

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
ITA No.6102/M/2016 (AY 2005-2006)

Smt. Bharti Arvind Jain, 23/26, Vijay Villa, Jawahar Nagar, S V Road, Goregaon (W), Mumbai – 62.	बनाम/ Vs.	ITO-24(3)(4), Mumbai.
स्थायी लेखा सं./PAN : ACFPJ6295B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

ITA No.6103/M/2016 (AY 2005-2006)

Smt. Vasumati Indravadan Jain, 23/26, Vijay Villa, Jawahar Nagar, S V Road, Goregaon (W), Mumbai – 62.	बनाम/ Vs.	ITO-24(3)(4), Mumbai.
स्थायी लेखा सं./PAN : ADCPJ5979J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri Naveen Kumar Mishra
प्रत्यर्थी की ओर से/ Respondent by :	Ms. Beena Santosh, DR

सुनवाई की तारीख /Date of Hearing : 12.04.2017
घोषणा की तारीख /Date of Pronouncement : 26.04.2017

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are two appeals under consideration pertaining to two different assesseees for the AY 2005-06. Since, the issues raised in these appeals are identical, therefore, for the sake of convenience, both these appeals are clubbed, heard combinedly and disposed of in this consolidated order. Appeal wise adjudication is given in the following paras of this order.

2. In connection with the appeal ITA No.6103/M/2016 (AY 2005-06) in the case of Smt. Vasumati Indravadan Jain, there is a delay of 2 days in filing the appeal before the Tribunal. After hearing the Ld AR on this issue and considering the smallness of the delay of 2 days, I find, it is a fit case to condone the delay without going into the merits of reasonable and sufficient cause. I order accordingly and proceed to adjudicate the appeal on merits in the following paras of this order.

3. The common issue raised in these appeals relates to 'treatment of long term capital gains as cash credit u/s 69C of the Act'. Assessee also questioned the validity of the re-assessment. However, the same is not pressed and therefore, dismissed as not pressed.

4. Referring to the core issue ie addition u/s 69C of the Act, Ld AR for the assessee submitted that the assessee purchased 3000 shares each of M/s. Ramakrishna Fincap Ltd in the year 2003 @ Rs. 3.12 per share. The same were sold in 2005 at the sale price of Rs. 157.30 involving a broker named M/s. Basant Periwala & Company in Calcutta Stock Exchange. There was no investigation into the said sale and purchase transaction of the assessee by any agencies. However, the SEBI investigated into the broker's affairs and held him found violating the bye laws of SEBI. The same are the facts in another related case of Sri Indravadan Jain HUF, a relative of the assessee under consideration. Referring to the facts of the case of Sri Indravadan Jain, Ld Counsel for the assessee submitted that the similar additions were made in that case and the Tribunal deleted the addition vide its order in ITA No.5168/M/2014 and others dated 27.5.2016. Before the Tribunal, Ld AR prayed for considering both the instant appeals as covered ones by the said order of the Tribunal (supra) dated 27.08.2016. Further, referring to the order of the CIT (A) and the way the FAA distinguished the said Tribunal's order in the case of Sri Indravadan Jain (supra), Ld Counsel for the assessee demonstrated that the CIT (A) is hyper technical and not fair in not following the said order of the Tribunal (supra) of the case of Sri Indravadan Jain, (supra).

5. On hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the cited decision of the Tribunal in the case of Sri Indravadan Jain HUF (supra), I find, the said decision of the Tribunal applies to the instant appeals of the assessee and there is no case for confirming the said addition in both the cases. The additions made u/s 69C of the Act stand deleted. Therefore, I direct the Assessing Officer to accept the claims of the assessee and also the said decision of the Tribunal (supra) in the case of Sri Indravadan Jain HUF (supra). The facts of the present two appeals are identical to that of the ones of Sri Indravadan Jain HUF (supra). Thus, all the grounds raised by the assessee in their respective appeals are allowed considering their covered nature. I order accordingly.

6. In the result, both the appeals of the assesseees are allowed.

Order pronounced in the open court on 26thApril, 2017.

Sd/-

(D. KARUNAKARA RAO)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 26.04.2017

व.नि.स./ OKK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**