

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI 'SMC' BENCH, NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3809/DEL/2018
[Assessment Year: 2015-16]

ANIP RASTOGI,
252, SHIVAJI ROAD,
MEERUT
(PAN: ABVPR2829J)
[Appellant]

Vs. ITO, WARD 1(1),
MEERUT

[RESPONDENT]

ITA No. 3810/DEL/2018
[Assessment Year: 2015-16]

ANJU RASTOGI,
252, SHIVAJI ROAD,
MEERUT
(PAN: ABVPR2828K)
[Appellant]

Vs. ITO, WARD 1(1),
MEERUT

[RESPONDENT]

Assessee by: Sh. Rohit Aggarwal, CA
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

These appeals by the different assessees are preferred against the respective orders of the Ld. Commissioner of Income Tax [Appeals]-Meerut pertaining to assessment year 2015-16. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this

common order for the sake of convenience. The grounds raised in ITA No. 3809/Del/2018 read as under:-

1. That the Id. CIT(A) has erred in law as well as on the facts of the case by confirming the addition of Rs.22,28,172/-, of the amount of LTCG earned by the appellant on STT paid sales of listed equity shares of M/s CCL International Ltd., ignoring the evidences, documents and case laws relied upon by the appellant, for various reasons including the followings:-

a) That the conclusions drawn by the authorities below for making/confirming the aforesaid addition are unjust, unlawful and based upon incorrect appreciations of the facts on record and the submissions of the appellant have not been considered in right perspective.

b) That nothing has been brought on record to show any linking between the alleged entry operators whose statements have been relied upon and the appellant. The evidences and arguments used by the authorities below are generic in nature and can in no sense be related to the appellant.

c) That the authorities below have made & confirmed the impugned addition without any basis and without

brining on record any corroborative material found during the course of assessment proceedings and also by completely ignoring the well established law that no addition can be made solely on the basis of statements recorded on oath during the course of survey conducted by the Investigation Wing of Income Tax, Kolkata and departmentally communicated to the A.O., without making his own independent enquiry and efforts. Thus the additions made solely on the basis of the statements recorded behind the back of the appellant deserve to be deleted.

d) That the statement of Sh. Jai Kishan Poddar, as relied upon the Id. A.O. cannot be taken cognizance with, as the same has been recorded at the back of the appellant and no opportunity of cross examination was provided. Further, the statement was only general statement and no where did the name of the appellant appear therein.

2. The appellant respectfully craves leave to add, alter, omit or substitute any or all of the above grounds of appeal.

2. The grounds raised in ITA No. 3810/Del/2018 read as under:-

1. That the Id. CIT(A) has erred in law as well as on the facts of the case by confirming the addition of Rs.14,36,364/-, of the amount of LTCG earned by the appellant on STT paid sales of listed equity shares of M/s CCL International Ltd., ignoring the evidences, documents and case laws relied upon by the appellant, for various reasons including the followings:-
 - a) That the conclusions drawn by the authorities below for making/confirming the aforesaid addition are unjust, unlawful and based upon incorrect appreciations of the facts on record and the submissions of the appellant have not been considered in right perspective.
 - b) That nothing has been brought on record to show any linking between the alleged entry operators whose statements have been relied upon and the appellant. The evidences and arguments used by the authorities below are generic in nature and can in no sense be related to the appellant.

c) That the authorities below have made & confirmed the impugned addition without any basis and without bringing on record any corroborative material found during the course of assessment proceedings and also by completely ignoring the well established law that no addition can be made solely on the basis of statements recorded on oath during the course of survey conducted by the Investigation Wing of Income Tax, Kolkata and departmentally communicated to the A.O., without making his own independent enquiry and efforts. Thus the additions made solely on the basis of the statements recorded behind the back of the appellant deserve to be deleted.

d) That the statement of Sh. Jai Kishan Poddar, as relied upon the Id. A.O. cannot be taken cognizance with, as the same has been recorded at the back of the appellant and no opportunity of cross examination was provided. Further, the statement was only

general statement and no where did the name of the appellant appear therein.

2. The appellant respectfully craves leave to add, alter, omit or substitute any or all of the above grounds of appeal.

3. I will first take up the appeal in the case of Anip Rastogi, being ITA No. 3809/Del/2018 (AY 2015-16) and my finding given therein will apply *mutatis mutandis* in other appeal, since similar facts and findings are permeating in other appeal also. The assessee is aggrieved by addition of Rs. 22,28,172/- made u/s. 68 of the I.T. Act, 1961 on account of credits of sale of penny stock.

4. Brief facts of the case are that assessee is an individual earning rental income, income from medical profession and interest on deposits with banks, during the relevant year. The assessee filed his ITR for the relevant year on 22.9.2015, declaring a total income of Rs. 9,39,250/-. The return filed him was selected for scrutiny assessment which were completed vide order dated 18.12.2017, passed u/s. 143(3) of the Income Tax Act, 1961 (in short "Act"), making an addition of Rs. 22,28,172/-, holding that the exempt long term capital gain earned by the assessee on sale of shares of M/s CCL International Ltd., was not genuine and the same was bogus. Against the assessment order, the Assessee appealed before the Ld.

CIT(A) who vide his impugned order dated 20.4.2018 has dismissed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), assessee appealed before the Tribunal.

5. During the hearing, Ld. counsel for the assessee has submitted that the addition in dispute was made and confirmed purely on presumptions, conjecture and surmises and therefore, deserve to be deleted. He further submitted that the authorities below have failed in disallowing deduction claimed by the assessee u/s. 10(38) of the Act for Rs. 22,28,172/-. It was further submitted that lower authorities failed to appreciate that the amount of LTCG earned by the assessee on STT paid sales of listed equity shares of M/s CCL International Ltd., ignoring the evidences, documents and case laws relied upon by the assessee. It was further submitted that the nothing has been brought on record to show any linking between the alleged entry operators whose statements have been relied upon and the assessee. The evidences and arguments used by the authorities below are generic in nature and can in no sense be related to the assessee. He further submitted that the addition made was without any basis and without bringing on record any corroborative material found during the course of assessment proceedings and also by completely ignoring the well established law that no addition can be made solely on the basis of statements

recorded on oath during the course of survey conducted by the Investigation Wing of Income Tax, Kolkata and departmentally communicated to the A.O., without making his own independent enquiry and efforts. Hence, he requested to cancel the orders of the authorities below and allow the appeal of the assessee. In support of his contention, he filed a Paper Book containing pages 1 to 55 in which he has attached the copy of written submissions dated 20.4.2018 as filed before the Ld. CIT(A), Meerut; photocopy of sale note and confirmation from M/s Sai Securities for purchase of shares of M/s CCL International Ltd. as filed before the Ld. CIT(A), Meerut; photocopy of the relevant bank statement of the assessee showing payment for purchase of shares as filed before the CIT(A); photocopy of statement of D-MAT account of the assessee, as maintained by him with Mansukh Securities and Finance Ltd. as filed before the CIT(A), Meerut; photocopy of the sale note of the shares sold as filed before the CIT(A), Meerut; Photocopy of the stock trading details as downloaded from website of BSE India as filed before the CIT(A); Financial details of M/s CCL International Ltd. for FY's 2012-13 to 16017 as downloaded from the website of money control.com as filed before the Ld. CIT(A); photocopy of submissions dated 4.10.2017 & 28.11.2017 as filed before the AO during the assessment proceedings; copy of judgment of Hon'ble

Delhi High Court in the case of PCIT & Ors. vs. Best Infrastructure India Pvt. Ltd. (2017) 397 ITR 0082; copy of Hon'ble Delhi High Court in the case of CIT vs. Ashwini Gupta (2010) 322 ITR 0396; judgment of Hon'ble High Court of Madhya Pradesh in the case of Prakash Chand Nahata vs. CIT (2008) 301 ITR 134 and copy of judgment of Hon'ble High Court of Bombay in the case of CIT vs. M/s Ashish International (2011) ITA no. 4299 of 2009; ITAT, Delhi 'SMC' Bench decision dated 25.9.2018 in ITA Nos. 20121/Del/2018 to 2028/Del/2018 in the case of Shoubit Goel (HUF) & Ors. vs. ITO; ITAT, Delhi SMC decision dated 24.10.2018 in the case of Amit Rastogi (HUF) & Ors. vs. ITO in ITA No. 2128, 2129, 2131 & 2132/Del/2018 (AY 2015-16) and SMC, ITAT, Delhi Decision dated 5.11.2018 in the case of Arun Kumar & Ors. vs. ACIT in ITA No. 457, 2825 & 2826/Del/2018).

6. On the other hand, Ld. DR relied upon the orders of the authorities below. He further stated that assessee has not substantiated his claim before the revenue authorities. He stated that assessee hasd generated bogus entries of long term capital gains on sale of penny stocks and claimed the same to be exempted under section 10(38) of the Act. In this case the Investigation Wing at Kolkata had carried out country wise investigation to unearth the organized racket of generating bogus entries of long term capital

gains which is exempt from tax. It was further submitted that the assessee had purchased 5000 equity shares of M/s CCL International Ltd. for Rs. 2,00,000/- on 15.4.2013 in off market transaction @ Rs. 40.00 per share from Sai Securities. These shares were sold by the assessee through stock broker M/s Mansukh Securities and Finance Ltd. ranging from Rs. 492.50 to 481.20 per share. He further submitted that the payment for purchase of shares has been debited from assessee account through cheque for a sum of Rs. 2,00,000/- was debited whereas the sale note was dated 15.4.2013, which proves that the transaction was an afterthought and the buyer has back dated the transaction. The shares were purchased through off market deals of unknown company. In view of the above assessee failed to prove the genuineness of the alleged long term capital gain claimed to have been earned by the assessee. He further stated that the case laws relied upon by the AO as well as Ld. CIT(A) may be read as his arguments including the decision of the Hon'ble Supreme Court of India in the case of Sumati Dayal vs. CIT and in the case of Mc Dowell and Company Limited, 154 ITR 148.

7. I have heard both the parties and perused the records especially the impugned order. I note that the assessee has shown Long Term Capital Gain amounting to Rs. 22,28,172/- earned during

the FY 2014-15 and exempt u/s. 10(38) of the I.T. Act, 1961. The assessee was asked to explain the source of aforesaid Long Term Capital Gain during the course of scrutiny proceedings. The explanation offered that it is sale proceeds of shares are found to be unsatisfactory. The explanation of the assessee is general in nature that as the transaction is through Stock Exchange and the payment is by cheque, the transactions should be treated as genuine. Further, regarding the statement of Sh. Jai Kishan Poddar the assessee has only stated that in the statement there is no specific link with the claim of exemption in respect of Long Term Capital Gain of Rs. 22,78,172/- u/s. 10(38) by him. He has not stated a thing with respect to the statement of Sh. Jai Kishan Poddar in which he has accepted that facilitation of accommodation entries of long term capital gain / long term capital loss through his share banking firm has been done to few beneficiaries with the help of different accommodation entry operators, promoters of the scripts of various penny stocks other brokers etc. Sh. Jai Kishan Poddar also gave details of different bogus scripts/ penny stocks which have been used for providing the accommodation entries of LTCG and LTCL to different beneficiaries using his brokerage company Consortium Capital Pvt. Ltd. and the name of CCL International Limited having scrip name CCL Inter appears in the list whose

shares were sold by the assessee and exemption on LTCG amounting to Rs. 22,28,172/- claimed u/s. 10(38) of the Act. After perusing the records, I find that in the instant case the investment in shares made by the assessee reveals that he has not been dealing in shares on a regular basis and the entries of LTCG have also been taken by other members of the assessee company and the purchase of these shares were claimed to be through off market deals and not through Stock Exchange. The financials of penny stock company M/s CCL International Ltd. and movement of its price are abrupt, unrealistic and based upon any realistic parameters. From the perusal of financial statements of the aforesaid company M/s CCL International Ltd. from the Ministry of Corporate Affairs website (MCA) examining the information available in the public domain from where it was observed that there is no extraordinary increase in the profits of the company to justify the increase in value of the shares. I further note that Investigation Wing had recorded the statement of Sh. Jai Kishan Poddar who is one of the Director of M/s Consortium Capital Pvt. Ltd. which is one of the entities utilised for providing entry of bogus long term capital gain of M/s CCL International Ltd. who had admitted that he was involved in scam of providing bogus long term capital gains through shares of M/s CCL International Ltd. had also admitted that they were also

involved in trading of these Jamakharchi Companies through which manipulative transactions in securities to either artificially raise or lower the market rate of the shares are being done. I also note that the independent findings of the AO, which are corroborated by the information given by the Investigation Wing, the assessee has failed to substantiate the genuineness of alleged share transactions in respect of long term capital gain u/s. 10(38) of the Act. In view of above discussions, the landmark decision of the Hon'ble Supreme Court in the case of McDowell and Company Limited, 154 ITR 148 are squarely applicable in this case wherein it has been held that tax planning may be legitimate provided it is within the framework of the law and any colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by dubious methods. However, the case laws cited by the Ld. counsel for the assessee are on distinguished facts, hence, not applicable in the instant case. The assessee has not argued any other ground mentioned in the grounds of appeal, but only argued on merit for which assessee has failed to substantiate his claim before the lower revenue authorities as well as before this Bench. In view of above discussions, I am of the considered opinion that Ld. CIT(A) has rightly confirmed the addition in dispute, which does not need any interference on my

part, therefore, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Assessee. In the result, the appeal of the assessee is dismissed.

8. Since in other appeal i.e. in the case of Anju Rastogi, ITA No. 3810/Del/2018 (AY 2015-16), similar facts are permeating and same finding has been given, therefore, my finding given above will apply *mutatis mutandis* in this appeal also, because the nature of transactions, evidences and documents are exactly the same. Thus, both the appeals are treated as dismissed.

9. In the result, both the Appeals of the different Assesseees are dismissed.

The order pronounced on 08.01.2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 08-01-2019

SR BHATNAGAR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi