

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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.5025/DEL/2018
Assessment Year: 2015-16

Ankita Vijay, C/o Manish Rakesh & Co., CAs B-205, 2 nd Floor Metro Plaza, Delhi Road, Meerut.	v.	ITO, Ward-1(1), Meerut.
TAN/PAN: AMHPV 5251D		
(Appellant)		(Respondent)

Appellant by:	Shri Manish Kumar Jain, CA.		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	31	01	2019
Date of pronouncement:	08	02	2019

ORDER

The aforesaid appeal has been filed by the assessee against the impugned order dated 18th May, 2018 passed by Ld. CIT(Appeals) Meerut for the quantum of assessment passed u/s 143(3) for the Assessment Year 2015-16. The assessee is mainly aggrieved by addition of Rs.1918892/- which was claimed as Long-Term Capital Gain by the assessee on sale of shares holding it to be a bogus transaction.

2. The facts in brief are that assessee is an individual carrying on business of handloom clothes and also received salary income from M/s. Ashlar Commodities Pvt. Ltd, Noida. In the return of income, assessee has shown long-term capital

gain of Rs.19,18,892/- on sale of shares of M/s. ALPS Motor Finance Limited which was claimed as exempt u/s.10(38). The Ld. Assessing Officer, first of all, observed that Director of Investigation, Kolkata had unearthed racket of bogus entries of Long-Term Capital Gain and has discussed in detail the *modus operandi* operated by the operators in penny stock. The entire general *modus operandi* has been discussed from pages 1 to 6 of the assessment order and from there he deduced that, since assessee had also shown long term capital gain, therefore, she is also one of such beneficiary of accommodation entry. Vide order sheet entry, AO required the assessee to submit various documents to prove the genuineness of the purchase and sale of shares, in response to which assessee filed the following details: -

1. *Photocopy of Demat Account and other related papers regarding sales/purchase of shares, transaction statements, holding statements, Statement of Account, Bill and Contract Note etc. are being enclosed herewith for your kind consideration. The assessee earned capital gain of Rs. 19,18,892.68 as Long-Term Capital Gain on the sales of 36000 shares which are exempted from tax.*
2. *As far as purchase / investment in above shares is concerned, it is stated that a cheque no-545679 was given from PNB, Khair Nagar Branch, Meerut for Rs. 1,25,000/- on 03.07.2013 which can also be seen from the transaction statement.*
3. *That the assessee maintains Saving Bank Account no-0320000109282245 with PNB, Khari Nagar, Branch, Meerut.*

Photocopy of the same is being enclosed herewith. As far as details of debit / credit entries are concerned, it is stated that the narrations given in the statement are self explanatory and needs no further explanation. However, the details of a particular entry, if required by your good self shall be very gladly.”

3. Thereafter, Assessing Officer asked detailed queries (as incorporated in pages 6 and 8 of the assessment order) and in compliance thereof, assessee submitted as under: -

“1. As far as purchase of shares if concerned, it is stated that the same were purchased directly from the company M/s ALPS Motor Finance Ltd. Photocopy of letter of allotment and copy of acknowledgement for receiving the cheque no-545679 dated 03.07.2013 by the company, for the allotment of 125000 equity shares of Rs. 10/- each for your kind consideration.

2. In support of the genuineness of a transaction, we have already submitted the following papers / documents and explanations to your kind honour: -

(i) Contract Notes for the sale of shares (two)

(ii) Copy of bill of broker through the shares have been sold.

(iii) Transaction and holding statements.

(iv) Statement of Account from the broker M/s Ashlar Securities Pvt. Ltd. certifying the sale of shares.

(v) Payment of sales consideration received by the assessee through account payee cheques.

(vi) STT has been duty paid on the sale transaction in the sum of Rs. 19240/-

(vii) Assessee's Demat Account reflecting the inflow of shares in Demat account and outflow thereon pursuant to sale.

(viii) The purchase / sale of shares has been made as per the rules framed by SEBI and others.

3. *Computation of Taxable Income showing the actual amount of LTCG exempted u/s.10(36) amounting to Rs. 18,82,892/.*

4. *Photocopy of purchase bills (u/s. 44AD) for the year under review.*

In view of the above facts and circumstances, it is requested to your kind honour that the proceeds from the sale of shares is a Long-Term Capital Gain which is also exempted from tax and should be treated as exempted income of the assessee. The same view has also been expressed by ITAT "D" BENCH; KOLKATA in case of Sh. Dolarrai Hentani V/s Income Tax Officer, Ward-34(3), Kolkata has also been submitted to your kind honour which also has similar and circumstances."

3.1. Assessee has also relied upon catena of judgements which has been noted by the Assessing Officer at page 9 of the assessment order.

4. However, the Assessing Officer rejected the assessee's contention and held that assessee has not furnished the bank statement of the sellers from whose shares of ALPS Motor Finance Limited were purchased from the period 1st April 2013 to 13th January, 2014; and assessee could not provide the identity of the person to whom shares were sold and their copies of bank statement. He also referred to statement of one, Shri Sanjay Vora, who was Regional Director of East zone of M/s. Anand Rathi Shares & Stock Brokers Ltd., which

was one of the entities utilized for providing entry of bogus long-term capital gain of M/s. ALPS Motor Finance Limited. From this statement which runs from pages 10 to 21 of the assessment order, in question no. 60, AO has incorporated a list of several companies including the ALPS Motor Finance Limited, whether the scrips of these companies were in the nature of Penny stock for bogus long-term capital gain, to which he affirmed. Again, the assessee rebutted the Assessing Officer's observation in the following manner: -

"1. With reference to your letter dated 06.12.2017, we submitted that the transactions of the sale of shares by the assessee are duly supported by relevant evidences including contract notes, demat statement, bank account reflecting the transactions, stock brokers have confirmed the transactions, the stock exchange have been confirmed the transactions, the shares have been sold on the online platform of the stock exchange and each trade of sale of shares were having unique trade number and trade time. Transactions due to the high rise in the stock price and for that the assessee cannot be blamed unless there is any material /evidences to prove that the assessee or any one on his behalf has rigged or manipulated the stock price. It should be noted that the stock exchange of SEBI are the statutory authority appointed by the Government of India to ensure that there is no stock rigging or manipulation. There is no evidence on record to show that Investigation agencies have alleged any stock manipulation against the assessee in question. Third party statement (As provided by you of Sh. Sanjay Vohra) also not includes the name of the assessee. You are prayed to give us opportunity to cross examine the statement of Shri Sanjay Vohra. In the absence of any relevant evidences it cannot be said that merely on The basis of third party statement, the assessee is to be blamed

for bogus transactions. It is pertinent to note that the assessee has purchased the stocks directly from the company and thereafter the assessee has sold the shares through the registered share/stock brokers with Bombay Stock Exchange, and both have confirmed the transactions and have issued valid contract notes as per law.

2. You are also requested to consider the following points while framing the assessment:-

(i) As per statement of Sh. Sanjay Vohra in point no.60, Sri. Sanjay Vohra accepted that his company /he has alone done trading of 62350 shares of ALPS Motor Finance Ltd. for bogus LTCG. (as statement provided by you), But period /date of trading note mentioned in his statement.

(ii) As per Bombay Stock Exchange data trading of 2,66,55,451 shares of ALPS Motor Finance Ltd. has been done during 01.04.2014 to 31.12.2014 (five month period only). Copy of date wise date sheet of trading on BSE is attached for your kind consideration as Annexure 'A' Date can be verified from the website of Bombay Stock Exchange.

(iii) We have sold 36000 shares of ALPS Motor Finance Ltd. It is not justified to conclude that our 36000 shares are included in 62350 bogus LTCG shares trading out of total trading of 2,66,55,451 shares. Bogus LTCG trading is merely 0.23% out of total trading of shares (Report of 5 Months taken) of ALPS Motor Finance Ltd.

(iv) It is also pertinent to note that Sh. Sanjay Vohra has not mentioned name of assessee anywhere in his statement.

(v) Statement of Sanjay Vohra has not mentioned the period of trading of Bogus LTCG. Shares of M/s ALPS Motor Finance Ltd. are also doing trade in Bombay Stock Exchange as on date. Copy of BSE trading is enclosed as Annexure 'B'. Assessee has no

connection with Anand Rathi shares & Stock brokers Ltd/Sh. Sanjay Vohra.

3. It is not justified in disallowing the assessee's claim of exemption under section 10(38) of the Act by concluding that the transactions of the assessee resulting in LTCG on sale of shares were bogus relying on the statements of any person recorded by Investigation Wing wherein that person accepted to have provided accommodation entries of various natures including LTCG. No adverse inference should be taken against the assessee on the basis of untested statements without allowing opportunity of cross examination."

5. However, Assessing Officer treated the long-term capital gain as bogus and unexplained and added the same under the deeming provisions of section 68. He has also referred to various decisions of the Hon'ble Supreme Court, including judgement of CIT vs Durga Prasad More, 82 ITR 540 and Sumati Dayal vs. CIT, (1995) 214 ITR 801 (SC) and catena of other judgements.

6. Ld. CIT (A) after incorporating the entire assessment order and reiterating the same reasoning adopted by the Assessing Officer, held that not only the purchase of share is questionable but also the long-term capital gain claimed by the assessee is not genuine and same has rightly been added u/s 68.

7. I have heard the rival submissions, perused the relevant findings given in the impugned orders as well as materials and evidences referred to at the time of hearing. The assessee

had purchased 12500 equity shares of Rs.10/- each of 'ALP Motor Finance Ltd.' for sum of Rs.1,25,000/-, directly from ALPS Motor Finance Ltd. The shares were purchased vide cheque no.545679 dated 3rd July, 2013 and the said shares were allotted vide certificate no. 3075096, bearing distinctive nos. 5583421 – 5595920. This is evident from pages 70 to 71 of the paper book, which is acknowledgement slip for purchase and letter of allotment issued by ALPS Motor Finance Ltd. Thereafter, the assessee got the shares dematerialized in his Demat account with National Security Depository Limited (NSDL) on 3rd July, 2014. It is evident from the NSDL statement appearing at pages 73 onwards, that assessee had sold these shares through BSE through registered broker, M/s Ashlar Securities Pvt. Ltd. on 26th August, 2014 at a market value of Rs. 53.40 - 53.45, after deducting service tax and other charges. Net payment of Rs. 19,21,573.67/- was credited to the bank account of the assessee. As per the contract note and the transaction details, it is seen that assessee's shares were sold on different lots and the trade time for sale was 14:22 to 14:25. The transaction of sale of shares is further evidenced from contract note appearing at pages 82 to 83 of the paper book and also the statement of Demat account of NSDL. Apart from that, from the perusal of the bank statement, it is seen that assessee has paid amount of Rs.1,25,000/- on 3rd July, 2013 for purchase of shares and the sale proceeds have been received on various dates. Not only that, from the perusal of

the Demat account, it is seen that the assessee was a regular investor in shares. Ld. Counsel for the assessee before us submitted that, following documents and evidence goes to prove the genuineness and transaction of the sale and purchase of the shares which are as under: -

Master Data of the company.

II. Copy of BSE trading of shares.

III. Copy of bank statement highlighting the payment made against the share purchased.

IV. Transaction statement of the stock broker, Contract Note for the sale of shares, Transaction and holding statement, Statement of account from the broker M/s ASHlar securities Pvt. Ltd certifying the sale of shares. Receipt of share application money.

V. Copy of bank statement in which sale proceed from the sale of shares received.

VI. STT has been duly paid on the sale transaction in the sum of RS. 1926-

VII. List of proposed shareholders includes name of Assessee (ANKITA VIJAY). Copy of form 23- along with copy of resolution including name of proposed buyers of shares.

VIII. Copy of allotment letter dt 03.07.2013 of 12500 shares. Share allotment list were duly filed in Form No-2 with the Registrar of Companies, Ministry of Corporate affairs, Govt, of India on 03.07.2013. List of share allotment includes name of mv assessee (ANKITA VIJAY-12500 shares For Rs. 1250001. Copy of Form 2- along with name of allottees of shares.

IX. M/s ALPS MOTOR FINANCE LTD divided the share into face value of Rs.1.00 on 30.06.2014. This division of shares also reported to Registrar of Companies, Ministry of Corporate affairs, Govt, of India. In form -7.”

10. The case of the Revenue, it is that one person, Shri Sanjay Vohra who was one of the employees of some stock broker company, had stated that scrips of M/s. ALPS Motor Finance Ltd. was utilised for providing bogus long-term capital gain. Entirely based on this statement, the assessee's long-term capital gain has been disbelieved and has been added u/s 68. Such a statement, first of all, has no direct or indirect connection with the assessee nor there is any reference that assessee was any kind of beneficiary of accommodation entry by any entry operator. Otherwise also, such a statement cannot be the sole basis for disbelieving the transaction of the assessee for the reason that, neither any cross-examination has been allowed by the Department nor there is any conclusive averment that all the trade of the scrips of ALPS Motor Finance Ltd. were manipulated for bogus long-term capital gain. There is no information or material on record that trading of the said scrip was banned by the SEBI in BSE. A general modus operandi as to how bogus entry of long-term capital gain is provided by entry providers, sans any specific enquiry or material or information on record to implicate assessee cannot be the basis for disbelieving the transaction backed by all documents. AO has to conduct some kind inquiry to find out

that transaction is sham or is colourable device. Here it is not the case that transaction of the assessee, both in case of purchase and sale are effected by any bogus entities controlled by any entry operator; or brokers have failed to maintain KYC norms; or there is any statement that entities involved in price movement or scrip operator or promoters of listed company have accepted their role in giving bogus entry; nor there is any probe or material relating to bank account of entities involved that purchase or sale by assessee has been done through cash deposits; or there is any order from SEBI/BSE where genuineness of the scrip has been doubted. When no such inquiry or material has been found or gathered that assessee is beneficiary or was involved in any such scam of accommodation entry, then it is very difficult to discard the assessee's explanation and documents.

11. Here, in this case, the shares have been directly allotted by the company and the payment has been made through account payee cheque duly disclosed by the assessee in the earlier year and said purchase of shares is evidenced not only from the bank statement but also by the allotment of shares. Thus, possession of the shares is not in doubt at all because same is also reflected in Demat account maintained with NSDL. Not only that, the sale of shares is also evidenced from transaction undertaken through registered stock at a specific trade time in BSE and after the sale of shares, the net receipts have been credited to the assessee's bank account. Hence, the nature of the transaction is clearly purchase and

sale of shares and the source of the credit, from the material facts on record are quite evident that it is from the sale of shares. Once, no material information has been brought on record to convert these transactions then it is very difficult to treat the sale proceeds of the shares as unexplained cash credit to be added under deeming provisions of section 68. There is no finding or any whisper in the impugned orders that some unaccounted money has been routed through some accommodation entry provider for getting the bogus long-term capital gain.

12. One very important fact brought on record by the ld. counsel is that, in the case of assessee's husband, **Shri Vishal Kumar Vijay**, this Tribunal on precisely similar facts and scrip and identical reasoning given by the Assessing Officer and ld. CIT (A) had deleted the said addition, vide order dated 28th November, 2018 passed in **ITA No.1714/Del/2018**. The Tribunal after examining the transaction statement of stock broker, contract note for sale of shares, transactions statement of Demat account, statement of account from the brokers, and also most of other documentary evidences had held that the transaction was genuine. The Tribunal had also rejected the reliance placed by the AO on the statement of Shri Sanjay Vohra holding that no opportunity to cross-examination was given which is in violation of the principle and ratio laid down by the Hon'ble Supreme Court in the case of Andaman Timbers Industries Ltd. vs Commissioner of Central Excise, in Civil Appeal

No.4228 of 2016. Thus, when there is a concurrent finding on similar set of facts in the case of assessee's husband, then as a matter of precedent same needs to be followed. In any case, independently also in view of the material facts on record as discussed above, I do not find any reason to sustain the action of the AO without any contrary material brought on record by the Assessing Officer to hold that the said transaction is not genuine. Accordingly, the addition made by the Assessing Officer u/s 68 is directed to be deleted and assessee's claim for exemption u/s 10(38) on long term capital gain is allowed.

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

Order pronounced in the open Court on 8th February, 2019.

sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 8th February, 2019

Pkk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar

		Date
1.	Draft dictated on (Direct on computer)	31.01.2019

2.	Draft placed before author	01.02.2019
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File comes back to PS/Sr. PS	
8.	Uploaded on	
9.	File sent to the Bench Clerk	
10.	Date on which file goes to the AR	
11.	Date on which file goes to the Head Clerk.	
12.	Date of dispatch of Order.	