

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.As. No.2128/Del/2018  
Assessment Years: 2015-16

M/s. Amit Rastogi HUF, A-121, Defence Colony, Meerut.	v.	ITO, Ward-1(1), Meerut.
TAN/PAN: AAJHA 8051L		
(Appellant)		(Respondent)

I.T.As. No.2129/Del/2018  
Assessment Years: 2015-16

Shilpa Rastogi, A-121, Defence Colony, Meerut.	v.	ITO, Ward-2(3), Meerut.
TAN/PAN: AJCPR 8711Q		
(Appellant)		(Respondent)

I.T.As. No.2131/Del/2018  
Assessment Years: 2015-16

Sadhana Rastogi, A-121, Defence Colony, Meerut.	v.	ITO, Ward-2(3), Meerut.
TAN/PAN: AGQPR 3117F		
(Appellant)		(Respondent)

I.T.As. No.2132/Del/2018  
Assessment Years: 2015-16

Ajay Kumar Rastogi, A-121, Defence Colony, Meerut.	v.	ITO, Ward-2(3), Meerut.
TAN/PAN: AAMPR 8106Q		
(Appellant)		(Respondent)

Appellant by:	Shri Sandeep Sapra, Adv. & Shri Rohit Aggarwal, CA
Respondent by:	Shri C.P. Singh, Sr.DR.

Date of hearing:	10	09	2018
Date of pronouncement:	24	10	2018

### **ORDER**

The aforesaid appeals have been filed by the above named assesseees against separate impugned orders dated 13.02.2018 and 12.03.2018, passed by Id. Commissioner of Income Tax (Appeals)-Meerut, for the quantum of assessment passed u/s.143(3) for the Assessment Year 2015-16. Since issues involved in all the appeals are common, arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidated order.

2. I will first take up the appeal in the case of Smt. Sadhana Rastogi, being ITA No. 2131/Del/2018 and my finding given therein will apply *mutatis mutandis* in all the appeals, since similar facts and findings are permeating in all the appeals. The assessee is aggrieved by addition of Rs.30,58,008/- which was claimed as Long Term Capital Gain by the assessee on sale of listed equity shares of 'M/s. Channel Nine Entertainment Ltd.' by treating it as income from other sources and taxing it u/s.68 of the Act.

3. The brief facts and background of the case are that the assessee is an individual and has claimed Long Term Capital Gain of Rs.30,58,008/- (Rs.32,26,033 – Rs.1,70.625/-) on sale of shares of 'M/s. Channel Nine Entertainment Ltd.' which was claimed as exempt u/s.10(38). From the perusal of the impugned assessment order, it is seen that the learned

Assessing Officer has referred to some inquiry conducted by Director of Investigation Kolkata which has unearthed that bogus entry providers of Long Term Capital Gain from pages 1 to 7 of the assessment order wherein he has incorporated the *modus operandi* of the manner in which entry providers operate without even discussing as to whether any specific inquiry was done or information was received in the case assessee also or was found to beneficiary in any of the entries found in the case of the entry providers or was found to taking accommodation entry of Long Term Capital Gain. The assessee has purchased 6500 equity shares of 'M/s. Channel Nine Entertainment Ltd.' on 11.03.2013 @ 26.25 per equity share from a broker, M/s. Panchsheel Securities Ltd. Later on, the said shares were sold by the assessee on various dates during the financial year 2014-15 in dematerialized form on Bombay Stock Exchange for a consideration of Rs.32,26,033/- on which Long Term Capital Gain of Rs.30,58,008/- were shown. The learned Assessing Officer has incorporated some part of the statement of a person, Shri Soumen Choudhury, who was an employee of some entity M/s. Gateway Financial Services Ltd. which was one of the entities utilized for providing entry of bogus Long Term Capital Gain of M/s. Channel Nine Entertainment Ltd., which was recorded by Investigation Wing Team, Kolkata. From the said statement, he came to the conclusion that Channel Nine Company is a 'Jama Kharchi' company through which manipulative transaction in securities has been done. After

rejecting the assessee's evidences filed in support of purchase and sale, he treated the amount of Rs.30,58,008/- u/s.68 of the Act.

4. Ld. CIT (A) too has confirmed the said action of the Assessing Officer and has gone by the statement of the employee of M/s. Gateway Financial Services Ltd. and how the Investigation Wing has exposed the bogus entry mandatory of Long Term Capital Gain. He has also ignored the entire evidences and the explanation filed by the assessee.

5. Before us, ld. counsel for the assessee, Mr. Sandeep Sapra submitted that the statement of person, Shri Soumen Choudhury who was an employee of M/s. Gateway Financial Services Ltd. cannot be relied upon at all to draw any adverse inference against the assessee for the reason that, *firstly*, assessee has nothing to do with M/s. Gateway Financial Services Ltd. nor she has purchased or sold any shares through the said entity; *secondly*, no information or evidence has been found against the assessee that she was involved in any kind of accommodation entry nor her name appeared anywhere as a beneficiary. He further submitted that assessee has filed following documentary evidences before the Assessing Officer as well as ld. CIT (A) to prove the genuineness of the purchase and sale of the shares:-

- a) Bill dated 11.03.2013 issued by the broker M/s. Panchsheel Securities Ltd. from whom Assessee purchased 6,500 shares of the aforesaid Co. For Rs.1,70,625.

- b) Payment for purchase of aforesaid shares was made on 23/03/2013 through banking channels as is evident from Assessee's relevant bank statement with HDFC Bank.
  - c) The aforesaid shares were transferred to Assessee's DEMAT A/c with HDFC Bank on 01/04/2013 as is evident from the statement of DEMAT A/C.
  - d) The said 6,500 shares were subsequently sold for Rs.32,26,033/- during the month of December, 2014 through HDFC Security Ltd. on the recognized Bombay Stock Exchange (BSE) after payment of STT as is evident from copy of statement and contract notes issued by HDFC Security Ltd. On sale of such shares, DEMAT A/c of the Assessee with HDFC Bank was duly credited on 19.12.2014 and 22.12.2014.
  - e) Relevant bank statement of the assessee with HDFC Bank from which it is evident that the sale proceeds were received by bank transfer.
6. Once, assessee has purchased the shares duly debited in the books of account and payment made through banking channel which has not been doubted as Assessing Officer and has given the benefit of purchase of the shares and the said shares were duly transferred to DEMAT with HDFC Bank immediately thereafter and has been sold to HDFC Securities Ltd. on BSE after paying STT, then such a transaction cannot be held to be non genuine. He also drew our attention to the paper book and pointed out each and every entry about the transaction of the shares. He has also referred to catena of

judgments wherein on similar set of facts, various Tribunals has decided this issue in favour of the assessee, list of such compilation submitted before me is as under:

<i>Copy of the judgment of Hon'ble Delhi ITAT "SMC' Bench in the case of Smt. Shikha Dhawan vs. Income Tax Officer in ITA No.3035/Del/2018 dated 27.06.2018</i>
<i>Copy of the judgment of Hon'ble Delhi ITAT in the case of Meenu Goel vs. Income Tax Officer (2018) 52 CCH 0232 dated 19.03.2018</i>
<i>Copy of the judgment of Hon'ble High court of Punjab &amp; Haryana in the case of PCIT vs. Prem Pal Gandhi (2018) 401 ITR 0253 dated 18.01.2018</i>
<i>Copy of the judgment of Hon'ble Kolkata ITAT in the case of Navneet Agarwal vs. Income Tax Officer (2018) 53 CCH 0388 dated 20.07.2018</i>
<i>Copy of the judgment of Hon'ble Hyderabad ITAT in the case of Income Tax Officer vs. Shri K. Ramakrishna Reddy in ITA No. 1614/Hyd/2017 dated 29.05.2018</i>
<i>Copy of the judgment of Hon'ble Jaipur ITAT in the case of Shri Pramod Jain vs. DCIT in ITA No.368/JP/2017 dated 31.01.2018</i>
<i>Copy of the judgment of Hon'ble Ahmedabad ITAT in the case of Ketulkumar D. Jaiswal vs. ITO (2017) [51 CCH 0135] dated 28.09.2017</i>
<i>Copy of the judgment of Hon'ble Bombay ITAT in the case of ITO vs. Aroind Kumar Jain HUF (2017) [51 CCH 0281] dated 18.09.2017</i>
<i>Copy of the judgment of Hon'ble Kolkata ITAT in the case of Manish Kr. Baid Vs. ACIT (2017) [60 ITR (tri) 0266] dated 18.08.2017</i>
<i>Copy of the judgment of Hon'ble Bombay ITAT in the case of Kamla Devi S. Doshi &amp; Ors. Vs. ITO &amp; Ors. (2017) [50 CCH 0072] dated 22.05.2017</i>
<i>Copy of the judgment of Hon'ble Ahmedabad ITAT in the case of Sunita Jain Vs. ITO (2017) [49 CCH 330] dated 09.03.2017</i>
<i>Copy of the judgment of Hon'ble Bombay ITAT in the case of Farrah Marker vs. ITO (2016) [46 CCH 0535] dated 27.04.2016</i>

7. On the other hand, learned Department Representative has strongly relied upon the order of the Assessing Officer and ld. CIT(A), submitted that, once Investigation Wing in the course of inquiry has found that some of the companies have

been providing bogus entry with regard to the scrip of 'Channel Nine Entertainment Company' then *prima facie* it goes to show that the company itself was not genuine and was manipulating the escalation of price for providing such kind of accommodation entry. Further, the Id. CIT (A) has noted the total reserve and surplus of this company and income and from that he had deduced that earning per share was very meager. Thus, such an action confirmed by the Id. CIT (A) needs to be upheld.

8. I have heard the rival submission and also perused the relevant findings given in the impugned orders as well as mater referred to before me. The assessee had purchased 6500 share of M/s. Channel Nine Entertainment Ltd. through a broker, M/s. Panchsheel Securities Pvt. Ltd. which is based at New Delhi. The said broker has issued a bill which has been placed at page 11 of the paper book and said purchases has been made on 23.03.2013 through banking channels and amount has been transferred through NEFT from HDFC Bank Defence Colony, Meerut. The said shares were transferred to assessee's DEMAT account with HDFC Bank on 01.04.2013, i.e., within a week. Later on, these shares have been sold at Rs.32,23,033/- in the month of December, 2014, i.e., after a period of more than one year and eight months through HDFC Security Ltd. at BSE after paying STT. This is evident from the statement and contract notes issued by the HDFC Securities Ltd. On sale of such shares, DEMAT account of the assessee with HDFC Bank was duly credited on 19.12.2014

and 12.12.2014. The sale proceeds have been duly received through bank transfer in the assessee's bank account with HDFC. None of these evidences or documents have been negated or have been inquired upon by the Assessing Officer or Id. CIT (A). Learned Assessing Officer without any material or information on record pertaining to the assessee has referred to some inquiry conducted by Investigation Wing Kolkata way back, wherein racket of entities providing bogus entries of Long Term Capital Gain was unearthed. After explaining the general *modus operandi* how entry providers gives Long Term Capital Gain, Assessing Officer has tried to see the entire transactions of the assessee with the same lens as if assessee too was involved in such kind of accommodation entry. Heavy reliance has been placed by the authority below over a statement of one employee of some M/s. Gateway Financial Services Ltd. of Kolkata. Such an entity first of all has nothing to do with the assessee, because assessee has neither dealt with the said company nor has carried out any transaction at any point of time with such entity. Such a reference of statement of employee sans any reference of assessee to draw any adverse inference against the assessee is too farfetched even when he has stated that its Company has been providing accommodation entry in the scrip of 'Channel Nine Entertainment Ltd.', but that does not mean that all the subscribers of the shares in India of the said company are involved in shady transaction of getting accommodation entry in the form of Long Term Capital Gain.

It has been brought on record by the learned counsel from the information available in public domain regarding credentials of 'M/s. Channel Nine Entertainment Ltd.' which is a group of 'Dainik Jagran Newspaper Ltd.' and was engaged in the business of marketing, producing various serials, movies, films distribution and is a renowned TV channel which is still in air. It has been regularly carrying out its business and shown huge profits from operations every year. This he has pointed out from the audited balance sheet and the P&L account of the said Company for the financial years 2013-14, 2014-15 and 2015-16. Further this company has always been listed in BSE and never got delisted. The entire transaction of sale has taken place through HDFC Securities Ltd. against which there is no information or material by the Department that such a reputed company was involved in providing some kind of bogus accommodation entry. It is seen that the authorities below have gone completely by general perception rather than that any contrary evidence or material found against the assessee.

9. Another important fact which is to be noted here is that purchase made in the earlier year has not been disturbed and once the entire transaction is through DEMAT account with the reputed broker without having any link with any such entities pointed out by the learned Assessing Officer then no adverse inference at all can be drawn against the assessee. If the sales are evidenced through proper contract notes by HDFC Security Ltd., sold on BSE after paying STT

and duly credited in the DEMAT account, then source of the credit has to be accepted that it is from transaction of sale of shares held for a Long Term Capital Gain. If purchase of shares is not doubted and these shares are not in possession with the assessee, then there cannot be any adverse inference that it is unexplained credit to be added u/s.68 of the Act. Thus, on the facts and in the circumstances of the case, we hold that there was a genuine transaction of purchase and sale of shares on which assessee has earned Long Term Capital Gain, and therefore, such Long Term Capital Gain cannot be taxed u/s.68. Since Long Term Capital Gain is exempted u/s.10 (38), therefore, no addition is called for. Accordingly, appeal of the assessee is allowed.

10. Since in all the other appeals, i.e., in the case of Amit Rastogi, Shilpa Rastogi and Ajay Kumar Rastogi, similar facts are permeating and same finding has been given, therefore, my finding given above will apply *mutatis mutandis* in these appeals also, because the nature of transactions, evidences and documents are exactly the same. Thus, all these appeals of the assessee are treated as allowed.

11. In the result, all the four appeals of the assessee are allowed.

**Order pronounced in the open Court on 24<sup>th</sup> October, 2018.**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 24<sup>th</sup> October, 2018

PKK: