

**Court No. - 32**

**Case :-** INCOME TAX APPEAL No. - 468 of 2009

**Petitioner :-** Commissioner Of Income Tax-I, Kanpur

**Respondent :-** Shri Sudeep Goenka

**Petitioner Counsel :-** Dhananjay Awasthi

**Respondent Counsel :-** Rakesh Ranjan Agrawal & Suyash Agrawal

**Hon'ble R.K. Agrawal,J.**

**Hon'ble Ram Surat Ram (Maurya),J.**

**(Delivered by Hon'ble Ram Surat Ram (Maurya),J**

1. Heard Sri Dhananjay Awasthi, Senior Standing Counsel for the appellant and Sri Rakesh Ranjan Agrawal assisted by Sri Suyash Agarwal for the respondent.
2. This appeal has been filed, under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the Act) from the order of Income Tax Appellate Tribunal, Lucknow Bench 'A', Lucknow (hereinafter referred to as the Tribunal) dated 22.05.2009, passed in Income Tax Appeal No. 208/Luc/09 by which the appeal filed by the Revenue has been dismissed and the order of Commissioner Income -tax (Appeals)-I, Kanpur, allowing the appeal of the assessee, has been upheld. The appellant has proposed the following substantial question of law, said to be involved in the appeal:-

- "1. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in law in directing the A.O. to treat the entire sale proceed as long term capital gains without appreciating that the ingredients of purchaser and seller are essential whereas in the instant case the identity of purchaser is unknown/unproved and the assessee as well as broker failed to furnish/produce copy of transfer deed and even could not give the name of the purchasers to whom the shares of above company was sold so as to enable to verify as to whether the shares were actually sold or not and until and unless the identities of both purchaser and seller is proved, such transactions cannot be regarded as genuine transactions?
2. Whether in the facts and circumstances of the case, the Hon'ble Tribunal was justified in law in directing the A.O. to treat the entire sale proceeds as long term capital gains without appreciating that the Company, M/s Supreme Agro Product Ltd. had incurred heavy losses during the A.Y. 2004-05 and in case the value of the assets of the company had increased, the company must have declared dividend etc. to it's share holder whereas in this case the company had not declared any such dividend etc.?
3. Whether in the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in law in directing the A.O. to treat the entire sale proceeds as long term capital gains without appreciating that on similar facts of the case of

an assessee namely Dr. G.S. Singhania, HUF, has also shown long term capital gains on purchase and sale of shares of M/s Supreme Agro Product Ltd. through Delhi based broker, M/s CMS Securities Ltd. who had admitted before the Investigation Wing of the department that it has taken cash and deposited the same in the account of various members of his family and after transferring the cash in it's accounts, the cheques were issued to the assessee, HUF as well as to other persons and the commission @ 0.25% was taken, in the instant also sale of shares of said company was made on such abnormal price of 30 times of its face value within 13 months, therefore transaction in the instant case also could not be regarded as genuine sale and purchase of shares?"

3. The facts giving rise to the present appeal are as follows: The appeal relates to the assessment year 2004-05. Shri Sudeep Goenka (the assessee) filed Income Tax Return on 31.10.2004, in individual capacity, showing his total income of Rs. 41,04,778/- which was processed on the returned income on 31.03.2005. Later on, the case was selected for scrutiny and notice under Section 143 (2) dated 21.10.2005 was issued and served upon the assessee on 26.10.2005. Another notice under Section 143 (2) dated 26.04.2006 was also issued. Thereafter notice under Section 142 (1) dated 23.10.2006 along with detailed questionnaire was issued and served upon the assessee on 02.11.2006. The assessee filed his reply in which he has stated that he in his return has shown his income from long term capital gain from sale of shares of M/s Supreme Agro Product Ltd. Details of the transactions are noted in the assessment order. According to which the assessee had purchased total 44,000 share for Rs. 1,37,750/- on 10.04.2002 and 11.04.2002 and sold these shares on 06.05.2003, 12.05.2003 and 12.11.2003 for total Rs. 42,34,350/-. The profit derived on sale of these shares was shown as his long term capital gain.

4. The Assessing Officer by order dated 28.12.2006 held that the assessee avoided to appear in person before him, in spite of notice issued for his personal appearance and from the fact that the shares were sold for more than 30 times of the purchase price within a period of one year proved that it was a bogus transaction. Accordingly sale price of the shares of Rs. 42,34,350/- was treated as the income of the assessee from undisclosed sources. The assessee preferred an appeal from the aforesaid order before the Commissioner of Income Tax (Appeals)-I, Kanpur who by his order dated 19.01.2009 held that the assessee had filed purchase bills of the shares, letter of transfer dated 20.04.2002, sale bills, accounts of Modern Holding Pvt. Ltd., account of Vikas Holding Pvt. Ltd., purchase and sale chart and copy of quotation of various letters from Stock Exchange showing the rate of shares of M/s Supreme Agro Product Ltd. at the relevant times, letters dated 16.10.2006,

28.11.2006, 19.12.2006 and 22.12.2006 from Vikas Holding Pvt. Ltd., the broker, confirming the sale of the shares and on an independent inquiry ICICI Bank informed that payment of the sale price of the shares was made through bank draft. From the documentary evidence produced by the assessee it was proved that transaction of sale and purchase of the shares were actual transactions and not a fictitious accommodation entries. He further found that the Assessing Officer has not assigned any reason for disbelieving the mass of documentary evidence produced by the assessee and based his findings on surmises that price rise of the value of the shares in short span of time was highly excessive. On these findings the appeal was allowed and the addition was deleted. The Revenue, feeling aggrieved, filed an appeal before the Tribunal. The Tribunal by the impugned order dated 22.05.2009 dismissed the appeal of the Revenue and upheld the order of the CIT(Appeals).

5. Sri Dhananjay Awasthi, Senior Standing Counsel submitted that the identity of the purchasers were not disclosed by the assessee and the brokers so as to enable to verify as to whether the shares were actually sold or not; they failed to furnish /produce copy of transfer deeds. Until and unless the identities of both purchaser and seller is proved, the transactions cannot be regarded as genuine. He further submitted that M/s Supreme Agro Product Ltd. had incurred heavy loss during the A.Y. 2004-05 and in case the value of the assets of the company had increased then no question would have arise for loss to the company. This clearly proves that the transactions were bogus accommodation entries. He further submitted that in similar facts of the case of Dr. G.S. Singhania, HUF, who had also shown long term capital gains on purchase and sale of shares of M/s Supreme Agro Product Ltd. the Tribunal has disbelieved that transactions of the sale of the share, in the present case also sale of the shares of same company was involved and the Tribunal has not followed it's own judgment of the case of Dr. G.S. Singhania. The orders of the CIT (A) and the Tribunal are illegal and liable to be set aside.

6. In reply to the aforesaid arguments, the counsel for the respondent submitted that the cases has to be decided on the basis of evidence adduced in it. In case, for some reasons, Dr. G.S. Singhania could not prove bonafide of sale transactions in his case, then judgment of that case has no relevancy in this case, where the assessee has proved sale transactions by filing mass of documentary. He submitted that the assessee had produced purchase bills of the shares, letter of transfer dated 20.04.2002, sale bills, accounts of Modern Holding Pvt. Ltd., account of Vikas Holding Pvt. Ltd. (the brokers), purchase and sale chart and copy of quotations from Stock Exchange showing the rate of shares of M/s Supreme Agro Product Ltd. at the relevant times, letters dated 16.10.2006, 28.11.2006, 19.12.2006 and 22.12.2006 from Vikas Holding Pvt. Ltd., the broker, confirming the sale of the shares and on an

independent inquiry, ICICI Bank informed that payment of the sale price of the shares was made through bank drafts. From these documentary evidence actual sale and purchase transactions of the shares had been proved. Payment to the assessee was made through bank draft and not in cash. These documentary evidence could not be disbelieved for the reasons that the assessee could not give the identity of the purchasers. The CIT (A) after considering entire evidence of record found that purchase and sale transactions were valid and the findings do not suffer from any illegality. He further submitted that before the Tribunal appeals of the assessee and Shri Akash Goenka were decided by a common judgment. The Revenue filed Income Tax Appeal (Defective) No. 261 of 2009 in the case of Shri Akash Goenka which has been dismissed by this Court by judgment dated 18.11.2010 and thus judgment of the Tribunal has been upheld and this appeal is also liable to be dismissed.

7. We have considered the arguments of the counsel for the parties. The CIT (A) after considering entire evidence of record found that purchase and sale transactions were proved. He further found that payment of the sale price was made to the assessee through bank channel and not in cash as such the transactions are actual transactions and not a fictitious accommodation entries. The sale transactions cannot be disbelieved only for the reason that the assessee could not give the identity of the purchasers. Arguments of the Senior Standing Counsel in this respect is not liable to be accepted. Similar controversy has been raised in the case of Shri Akash Goenka which was decided by a common judgment by the Tribunal. The Revenue filed Income Tax Appeal (Defective) No. 261 of 2009 in the case of Shri Akash Goenka which has been dismissed by this Court by judgment dated 18.11.2010 and thus judgment of the Tribunal has been upheld. The Senior Standing Counsel could not point out any distinguishing feature for not following the aforesaid judgment.

8. As a result of the aforesaid discussion the appeal has no force and is **dismissed**.

**Order Date :- 03.01.2013**

**Jaideep/-**