

IN THE INCOME TAX APPELLATE TRIBUNAL  
PANAJI BENCH :: PANAJI

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
(Through virtual hearing)

ITA No.09/PAN/2022  
(A.Y. 2011-12)

Manoj Anand, T-5, Second Floor, Green Park Main, Delhi	vs	ACIT, Central Circle, Panaji, Goa.
PAN: AGLPA 4142 L		
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri Prabhakar Anand DJ, DR
Date of hearing	:	05/09/2023
Date of pronouncement	:	21/09/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Commissioner of Income Tax (Appeals)-2, Panaji, [for short, 'CIT(A)'], dated 27.01.2022 for A.Y.2011-12 as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assessee. The submissions of the Id.DR were recorded, the materials/documents on record were considered and the case was heard on merits.

3. In this case, assessee is an individual, filed his return of income declaring income of Rs. 7,50,670/-. A search and seizure action u/sec. 132 of the Income Tax Act, 1961 (for short, 'the Act') was carried out

in the case of the assessee on 24/10/2017. In response to the notice issued u/sec. 148, the assessee filed his return of income declaring total income of Rs. 7,50,670/-. The Assessing Officer (AO) completed the assessment u/sec. 143(3) r.w.s. 147 determining the total income at Rs. 3,20,00,670/-.

4. Aggrieved by the order of the AO, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has discussed each and every issue elaborately and dismissed the appeal of the assessee by observing as under:-

*"7.9 At two points unaccounted monies are converted. At the first stage and at the third stage, i. e. once at the point of creation of share capital and then again at the point of converting the inventories/ investments/loans and advances into funds for the legitimate business purpose. It is relevant because the creation of the shell companies and introduction of the share capital is not the only issue that comes up. This is but the tip of the iceberg. A perusal of the Balance sheet and Profit & Loss account in the case of the assessee shows that the share application monies received by the assessee along with the premium are represented in the Balance sheet in the form of current assets being the unquoted equity shares in other such companies. That is the share application money received by the assessee is used for making further investments in other such similar shell companies from whom cash is taken and rerouted through cheques. These shell companies which are acquired by the interested third parties purchase these companies at a fractional amount of the value of the shares. That means a company whose share value is Rs.10/-, the share is issued at a premium of Rs.490/- total value of the share becomes Rs.500/- This contains first portion of the unaccounted cash brought in or converted through the accommodation entry. Now this 500 rupee share is purchased by the third party or the interested person in taking over the company for the purpose of utilizing its capital. It may be two rupees or three rupees per share. Here the purchase price is even below the face value of the shares or at the face value. The premium is in effect the bonus. The premium already introduced sits in the liability side as a reserve and on the asset side as investments in all other shell companies. Now once the balance sheet which now holds in current assets the un-quoted shares of other shell companies and loans and advances get cleaned by again liquidating these current assets. Now these current assets representing the share application*

*money or the inventories being shares in the unquoted companies are sitting at a premium because these shares have also been applied for and purchased at a premium.*

*7.10 The present case of the assessee is a perfect example of a facade created to convert unaccounted money by way of a shell companies and putting them into a series of transactions to give a legitimate color of converting of unaccounted cash available with the individuals. It is again important to bring out here the observations made by Hon'ble Supreme Court in various cases, where the Hon'ble Court has observed that the true nature of transactions in the context of human probability needs to examine to bring the truth from the apparent as observed by the Hon'ble Supreme Court in the case of CIT vs Durga Prasad More 82 ITR 540 and in the case of Sumati Dayal vs CIT 214 ITR 801 has expounded that revenue authorities are also supposed to consider the surrounding circumstances and apply the test of human probability. In these cases, the transactions though apparent were held to be not real ones. Also, in 63 ITR 609 in the case of CIT vs Shri Meenakshi Mills Ltd Hon'ble Apex Court has held that in exceptional circumstances courts are entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal façade."*

5. Reference may be made to the decision of the Hon'ble Supreme Court in the case of *Mc Dowell & Company Ltd. v. CTO* [1985] 154 ITR 148 (SC) wherein the Hon'ble Supreme Court has held that "*Tax planning may be legitimate provided it is within the framework of law, Colourable devices cannot be part of tax planning....*". In the case of *DCIT v. Pawan Kumar Malhotra* [2010] 2 ITR 250 (Del – Trib.), it was observed that AO had come to a conclusion after meticulous enquiry as regards the purchases found by him as sham transaction treating the difference as undisclosed income and, therefore, the Revenue's appeal was allowed restoring the order of the AO. The Tribunal relying upon the decision of the Hon'ble Supreme Court in the case of *Mc Dowell & Company Ltd.* (supra) and the case of *Sumati Dayal v. CIT* [1995] 214 ITR 801 (SC) wherein the former case dealt with tax

planning and condemned sham transactions and in the later case, the inference was based upon test of human probabilities with the assessee's version on facts was unbelievable and hence, was to be discarded. In all these decisions, the judicial conclusion is clearly set out that where tax planning is permitted at the same time, the assessee is not allowed to resort to any sham transaction or colourable devices for avoiding and evading tax. One classic judicial example is the decision of the Hon'ble Supreme Court in the case of *M/s. Friends Trading Company v. Union of India* in Civil Appeal No.5608/2011 vide order dated 23/09/2022 held in the context of availment of alleged forged in capital DEPB under the Customs Act held that exemption benefit availed on such forged DEPB are *void ab initio* on the principle that fraud vitiates everything. The ratio of this decision squarely applies to the conduct of the present assessee before us as he had fraudulently conducted himself with the Revenue by misreporting his income in the return filed for evading tax. Further, the application of principle of fraud was considered by the Hon'ble Supreme Court in the case of *Badami (deceased) by her LRs v. Bhali* in Civil Appeal No. 1723/2008, dated 22/05/2012 wherein the Hon'ble Supreme Court has held as follows:-

*"20. In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others AIR 1994 SC 853 this court commenced the verdict with the following words:-*

*"Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment*

*or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."*

*21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party .*

*22. In Smt. Shrist Dhawan v. M/s. Shaw Brothers AIR 1992 SC 1555 it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in Roshan Deen v. Preeti Lal AIR 2002 SC 33, Ram Preeti Yadav v. U.P.Board of High School and Intermediate Education and others (2003) 8 SCC 312 and Ram Chandra Singh v. Savitri Devi and others (2003) 8 SCC 319.*

6. That, as evident in the order of the Id. CIT(A) at para 7.9 and 7.10, it has been clearly brought out the *modus operandi* of the assessee and undisputedly from the facts on record it is precise that the transactions entered into by the assessee is nothing but conversion of unaccounted money by way of shell companies and putting them a shape of legitimate colour of converting such unaccounted cash available with the individuals. That, even in the assessment order, it has been elaborately discussed by the AO that the assessee had designed a structure of tax evasion by employing paper companies which were listed on the recognized stock exchanges and the subsidiary paper companies of such listed companies. That, it

is also apparent from the foregoing paras as held by binding decisions in the case of *Mc Dowell & Company Ltd.* (supra) wherein the Hon'ble Apex Court had held that tax planning is legitimate provided it is within the framework of law and colourable devices cannot be part of tax planning. The legal principle is clearly set out that where tax planning is permitted, the assessee is not allowed to resort to sham transactions or colourable devices for avoiding and evading tax. In the realm of financial legislations or for that matter, whenever the assessee or the petitioner has approached the Court, it is necessary that they are coming before the Court of law with clean hands. The moment any fraud is detected in the conduct of the assessee or the petitioner that will vitiate all judicial acts, ecclesiastical or temporal which was referred in the decision of Hon'ble Supreme Court in the case of *S.P Chengalvaraya Naidu vs Jagannath AIR 1994 (SC) 853*, where the words of Chief Justice Edward Coke of England were quoted by the Hon'ble Supreme Court by stating that it is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and *non est* in the eyes of law. A person, whose case is based on falsehood, has no right to approach the court. In the present matter before us, the Revenue authorities have given categorical finding that the assessee had resorted to colourable devices and sham transaction in order to defraud the Department by camouflaging its unaccounted income, so that ultimately, tax can be evaded. In view of examination of facts on record and legal principles

enshrined hereinabove, we do not find any infirmity with the findings of the Id.CIT(A) which is upheld. Grounds of appeal are dismissed.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in open Court on 21<sup>st</sup> September, 2023.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 21<sup>st</sup> September, 2023  
vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, Panaji Bench, Panaji.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary  
ITAT, Pune.