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% 29.03.2011

Present: Ms. Prem Lata Bansal, Sr. Advocate with Mr. Deepak Anand, Jr. Standing Counsel for the Revenue.

(common orders)

+ CM APPL. 5927/2011 in ITA 575/2011
CM APPL. 5929/2011 in ITA 576/2011
CM APPL. 5931/2011 in ITA 577/2011
CM APPL. 5933/2011 in ITA 578/2011
CM APPL. 5935/2011 in ITA 579/2011

Exemption allowed subject to just exception.

These applications stand disposed of.

+ CM APPL. 5928/2011 in ITA 575/2011
CM APPL. 5930/2011 in ITA 576/2011
CM APPL. 5932/2011 in ITA 577/2011
CM APPL. 5934/2011 in ITA 578/2011
CM APPL. 5936/2011 in ITA 579/2011
CM APPL. 5937/2011 in ITA 580/2011

For the reasons stated in the applications, the delay in refilling the appeals is condoned.

These CMs stand disposed of.

ITA 575/2011
ITA 576/2011
ITA 577/2011
ITA 578/2011
ITA 579/2011
ITA 580/2011

In all these cases, common issue arises. The assesseees in their Income-Tax Returns had declared Long Term Capital Gain on sale of certain shares and had claimed commission under Section 54 F of the Income-Tax Act. The Assessing Officer had issued notice to



M/s Nagesh Investment Pvt. Ltd. whose shares were purportedly transacted by the assessees and also M/s Bubna Stock Broking Services Ltd. Kolkatta who was the share broker. As no response was received to these notices, the Assessing Officer held the view that genuineness of the transactions could be proved and on that basis the Assessing Officer treated the alleged sale transactions as bogus accommodation entries and added to the income of the assessees as unexplained cash credit. He also added 2% of the amounts in question as expenses incurred by the assessee for receiving such amounts. We may record here that in so far as assessees are concerned, they had submitted details of payment and receipt through cheques, bank drafts etc. and had also shown the books of accounts where these transactions were entered into. The matter was carried in appeal by the assessees and before the CIT (A) who after going through the record accepted the genuineness of the transaction in holding that the assessee had sufficiently discharged the onus cast upon them and thus deleted the additions made by the Assessing Officer. We may record here that the evidence which were produced by the assessees to show the purchase of shares and thereafter sale of these shares included the following:-

- (i) Copy of share broker bill
- (ii) Copy of the contract notes



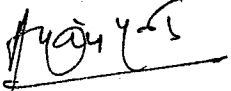
- (iii) Copy of shares where physical delivery was taken at the time of sale.
- (iv) Copy of demat account statement showing that the share were transferred from the name of the assessee after its sale.
- (v) Copy of the bank statement of the assessees.
- (vi) Copy of the bank statement of the share broker.
- (vii) Copy of the quotation on the share market on the date of purchase and sale as published by the Stock Exchange.

The ITAT while affirming the aforesaid view of the CIT (A) and dismissing the appeal of the Revenue inter alia noticed that in regard to the demat account, the shares had been transferred out of the demat account of the assessee and the name of the purchaser of the shares were also seen in the demat account that by itself was sufficient to prove the genuineness of the purchase and sale of the shares having regard to the relevant provisions contained in the Depository Act. On the basis of aforesaid documents, the concurrent findings of fact which are arrived at by the two authorities below do not seem to be perverted or unreasonable. The Assessing Officer could not bring on record any other details on the basis of which the aforesaid transactions could be treated as suspect.



The issue raised in these appeals is also identical except that the shares which were purchased and sold by the assesseees pertain to the company called Nisshan Indo Ltd.

For the reasons given above, these appeals are dismissed.


A.K. SIKRI, J.


M.L. MEHTA, J.

MARCH 29, 2011

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