

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.1834/Kol/2018
Assessment Year :2015-16

M/s Mahendra Kumar Jhawa and Sons HUF, 14/2 3 rd Floor, R.No. 223, Bhikam Chand Market, Old China Bazar St. Brabouarne Road, Kolkata-001 [PAN No.AAGHM 5078 N]	V/s.	Income Tax Officer, Ward-No.35(4), 110 Shantipally, Nr. Ruby Hospitl, E.M. Bye Pass, Kolkakta-17
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

ITA No.2019/Kol/2018
Assessment Year :2014-15

Shri Manoj Kumar Dugar 18B Sukeas Lane, Kolkata-700001 [PAN No.ADPPD 7177 D]	V/s.	Income Tax Officer, Ward-No.35(4), 110 Shantipally, Nr. Ruby Hospitl, E.M. Bye Pass, Kolkakta-17
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri S.M. Surana, Advocate
राजस्व की ओर से/By Respondent	Shri Robin Choudhury, Addl CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	19-11-2018
घोषणा की तारीख/Date of Pronouncement	30-11-2018

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

These two assesseees have filed their instant respective appeal(s) for assessment years 2015-15 & 2014-15 against the Commissioner of Income Tax (Appeals)-10 Kolkata's separate order(s) dated 19.07.2018 and

24.08.2018 passed in case No.1018/CIT(A)-10/W-35(4)/2015-16/2017-18/Kol & 357/CIT(A)-10/W-35(4)/2014-15/2016-17/Kol, involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. We have heard these two appeal(s) together since involving identical question of correctness of this assessee's claim having derived long / short term capital gains treated as unexplained cash credits in assessment and lower appellate proceedings. We thus treat former appeal **ITA No.1834/Kol/2018** to be the lead case.

3. The assessee's sole substantive ground pleaded in the instant appeal is that both the lower authorities erred in law as well as on facts in treating its LTCG of ₹5,52,796/- on sale of shares held in M/s Kailash Auto Finance Ltd. to be unexplained cash credits u/s 68 of the Act.

4. Mr. Choudhury vehemently contends during the course of hearing that both the lower authorities have rightly treated assessee's capital gains derived from suspicious transactions in collusion with various entries and operators as unexplained cash credits u/s 68 of the Act. We find that this tribunal's coordinate bench's decision in ITA No.1335-1340/Kol/2018 Banwari Lal Saraf (HUF) & Others vs. ITO decided on 17.10.2018 has rejected Revenue's similar contention regarding alleging artificial rigging of shares in M/s Kailash Auto Finance Ltd. as follows:-

"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	Vivk Saraf (HUF)	Rs.33,89,500/-	-
1339/K/2018	Sushila Devi Saraf	Rs.34,67,372/-	Rs.17,337/-
1340/K/2018	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 AD 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 AD 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 assesseee 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.D. 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 Id AR that the Id 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 Braking 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 ruder 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 bona fide 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.D. 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 assesseees in the present cases.”

We sought for Revenue's response as to whether the assessee's name has cropped up in any search statement in case of any entry operator or not. Mr. Choudhury has taken lot of pains to submit that although all facts and circumstances involved in the instant case point out suspicious share investments made at assessee's behest, there is no direct evidence available in the case file pin-pointing this taxpayer's name specifically. We therefore adopt the above detailed reasoning *mutatis mutandis* to delete the impugned addition of ₹5,52,796/-.

5. Same reasoning to follow in latter assessee's appeal ITA No.2019/Kol/2018 seeking to treat the LTCG of ₹1,26,6,67,408/- derived from shares in M/s Unno Industries Ltd. as there is no direct evidence implicating this taxpayer as well.

6. Both these assessee's appeals are allowed accordingly.

Order pronounced in the open court 30/11/2018

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 30/11/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-M/s Mahendra Kr. Jhawar & Sons HUF 14/2,3rd Fl. R.No.223,
Bhakam Chand Market, Old China Bazar Street Brabourne Road. Kol-001
Sh Manoj Kr. Dugar 18B, Sukeas Lane, Kolkata-001
2. राजस्व/Revenue-ITO Ward-35(4), 110, Shantipally, NR. Ruby Hospital, Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण, कोलकाता ।