IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 196 of 2014 (O&M)

Date of Decision: 16.9.2014

Chandan Gupta

....Appellant.

Versus

Commissioner of Income Tax, Ludhiana

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE FATEH DEEP SINGH.

PRESENT: Mr. Deepak Aggarwal, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of ITA Nos. 196 and 197 of 2014 as according to the learned counsel for the appellant, the issue involved therein is identical. For brevity, the facts are being taken from ITA No. 196 of 2014.

2. ITA No. 196 of 2014 has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 26.9.2013 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 161/CHD/2008, relating to the assessment year 2005-06, claiming the following substantial questions of law:-

> "i) Whether in the present facts and circumstances of the case, the Ld. ITAT was justified in confirming the

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addition of Rs.51,87,680/- under Section 68 of the Act, wherein the said income has already been shown by the assessee in his return of income as income under the head Capital Gains?

ii) Whether in the present facts and circumstances of the case the order passed by the Ld. ITAT is perverse in confirming the addition of Rs.51,87,680/- under section 68 of the Act?

iii) Whether in the facts and circumstances of the case, the Ld. ITAT was justified in arriving at the conclusion that the sale and purchase of shares by the assessee was a bogus transaction when there was no material on record on which such apprehensions could be based?

3. Put shortly, the facts necessary for adjudication as narrated in the appeal are that the during the assessment year in question i.e. 2005-06, the assessee filed his return of income on 31.10.2005 declaring an income of ₹ 58,32,924/- which included long term capital gains on trading of shares amounting to ₹ 47,65,180/- and on this amount also paid long term capital gain at the rate of 10%. The Assessing Officer vide assessment order dated 7.12.2007 (Annexure A-1) after terming the sale transaction of the shares as bogus, made an addition of ₹ 51,87,680/-. The Assessing Officer had even treated the cost of shares as unexplained cash credit under Section 68 of the Act. Feeling aggrieved by the assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] who vide order dated 26.11.2008 (Annexure A-2) dismissed

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the appeal. Being dissatisfied with the CIT(A)'s order dated 26.11.2008 (Annexure A-2), the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 26.9.2013 (Annexure A-3) dismissed the appeal. Hence, the present appeals.

4. Learned counsel for the assessee submitted that the capital gains on sale of shares was a genuine transaction whereas the Assessing Officer, the CIT(A) and the Tribunal have erred in treating the same to be unexplained cash credit under Section 68 of the Act. Support was drawn from the judgment of the Rajasthan High Court in **Commissioner of Income Tax v. Smt. Pushpa Malpani (2011) 242 CTR (Raj) 559**.

5. After hearing learned counsel for the appellant, we do not find any merit in the submission made by the learned counsel for the appellant.

6. The Assessing Officer after deliberating the enquiries made by him and appreciating the material available on record concluded that the transaction of sale of shares of M/s Citigold Credit Capital Limited (changed from name of M/s Country Credit Capital Ltd. on 16.2.2004) by the assessee to be bogus and sham in the following words:-

> "In view of the above discussion the alleged claim of sale of shares is false and concocted as no actual transactions of shares took place. The assessee introduced his own unexplained money in the garb of sale of shares and has avoided giving his due taxes.
>
> According to Section 68 if any sum is found credited in the books of assessee maintained for any previous year and the assessee offers no explanation

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about the nature and source thereof or the explanation offered by him is not in the opinion of the AO, satisfactory, the sum so credited may be charged to income tax as income of the assessee of that previous year.

In this case also the assessee could not explain the receipt of alleged share profits credited in his bank accounts. The explanation given by the assessee is not at all satisfactory as can be seen from the various enquiries mentioned above. It is proved beyond doubt that the share transactions entered into by the assessee are sham transactions and own money has been introduced to get share profits. Hence the amount of Rs.5129625/- equivalent to the alleged sale value of shares of the Company i.e., assessee from undisclosed sources u/s 68 of the I.T. Act, 1961. The documents furnished were test checked."

7. The CIT(A) while affirming the findings of the Assessing Officer, after referring and discussing the evidence on record had concluded as under:-

"Coming to the case of the Hon'ble Punjab & Haryana High Court in the name of Anupam Kapoor (supra), in that case there was no material before the A.O. which could lead to the conclusion that the transactions in that case were simpliciter a device to camouflage activities to defraud the revenue. However, in the case of the appellant, the A.O. has plenty of material

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which is duly discussed in the assessment order to show that the transactions of sale and purchase of shares by the appellant were sham transactions. Ratio of these decisions would, therefore, also not apply to the fact & circumstances of appellant's case. In view of the above discussions the grounds of appeal of the appellant are dismissed and the appeal of the appellant is also dismissed."

8. The Tribunal while rejecting the contention of the assessee had come to the conclusion that the assessee had manipulated the accounts. It was held that no sale or purchase of the shares was done by the assessee but only entries of the capital gains were given to the assessee on receipt of cash payment. It was recorded that since the assessee had only filed copy of sale and purchase bill and showed inability to produce the broker, the Assessing Officer was right in conducting the enquiries on his own. Further, the bogus capital gains have been generated by the assessee and, therefore, the quotations in a Gujarati Diary was of no help to the assessee. From a perusal of questions and answers, it appeared that the assessee had not done any share business before financial year 2003-04 and after financial year 2004-05 in which he had earned capital gains of ₹ 51 lacs. On appreciation of the evidence, the Tribunal held that the assessee had failed to prove the genuineness of the transaction of sale and purchase of shares. Once the transaction of purchase and sale was found to be bogus then the sale proceeds had to be added as income of the assessee under Section 68 of the Act because the money received on the basis of bogus transaction had been credited by the assessee in the

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books of account which remained unexplained.

9. In view of the findings of fact recorded by the authorities below which could not be demonstrated to be erroneous or perverse in any manner, no interference is called for.

10. The judgment in **Smt. Pushpa Malpani's case (supra)** on which reliance has been placed by the learned counsel for the appellant was on its own facts. In that case, the Tribunal had come to the conclusion that the sale of shares was genuine and, therefore, being finding of fact, no question of law arose. The said pronouncement, thus, does not lend any support to the argument of the learned counsel for the appellant.

11. Accordingly, we find no merit in these appeals and the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 16, 2014 **(FATEH DEEP SINGH)**
gbs **JUDGE**

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AJAY KUMAR MITTAL, J.

For orders, see **ITA No. 196 of 2014 (Chandan Gupta v. Commissioner of Income Tax, Ludhiana).**

(AJAY KUMAR MITTAL)
JUDGE

September 16, 2014
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JUDGE

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