

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "Friday E": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

SA No. 989/Del/2019  
(In ITA No. 6703/Del/2019)  
(Assessment Year: 2015-16)

Shri Anoop Jain, 11, Parmatma House, Babar Lane, Bengali Market, New Delhi	Vs.	ACIT, Central Circle-53(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri S. K Tulsian, Adv Ms. Bhoomija Verma, Adv
Revenue by:	Ms. Rakhi Bimal, Sr. DR
Date of Hearing	25/10/2019
Date of pronouncement	14/11/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This stay petition is filed by the assessee in ITA number 6703/Del/2019 for assessment year 2015 - 16 requesting for stay of demand of Rs. 21267320/-.
2. The assessee is an individual who has filed appeal before the coordinate bench on 24/7/2019, filed return of income for assessment year on 31/8/2015 declaring income of Rs. 4440350/-. During the course of assessment proceedings it was found that assessee has shown long-term capital gain of INR 57053401/- on sale of shares of Lifeline drugs and Pharma Ltd claiming exemption under section 10 (38) of the income tax act. The learned assessing officer during the course of assessment proceedings asked the assessee to justify the identity, genuineness of the transaction. Assessee produced the information however ld AO rejected the claim of the assessee of exemption u/s 10 (38) of the income tax act and made an addition u/s 68 of the income tax act. The learned assessing officer further made an addition of Rs. 1141835/- on account of the alleged commission charged by the entry operators and consequently the assessment order u/s 143 (3) of the act was passed on 29/12/2017.

3. The assessee preferred an appeal before the learned CIT – A, who confirmed the order of the learned assessing officer by the order dated 24/7/2019 and therefore the assessee has filed this appeal before the coordinate bench. Consequent to that tax demand of Rs 26584150/- arose out of which the assessee has already deposited 20% of the tax amounting to INR 5316830/-, thus the outstanding demand is of Rs. 21267320/-. By this stay petition the assessee has requested a direction to the learned assessing officer to keep the above demand in abeyance till the disposal of the appeal.
4. The learned authorised representative submitted that assessee has already paid substantial tax out of disputed tax demand. He submitted that assessee has submitted all the details before the learned assessing officer and the learned assessing officer without making any further enquiry has confirmed the addition. He submitted that the statement of the entry operators have been relied upon by the learned assessing officer without giving cross-examination to the assessee. He submitted that the assessment proceedings also concluded in gross violation of the principles of natural justice. Even on the merits, he submitted that as assessee has submitted all the details with respect to the transaction that have not been found to be false by the learned assessing officer, the addition couldn't be made. He submitted that the issue is squarely covered in favour of the assessee by the plethora of judicial precedents on this issue. Therefore, it was submitted that the balance of the convenience lies in favour of the assessee. It was further stated that assessee has paid substantial tax demand out of the total outstanding demand; assessee deserves the stay of the balance amount of the outstanding tax.
5. The learned departmental representative vehemently objected to the stay petition and stated that assessee has obtained the bogus long-term capital gain in penny stock and therefore it does not deserve stay of demand. He further submitted that there are equal numbers of judicial precedent against the assessee and therefore the balance of convenience does not lie in favour of the assessee.
6. We have carefully considered the rival contention and perused the issue involved on which the demand has arisen. We do not find that the issue on

which the demand has arisen makes the assessee eligible for stay of demand. As the issue involved is required to be decided on the facts of each case, we do not find that balance of convenience lies in favour of the assessee and therefore we reject the request of the assessee to keep the above demand in abeyance till the disposal of appeal. However, in the interest of justice, we are of the opinion that the issue may be decided expeditiously and therefore at the consent of both the parties, appeal of the assessee is fixed for hearing on priority basis on 18/11/2019. As the date of hearing is announced in the open court, as per the convenience of both the parties, no further notices required to be issued. Both the parties are directed to not to seek unnecessary adjournment in the above case and strive for early disposal of appeal.

7. In view of the above direction, the stay petition of the assessee is dismissed. Order pronounced in the open court on 14/11/2019.

-Sd/-  
(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 14/11/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi