

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA No.1057/Bang/2018
Assessment year :2014-15

Smt. Reshma Gulab Jain, C/o. Sri Krishna Madhav Residency, No.21/3, Govindappa Road, Basavanagudi, Bengaluru – 560 004. <b>PAN : AJTPJ9834 B</b>	Vs.	The Income-tax Officer, Ward – 5(3)(2), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Shri. Sunil Kumar Agarwal, Addl. CIT

Date of hearing	:	22.10.2019
Date of Pronouncement	:	25.10.2019

**ORDER**

***Per G. Manjunatha, Accountant Member:***

This appeal filed by the assessee is directed against the order of the CIT(A)-5, Bengaluru dated 26.03.2018 and it pertains to Assessment Year 2014-15. The assessee has raised the following grounds of appeal:-

- The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The impugned orders being bad in law, void ab-initio are required to be quashed.*

2. *In any case the order passed in gross violation or the principles of natural justice and fair play, especially in the absence of the cross examinations or the persons whose averments are sought to be relied upon by the Assessing Officer while passing the order, makes the order totally bad in law and liable to be cancelled.*
- 2 *In any case and without prejudice, the learned Assessing Officer had erred in making addition of Rs. 1.02.68,954/- being sale proceeds of shares to the income of the appellant and • the learned CIT (A) -5 has erred in confirming the same. The addition to the income is bad both in law and on facts and is liable to be deleted in entirety.*
3. *The learned Assessing Officer has not properly appreciated the facts of the case. On proper appreciation of the facts and law applicable, it will be clear that the addition as made has no basis to stand and is liable to be deleted in entirety.*
4. *The learned Assessing Officer had erred in holding that the provisions of Section 68 of I.T. Act, 1961 are applicable and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. There being no unexplained credit and in fact the credit having been duly explained, makes the addition U/s. 68 wholly erroneous and liable to be deleted.*
5. *The appellant denies liability to pay interest u/s 234A, 234B and 234C of the Act. The interest having been erroneously levied to be deleted.*
6. *In view of the above and other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or at least the assessment or entire sale consideration on sale of shares as Income from Other Sources be deleted the income from Long Term Capital Gain earned on sale of shares as returned by the appellant be accepted and the interest levied be also deleted.*

2. The brief facts of the case are that the assessee is an individual deriving income from salary, income from house property and income from other sources. The assessee has filed her return of income for Assessment Year

2014-15 on 19.12.2014 declaring total income of Rs.8,53,883/-. The case was selected for scrutiny and notices under section 143(2) and 142(1) of the Income Tax Act, 1961 were issued. In response to the notice, the AR appeared from time to time and filed various details as called for. During the course of assessment proceedings, the AO noticed that the assessee has disclosed income from long term capital gain in respect of transfer of equity shares of M/s. SRK Industries Ltd, therefore, called upon the assessee to file necessary evidences including contract notes for sale of shares and bank statements. In response, the assessee has filed complete details including contract notes, bank statements and other details. The AO, on the basis of the information filed by the assessee and also taking note of the fact that the Investigation Wing of Kolkata has undertaken investigation into 84 penny stocks and M/s. SRK Industries Ltd., being one of the Penny stocks, assessed the total receipts from sale of shares of SRK Industries Ltd., an unexplained cash credit under section 68 of the Income Tax Act, 1961. The assessee carried the matter in appeal before the First Appellate Authority, but the learned CIT(A) for detailed reasons recorded in its Appellate Order dated 26.03.2018 confirmed additions made by the AO towards receipts from sale of shares of SRK Industries Ltd., under section 68 of the Income Tax Act, 1961.

3. Aggrieved by the CIT(A)'s order, the assessee is in appeal before us.
4. The learned AR for the assessee, at the time of hearing submitted that the order passed by the AO is illegal and bad in law, because the AO has passed assessment order without following the principles of natural justice, which is evident from the fact that the AO has made additions on the basis of statement of third parties without confronting those statements to the assessee for her rebuttal. The learned AR further submitted that this issue is also squarely covered in favour of the assessee by the decision of the Hon'ble Karnataka

High Court, in the case of Mr. Devichand Kothari, (HUF) Vs. ITO in WP No.39376/2014, where under identical set of facts, the Hon'ble Karnataka High Court held that in absence of fair and reasonable opportunity, an assessment order could not be sustained and could be interfered with under article 226 of the Constitution of India and accordingly, set aside the issue to the file of the AO to reconsider the issue in light of the claim of the assessee that the statement and information relied upon by the AO was not confronted to the assessee. The AR has also relied upon the decision of the ITAT Bengaluru Bench, in the case of Ramesh Kumar Shah Vs. ACIT in ITA No.595/Bang/2018.

5. The learned DR, on the other hand strongly supporting the order of the AO as well as the learned CIT(A) submitted that this case is not squarely covered by the decision of the Hon'ble Karnataka High Court in the case of DevichandKotheri (supra), because in that case in spite of request from the assessee, the AO was not given opportunity of cross examination and also the statements which were relied upon for making the addition and hence the Hon'ble High Court came to the conclusion that without providing an opportunity of hearing to the assessee and also copy of the statements, the additions made by the AO cannot be sustained. In this case, on perusal of the order passed by the AO, it is abundantly clear that the AO has confronted information collected from Investigation Wing of Kolkata to the assessee and also recorded her statement of oath, where she was not given satisfactory explanation about long term capital gain declared from sale of shares of SRK Industries Ltd., and hence it is incorrect to say that the AO has not observed principles of natural justice. The learned DR further relied upon the decision of ITAT Delhi Benches, in the case of Suman Poddar Vs. ITO in ITA No.1006/Del/2019 and argued that the Tribunal has considered an identical facts and held that the purported sale of shares of penny stock companies is

unexplained credit under section 68 of the IT Act, 1961. The learned DR has also relied upon the decision of the ITAT Delhi Benches in the case of Pooja Ajmani Vs. ITO in ITA No.5714/Del/2018.

6. We have heard both the parties, perused the material on record and gone through orders of the authorities below along with case law cited by both parties. We find that the preliminary objections raised by the assessee in the light of the decision of the Hon'ble High Court of Karnataka in case of Devichand Kothari, HUF (supra) is squarely applicable to the facts of present case. We further noted that the Hon'ble Karnataka High Court, in the Said case held that in absence of opportunity of hearing by providing copy of the statement and related detailed regarding the alleged share amount, the additions made by the AO cannot be sustained. We further noted that the ITAT Bengaluru 'A' Bench in the case of Ramesh Kumar Shah (supra) has considered identical issue and after considering the facts and also the decision of ITAT in the case of Aravind Kumar Moochand in ITA No.509/Bang/2017, set aside the issue to the file of the AO to decide the issue afresh after giving opportunity of hearing to the assessee and also after making available all statements and other related documents relied upon by the AO to make additions to the assessee for rebuttal. In this case, although the assessee has not specifically asked for statements and other related details regarding alleged share amount, but she had made request before the learned CIT(A) during appellate proceedings. But, the ld. CIT(A) did not consider her request. We find that the CIT(A) has co-terminus powers with AO, therefore, he ought to have provided copies of statements and other related materials and also opportunity of cross-examination to the assessee before deciding the issue on merits when she had specifically requested for those evidences. Therefore, we are of the considered view that in absence of proper opportunity of hearing and also cross-examination to the assessee for her rebuttal, the assessment order passed by the AO suffers from principles of

natural justice and hence addition made by the AO cannot be sustained. Hence, we are of the view that the appeal filed by the assessee needs to go back to the file of the AO for fresh consideration. In so far as the arguments of the learned DR in light of the decision of the ITAT Delhi Benches in the case of Suman Poddar (supra) and Pooja Ajmani Vs. ITO (supra), we find those cases were decided on merits on the issues without considering the aspect violation of principles of natural justice, whereas, the jurisdictional High Court of Karnataka in the case of Devichand Kothari (supra) has restored the matter back to the file of the AO for alleged violation of principles of natural justice. Therefore, we are of the considered view that the case laws relied upon by the learned DR has no application to the facts of the present case and hence not considered.

7. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that order passed by the AO suffers from principles of natural justice and hence, we restore the appeal to the file of the AO for denovo consideration of the issue after making available to the assessee for rebuttal all documents including statements, investigation reports, etc., relied upon by the AO for making additions towards amount received from sale of shares under section 68 of the Income Tax Act, 1961 and also to provide adequate opportunity for cross-examination of persons whose statements are being relied upon.

8. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

*Order pronounced in the open court on this 25<sup>th</sup> day of October, 2019.*

Sd/-  
**(N. V. VASUDEVAN)**  
**Vice President**

Sd/-  
**(G. MANJUNATHA)**  
**Accountant Member**

Bangalore.

Dated: 25<sup>th</sup> October, 2019.  
/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.