



WEB COPY



T.C.A.No.248 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2026
DELIVERED ON : 30.04.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

TCA No.248 of 2021
and CMP No.6957 of 2021

Principal Commissioner of Income Tax
Central I, No.108, Nungambakkam
High Road, Chennai - 600 034.

Appellant(s)

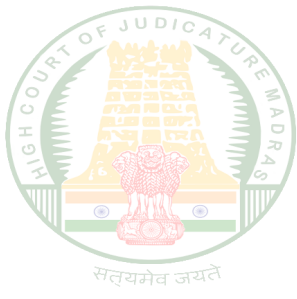
Vs

M.Kiran Kumar
123, Usman Road, T.Nagar,
Chennai - 600 017,
PAN: ACHPM 2247 E.

Respondent(s)

PRAYER: Appeal filed under Section 260A of the Income Tax Act, 1961
against the order of the Income Tax Appellate Tribunal Madras "C"
Bench dated 01.03.2021 in ITA.No.3374/Chny/2019.

For Appellant(s): Mr. D.Prabhu Mukunth Arunkumar
Senior Standing Counsel



WEB COPY



T.C.A.No.248 of 2021

For Respondent(s): Mr. N.Murali Kumaran
Senior Counsel
for M/s.Mc Gan Law Firm

JUDGMENT

THE CHIEF JUSTICE

This appeal by the Revenue challenges the legality and validity of the order dated 1.3.2021 passed by the Income Tax Appellate Tribunal [ITAT], 'C' Bench at Chennai, and the same was admitted by order dated 27.04.2021, on the following substantial questions of law:

"1. Whether the Appellate Tribunal was correct in holding that the admission made by the assessee during the search proceedings is only on an ad-hoc basis, whereas the addition was made on the basis of the statement recorded u/s. 132(4) of the IT Act, and the assessee was unable to reconcile the discrepancies with proper evidences during original proceeding or before appellate authorities?"

2. Whether the Appellate Tribunal was correct in deleting the addition of Rs.20 crores without any evidences or records when the assessee has never



WEB COPY

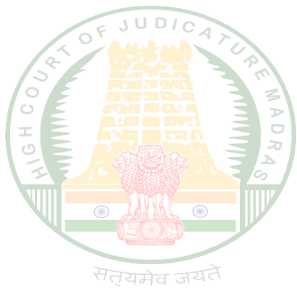


T.C.A.No.248 of 2021

retracted his statement made u/s.132(4) at any point of time before any authorities?

3. Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was right in deleting the addition made u/s.2(22)(e) of the Act as a mere trade advances, without appreciating the fact that the two concerns M/s.Marium Creations and M/s. Infinite Jewellers are only paper concerns, doing circular transactions utilized by the assessee with the motive of diverting the funds of M/s. Lalithaa Jewellery Mart Pvt. Ltd to M/s. AK Exports which in turn are ploughed back in the share application money/share premium of the same company i.e., M/s. Lalithaa Jewellery Mart Pvt. Ltd. which is a clear case fall within the ambit of section 2(22)(e) of the IT Act ?

4. Whether the ITAT was right in deleting the disallowance of exempt long term capital gains claim made by the assessee u/s.10(38), when the entire scripts sold belongs to a loss making (penny stock) company having no reserves surpluses/assets and no possibility of earning any dividend income and whose shares were sold by the assessee for 2613% higher than the investment, within a span of 13 months to 21 months, which cannot happen in a normal



WEB COPY



T.C.A.No.248 of 2021

business transactions, which the ITAT had termed as a genuine transaction?"

2. The undisputed facts of the case leading to filing of the present appeal, which are required to be adverted to, for the disposal of the present appeal are as follows:

(i) The respondent/assessee is an individual and Proprietor of M/s.A.K. Exports and A.K. Jewellers, which is engaged in the business of trading in gold jewellery and bullion. He is also the Managing Director of Lalithaa Jewellery Mart Pvt. Limited.

(ii) A search was conducted on 02.09.2014 under Section 132 of the Income Tax Act in the business premises of Lalithaa Jewellery Mart Pvt. Ltd and Group of Companies, including the residential premises of the respondent/assessee and, consequent thereto, notice under Section 153A of the Act was issued to the respondent/assessee. In response, the respondent/assessee filed his return of income on 14.11.2015, declaring a total income of



WEB COPY



T.C.A.No.248 of 2021

Rs.1,42,42,750/-, which was the same total income returned in the original return.

(iii) The case was taken up for scrutiny and the Assessing Officer added a sum of Rs.20,00,00,000/- as undisclosed income for the assessment year 2015-16, out of the Rs.30 crores offered by the respondent/assessee during the course of search. The remaining Rs.10 Crores was added in the previous assessment year, i.e., 2014-15.

(iv) The Assessing officer also made an addition of a sum of Rs.76,19,00,000/- as deemed dividend u/s.2(22)(e) of the Act, in the hands of the respondent/assessee, being the cumulative credit balance in the book of M/s.A.K. Exports and due to M/s.Infinity Jewellers and M/s. Mariyam Creations, while holding that the respondent/assessee had indirectly borrowed funds from Lalithaa Jewellery Mart Pvt. Ltd through the books of M/s.Infinity Jewellers and M/s.Mariyam Creations, which are paper concerns. The Assessing Officer had also made



WEB COPY



T.C.A.No.248 of 2021

additions towards Long term capital gains derived from sale of shares by disallowing the exemption claimed under Section 10(38) of the Act to the tune of Rs.16.24 crores for the reason that the gains computed from sale of shares were unrealistic and the script was rigged in the market to derive undue benefit to the Respondent/assessee. Similarly, the Assessing Officer has made additions towards excess jewellery at Rs.10,17,000/- found during the course of search stating that no explanation was offered by the assessee.

(v) Being aggrieved by the Assessment Order, the respondent/assessee preferred an appeal before the Commissioner of Income-Tax (Appeals), Chennai [CIT(A)], *inter alia*, contending that the Assessing Officer cannot make additions of undisclosed income, solely on the basis of the statement of the assessee made during the search without any corroborative evidence and, at any rate, the so-called discrepancies for which the additions were made are



WEB COPY



T.C.A.No.248 of 2021

neither connected to the assessee nor the assessee was in any way connected to it, in his individual capacity; that the addition made towards deemed dividend in respect of amounts due to M/s.Infinity Jewellers and M/s.Mariyam Creations, is without any basis as the transactions are genuine business transactions for purchase and sale of gold for which necessary evidences have been filed before the Assessing Officer to prove that the said transactions do not come under the purview of provisions of section 2(22)(e) of the Act; that the Assessing Officer erred in disallowing the exemption claimed towards long term capital gain derived from sale of shares on the ground that though the Assessing Officer claimed that the assessee is a beneficiary of the bogus long term capital gain derived from sale of penny stocks, the Assessing Officer has failed to link the transactions of the assessee with any alleged scam related to bogus long term capital gain.



WEB COPY



T.C.A.No.248 of 2021

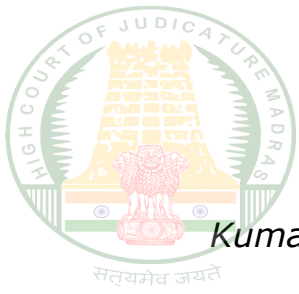
(vi) The CIT(A) dismissed the appeal preferred by the respondent/assessee vide order dated 14.11.2019, which resulted in the respondent/sassessee filing of an Appeal in ITA. No. 3374/Chny/2019 before the Income Tax Appellate Tribunal, 'C' Bench, Chennai.

(vii) The Income Tax Appellate Tribunal vide order dated 01.03.2021 partly allowed the appeal of the assessee deleting the additions made by the Assessing Officer except the sum of Rs.10,17,000/- towards unexplained jewellery. Aggrieved by the same, the Revenue has filed this Appeal.

SUBSTANTIAL QUESTIONS OF LAW Nos.(1) AND (2)

3. Out of the four questions of law, the first two questions of law relate to the issue of addition of Rs.20 Crores.

4.1. The learned Senior Standing Counsel for the appellant placing reliance on a decision of the Supreme Court in *B.Kishore*



T.C.A.No.248 of 2021

Kumar vs. DCIT¹, contended that when there is a clear and categorical admission of undisclosed income by the assessee himself, there is no necessity to scrutinize the documents and that the assessee had agreed to offer a total sum of Rs.30,00,00,000/- during the search, including a sum of Rs.10,00,00,000/- pertaining to assessment year 2014-15 as additional income. Hence, it is submitted that in view of the fact that the assessee was unable to explain certain discrepancies in the documents and materials seized during the course of search which relate to the company M/s.Lalitha Jewellery Mart Pvt. Ltd and the personal proprietary business of the assessee and also in view of the admission made by the assessee himself under Section 132(4) of the Act and the evidences seized during the course of search, the additional undisclosed income of Rs.20,00,00,000/- has rightly been adjudged by the Assessing Officer for the Assessment Year 2015-16.

4.2. The learned Senior Standing Counsel for the appellant further contended that it is clear from the statement recorded during the course of search under Section 132(4) of the Act, that

¹ [2015] 62 taxmann.com 215 (SC)



T.C.A.No.248 of 2021

the assessee, in his individual capacity, had admitted voluntarily a sum of Rs.20 crores as undisclosed income for the assessment year 2015-16, which was not retracted by him either during the course of assessment proceedings or first appellate proceedings. During the second appellate proceedings, no new material/evidence was brought on record to disturb the findings of the Assessing Officer, which was confirmed by the CIT(A). In this case the assessee has admitted undisclosed income in his individual capacity, which was supported by the statement recorded during the course of search under Section 132(4) of the Act and such statements were recorded in light of various discrepancies noted in respect of loose sheets found during the course of search, excess wastage claim on melting of old gold, etc. Therefore, the Tribunal was wrong in deleting the said addition in the absence of any new material or evidence or retraction by the assessee.

5.1. Per contra, learned Senior Counsel appearing for the respondent/assessee by placing reliance on the findings of the Tribunal contended that it is evident both from the records as well as the findings of the Tribunal that the assessee has explained

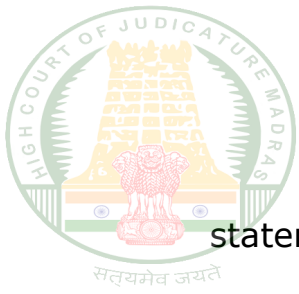


T.C.A.No.248 of 2021

every discrepancy found during the course of search and the statement recorded itself states that only in order to buy peace, the respondent/assessee had offered the said Rs.20 Crores as an undisclosed income. As is found by the Tribunal, the so called discrepancies relate to one, M/s.V.B. Jewellers and manufacturers which was for the assessment years 2014-2015 and whatsoever statement or declaration that was made by the assessee relates only to Lalithaa Jewellery Mart, where he is a Managing Director and not as an assessee in his individual capacity. Learned Senior Counsel citing the Circulars of the CBDT dated 18.12.2014 and 10.03.2023, contended that the Department cannot make additions of undisclosed income based on so called confessions in the absence of any corroborative evidence.

5.2. Learned Senior Counsel for respondent placing reliance on a Division Bench judgment of the Gujarat High Court in the case of *PCIT Vs.Nageshwar Enterprises*², has argued that the Department cannot make an addition on the basis of confession made by assessee. In the absence of any material to corroborate the

² (2020) 421 ITR 388



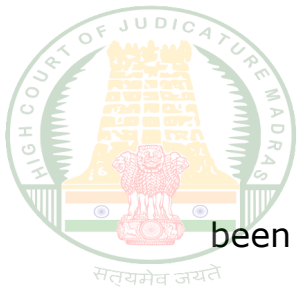
T.C.A.No.248 of 2021

statement made by the assessee in the form of confession, no addition can be made. Further, learned Senior Counsel also relied on Division Bench judgment of the Rajasthan High Court in the case of *PCIT v. Esspal International (P.) Ltd*³ to contend that the admission of the assessee in the absence of any corroborative evidence cannot be made a basis for any addition.

6. We have bestowed our consideration to the respective submissions made by the learned counsel for the parties and perused the records of the case.

7. If we sift through the order passed by the Assessing Officer, it is evident that whatsoever statement has been made by the assessee has not been made in his individual capacity and, therefore, no addition can be made on the basis of such admission of undisclosed income, more so as there is no corroborative evidence to support the statement of the assessee offering undisclosed income during the time of search. Such a practice has

3 (2025) 473 ITR 329



T.C.A.No.248 of 2021

been adversely taken note of by CBDT in its two circulars dated 18.12.2014 and 10.03.2023.

WEB COPY

8. At this juncture, it is apposite to reproduce the findings of ITAT, with which we express our concurrence:

"7.6. ... Thus, the statement recorded and the declaration given by the assessee can only relate to the transactions of LJM and not the assessee in his individual capacity. It is relevant to note that the assessee is deposing not only in his individual capacity but also the MD of LJM. The discrepancies pointed out in Question No.20 of sworn statement was already been quantified and offered to tax by the assessee in his return of income for assessment year 2014-15. Apart from sworn statement, there is no other corroborative evidence to prove said sum of Rs.20 crores as undisclosed income of the assessee. Therefore, in our considered view, the AO has misplaced his reliance on the statement recorded during the course of search to conclude that admission of undisclosed income is based on incriminating material founds during the course of search.



WEB COPY



T.C.A.No.248 of 2021

7.7. ... *In the absence of any corroborative evidence, merely on the basis of admission in statement recorded u/s.132(4) of the Act, no liability can be fastened on the assessee. The AO has not brought on-record-any material and reasons for rejection of assessee contention by which the assessee has retracted from his admission. None of the authorities gave any reason as to why the AO did not proceed further to enquire into the unaccounted income as admitted by the assessee in the statement U/s.132(4) of the Act. ... "*

9. In the case at hand, as there is no corroborative evidence to support the alleged confession of the assessee and in view of the fact that pursuant to the notice issued under Section 153A of the Act, the assessee has not returned it as income, and taking into consideration the decision cited by learned Senior Counsel for respondent in *Nageshwar Enterprises (supra)* and *Esspal International (P.) Ltd (supra)*, we answer the first two questions of law against the appellant and in favour of the assessee.



T.C.A.No.248 of 2021

SUBSTANTIAL QUESTION OF LAW No.(3)

WEB COPY

10. Qua the third question of law wherein a deemed dividend under Section 2(22)(e) of the Act was added as income by the Assessing Officer, learned Senior Standing Counsel for the appellant contended that Assessing Officer has found that M/s.Infinity Jewellers and M/s.Mariyam Creations belong to one Syed Aafaq Khurram and its transactions with A.K.Exports, which is the proprietorship concern of the assessee is highly suspicious and it is clear that the assessee has borrowed funds indirectly from M/s.Lalithaa Jewellery Mart, wherein he holds 90% of the shares, through the books of M/s.Infinity Jewellers and M/s. Mariyam Creations. Therefore, it is argued that they are deemed dividends in the hands of the assessee under Section 2(22)(e) of the Act. He placed reliance on the judgment of this Court in *Bhagavathy Velan vs Deputy Commissioner of Income Tax (DCIT)*⁴, to contend that, the ITAT was wrong in deleting the said addition.

4 (2019) 264 Taxman 146 (Mad.)



T.C.A.No.248 of 2021

11. Per Contra, learned Senior Counsel appearing for the assessee contended that, as rightly held by the ITAT, the transactions in question are pure business transactions and in the course of running account between parties it is natural that there will be outstanding in the books of accounts on the end of the financial/assessment year and in this case also whatever was outstanding in the books of accounts of M/s.A.K. Exports, due and liable to be paid towards the Jewellery supplied by M/s.Infinity Jewellers and M/s.Mariyam Creations, got squared in the next financial/assessment year on payment of the sale value of the supplied Jewellery. Similar is also the transactions between M/s.AK Exports and M/s.Lalithaa Jewellery Mart Pvt. Ltd, and, therefore, these business transactions do not fall under the scope of Section 2(22)(e) of Act as clarified by the CBDT Circular No.19/2017, dated 12.06.2017.

12. Learned Senior Counsel for the assessee relying on the decisions in *Commissioner Of Income Tax vs Shri Madurai Chettiyan*



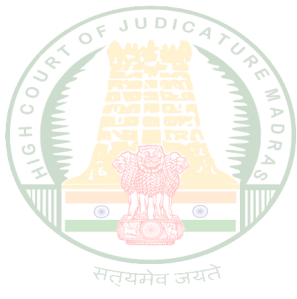
T.C.A.No.248 of 2021

*Karthikeyan*⁵ and CIT, Kottayam Vs. Malaya Manorama⁶, contended that there was no perversity in the order of the ITAT.

13. Upon hearing learned counsel for the parties on Question No.3, this court gave anxious consideration to the finding recorded by the ITAT in this regard, which is being reproduced below:

"8.7. ... M/s. AK Exports is an independent proprietorship concern of the assessee and engaged in purchase and sale of gold and bullion from various parties and sells to LJM as a captive jewellery unit, for which it had received payments for sale of gold and gold ornaments. Similarly, M/s.Infinity Jewellers and M/s.Mariyam Creations are two third parties from whom M/s.AK Exports purchases gold and gold ornaments for which it has pending payments against purchase of goods. Based on the above transactions, the Assessing Officer has propounded the theory of circuitous transactions among the concerns for diverting profit of LJM in the guise of payment for purchase and sales and ultimately the same has been rerouted to the company as share application money. The AO, to arrive at such

⁵ (2014) 223 Taxman 350 (Mad.)
⁶ 405 ITR 5959 (Kerala)



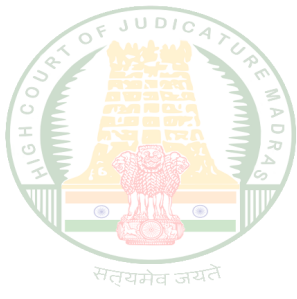
WEB COPY



T.C.A.No.248 of 2021

conclusion has given his own reasons including the capacity of two partnership firms and their business model including the places from where they operate their business.

8.8. We have given our thoughtful considerations to the reasons given by the AO to reach to a conclusion that cumulative credit balance in the books of M/s.AK Exports due to M/s.Infinity Jewellers and M/s.Mariyam Creations, as diversion of funds from LJM and found that the AO has propounded a theory of circuitous transactions purely on conjectures and surmises, moreover without their being proper appreciation of facts. We further noted that both concerns are carrying out their business independently and are regularly filing VAT returns not only that they have also income tax assessee's and filed return of income for the respective assessment years. In fact, these facts are not disputed by the AO. But, objection of the AO is that these concerns operate in a small place with no wherewithal to conduct business of such huge volume and also that there are no personnel employed by them for achieving these huge turnover. We ourselves do not subscribe to the reasons given by the AO, for the simple reason that



WEB COPY



T.C.A.No.248 of 2021

what is dealt by these two concerns is gold and gold jewellery, whose value is high compared to the mass and weight of any other merchandise that the AO conceives of. It is not uncommon that huge volumes could be achieved when transaction in a few kilograms of primary gold or the gold ornaments. As clarified by the Id. AR for the assessee, in places like Mumbai, where there is a place constraint with small place, huge turnover in thousands of crores are achieved. Therefore, for this reason, the conclusion arrived at by the AO that these are not commercial transactions but circuitous transactions carried through group firms for diverting funds of the company to the Director is incorrect and unfounded under law.

...

8.10. ... The assessee has placed account copies of the concerns M/s.Infinity Jewellers and M/s.Mariyam Creations in the books of LJM. From the above, it could be seen that it is a continuing account, where huge purchase and sales inter se these concerns. Thus, it is very clear that it has a commercial transaction and account is running accounts. Further, the account copy of M/s. Mariyam Creations in the books of LJM for the period 01.04.2014 to 31.03.2015 is placed on record as per which the



WEB COPY



T.C.A.No.248 of 2021

closing balance is only a sum of Rs.26.11 crores, whereas the AO has considered deemed dividend from this concern at Rs.46.18 crores. Thus, from the above, it is very clear that the AO's action is founded on suspicions and surmises and without reference to actual facts and figures. We further noted that the account copy of LJM in the books of M/s. AK Exports is placed on record at pages 89 to 173 of paper-book. It could be seen that the total credits / debits in this account for the period of Rs.810 crores. There are huge purchases as well as sales effected to LJM. The transaction between the assessee and LJM are also pure commercial transactions. Thus, even assuming for the sake of arguments that the amounts had been paid directly by LJM to M/s. AK Exports, still it would only be a commercial transaction outside the scope of deemed dividend as explained by the CBDT in Circular No.19 of 2017 dated 12.06.2017.

8.11. ... Therefore, in our considered view, the AO has made addition only based on the formulated theory that the assessee avails the benefit in the nature of loans and advances in the capacity of shareholder. In order to consider any payment under the provisions of section 2(22)(e) of the Act, the first



WEB COPY



T.C.A.No.248 of 2021

and foremost limb is that there should be some benefit arising out of the said transactions to the shareholder. In the present case, there is no personal benefit at all to the assessee. The AO himself accepts the fact that the funds were utilized during the course of business and therefore, this transaction at any point did not get out of the business circle at all. The provisions of section 2(22) (e) of the Act, is deeming provision-and-should-be-construed strictly.”

14. This court upon perusing the finding rendered by ITAT has no hesitation in holding that the ITAT was right in stating that the transactions do not fall under Section 2(22)(e) of the Act and, therefore, we do not find any reason or ground to interfere with the findings of the Tribunal and answer the third question of law in favour of the assessee and against the revenue.

SUBSTANTIAL QUESTION OF LAW No.(4)

15. This question of law relates to the disallowance of the long term capital gain claimed under Section 10(38) of the Act and adding the same as income.



T.C.A.No.248 of 2021

WEB COPY

16. Learned Senior Standing Counsel for the appellant contended that the difference between the purchase and sale of shares of the assessee of Indo-American Advanced Pharmaceutical Limited [subsequently changed to Mahavir Advanced Remedied Limited] is almost 2613%, which is unrealistic. It is argued that the Assessing Officer had brought out clear facts to the effect that the key financials of M/s.Mahavir Advanced Remedies Ltd, do not have any financial fundamentals. Further, the company does not have awesome-profit, EBIDTA margin, EPS, bonus dividend etc. The assessee has earned 303% of profit on investments, although the book value of the shares of the company is negligible. Referring to various documents, he submitted that the financials of the company if compared with share price, it is really incomprehensible as to how such an unrealistic and astronomical price increase could be there in the share price during such short span of time. In support of his submissions various judicial precedents including that of the judgment of this Court in *Tax Appeal No.198 of 2019* and the



T.C.A.No.248 of 2021

decision of the Supreme Court in the case of *Suman Poddar vs. ITO*⁷ were relied.

WEB COPY

17. Per contra, learned Senior Counsel appearing for the respondent/assessee contended that the addition made by the Assessing Officer by disallowing the claim of exemption is only on the basis of preponderance of probability, purely on guess work, conjectures and surmises and the so-called findings of the Assessing Officer are not supported by any evidence collected from any authority and by any rate they having been not placed before assessee for his remarks and comments, the ITAT was fully justified in deleting the said addition.

18. Learned Senior Counsel for respondent placed reliance on the decision in *Lalithaa Mart Pvt Ltd. v. Deputy Commissioner of Income Tax*⁸, which was also upheld by the Supreme Court; and also the judgement of this Court arising out of the same search dated 02.09.2014 in the case of the company, M/s.Lalithaa Jewellery Mart in TCA Nos.14 to 16 of 2020 and TCA No.296/2023,

⁷ (2020) 268 Taxman 321

⁸ Judgment dated 11.08.2017 in TCA Nos.435 and 436 of 2013



T.C.A.No.248 of 2021

and contended that the assessee has discharged his burden of proof and, therefore, once the assessee discharged the burden of proof under Section 68 of the Act, merely on the basis of suspicion, in absence of any specific evidence being brought on record, the ITAT was completely justified in deleting the said additions. He also further contended that on a pure finding of fact, no question of law arises.

19. Upon hearing learned counsel for the parties on Question No.4, this court gave anxious consideration to the finding recorded by the ITAT in this regard, wherein the ITAT has deleted the said addition made by the Assessing Officer, which is being reproduced below:

"9.5. ... We further noted that the AO as well as the CIT(A) have gone on the wrong premises by assuming that the assessee is one of the beneficiary of organized racket of bogus transactions of long term capital gain without any reference to information collected during the course of investigation carried out by the Directorate of Investigation, Kolkata and to the assessee. Although, the AO has extensively discussed the issue in light of modus



WEB COPY



T.C.A.No.248 of 2021

operandi of the persons involved in the racket of bogus long term capital gain but nowhere, he has referred to any piece of evidence collected during the course of investigation to the assessee and the company share in which assessee has dealt.

...

9.7. The AO has also made another allegation that investigation carried out by the Directorate of Investigation, Kolkata had brought out a list of 87 companies, which were involved in bogus long term capital gains. The AO neither furnished the list of 87 companies in the assessment proceedings and it is not shown in, under which serial number this company appears in the said list. Further, the Departmental authorities having referred to a list of 331 shell companies which are involved in bogus long term capital gain, once again the list has not been furnished to prove that the name of the company in which the assessee invested also finds a place. Unless, the AO confronted with the information possessed by him to the assessee for his comments, no addition can be made only on the basis of some allegation that the assessee may be one of the beneficiary of the organized racket of bogus long term capital gain. ... Further, the AO as well as the CIT(A had referred to investigation in the order of assessment in respect of companies situated in Kolkata. ... But, the



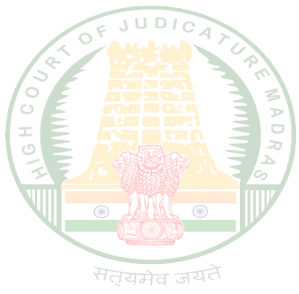
WEB COPY



T.C.A.No.248 of 2021

evidence placed before us shows that the authorities failed to note that the company is situated in Chennai and there is no link to any of Kolkata companies involved in the bogus long term capital gain scam. Since, the company 'situated in Chennai and also present for more than 21 years, the assessee felt that the prospect of pharmaceutical industry would be good and therefore invested in the company. Another important point to be considered is that the company was listed in the BSE on 26.06.2013 at Rs.7.77 per share. Unlike other companies as mentioned by the AO in the assessment order, this company was not previously listed as on the date of purchase of shares. The shares were purchased through private placement before the list and on the basis of optimism of the assessee with respect to the growth of pharmaceutical industry....

9.8. ... yhe AO totally ignored the genuine documents produced before him and passed the Assessment Order on a sweeping statement without any material evidence or fact on record. ... In our considered view, on the basis suspicion, modus operandi, preponderance of human probabilities, the claim of assessee cannot be discarded, unless specific evidences are brought on record to controvert voluminous evidences filed by the assessee. ...

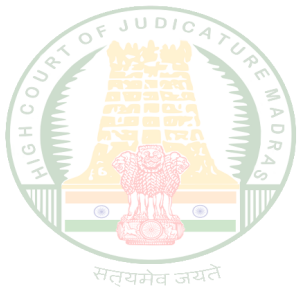


WEB COPY



T.C.A.No.248 of 2021

9.9. *The assessee has submitted some additional documents before the Ld. CIT(A) along with an application for admission of additional evidence under Rule 46A of the IT Rules (pages 399 to 440 of PB No.2). They are the details of the assessee's shareholding as on 31.03.2013 and 31.03.2014 issued by MK Global Financial Services Limited and the ledger account of the assessee in the books of Aryan Share and Stock Brokers Limited for the period 01.04.2014 to 31.03.2015 and MK Global Services Limited. The contract notes issued by the aforesaid share brokers are there in pages 404 to 434 of PB No.2. The CIT(A) refused to admit these documents as additional evidence for the reason that there is no cause shown by the Assessee as to why these documents could not be placed before the AO. A Look at the Assessment Order would show that the proceedings were concluded on 30th December, 2016. The documents were called for by the AO only at fag end of the Assessment Proceedings and therefore could not be placed before him at that point of time. It is however relevant to note that the AO has not disputed the purchase or the sale of the shares. Therefore, in effect even though the contract notes were not placed before the AO in the course of Assessment Proceedings the AO has accepted the purchase and sale of the shares. Thus, these documents are only support the*



WEB COPY

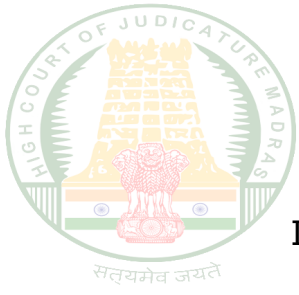


T.C.A.No.248 of 2021

statement already made by the Assessee in the course of the Assessment Proceedings which statement is 7 not disputed by the AO.

9.10. ...The AO failed to bring on record any evidence indicating bogus transactions. ... All these transactions are through proper banking channels, Dematted and subjected to securities transaction tax. When the pre-requisite conditions imposed by the legislature stands complied in toto, the AO cannot proceed to treat the same as bogus and disallow the same solely based on the fact that the shares prices went up substantially. More importantly, said company Mahavir Remedies haven't been termed as SHELL Company which involved in unlawful trading of scripts."

20. Since the ITAT has deleted the addition on the basis of pure finding of fact, we hereby hold that the same does not give rise to any question of law, much less any substantial question of law and, therefore, we answer the last and fourth question of law against the appellant/department.

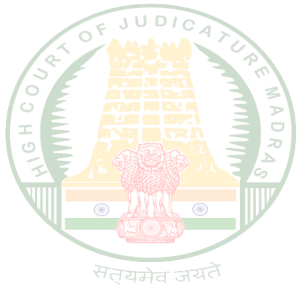


T.C.A.No.248 of 2021

In view of the foregoing discussion, the appeal being devoid of merits is hereby dismissed. No order as to costs. Consequently, interim application stands closed.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)
30.04.2026

Index : No
Neutral Citation : No
sasi



WEB COPY



T.C.A.No.248 of 2021

THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

TCA No.248 of 2021

30.04.2026