

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-C”, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.1584/Bang/2019 : Asst.Year 2015-2016

Snehlatha Agarwal H-803, ETA Garden Apartments Opp : Binny Mills, Magadi Road Bangalore – 560 023. PAN : AAJPA5577B.	v.	The Income Tax Officer Ward 3(2)(1) Bengaluru.
(Appellant)		(Respondent)

ITA No.1585/Bang/2019 : Asst.Year 2015-2016

Santosh Devi Agarwal H-803, ETA Garden Apartments Opp : Binny Mills, Magadi Road Bangalore – 560 023. PAN : ABIPA0545P.	v.	The Income Tax Officer Ward 3(2)(1) Bengaluru.
(Appellant)		(Respondent)

ITA No.1586/Bang/2019 : Asst.Year 2015-2016

Anil Kumar Agarwal (HUF) H-803, ETA Garden Apartments Opp : Binny Mills, Magadi Road Bangalore – 560 023. PAN : AAFHA6615J.	v.	The Income Tax Officer Ward 3(2)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : --- None ---
Respondent by : Sri.Ganesh R.Ghale,
Standing Counsel for Department

Date of Hearing : 17.11.2020	Date of Pronouncement : 18.11.2020
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ORDER

These appeals at the instance of various assessee's are directed against three orders of the CIT(A), all dated 15.05.2019. The relevant assessment year is 2015-2016. Common issue is raised in these appeals, hence they were heard together and are being disposed of by this consolidated order.

2. The solitary issue that is raised in these appeals is whether the CIT(A) has erred in confirming the Assessing Officer's order, wherein the consideration received for sale of shares was treated as bogus transaction and addition was made u/s 68 of the I.T.Act, by rejecting the claim of deduction u/s 10(38) of the I.T.Act.

3. Facts are identical in these cases, except for variance in figures, hence, the facts pertaining to ITA No.1584/Bang/2019 are narrated and the decision rendered therein would apply *mutatis mutandis* to the other appeals also.

4. The brief facts of the case are as follow:

The assessee, an individual, had filed return of income on 29.09.2015 declaring total income of Rs.7,16,950. In the return of Income, the assessee had declared Long Term Capital Gains (LTCG) of Rs.19,99,260 and claimed the same as exempt u/s 10(38) of the I.T.Act. During the course of assessment proceedings, the A.O. noted, the assessee's declaration of LTCG from sale of shares of a company named Kailash Auto Finance Limited (KAFL) and claim of exemption u/s 10(38) of the I.T.Act. The assessee had purchased 50,000 shares of Panchshul Marketing Limited (PML) in physical form at an average price of Rs.2 per share. This company later on got merged with KAFL and the assessee got 50,000 shares of KAFL. The assessee sold 50,000 shares of KAFL in May 2014 at an average price of Rs.41.98 per share. The Assessing Officer carried out investigation by examining BSE data, financials of

KAFI, Investigation Wing report and the findings of the SEBI. The A.O. held that KAFI was one of the companies which were investigated by the Directorate of Investigation, Kolkata in relation to bogus LTCG and Short Term Capital Losses (STCL) entries being provided to various persons by accommodation entry operators. The A.O. discussed in detail the modus operandi of providing accommodation entry by the entry operators as well as the findings of the Investigation Wing in relation to KAFI scrip price rigging. The Assessing Officer concluded that the assessee had entered into engineered transaction to generate artificial long term capital gains. Accordingly, the A.O. held that the sale consideration of Rs.20,99,260 (the entire sale consideration) was to be treated as unexplained credit u/s 68 of the I.T.Act. Therefore, the assessee's claim of exemption u/s 10(38) of the I.T.Act was rejected. Further, the A.O. held that the unexplained cash credit of the assessee amounting to Rs.20,99,260 is to be brought to tax at the rate of 30% as per section 68 r.w.s. 115BBE of the I.T.Act.

5. Aggrieved by the order of the assessment by denying the benefit of exemption u/s 10(38) of the I.T.Act and making an addition u/s 68 of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) rejected the appeal of the assessee and confirmed the view taken by the Assessing Officer.

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal, raising the following grounds:-

1. The Learned Income Tax Officer, Ward - 3(2)(1), Bangalore (hereinafter referred to as "ITO"), and the Hon'ble CIT(A) - 3 ["AO" and "CIT(A)" collectively referred to as "lower authorities"] have erred in passing the Orders:

(a) Without considering all the submissions and/or without appreciating properly the facts and circumstances of the case and the law applicable.

Grounds relating to Long Term Capital Gains - General

1. The lower authorities have erred in:

(a) Considering Rs. 20,99,260/- to be an unexplained transaction and taxable under section 68 of the Income-tax Act, 1961

(b) Treating the Long-term capital gain from sale of shares as a bogus transaction

(c) Rejecting the application of Section 10(38) of Income Tax Act, 1961

(d) Passing the order without demonstrating that the Appellant did not have motive of tax evasion.

Grounds relating to Long Term Capital Gains

(a) The lower authorities have erred in claiming Rs. 20,99,260/- as an unexplained transaction under Section 68 of Income Tax Act, 1961 in respect of sale of long - term shares of a listed entity. There has been no unexplained credit and the explanation with respect to the credited amount has been provided, thus making the addition u/s 68 completely erroneous and liable to be deleted.

(b) The lower authorities have also erred in not granting the exemption from transfer of Long-Term Capital Gains under the provisions of Section 10(38) of the Income Tax Act, 1961. The appellant had complied with all the pre-requisite conditions prescribed u/s 10(38) of the I.T. Act, 1961, thereby making the "non-granting" erroneous.

(c) The lower authorities have not considered the documents and evidences placed, and the various judgments of the Apex Court and High Courts which explained that just because the company is bogus or the recognized stock broker has been prohibited from trading further, does not hold the fact that the

transaction made with relation to sale of long term shares of such company, are bogus.

(d) The CIT(A) erred in upholding the action of the Assessing Officer in making the impugned addition and framing of the assessment order in violation and utter disregard to the principles of natural justice, as the Assessing Officer has not given an opportunity to the appellant to cross examine the persons whose statement the Assessing Officer has relied upon.

(e) The lower authorities have erred in including the interest and it is liable to be deleted.

(f) The lower authorities have erred in initiating penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961.

Appellant craves leave to add, alter, vary, omit, substitute or amend the above-mentioned grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Income Tax Appellate Tribunal to decide the appeal according to the law.

Appellant prays accordingly.”

7. None was present on behalf of the assessee. The learned Standing Counsel present on behalf of the Department submitted that in similar kind of cases, the Tribunal has restored the matter to the A.O. for *de novo* consideration. The learned Standing Counsel placed on record the Tribunal orders, wherein identical facts were considered. The details of the Tribunal's order are as follows:–

(i) Shri Manoj Kumar Sipani & Ors. v. ITO [ITA No.1316/Bang/2019 & Ors – order dated 03.09.2020]

(ii) Shri Kirti K.Bhansali v. ITO [ITA No.105/Bang/2019 – order dated 24.05.2019]

8. I have heard the learned Standing Counsel and perused the material on record. The case was posted on several occasion, however, there was no representation on behalf of the

assessee nor was there any letter of adjournment filed. Therefore, I proceed to dispose of this appeal on merits. I find that similar issue was considered by this Tribunal in the case of Shri. Kirti K.Bhansali v. ITO for assessment year 2008-2009 in ITA No.105/Bang/2019. Vide order dated 24.05.2019, the Tribunal held as under:-

“4.3.1 I have considered the rival submissions and first of all, I reproduce Para No.8 of the judgment of Hon’ble Karnataka High Court rendered in the case of M/s. Chandra Devi Kothari (Supra) and this is as under:

“8. In the light of the facts and circumstances as adverted to above and as the petitioner has been denied an opportunity of fair hearing by providing copy of the statement and related details regarding the alleged share amount, I am of the view that the matter requires to be re-considered by the respondent by providing fair and reasonable opportunity of hearing to the petitioner and by furnishing the details / copy of the statement based on which the impugned assessment order has been passed.”

4.3.2 From the above Para from the judgment of Hon’ble Karnataka High Court, it is seen that matter was restored back to the file of the AO for fresh decision after providing copy of the statement of Shri Mukesh Choksi and other related details. As per the facts noted by the High Court in the earlier paras of judgment (supra) and as per the facts of the case on hand, there appears to be no difference in facts and therefore by respectfully following this judgment in the case of Chandra Devi Kothari (Supra), I set aside the impugned orders of learned CIT(A) for Assessment Year 2008-09 and restore the matters to the file of the AO for fresh decision with the same directions as were issued by the Hon’ble Karnataka High Court in the case as per Para No.8 of the judgment reproduced above. In view of this decision, no adjudication is called for at this stage regarding the merits of the addition.”

8.1 In view of the above order of the Tribunal, I remit the issue to the file of the Assessing Officer to decide the issue afresh with similar directions as held by the Tribunal in the case of Shri.Kirti K.Bhansali (supra). It is made clear that I have not commented upon any of grounds of appeal on merits of the issue.

8.2 In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

9. Since the facts pertaining to other assesseees are identical, the decision rendered by me in the case of Snehlatha Agarwal (ITA No.1584/Bang/2019) will hold good for the other assesseees as well. It is ordered accordingly.

10. In the result, the appeal filed by the assesseees are partly allowed for statistical purposes.

Order pronounced on this 18th day of November, 2020.

**Sd/-
(George George K)
JUDICIAL MEMBER**

Bangalore; Dated : 18th November, 2020.
Devadas G*

Copy to :

1. The Appellants.
2. The Respondent.
3. The CIT(A)-3, Bengaluru.
4. The Pr.CIT-3, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore