

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

**ITA No. 410/Del/2018**  
**Assessment Year: 2014-15**

MOHIT HORA (HUF),  
K-90, SOUTH CITY-1,  
GURGAON

**(PAN: AAMHM0632A)**  
**(APPELLANT)**

VS. ITO, WARD 2(5),  
GURGAON

**(RESPONDENT)**

Assessee by : Sh. K.V.S.R. Krishnan, Adv

Revenue by : Sh. V.K. Jiwani, SR. DR

**ORDER**

The Assessee has filed the Appeal against the Order dated 05.12.2017 of the Ld. CIT(A)-1, Gurgaon pertaining to assessment year 2014-15 and raised the following grounds:-

1. The Ld. CIT(A) as well as AO has erred in law and on facts in not allowing the claim of the appellant in respect of long term capital gains on sale of listed equity shares through recognized Stock Exchange after payment of STT u/s 10(38) of the Income Tax Act, 1961.

2. The appellant contends that all documentary evidence in support of sale and purchase of shares has been submitted. The entire transaction is through

Banking channel. The rejection by the AO as well as CIT(A) as bogus long term capital gain is without any basis on conjectures and surmises. The claim of long term capital gain should be allowed.

3. The CIT(A) as well as AO has placed reliance on statement recorded by Investigation Wing, Kolkatta which has no nexus to the appellant's case.

4. The CIT(A) has erred in law and on facts in confirming the order of the AO upholding the addition to Rs.33,63,365/- u/s 68 as unexplained credit instead of long term capital gain as claimed by the appellant. The source identity and genuineness of the transaction having been established by documentary evidence, there is no case for making addition u/s 68 which should be deleted.

5. The Id. CIT(A) has erred in enhancing the assessed income by Rs.1,40,686/- being the cost allowed by the AO. The enhancement is legally not permissible and the CIT(A) cannot improve the case of the AO.

6. The above grounds are independent and without prejudice to one and another.

7. The appellant may be allowed to add, amend, alter, forgo any of the grounds at the time of hearing.

2. The brief facts of the case are that assessee filed return of income on 29.7.2014 declaring income of Rs. 2,62,000/- after claiming the income from long term capital gain (LTCG) of Rs. 33,63,365/- on sale of listed equity shares of Unno Industries Ltd. which were subjected to STT as exempt income under section 10(38) of the Income Tax Act, 1961 (hereinafter referred as the Act). AO observed that LTCG amounting to Rs. 33,63,365/- was unaccounted income for the assessee and added the same to the total income of the assessee u/s. 68 of the Act. The AO further held that the tax on these additions would be charged as per section 115BBE of the Act and exemption claimed u/s. 10(38) of the Act was denied. AO assessed the income of the assessee at Rs. 36,25,365/- u/s. 143(3) of the Act vide order dated 19.12.2016.

3. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 05.12.2017 has dismissed the appeal of the Assessee by enhancing the addition in dispute to Rs. 34,78,051/-.

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

5. At the time of hearing, Ld. Counsel of the assessee has stated that revenue authorities erred in law and on facts in not allowing the claim of the assessee in respect of Long Term Capital Gains on sale of listed equity shares through recognized Stock Exchange after payment of STT u/s 10(38) of the Income Tax Act, 1961. However,

the assessee has submitted all documentary evidences in support of sale and purchase of shares. It was further stated that the entire transaction is through Banking channel and the rejection by the AO as well as CIT(A) as bogus long term capital gain is without any basis on conjectures and surmises, hence, the claim of long term capital gain should be allowed. He further stated that lower authorities has placed reliance on statement recorded by Investigation Wing, Kolkatta which has no nexus to the assessee's case. 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. It was further contended that Ld. CIT(A) also has erred in enhancing the assessed income by Rs.1,40,686/- being the cost allowed by the AO. The enhancement is legally not permissible and the CIT(A) cannot improve the case of the AO. 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.

6. 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 Rs. 34,78,051/- as 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 enhanced the addition to Rs. 34,78,051/- which does not need any interference and needs to be upheld.

7. 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 the assessee's counsel on the issue in dispute. I find that the assessment in this case was completed u/s. 143(3) of the Act vide order dated 19.12.2016 determining an income of Rs. 36,25,365/-. The AO has alleged that the assessee has claimed bogus long term capital gain of Rs. 33,63,365/- and has added the same treating it as unexplained cash credit found in the books of the assessee u/s. 68 of the Ac. I further note that AO has placed reliance on the information provided by the Investigation Wing and the statement recorded on oath of various persons. I further find that in support of claim of LTCG, the assessee has provided all the documents relating to sale and purchase which have taken place only through banking channel and are supported by contract note from HDFC Securities and the shares of Unno

Industries Ltd. being listed shares on stock-exchange were filed by the assessee before the AO. I note that the shares of assessee were sold through HDFC Securities Ltd. at Bombay Stock Exchange and assessee received sale consideration from HDFC Securities Ltd. after payment of STT and brokerage. However, the AO has not brought on record any material to support its finding that there has been collusion/ connivance between the broker and the assessee for the introduction of assessee's own unaccounted money. In view of the above, I am of the considered view that the LTCG claimed by the assessee is resulting from purchases made directly from the seller through a/c payee cheque based on actual delivery of shares, the transaction for sale is through registered broker on the floor of the stock exchange. Consequently, the LTCG of Rs. 33,63,368/- is fully supported by evidence, which in my considered opinion needs to be allowed. Keeping in view of the facts and circumstances of the case as explained above, the assessee has justified the LTCG as a genuine and bonafide transaction the cost of Rs. 1,14,686/- shall also be allowed as a deduction from the sale consideration. Hence, the enhanced addition in dispute amounting to Rs. 34,78,051/- is hereby deleted. My aforesaid view is fortified by the following decision:-

**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.”*

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

Order pronounced on 12-03-2018.

**Sd/-**  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

**Dated : 12-03-2018**

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.