAT Hyderabad on the ground that the facts are identical and unless it is contradicted by the Revenue, the findings and conclusions cannot be questioned at this stage. Under these circumstances, we uphold the order of the Ld. CIT(A) with a liberty to the Revenue to file a suitable application for recalling of the order if the Revenue wishes to place any material on record to contradict the findings of the Ld. CIT(A). We may also state that the view taken herein is limited to the peculiar facts of this case and the Revenue is always at liberty to, in other cases, to challenge the alleged bogus purchases (based on the statement of Mr. Mukhesh Choksi). With these observations, the appeal filed by the Revenue is dismissed.

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated: 29th May, 2018.

OKK, Sr.PS

Copy to

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2.	ITO, Ward-14(2), 6 th Floor, C-Block, R.No. 635, I.T. Towers, A.C. Gurards, Hyderabad.
3.	CIT (A)-4, Hyderabad.
4.	Pr. CIT-4, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKIOTIAIAH, ACCOUNTANT MEMBER

ITA.No.1228/Hyd/2016
Assessment Year 2007-2008

Smt. Sarita Devi Hyderabad. PAN ACZPD9105A (Appellant)	vs.	Income Tax Officer Ward-14(5), I.T. Towers A.C. Guards, Hyderabad. (Respondent)
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ITA.No.1229/Hyd/2016
Assessment Year 2007-2008

Smt. Nitika Kumari Hyderabad. PAN AGFPN3027P (Appellant)	vs.	Income Tax Officer Ward-14(5), I.T. Towers A.C. Guards, Hyderabad. (Respondent)
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For Assessee :	Shri K.C. Devdas
For Revenue :	Shri A. Sitarama Rao

Date of Hearing :	28.03.2017
Date of Pronouncement :	05.05.2017

ORDER

PER B. RAMAKOTIAIAH, A.M.

These two appeals are by the assesseees against the respective orders of the CIT(A)-6, Hyderabad dated 29.07.2016. Even though many issues are contested, mainly the issue pertain to whether the income offered by the assessee has to be assessed under 'capital gains' or under 'other sources'.

2. Briefly stated, assessee herein are related being mother and daughter and have filed their respective returns of income at the relevant point of time admitting incomes, including long term and short term capital gain in the case of Smt. Sarita Devi and short term gain in the case of Smt. Nitika Kumari. These returns have been accepted under section 143(1) of the Act. Subsequently, the A.O. seems to have received certain communication from CCIT, Central, Mumbai that assessee were the beneficiaries of accommodation entries provided by Shri Mukesh Chokshi and the latter had given a sworn statement in this connection whereby had admitted that he had provided accommodation entries. As per the information received, assessee, Smt. Sarita Devi was stated to have received accommodation entries totalling to Rs.2.20 crores in the form of share transactions and Smt. Nitika Kumari an amount of Rs.1.60 crores in the form of share transactions. The A.O. has reopened the assessments under section 147 and issued notices on 25.02.2014 which were served on 04.03.2014. In response, assessee filed letters dated 02.04.2014 requesting the A.O. to treat the returns filed in originally to be treated in response to the notice under section 148. Subsequently, in the scrutiny proceedings assessee herein have objected to the reopening of the assessments as assessee have already declared the incomes and there is no tangible material to reopen the assessments. A.O. however did not agree with the contentions and after issuing various show cause notices finally concluded that the transactions undertaken by the assessee with M/s. Alliance Intermediaries and Net Work P. Ltd., are bogus in nature and accordingly, the entire receipts received by the assessee i.e., sale proceeds to an extent of Rs.2,20,68,890 in the case of Smt. Sarita Devi and Rs. 1.60 crores in the hands of

Ms. Nitika kumari has been brought to tax. In doing so, the A.O. has not provided the statement given by Shri Mukesh Chokshi to the assessee nor informed any communication received from Mumbai. It was the contention of AO that the said company through whom assessee herein have transacted was not registered with BSE or NSE and that the transactions have not been routed through the De-mat account of the respective assessee.

3. Before the CIT(A), it was contended that (1) reopening of assessment is bad in law on the reason that there was no tangible material to come to conclusion that the transactions are bogus; (2) the cross-examination was not provided to the assessee (3) there was no approval from the Joint Commissioner whereas Commissioner seems to have approved the reopening of assessment. (4) that the reasons were not communicated in spite of requesting. The Ld. CIT(A) rejected all the contentions and held that the reopening of the assessment is valid.

4. Coming to the merits of the addition, Ld. CIT(A) examined the detailed contentions of the assessee on the transactions and held that the entire gross receipts cannot be brought to tax and directed the A.O. to tax only the capital gains received. In the case of Smt. Sarita Devi capital gains offered of Rs.31.58 lakhs, which consists of Rs.24.83 lakhs long term capital gains was and Rs.6.74 lakhs being short term capital gains. In the case of Nitika Kumari also short term capital gain of Rs.10,96,487. However, the Ld. CIT(A) directed the A.O. to treat such gains as income from 'other sources' and not as 'capital gains' as the Ld. CIT(A) held that these transactions were not genuine share

transactions and are mere paper entries. In view of the findings and directions of the Ld. CIT(A), assessee are in appeal and raised more or less common grounds. The grounds raised in the case of Smt. Sarita Devi are extracted for the sake of record.

1. *"The order passed by the Hon'ble Commissioner of Income-tax (Appeals)-6, (CIT(A), is unsustainable both on facts and in law.*
2. *The CIT(A) ought to have clearly held that the notice issued U/s.148 is invalid, bad in law and without jurisdiction as it does not meet the statutory conditions and compliance as enjoined in section 147, 148, 149, 151 of the I.T. Act, 1961 and therefore, ought to have quashed the entire reassessment proceedings.*
3. *The Hon'ble CIT(A) failed to note that all the particulars in relation to purchase and sale of shares were filed along with the original return of income and therefore the reopening of assessment on the same set of facts is invalid, bad in law and therefore the entire reassessment proceedings has no legs to stand.*
4. *The Ld. CIT(A) failed to note that the entire details relating to share transactions were filed along with the R.O.I. and that there was no tangible material in the possession of the A.O. to warrant the issue of notice U/s.148 of the I.T. Act, 1961 which is invalid and more so the reassessment proceedings.*
5. *The Hon'ble CIT(A) failed to note that U/s.151 of the I.T. Act, 1961 it is the J.C.I.T. who is to grant the approval for reopening and therefore the notice issued U/s.148 with the approval of the C.I.T. is invalid, bad in law and totally contrary to provisions of the I.T. Act and therefore the entire reassessment proceedings out to have been quashed.*
6. *The Ld. CIT(A) failed to note that there was no intelligible nexus between the reasons recorded and income escaping assessment and therefore ought to have held that the entire reassessment proceedings are invalid.*

7. *The Ld. CIT(A) ought to have clearly held that there was violation of principles of natural justice as copies of statements collected behind the back of the appellant was relied upon without giving a copy of the same and therefore the entire reassessment proceedings are bad in law, invalid and must be quashed.*
8. *Without prejudice to ground No.7, the learned CIT(A) failed to note that Mr. Choshi the witness of the department was not produced for cross examination in spite of specific request and therefore the entire reassessment proceedings has no legs to stand and must be quashed.*
9. *The Hon'ble CIT(A) failed to note that entire transactions in the purchase and sale of shares were genuine and therefore ought to have clearly held that the long term capital gains on sale of shares of Rs.24,83,473 was exempt u/S.10(38) of the I.T. Act and ought to have taxed the surplus of Rs.6,74,356 as short term capital gains as enjoined in section 111A of I.T. Act and erred in holding that the aggregate amount of capital gains at Rs.31,57,829 was taxable under the head "other sources".*
10. *The appellant denies its liability to be assessed to the levy of interest U/s.234A and Interest u/s.234B.*
11. *The appellant craves leave to add, amend, or alter any or all the above grounds of appeal."*

5. Learned Counsel for the Assessee referring to the orders of the authorities and the paper book filed in each case submitted that as far as Smt. Sarita Devi is concerned, she has both long term capital gains as well as short term capital gains and the purchase of shares pertaining to long term capital gains were in fact purchased in A.Y. 2006-07 which were reflected in that year. He pointed out that Ld. A.O. reopened the assessment for A.Y. 2006-07 on similar lines but since there were no sale transactions in that year, without taking any adverse view on the

purchases, accepted the return of income. Since the purchasers are genuinely shown in the earlier year and accepted by the department consequent sales cannot be considered as bogus. With reference to the objection of the A.O. regarding the transactions not entered in De-mat account, it was submitted that these shares were transferred in the De-mat account and the evidence was already furnished.

5.1. As far as the transactions of Smt. Nitika Kumari is concerned, it was submitted that she has only short term capital gain having purchased and sold in a period of 03 days and the shares were in the broker's account not transferred to assessee's De-mat account. It was further submitted that assessee has furnished the necessary purchase invoices, sales invoices, ledger copies, De-mat account certificates issued by the broker to support that the transactions are genuine.

5.2. With reference to the objection of the A.O. that the said broker is not registered in NSE/BSE, it was submitted that he was a sub-broker of a broker registered with them and at the time of entering into transactions, assessee had no connection with Sri Mukesh Choksi and the transactions were entered in normal course. Assessee is not aware about the denial subsequently by the said person, who has not directly dealt with the assessee. Even otherwise it was submitted that the so-called statement of Mr. Chokshi was not provided to the assessee nor the information on the basis of which the assessment was reopened. In the absence of any worthwhile evidence assessee's transactions cannot be considered as bogus. Since the assessee has already declared

capital gain, both short term and long term the same should have been accepted by the Ld. CIT(A).

6. Learned Counsel for the Assessee also referred to the grounds pertaining to reopening of assessment. It was submitted that there was no tangible material to come to conclusion that the transactions are bogus. There is no denial of the fact that assesseees have entered transactions with sub-broker and purchases are accepted particularly pertaining to long term capital gain declared by the assessee Smt Sarita devi in earlier year and the consequent sales were also to be accepted. In fact, it was submitted that there are many mistakes committed by the A.O. in the assessment order not only to amounts involved but also nature of transactions. It was submitted that A.O. had brought to tax an amount of Rs.2,20,68,890 in Smt Sarita devi assessment whereas the assessee's total sales during the year was only Rs.90,75,213. He referred to the triplication of the same transaction of sale thereby the amount has become so much. A.O. without examining the validity of the data brought to tax the entire amount of Rs.2.20 crores whereas after explaining the facts to the Ld. CIT(A), the Ld. CIT(A) accepted that the total sales are only Rs.90,75,213.

7. In the case of Smt. Nitika Kumari even though it was submitted that the total transactions are Rs.1.60 crores the A.O. wrongly brought the amount of Rs.2.20 crores to tax in that case in the body of the order. Cross-examination of Mr. Chokshi was not provided so that the genuineness of the transactions could have been verified. Even though the assessments were reopened on the basis of the so-called information received from the CCIT,

Mumbai as communicated to the assessee in the reasons for reopening, the A.O. subsequently when asked for cross-examination stated that the reopening is not on the basis of the information received but on the basis of information furnished by NSE and the material provided by assessee own-self. Learned Counsel for the Assessee referred to the letter dated 16.03.2015 (page85 in the paper book of Smt. Sarita Devi). It was submitted that assessee was not provided the basis for coming to conclusion that transactions were bogus. Assessments were completed on assumptions and presumptions therefore, reopening of assessments per se is not correct. Since the assessee has offered capital gains which was accepted originally and since there is no contrary information, the Ld. CIT(A) should have directed that the capital gains should have been assessed as such only and not as income from other sources.

8. The Ld. D.R. in reply relied on the statement of Shri Mukesh Chokshi to submit that he was in the habit of providing accommodation entries and this aspect was exhaustively dealt with by Ld. CIT(A). He supported the orders of Ld. CIT(A).

9. Learned Counsel for the Assessee, in reply however submitted that there is no evidence/reliability with reference to the statement of Mr. Mukesh Chokshi and he relied on the Coordinate Bench decision in the case of Paduchuri Jeevan ITA.No.452/Hyd/2015 dated 19.08.2016 wherein the Coordinate Bench has considered that Mr. Chokshi is in the habit of giving such statements periodically every three years and no reliance can be placed on those statements and in that case the transactions are accepted as genuine. Learned Counsel for the Assessee also

relied on the Coordinate Bench decision in the case of Mr. Mukesh Ratilal Marolia 65 SOT 247 (Mum.) wherein also on the basis of statement of Mr. Chokshi the transactions were held to be bogus which were not accepted by the ITAT. Learned Counsel for the Assessee also placed the following case law in support of its contention :

1. M/s. Sai Deepa Rock Drills Hyderabad vs. ITO, Ward-3(1), Hyderabad (ITA.No.459/Hyd/2014 dated 28.08.2014).
2. CIT, Mumbai vs. Mukesh Ratilal Marolia SLP (Civil) No.20146/2012 dated 27.01.2014.

9.1. There are other cases also running from sl. No 37 to 70 of the paper book which do not require separate adjudication as the issues are more or less similar to the above cases.

10. We have considered the rival contentions and carefully perused the evidence placed on record and orders of the authorities. It was admitted by the order of AO and CIT(A) that some communication was received from CCIT, Mumbai that Mr. Chokshi has given a statement that he has provided accommodation entries. How those statements are relevant to the assessee or whether any transactions of the assesseees were specifically stated is not forthcoming either from the orders of the authorities or from the documents furnished before us. In fact, neither the statement of Mr. Chokshi was provided to the assesseees nor the cross-examination was allowed. The same was not even on record. Even though Ld. CIT(A) gave a finding that the assessment was reopened on the basis of the communication of the CCIT, whether there was any statement enclosed or not could

not be verified. Surprisingly, the A.O. himself informed assessee that reopening was not based on the statement of Mr. Chokshi. The communication given to assessee viz., Smt. Sarita Devi vide letter dated 16.03.2015 placed in paper book at page 85 is extracted hereunder for ready reference :

*“The scrutiny assessment proceedings for the Asst. year 2007-08 in your case are pending with the undersigned. As requested by you, letter from NSE stating that M/s. Alliance Intermediaries & Network Pvt. Ltd. is not a broker/sub-broker with them is hereby provided. **You have requested this office to summon Mr. Mukesh Choksi for cross-verification. But, the assessment in your case is made basing on the information furnished by NSE and the material provided by yourself. Hence, there is no necessity of producing Mr. Mukesh Choksi for your cross verification.**” (emphasis supplied)*

10.1 This indicates that Revenue is not having any information and even though the assessment is reopened on that basis as communicated in the reasons for reopening, A.O. simply denies the same in order to avoid cross-examination to be provided to the assessee. Under these circumstances, since neither the communication from CCIT, Mumbai nor the so-called statement of Mr. Mukesh Chokshi was provided either for verification or for cross-examination, it cannot be stated that A.O. has any ‘tangible information’ so as to reopen the assessments under section 147. The returns were already filed admitting incomes under capital gains. These were accepted under section 143(1). Assesseees have furnished the necessary information of purchase bills, sale bills, ledger accounts, De-mat account copies in support of transactions. Since there is no other information so as to come to conclusion that the transactions entered by the assessee are bogus, these are to be accepted as transactions entered in normal

course. The enquiry from the NSE that M/s. Alliance Intermediaries and Net Work P. Ltd., is not a broker or sub-broker does not establish that the transactions with that company is bogus. Moreover, as far as Smt. Sarita Devi is concerned, the purchase transactions mostly pertain to long term capital gains and have been entered in earlier year and have been recorded as on 31.03.2006. A.O. even though has reopened the assessment in that year also, much before this assessment was reopened, the said proceedings were dropped without taking any adverse view. Consequently, the purchases shown in that year in the balance sheet has to be accepted as genuine and subsequent sale thereon cannot be considered as bogus, on presumptions and assumptions. In view of that we have no hesitation in holding that the capital gains declared by the assessee should be assessed as capital gains only.

11. As seen from the orders, the A.O. has treated the entire sale consideration received as bogus and brought to tax the entire amount as stated to have communicated to him. The Ld. CIT(A) examined this aspect and gave finding that the transactions in the case of Smt. Sarita Devi are not to the extent of Rs.2.20 crores and restricted the sale amount to the extent of Rs.90.75 lakhs correctly. She also gave correct finding that the entire gross receipts cannot be brought to tax and only the gain can be taxed. Similarly in the case of Ms. Nitika also, the correct amount was determined and amount to be taxed was the short term capital gain received by assessee. To that extent findings of Ld. CIT(A) are correct. It is to be noted that the Revenue has not come in appeal on that aspect. Therefore, only issue to be considered is with the direction of the CIT(A) to tax the said amounts as 'income from

other sources'. For the reasons stated above, we are not in agreement with the action of the A.O. either for reopening of assessment or for treating the transactions as bogus, since the very basis for reopening the assessment was not provided to the assessee nor an opportunity was given to cross-examine the so-called Mr. Chokshi. There is no basis for treating the said transactions as not genuine. Considering the documents placed on record and the case law relied, we have no hesitation in directing the A.O. to accept the long term capital gains and short term capital gains declared by Smt. Sarita Devi and short term capital gains declared by Ms. Nitika Kumari under the head "Capital Gains" only. The grounds are accordingly allowed.

12. In the result, appeals of the assesseees are allowed.

Order pronounced in the open Court on 05.05.2017.

Sd/-
(SMT. P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 05th May, 2017.

VBP/-

Copy to

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

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3.	The Income Tax Officer, Ward-14(5), I.T. Towers, A.C. Guards, Hyderabad.
4.	CIT(A)-6, Hyderabad.
5.	Pr. CIT-6, Hyderabad.
6.	D.R. ITAT "A" Bench, Hyderabad.
7.	Guard File