

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (SMC), KOLKATA
[Before Shri P.M. Jagtap, AM]**

**I.T.A. No. 1335/Kol/2018
Assessment Year: 2014-15**

Banwari Lal Saraf (HUF).....Appellant
11, Pollick Street,
Room No. 7C, 7th Floor,
Kolkata – 700 001.
[Pan : AAEHB 7850 D]

ITO Ward 34(1) Kolkata.....Respondent
110, Shantipally, E.M. Bypass,
Kolkata – 700 107.

**I.T.A. No. 1336/Kol/2018
Assessment Year: 2014-15**

Sweta Saraf.....Appellant
11, Pollick Street,
Room No. 7C, 7th Floor,
Kolkata – 700 001.
[Pan : AUVPS 5663 A]

ITO Ward 36(2) Kolkata.....Respondent
110, Shantipally, E.M. Bypass,
Kolkata – 700 107.

**I.T.A. No. 1337/Kol/2018
Assessment Year: 2014-15**

Sonal Saraf.....Appellant
11, Pollick Street,
Room No. 7C, 7th Floor,
Kolkata – 700 001.
[Pan : AXMPS 5655 A]

ITO Ward 36(2) Kolkata.....Respondent
110, Shantipally, E.M. Bypass,
Kolkata – 700 107.

**I.T.A. No. 1338/Kol/2018
Assessment Year: 2014-15**

Vivek Saraf (HUF).....Appellant
11, Pollick Street,
Room No. 7C, 7th Floor,
Kolkata – 700 001.
[Pan : AAGHV 3591 R]

ITO Ward 36(4) Kolkata.....Respondent
110, Shantipally, E.M. Bypass,
Kolkata – 700 107.

I.T.A. No. 1339/Kol/2018
Assessment Year: 2014-15

Sushila Devi Saraf.....**Appellant**
11, Pollick Street,
Room No. 7C, 7th Floor,
Kolkata – 700 001.
[Pan : ALXPS 9530 R]

ITO Ward 36(2) Kolkata.....**Respondent**
110, Shantipally, E.M. Bypass,
Kolkata – 700 107.

I.T.A. No. 1340/Kol/2018
Assessment Year: 2014-15

Vinay Saraf (HUF).....**Appellant**
11, Pollick Street,
Room No. 7C, 7th Floor,
Kolkata – 700 001.
[Pan : AAGHV 3590 Q]

ITO Ward 36(4) Kolkata.....**Respondent**
110, Shantipally, E.M. Bypass,
Kolkata – 700 107.

Appearances by:

Shri A.K. Tibrewal, FCA, appearing on behalf of the Assessee.
Shri Kapil Mondal, JCIT appearing on behalf of the Revenue.

Date of concluding the hearing : September 20, 2018

Date of pronouncing the order : October 17, 2018

ORDER

These six appeals filed by the six different assessees belonging to one group are directed against six separate orders passed by the Ld. CIT (Appeals) – 10, Kolkata all dated 27.04.2018 and since the issues involved therein are common, the same have been heard together and are being disposed of by a consolidated order for the sake of convenience.

2. The common issues involved in these appeals relate to the confirmation by the Ld. CIT(A) of the action of the AO in disallowing the claim of the assessee for exemption on account of long term

capital gain arising from the sale of shares of M/s. Kailash Auto Finance Ltd. by treating the same as bogus and adding the entire proceeds of such sale u/s 68 by treating the same as unexplained cash credit and also making a further addition on account of the commission allegedly paid by the assessee for obtaining the entries for making such bogus claim of long term capital gain by treating the same as unexplained expenditure. The amounts so added by the AO and confirmed by the Ld. CIT(A), which are in dispute in the present appeals, are as under:

ITA No.	Name of the Assessee	Addition u/s 68	Addition u/s 69C
1335/K/2018	Banwarilal Saraf (HUF)	Rs. 34,75,674/-	Rs. 6,741/-
1336/K/2018	Sweta Saraf	Rs. 34,48,756/-	Rs. 17,244/-
1337/K/2018	Sonal Saraf	Rs. 33,39,382/-	Rs. 16,697/-
1338/K/2018	Vivek Saraf (HUF)	Rs. 33,89,500/-	-
1339/K/2018	Sushila Devi Saraf	Rs. 34,67,372/-	Rs. 17,337/-
1340/K/1340	Vinay Saraf (HUF)	Rs. 34,28,175/-	-

3. The relevant facts, which are almost identical in all these cases, are that the assesseees in the present cases had initially purchased shares of certain unlisted companies such as M/s. Panchshul Marketing Ltd. etc. from M/s. Brijdhara Mercantile Pvt. Ltd. in the F.Y. 2012-13 through cheques. Later on, the said companies were amalgamated with M/s. Kailash Auto Finance Ltd. and as per the scheme of amalgamation duly approved by the Hon'ble Allhabad High Court, the assesseees were allotted shares of Kailash Auto Finance Ltd. The shares so allotted in dematerialised form were duly credited in the accounts of the assesseees. Each of the six assesseees in the present cases sold 90,000 equity shares so allotted on different dates during the previous year relevant to the assessment year under consideration and claimed the long term capital gain arising from

such sale as exempt from tax u/s 10(38) of the Act. During the course of assessment proceedings, the claim of the assesseees for such exemption was examined by the AO and on such examination, he held for the detailed reason given in the assessment orders that the claim of the assesseees for long term capital gain was bogus in as much as the entire transactions giving rise to such long term capital gains were accommodation entries. Accordingly, the entire proceeds of sale of shares credited in the books of the assesseees were treated by the AO as unexplained cash credits and additions to that extent were made by him to the total income of the assesseees u/s 68. He also treated the commission allegedly paid by the assessee for obtaining such accommodation entries as unexplained expenditure and additions on this count were made by him to the total income of the assesseees u/s 69C of the Act. On appeal, the Ld. CIT(A) confirmed these additions made by the A.O. in case of all the six assesseees. Aggrieved by the orders of the Ld. CIT(A), the assesseees have preferred these appeals before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the learned counsel for the assessee, similar issues involving identical facts had come up for consideration before the Division Bench of this Tribunal in the case of Manish Kumar Baid and Mahendra Kumar Baid and vide its order dated 18.08.2017 passed in ITA Nos. 1236 & 1237/K/2017, the Tribunal deleted the similar additions made by the A.O. u/s 68 for the following reasons given in paragraph no. 6 of its order:

"6. We have heard both the rival submissions and perused the materials available on record. We find lot of force in the arguments of the ld AR that the ld AO was not justified in rejecting the claim of the assessee on the

basis of theory of surrounding circumstances, human conduct, and preponderance of probability without bringing on record any legal evidence against the assessee. We rely on the judgement of Special Bench of Mumbai Tribunal in the case of GTC Industries Ltd. (supra) for this proposition. The various facets of the arguments of the Id AR supra, with regard to impleading the assessee for drawing adverse inferences which remain unproved based on the evidences available on record, are not reiterated for the sake of brevity. The principles laid down in various case laws relied upon by the Id AR are also not reiterated for the sake of brevity. We find that the amalgamation of CPAL with KAFL has been approved by the order of Hon'ble High Court. The Id AO ought not to have questioned the validity of the amalgamation scheme approved by the Hon'ble High Court in May 2013 merely based on a statement given by a third party which has not been subject to cross-examination. Moreover, it is also pertinent to note that the assessee and / or the stock broker Ashita Stock Broking Ltd name is neither mentioned in the said statement as a person who had allegedly dealt with suspicious transactions nor they had been the beneficiaries of the transactions of shares of KAFL. Hence we hold that there is absolutely no adverse material to implicate the assessee to the entire gamut of unwarranted allegations levelled by the Id AO against the assessee, which in our considered opinion, has no legs to stand in the eyes of law.

We find that the Id DR could not controvert the arguments of the Id AR with contrary material evidences on record and merely relied on the orders of the lower authorities apart from placing the copy of SEBI's interim order supra. We find that the SEBI's orders relied on by the Id AO and referred to him as direct evidence against the assessee did not contain the name of the assessee and/or the name of Ashika Stock Broking Ltd. through whom the assessee sold the shares of KAFL as a beneficiary to the alleged accommodation entries provided by the related entities / promoters / brokers / entry operators. In the instant case, the shares of CPAL were purchased by the assessee way back on 20.12.2011 and pursuant to merger of CPAL with KAFL, the assessee was allotted equal number of shares in KAFL, which was sold by the assessee by exiting at the most opportune moment by making good profits in order to have a good return on his investment. We find that the assessee and / or the broker Ashita Stock Broking Ltd. was not the primary allottees of shares either in CPAL or in KAFL as could be evident from the SEBI's order. We find that the SEBI order did mention the list of 246 beneficiaries of persons trading in shares of KAFL, wherein, the assessee and / or Ashita Stock Broking Ltd's name is not reflected at all.

Hence the allegation that the assessee and / or Ashita Stock Broking Ltd getting involved in price rigging of KAFL shares fails. We also find that even the SEBI's order heavily relied upon by the Id AO clearly states that the company KAFL had performed very well during the year under appeal and the P/E ratio had increased substantially. Thus we hold that the said orders of SEBI is no evidence against the assessee, much less to speak of direct evidence. The enquiry by the Investigation Wing and/or the statements of several persons recorded by the Investigation Wing in connection with the alleged bogus transactions in the shares of KAFL also did not implicate the assessee and./or his broker. It is also a matter of record that the assessee furnished all evidences in the form of bills, contract notes, demat statements and the bank accounts to prove the genuineness of the transactions relating to purchase and sale of shares resulting in LTCG. These evidences were neither found by the Id AO to be false or fabricated. The facts of the case and the evidences in support of the assessee's case clearly support the claim of the assessee that the transactions of the assessee were bonafide and genuine and therefore the Id AO was not justified in rejecting the assessee's claim of exemption under section 10(38) of the Act. We also find that the various cases laws of Hon'ble Jurisdictional High Court relied upon by the Id. AR and findings given thereon would apply to the facts of the instant case. The Id. DR was not able to furnish any contrary cases to this effect. Hence we hold that the Id. AO was not justified in assessing the sale proceeds of shares of KAFL as undisclosed income of the assessee u/s 68 of the Act. We accordingly hold that the reframed question no. 1 raised hereinabove is deleted in the negative is decided in the negative and in favour of the assessee."

5. The Tribunal also allowed the consequential relief to the assessee by deleting the additions made by the A.O. u/s 69C holding that the transactions giving rise to long term capital gain being genuine, there was no question of paying any commission for obtaining the alleged accommodation entries. Since the issues involved in the present cases as well as the material facts relevant thereto are similar to the cases of Shri Manish Kumar Baid and Mahendra Kumar Baid (supra), I respectfully follow the order passed by division bench of this Tribunal and delete the additions made u/s

68 and 69C to the total income of the six assessees in the present cases.

6. In the result, the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 17th October, 2018.

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 17/10/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Banwari Lal Saraf (HUF), Sweta Saraf, Sonal Saraf, Vivek Saraf (HUF), Sushila Devi Saraf, Vinay Saraf (HUF), Kolkata.
2. ITO Ward 34(1), 36(2), 36(4), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata