

**Income Tax Appellate Tribunal  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 413/Del/2016  
(Assessment Year: 2012-13)

Paramjit Gandhi, C/o. M/s. RRA Taxindia, D-28, South Extension, Part-I, New Delhi (Appellant)	Vs. DCIT, Circle-2, Ghaziabad  (Respondent)
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**PAN: ADYPG3514G**

Assessee by :	Dr. Rakesh Gupta, Adv Shri Saksham Agarwal, CA
Revenue by:	Shri Kanv Bali, Sr. DR

Date of Hearing	24/07/2023
Date of pronouncement	20/10/2023

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.413/Del/2016 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals), Ghaziabad [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 087/362/2014-15/GZB dated 02.12.2015 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 10.03.2015 by the Assessing Officer, DCIT, Circle-2, Ghaziabad (hereinafter referred to as 'ld. AO').
2. The only effective issue to be decided in this appeal is whether the ld CIT(A) was justified in confirmation the action of the ld AO in disallowing the long term capital loss of Rs. 92,50,512/- on sale of shares in the facts and circumstances of the instant case.
3. We have heard the rival submissions and perused the materials available on record. The assessee is an individual deriving remuneration from M/s Progressive Tools and Components Pvt. Ltd in which he is one of the Directors.

Apart from this, the assessee is earning interest income as well as short term and long term capital gain. The return of income for AY 2013-14 was filed by the assessee on 31.07.2012 declaring total income of Rs. 54,49,160/-. The Id AO at page 2 of the assessment order observed that the assessee had furnished the copy of bank statement, TDS certificates, ledger accounts along with supporting bills/ invoices and books of account as called for by the Id AO and the same were examined and test checked by him. The Id AO observed that the assessee reported short term capital gain on sale of plot at Rs. 1,94,680/- and short term capital gain on sale of one plot amounting to Rs. 3,47,063/-.

4. The assessee was holding 822500 equity shares of M/s. Flexpack Technology Pvt. Ltd (FPTPL) which was bought for purchase consideration of Rs. 82,25,000/- at a face value of Rs 10 per share. These shares were allotted to him on 04.04.2007 at par. These shares were sold by the assessee during the year for Rs. 24,67,500/- and after claiming benefit of indexation, the assessee declared long term capital loss of Rs. 92,50,512/-. The assessee also explained the purpose behind selling the shares by stating that FPTPL could not do well in business and in order to mitigate the loss, the assessee thought it fit to exit from the said investment but could not recover beyond Rs. 3 per share even though he had purchased the same at Rs. 10 per share. The assessee was asked to justify the sale price of shares and the incurrance of long term capital loss thereon by the Id AO. The assessee explained that one of the shareholder and Directors of FPTPL Brig. Shri Sudhir Kumar is friend of the assessee and at this behest, the shares of FPTPL were originally allotted to the assessee at par in the year 2007. Since the company was not doing well in the business and continuously incurring losses, the assessee requested Brig. Shri Sudhir Kumar to take back the shares and after lot of persistent efforts made, ultimately sold the shares to Smt Sunita Jain, W/o. Anil Kumar Jain at a negotiated price of Rs. 3 per share. The assessee also placed on record evidence in the form of balance sheet of FPTPL as on 31.03.2012 and company incorporation details as per Ministry of Corporate Affairs from which it could be seen that Smt. Sunita Jain (purchaser of shares from

assessee) was also one of the shareholders of FPTPL. The Id AO observed that Smt. Sunita Jain who after acquiring the shares from the assessee at Rs. 3 per share had eventually transferred the same shares to the initial promoters of FPTPL i.e. Shri Navneet Sudhir Kumar. Accordingly, the Id AO concluded that the assessee had sold the shares to the initial promoters at a loss through Smt Sunita Jain. With these observations, he concluded that the sale of shares at a lesser price than the cost price was not genuine and accordingly disallowed the long term capital loss of Rs. 92,50,512/-. This action of the Id AO was upheld by the Id CIT(A).

5. The Id AR before us vehemently argued that the assessee had sold the shares of FPTPL at a negotiated price at Rs. 3 per shares to the existing share holders of FPTPL Smt. Sunita Jain. Since the company i.e. FPTPL was incurring continuous loss, the assessee decided to exit the said investment to mitigate his loss. Since Brig. Shri Sudhir Kumar (initial promoters of FPTPL) was his friend through whom the shares of FPTPL were initially allotted to the assessee, the shares held by the assessee in FPTPL could be sold to Smt Sunita Jain. Thereafter, what Smt. Sunita Jain does with those shares is none of the business of the assessee herein. The Id AR argued that as far as the assessee is concerned, he has furnished all the documents evidencing the veracity and genuineness of the purchase and sale of shares. He argued that a sum of Rs. 24,67,550/- was duly received by the assessee from Smt. Sunita Jain towards sale consideration of the shares. Further, the assessee held these shares for a period of 4 years before this sale. Hence, there is no scope of disbelieving the conduct of the assessee in the instant case. The Id AR also submitted that evidence in the form the income tax returns of the assessee for AY 2013-14 to 2017-18 wherein, it could be seen that the assessee had not derived any benefit at all by showing long term capital loss for the year under consideration and such loss was not set off in future assessment years. There is absolutely no malafide intention on the part of the assessee to reduce his tax incidence by indulging in this transaction of sale of shares at a loss.

6. Per contra, the Id DR vehemently supported the orders of the lower authorities and argued that it is arranged transaction with the known parties and the shares sold by the assessee (though held for a period of four years) were eventually transferred to the initial promoters of FPTPL through Smt Sunita Jain. Hence, the Id DR prayed for confirmation of action of the lower authorities.

7. It is fact that the assessee during the year had sold the shares held by him in FPTPL for a period of four years at a loss. The fact that FPTPL was incurring continuous losses and their net worth was getting eroded due to loss and the fact that these shares in FPTPL were allotted to the assessee at par in the year 2007 because of the friendship of the assessee with Brig. Shri Sudhir Kumar (initial promoters FPTPL) are not disputed. When the value of shares held in a private company are getting eroded due to loss in the private company, there is no harm in assessee trying to get out of this investment. Every prudent investor would do the same to mitigate his loss. First of all, in a loss making company nobody would even come forward to purchase the shares from the assessee other than the existing share holders. Since the shares were purchased by the assessee at the behest of Brig. Shri Sudhir Kumar, Smt. Sunita Jain was introduced by Brig. Shri Sudhir Kumar to the assessee to have a negotiated settlement of Rs. 3 per share and ultimately the assessee sold the share in FPTPL to Smt. Sunita Jain at Rs. 3 per share. It is not in dispute that the sale consideration of Rs. 24,67,500/- was indeed received by the assessee from Smt Sunita Jain through regular banking channels. The purchase made by the assessee is not doubted by the revenue in the year 2007. The shares being held for a period of four years is not doubted by the revenue. The sale consideration at Rs. 3 per share amounting to Rs. 24,67,500/- is not doubted by the revenue. The only doubt of the revenue is that since the shares were sold at a loss and that those shares had eventually been transferred to initial promoters through Smt. Sunita Jain, it is an arranged transaction by the assessee. We are unable to comprehend ourselves to accept to this proposition of the lower authorities in view of the fact that the assessee with great difficulty had found a buyer in the form of Smt. Sunita Jain and had sold

shares of private company which is incurring huge loss at negotiated sale price at Rs. 3 per share. Once Smt. Sunita Jain acquires the shares from the assessee and all documentation is completed and consideration duly paid to the assessee thereon, the assessee would be least interested as to what Smt. Sunita Jain does with those shares. Either way, it would be beyond the reach and control of assessee as to what Smt. Sunita Jain does with those shares. It is pertinent to note that the AO had not even bothered to examine Smt Sunita Jain to understand the veracity of these transactions. Had she been examined by the Id AO, the doubts in the mind of the Id AO could have been sorted out. In these circumstances, the decision relied by the Id AR on Hon'ble Calcutta High Court in the case of CIT Vs. Korlay Trading Company Ltd reported in 232 ITR 820 (Cal) to prove the genuineness of the transaction comes to the rescue of the assessee. The relevant operative part of the said order is reproduced herein below:-

*"5. We are unable to accept this proposition put forward by counsel for the Revenue. Once the assessee has discharged its initial burden, no proper steps have been taken by the Income-tax Officer to bring on record, the materials to controvert the claim of the assessee. The claim of the assessee cannot be denied only on the ground that the broker through whom the transaction was made has failed to produce the proper books. Therefore, the transaction could not but be said to be genuine.*

*6. Considering the facts of the case, we are of the view that the assessee has discharged its initial burden. No proper investigation was made by the Income-tax Officer. No material has been brought to disbelieve such transaction. In view of the above, it cannot be said that the finding of the Tribunal is perverse. When the finding is not perverse, no interference is called for, Accordingly, we answer question No. 1 so far as it relates to whether the assessee has proved the transaction, we answer it in the affirmative, that is, in favour of the assessee and against the Revenue. So far as it relates to the finding as to perversity, we answer it in the negative, that is, in favour of the assessee and against the Revenue."*

8. Further it is very well settled that *suspicion whatsoever strong cannot partake the character of evidence.*

9. In view of the aforesaid observations and respectfully following the judicial precedent relied upon herein above, we hold the long term capital loss of Rs. 92,50,512/- incurred by the assessee to be genuine and direct the Id AO to allow

the same to be set of with the income, if any, during the year as per law and also the same would be eligible to be carried forward to subsequent years as per the law. Accordingly the grounds raised by the assessee are allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20/10/2023.

-Sd/-  
**(Anubhav Sharma)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 20/10/2023

A K Keot

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	19/10/2023
Date on which the typed draft is placed before the dictating member	19/10/2023
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	