

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND  
SHRI A.D.JAIN, JUDICIAL MEMBER

ITA No.4862/Del/2011  
Assessment Year : 2002-03

Asstt.Commissioner of  
Income Tax,  
Central Circle-22,  
New Delhi.

(Appellant)

Vs. Shri Satnam Arora,  
201, Vipps Centre,  
2, Community Complex,  
Masjid Moth,  
Greater Kailash-II,  
New Delhi – 110 048.  
PAN : AAKPA2694L.  
(Respondent)

Appellant by : Shri Niranjan Kouli, CIT-DR.  
Respondent by : Shri Sanat Kapoor, Advocate.

**ORDER**

**PER G.D.AGRAWAL, VP :**

In this appeal filed by the Revenue, following grounds are raised:-

*"1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.13,68,249/- made by the Assessing Officer on account of sale of shares.*

*2. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in admitting additional evidence under Rule 46A which was not submitted before the AO inspite of several opportunities given to the assessee.*

*3. The order of the CIT(A) is erroneous and in not tenable on facts and in law."*

2. At the time of hearing before us, it is submitted by the learned CIT-DR that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has shown sale consideration of 2,000 shares amounting to ₹13,68,975/-. The Assessing Officer asked the assessee to file the details of purchase and sale of shares. However, the assessee did not comply with the same. Therefore, the Assessing Officer made the addition of ₹13,68,975/- to the total income of the assessee. That the CIT(A) admitted the additional evidence without appreciating the fact that the Assessing Officer had allowed adequate opportunity to the assessee. He, therefore, submitted that the matter should be restored to the file of the learned CIT(A) or to the Assessing Officer for readjudication. He further submitted that even on merit, the matter is required to be set aside to the file of the Assessing Officer because in the details filed before the CIT(A), the assessee has shown the payment of purchase consideration amounting to ₹13,33,420/- by cheques of two different banks. The cheque of ₹9,14,155/- is issued by the bank account which is disclosed in the assessee's balance sheet. However, the payment of ₹4,19,265/- is made by cheque of The Karur Vyasya Bank. In the balance sheet, the assessee has never disclosed the account of The Karur Vyasya Bank. Therefore, the account of The Karur Vyasya Bank is the assessee's undisclosed bank account and this bank account might contain certain transactions of the year under consideration. Therefore, the matter should be set aside to the file of the Assessing Officer for examining this undisclosed bank account. He also submitted that even the assessee has not furnished the details of sale consideration received by the assessee but only the transfer of shares

from the demat account is produced. He, therefore, submitted that the matter requires re-examination at the end of the Assessing Officer.

3. The learned counsel for the assessee, on the other hand, stated that in ground No.2, the mention by the Revenue that Assessing Officer allowed several opportunities to the assessee is factually incorrect. From the assessment order itself, it is evident that the Assessing Officer claimed to have issued only one letter dated 9<sup>th</sup> December, 2009. When this letter was served upon the assessee is nowhere mentioned. The assessment order was completed on 30<sup>th</sup> December, 2009. Therefore, the claim in the grounds of appeal that several opportunities were allowed to the assessee is factually a wrong statement. He also stated that learned CIT(A) forwarded the additional evidence to the Assessing Officer and called for his comments. The Assessing Officer also submitted his comments in which he has never mentioned that the assessee was allowed adequate opportunities of being heard and, therefore, the additional evidence should not be admitted. With regard to the merits of the case, he stated that the assessee made the purchase of shares in the financial year 1999-2000 for which payment was made by cheque. That the sum of ₹4,19,265/- is paid by Satnam Overseas Exports and debited to the assessee's account. Copy of assessee's account in the books of Satnam Overseas Exports is placed at page 29 of the assessee's paper book. He further stated that the shares purchased by the assessee are duly shown in the assessee's balance sheet for the year ended on 31<sup>st</sup> March, 2000 and 31<sup>st</sup> March, 2001. That the question of the source of purchase consideration, if at all required to be examined, could have been examined in the year of purchase i.e. financial year ended on 31<sup>st</sup> March, 2000 and not in the year under appeal. That the sale consideration of shares is duly received by cheque and the Assessing Officer never doubted the sale consideration because he himself has

added the sale consideration in the assessee's income. Therefore, the quantum of sale consideration was never in dispute. The only dispute was whether the sum was received from sale of shares or it is undisclosed income of the assessee. The assessee has furnished the copy of shares depository account maintained by National Securities Depository Account Ltd. in which 2000 shares of Ranbaxy Laboratories Ltd. are transferred from assessee's account. He, therefore, submitted that the order of learned CIT(A) is quite justified and the same should be sustained.

4. We have carefully considered the arguments of both the sides and perused the material placed before us. The relevant finding in the assessment order in this regard reads as under:-

*"4. The assessee has credited an amount of Rs.35,555/- on account of profit on sale of shares. On verification of computation sheet the assessee has shown sale consideration of 2000 shares amounting to Rs.13,68,975/- against which indexed cost of acquisition amounting to Rs.14,60,249/-. The assessee was asked to file details of purchase and sale of shares vide this office letter dated 09.12.2009. The assessee has not complied to this letter till date. Therefore an amount of Rs.13,68,975/- is added to the total income of the assessee."*

5. From the above, it is evident that the assertion in ground No.2 of the Revenue's appeal that several opportunities were given to the assessee is factually incorrect. As per the assessment order, opportunity was allowed only once, that too by letter dated 9<sup>th</sup> December, 2009. Moreover, when this letter was served upon the assessee and when the assessee was required to make compliance is

not mentioned in the assessment order. The assessment order is passed on 30<sup>th</sup> December, 2009. These facts clearly establish that adequate opportunity to produce the necessary evidence was not allowed to the assessee and, therefore, learned CIT(A) was justified in admitting the additional evidence. On admission of additional evidence, learned CIT(A) called for the remand report of the Assessing Officer and Assessing Officer submitted the remand report. Therefore, in our opinion, there is no violation of Rule 46A by the CIT(A). The CIT(A) has duly considered the remand report and also the assessee's comments on that remand report. Therefore, he decided the issue as under:-

*“Upon a careful consideration of the submissions made by the appellant the remand report and the counter reply of the appellant, it is seen that Ground No.1 to 4 are all essentially on the single issue that whether the investment made by the appellant in 2,000 shares of Ranbaxy Ltd. in the financial year 1999-2000 were disclosed to the revenue and were invested out of its accounted source of income or not and whether the subsequent sale of these shares in period relevant to AY 02-03 have accordingly resulted in profit of Rs.35,555/- which however works out as loss for Rs.91,275/- as per computation of income after the benefit of indexation is given on these shares.*

*The appellant's submission is that the cost of acquisition of these shares is for Rs.13,33,420/- in the year ending 31.03.2000 for which payments have been made from the appellant's account in Satnam Overseas (Exports) where the appellant is a partner. In support of his contention the appellant has provided the statement of account appearing*

*in Satnam Overseas (Exports) in FY 1999-2000. Further the statement of appellant's account with JMC Investment Consultants the "stock and share brokers" to whom the payment has been made has also been provided. The investment has also been shown in the balance sheet for the year ending 31.03.2000. The appellant has subsequently sold his shares for a sale of consideration of 13,68,975/- in FY 2001-02 to CM Composite Securities Ltd. between 14.09.01 to 28.11.01, as seen from the transaction statement filed of his shares depository Alankit Assignments Ltd. Further from the statement of income filed with the original return filed it is seen that the appellant has shown total exempted dividend income for Rs.1,27,088/- the breakup of which has also been provided which includes a dividend of Rs.15,000/- received on account of shares of Ranbaxy India Ltd. on 05.07.2001. The copy of dividend warrant dated 04.07.01 has also been enclosed in the submissions.*

*Keeping in view the above details, which have been placed on record, it is apparent that the transaction with respect to investment in 2,000 shares of Ranbaxy Ltd. in FY 1999-2000 and it's subsequent sale in FY 2001-02 is explained for and therefore the addition made for Rs.13,68,249/- which appears to be has been made based on the assumption that this investment was undisclosed, is found to be incorrect and therefore is liable to be deleted.*

*Even otherwise, since this transaction had been reflected in the return of income filed on 28.10.02 and the income statement submitted with the return and as nothing*

*incriminating has been found with reference to such investment during the course of search therefore the ratio of the decisions in Anil Kumar Bhatia, LMJ International Ltd., Anil P. Khemani (supra) are squarely applicable to the facts of the case.*

*Thus on merits as well as relying on the ratio of the aforesaid decisions the addition made for Rs.13,68,249/- is directed to be deleted. Accordingly, the ground of appeal No.1 to 4 are allowed.”*

6. After considering the arguments of both the sides and facts of the case, we do not find any infirmity in the order of learned CIT(A). The learned DR has doubted the source of payment for purchase consideration. However, the purchase was made during the financial year 1999-2000. Therefore, the source of the purchase consideration could have been examined in that year. The shares were duly disclosed in the balance sheet of the assessee for the year ended on 31<sup>st</sup> March, 2000 and 31<sup>st</sup> March, 2001. The learned DR has also doubted the correctness of the sale consideration by saying that in which bank account the amount is credited has not been given. However, from the assessment order, we find that the Assessing Officer never doubted the correctness of the amount of sale consideration. In fact, he treated the sale consideration disclosed by the assessee as income of the assessee. Therefore, the limited question is whether the entire sale consideration is income or the same is received by the assessee from sale of shares, therefore, to be considered under the head 'income from capital gains'. In our opinion, the assessee has duly established that the amount was received from the sale of shares and, therefore, the same cannot be treated as income of the assessee. The same can be considered for the purpose

of capital gains under the head 'income from capital gains' but, it seems that the indexed cost of acquisition is more than the purchase consideration. Therefore, there was no liability of capital gains tax either. In any case, the issue before us is whether the sale consideration of the shares can be treated as income of the assessee. In our opinion, the sale consideration of shares cannot be treated as income of the assessee under any of the provisions of the Act. In view of the above, we uphold the order of learned CIT(A) and dismiss the appeal filed by the Revenue.

7. In the result, the appeal of the Revenue is dismissed.  
Decision pronounced in the open Court on 18<sup>th</sup> May, 2012.

Sd/-  
**(A.D.JAIN)**  
**JUDICIAL MEMBER**

Sd/-  
**(G.D.AGRAWAL)**  
**VICE PRESIDENT**

Dated : 18.05.2012  
VK.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar