

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'SMC' : NEW DELHI)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**ITA No. 6880/Del/2017
Assessment Year: 2014-15**

CHANDER PRAKASH,
EA-137, MAYA ENCLAVE,
HARI NAGAR,
NEW DELHI - 110 064
(PAN: AAFPP8066N)
(APPELLANT)

VS. ITO, WARD-49(4),
NEW DELHI

(RESPONDENT)

Assessee by : Sh. Ved Jain, Adv. Ms Jyoti Sharma &
Ms. Devina Sharma, Advocates
Revenue by : Sh. V.K. Jiwani, SR. DR

ORDER

The Assessee has filed the Appeal against the Order dated 27.9.2017 of the Ld. CIT(A)-17, New Delhi pertaining to assessment year 2014-15 and raised the following grounds:-

1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.31,10,915/- made by AO holding the sale proceeds of the shares, to be not genuine.

3.(i) That the addition has been confirmed despite the same having been made grossly indulging in conjecture and surmises without there being any direct adverse material against the assessee, based only on suspicion.

(ii) That the addition has been confirmed despite the assessee bringing on record all evidences and material to prove the genuineness of the transaction.

(iii) That the CIT(A) has erred in confirming the addition despite the transaction having been done through proper banking channels and as per the rules and regulations of the Stock Exchange.

(iv) That the addition was made misinterpreting the financials of the companies whose shares were sold by the assessee.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the notice u/s 133(6) having been duly served, the onus was on the A.O. to take the investigation to a logical end.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the AO taking adverse

inference, misinterpreting the statement of assessee recorded on oath.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above addition despite the assessee declaring the total consideration on sale of shares as his income exempt under section 10(38) of the Act, the addition amounts to double taxation of the same income.

7. That the addition was made grossly indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption

8. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition which was made on the basis of material collected at the back of the assessee without giving his an opportunity to rebut the same is violation of the principle of natural justice.

9. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.1,55,546/- made by AO on account of commission @ 5% without there being any basis for the same.

10. That the appellant craves leave to add, amend or alter any of the grounds of appeal.
2. The brief facts of the case are that assessee filed his return of income for the assessment year 2014-15 on 03.11.2014 declaring income at Rs. 6,64,692/- . 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 18.5.2016 and relevant details and documents were called for. Further various notice(s) u/s. 142(1) of the Act alongwith detailed questionnaire were issued and served for various relevant details and documents. In response to the said notices, the AR of the assessee attended the proceedings. The assessee is an individual and during the relevant year, assessee has filed return declaring income under the head of Business Income being proprietor of M/s NK Hardware Stores in which income has been declared u/s. 44AD of the Income Tax Act, 1961, Long Term Capital Gains being exempt u/s. 10(38), Short Term Capital Gains on sale of shares, interest income and bank interest income as income from other sources. The issue involved in this case is addition of Rs. 31,10,915/- made by the AO holding that the long term capital gain earned by the assessee on its investments in the shares of HPC Biosciences Ltd. 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 Rs.39,51,150/- u/s. 143(3) of the Act vide order dated 28.12.2016. In appeal, Ld. CIT(A) has confirmed the action of the AO holding that the transaction is against human probability. In this regard, the CIT(A) has stated that the rise in value of the shares is abnormal over a period of 13 to 14 months and realization of such capital gain without any past experience in trading of shares raises a very strong suspicion so as to question the authenticity of the transaction and reject the paper trail created by the assessee.

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 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 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. 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. 31,10,915/- by holding that sale proceeds of the shares, to be not genuine and Rs. 1,55,546/- on account of commission @ 5% which does not need any interference and need to be upheld.

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 the assessee's counsel on the issue in dispute relating to addition made on account of LTCG by treating the same as income from other sources. In this case the assessee has shown LTCG from sale of 6000 shares of M/s HPC Biosciences Limited and the same has been claimed as exempt u/s. 10(38) of the Act. The AO rejected all the claims made by the assessee and not allowed the claim of the assessee in respect of Long Term Capital Gains on sale of listed equity shares through recognized Stock Exchange after payment 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. However, the entire transaction is through Banking channel and the rejection by the AO as well as CIT(A) as bogus long term capital gain has not basis, hence, the claim of long term capital gain should be allowed. I further note that lower authorities relied upon the statement recorded by Investigation Wing, Kolkatta which has no nexus to the assessee's case. It is also noted that lower authorities made the addition 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. Therefore, the issue in dispute is squarely covered by the

various decisions of the ITAT and the Hon'ble High Courts including the recent following 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.

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*

assessees' 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 of an amount of Rs. 31,10,915/- made by the AO holding the sale proceeds of the share, to be not genuine as well as addition of Rs. 1,55,546/- made by the AO on account of commission @5% without ehre being any basis are hereby deleted.

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.**