

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 18 of 2017 (O&M)
Date of decision: 16.02.2017

The Pr. Commissioner of Income Tax (Central), Ludhiana

.....Appellant

Vs.

Sh. Hitesh Gandhi, Bhatti Colony, Chandigarh Road, Nawanshahar.

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Rajesh Katoch, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-revenue under Section 260-A of the Income Tax Act, 1961 (in short, "Act") against the order dated 20.07.2016, Annexure A-III, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No.129(Asr)/2014, for the Assessment Year 2008-09, claiming following substantial questions of law.

(i) "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

₹ 2,78,26,685/-, made by the AO on account of sham share transactions, ignoring an important aspect that the transaction of shares showing their purchase price at ₹ 11,00,000/- and sale consideration at ₹ 2,91,32,850/- within a period of less than two years/purchase 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 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?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. During the course of assessment proceedings under Section 153A read with Section 143 (3) of the Act, it was noticed by the Assessing Officer that the assessee had shown long term capital gain on sale of shares of a company M/s GeeFCee Finance Limited during the year under assessment. The assessee submitted that he had purchased one lakh shares of GeeFCee Finance Limited through a broker of Karol Bagh, New Delhi at a price of ₹ 11/- per share. The amount of ₹ 11 lakhs was claimed to have been paid out of cash in hand available with the assessee for the purchase of these shares. It was claimed that the shares transferred in name of assessee were subsequently sold during the year relevant to the assessment year under assessment for ₹ 2,89,94,516. The assessee had shown long term capital gain of ₹ 2,78,26,685/- on the sale of these shares. The assessee could not substantiate the genuineness of the said share transaction. He was not even able to prove the source of investment of ₹ 11 lakhs in the purchase of these shares. The Assessing Officer vide order

dated 17.08.2012, Annexure A-I, treated the share transaction as non-genuine transaction and the amount of ₹ 2,78,26,685/- shown as long term capital gain on share transaction, was added to the income of the assessee. Aggrieved, by the assessment order dated 17.08.2012, the assessee filed appeal before the Commissioner of Income Tax (Appeals), Ludhiana [CIT(A)]. Vide order dated 30.12.2013, Annexure A-II, the CIT(A) deleted the addition of ₹ 2,78,26,685/- holding that department failed to prove that the sale of shares was sham transaction. The appeal was thus, partly allowed. Not satisfied with the order passed by the CIT(A), the revenue filed appeal before the Tribunal. Vide order dated 20.07.2016, Annexure A-III, the Tribunal upheld the order passed by the CIT(A) and dismissed the appeal of the revenue. Hence, the instant appeal by the appellant-revenue.

3. We have heard the learned counsel for the appellant.

4. The CIT(A) examined the matter and the comments of the Assessing Officer in the remand report. It has been recorded by the CIT(A) that the purchase of shares in the financial year 2006-07 for an amount of ₹ 11 lakhs had been physically transferred in favour of the assessee in the books of the company namely GeeFCee Finance Limited. Further, the said shares were dematerialized and credited in the assessee's account maintained with depository participant i.e. HDFC on 16.10.2006. The dividend amount of ₹ 1,50,000/- had been received with regard to aforementioned holding of shares on 23.10.2007. The said amount had been disclosed by the assessee in his return of income and exemption was claimed accordingly. Thus, the addition being without any logical basis was directed to be deleted. The relevant findings recorded by the CIT(A) in this regard read thus:-

“I have considered the facts of the case, the basis of addition made by the Assessing Officer, the arguments of the AR during

the assessment as well as appellate proceedings and the comments of the Assessing Officer in the remand report. It is seen that the impugned purchase of shares allegedly effected in the financial year 2006-07 for an amount of ₹ 11 lakhs and the said shares had been physically transferred in favour of the appellant in the books of the listed company namely GeeFCee Finance Limited. Further the said shares got dematerialized and were, credited in the assessee's account maintained with depository participant i.e. HDFC on 16.10.2006. Further, dividend amounting to ₹ 1,50,000/- has been declared and received with respect to aforementioned holding of shares on 23.10.2007 and the said dividend had been disclosed by the assessee in the return of income and claimed exempt accordingly. It is also to be noted that the said dividend had been accepted as exempt by the Assessing Officer for the year under consideration. The only logical conclusion that can be made from the sequential perusal of the above detailed facts is that the impugned shares were actually purchased by the assessee on given dates as these stand reflected in D'MAT account maintained with HDFC bank. The dividend declared on the same has been received and credited in assessee's bank account which is further found recorded in the Income Tax Return and allowed as exempt by the Assessing Officer. As against this clear documentary evidence in favour of the appellant, the Assessing Officer has merely rejected the contention of purchase on the basis of suspicion arising out of reckless/casual replies given to various questions raised by the Assessing Officer in the assessment proceedings. It is important to appreciate here that the assessee had been subjected to search and seizure proceedings under Section 132 of the Income Tax Act, 1961 and the search proceedings did not lead to recovery of any incriminating evidence to show that the transaction of purchase of share was arranged as suspected by the Assessing Officer. It is also seen that no post search enquiries on the issue had been conducted in the form of recording the statement of broker so as to bring on record any evidence of the said

transaction being an accommodation entry. This is to mean that just because assessee has been found to be earning huge amounts of long term capital gain on sale of shares, the same has been held to be sham transaction merely on the ground of same being unlikely in the given circumstances. The Assessing Officer, in the remand report has not been able to contradict any of the facts regarding purchase of shares highlighted above or regarding the sale of shares and has not progressed beyond the stage of suspicion. It is further seen that the shares had been sold for an amount of ₹ 2,91,32,850/- and has been debited to assessee's D'MAT account maintained with D/P, HDFC. It is also seen that STT has been paid on the sale of shares and said shares had been sold through National Stock Exchange. It is also seen that the Assessing Officer while working out the addition has allowed indexation on the cost of purchase of shares till the date of sale and has in fact worked out the capital gain only to make the impugned addition. I am of the view that there is no evidence on record, gathering during the course of search proceedings or during the course of post search investigation or assessment proceedings to hold the view that the entire transaction of purchase/sale of shares effected over a period of two years was a sham transaction. The addition being without any logical basis is directed to be deleted."

5. On appeal by the revenue, the Tribunal upheld the findings recorded by the CIT(A). It was categorically recorded by the Tribunal that as noticed by the CIT(A), in the remand report the Assessing Officer was not able to contradict the facts regarding purchase of shares and sale thereof. Further, it was recorded that the assessee had sold shares through MTL shares and Stock Broker limited which is a SEBI registered Stock Broker. The payment for sale of shares was received through banking channels. All the documentary evidence being in favour of assessee, the deletion of the

addition made by the CIT(A) was upheld by the Tribunal. The relevant findings recorded by the Tribunal read thus:-

“We have heard the rival parties and have gone through the material placed on record. We find that the assessee had purchased shares in the month of April/May, 2006 as noted by the learned CIT(A) in his order at page-4. The shares were purchased in Assessment year 2006-07. Further the shares were got dematerialized and the same were created in the account of assessee maintained with HDFC bank. The assessee also received dividend on such shares on 23.10.2007 and such dividend was claimed as exempt and Assessing Officer did not raise any objection against the claim of such dividend. The learned CIT(A) has noted in his order that in the remand report Assessing Officer was not able to contradict any of the facts regarding purchase of shares and regarding sale of shares. It is further observed that assessee had paid STT on the sale of such shares and this fact has been noted by learned CIT(A) in his order. Further, we find that while making out the addition on account of capital gain the Assessing Officer himself gave credit to assessee for indexed cost of acquisition to the extent of ₹ 11,67,821/- taking the purchase price at ₹ 11,00,000/-. Further, we find that assessee had sold shares through MTL shares and Stock Brokers Limited as is noted by Assessing Officer in reply to question No.24 which is a SEBI registered Stock Broker. Furthermore the payment for sale of shares was received through Banking channels. All these documentary evidences in favour of the assessee were rejected by Assessing Officer merely on the basis of some casual replies given by assessee to the Assessing Officer. However, the fact remains that all the documentary evidences are in favour of assessee and learned CIT(A) has passed a very reasoned and speaking order and we do not find any infirmity in the same.”

6. The findings recorded by the CIT (A) and the Tribunal are pure findings of fact which have not been shown to be illegal, erroneous or

perverse by the learned counsel for the appellant. He has also not been able to produce any material on record to controvert the said findings. Thus, no substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 16, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes