

**आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य

**BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 4330/Mum/2018

(निर्धारण वर्ष / Assessment Year 2014-15)

Vishal Dhandhia HUF 55 Jal Darshan, 51 Nepeasea Road, Mumbai-400 036	Vs.	The Income Tax Officer, Ward-19(3)(5), Room No. 201, Matru Mandir Tardeo Road, Mumbai-400 007
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAFHV2908H</b>		

आयकर अपील सं./ ITA No. 4331/Mum/2018

(निर्धारण वर्ष / Assessment Year 2014-15)

Smt. Veena Dhandhia 55 Jal Darshan, 51 Nepeansea Road, Mumbai- 400 036	Vs.	The Income Tax Officer, Ward 19(3)(5), Room No. 201, Matru Mandir Tardeo Road, Mumbai-400 007
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AEDPD2953G</b>		

अपीलार्थी की ओर से / **Appellant by** : Shri Sunil Hirawat, AR

प्रत्यर्थी की ओर से / **Respondent by** : Shri Rajat Mittal, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	<b>25.06.2019</b>
घोषणा की तारीख / <b>Date of pronouncement :</b>	<b>25.06.2019</b>



## आदेश / ORDER

### PER MAHAVIR SINGH, JM:

These two appeals of two different assesseees' are arising out of the order of Commissioners of Income Tax (Appeals)-6 & 54, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-6/IT-259/59/292/2017-18, CIT(A)-30/IT-10356/ITO.19(3)(5)/16-17 vide order dated 16.04.2018 & 12.04.2018. The Assessments were framed by the Income Tax Officer, Ward 19(3)(5) Mumbai (in short 'ITO/ AO') for the A.Y. 2014-15 of even date 28.12.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these two appeals of assessee is as regards to the order of CIT(A) not allowing the basic investment made by both the assessee's i.e. 4 lacs each on account of purchase of shares of Kailash Auto. The facts and circumstances are exactly identical in both the cases of the assessee, even investment is also the same. Hence, I will take the facts from the case of Smt. Veena Dhandhia in ITA No. 4331/Mum/2018 for the AY 2014-15. The grounds raised by assessee are also identical. The grounds raised by assessee read as under: -

*"1. On facts and in law, the learned Commissioner of Income-tax (Appeals) (hereinafter referred to as the "Ld. CIT(A)") had failed to appreciate that addition made by the learned Assessing Officer (LAO) u/s.68 of the I.T. Act is bad-in-law. Under the facts and circumstances of the matter, the addition made u/s.68 of the Act by the LAO ought to have been deleted.*



2. *On facts and in law, the Ld. CIT(A) had erred in not deleting the addition of Rs.4,00,000/- made by LAO without appreciating the fact that the entire Long Term Capital Gain had already been declared under IDS. Under the facts and circumstances of the matter, the addition of Rs.4.00,000/- ought to have been deleted.*

3. *The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time at hearing of the appeal, so as to enable the Hon. ITAT to decide this appeal according to law.”*

3. Briefly sated facts are that the assessee has transacted in penny stock in the company of Kailash Auto in FY 2013-14 relevant to AY 2014-15 with a motive to bring her unaccounted money without paying the tax on the same in the garb of long term capital gain earned on account of transfer of shares of Kailash Auto. During the course of assessment proceedings the AO noted that the assessee sold shares of Kailash Auto being penny stock for an amount of ₹ 1,52,25,015/- (however, the AO has wrongly noted the figure as 1,53,25,015/-) and claimed long term capital gain of ₹ 1,48,13,572/- arising on transfer of shares of Kailash Auto of 4 lakhs shares. When the assessee was issued summons under section 131 of the Act vide dated 09.12.2015 and asked to submit the details of sales/ purchases, broker note, contract note, demat account, statement of bank through which the payments/ receipts are done on account of the sale of shares. The assessee vide letter dated 11.11.2016 offered the entire long term capital gain of ₹



1,48,13,572/- under the income declaration scheme (IDS) 2016 as income arising on transfer of 4 lakhs shares of Kailash Auto. This offer under IDS 2016 was accepted by the PCIT-19, Mumbai and issued certificate in form No. 2 dated 08.10.2016. But the AO noted that the assessee has sold the above share of Kailash Auto for a sum of ₹ 1,52,25,015/- and thereby net capital gain was earned at ₹ 1,48,13,572/-. The AO also added the differential amount of ₹ 5,11,443/- (but correct amount should have been Rs. 4,11,443/-). The assessee claimed before AO and before CIT(A) that she has invested the original sum of ₹ 4 lacs for purchase of these shares from her bank account on 12.07.2012. But the AO has not given any credit for the same. The CIT(A) also confirmed the action of the AO by noting that the entire sale consideration of ₹ 1,52,13,572/- is actually undisclosed income out of which the assessee has disclosed under IDS 2016 at ₹ 1,48,13,572/-. The balance amount of ₹ 4 lacs has rightly been added by the AO under section 68 of the Act. For this, the CIT(A) given detail finding in Para 5.4 as under: -

*“5.4 The submissions of the Id. Counsel are being considered. The appellant, has apparently purchased 40,000 shares of Kailash Auto Finance Ltd. On 12.07.2012 for a consideration of Rs.4 lacs. The said shares were sold on various dates in August 2013 for a consideration of Rs.1,52,13,572/-, the difference between sale and purchase which is Rs.1,48,13,572/- has been declared as long term capital gain and claimed exempt. However, during the IDS 2016, the assessee had declared Rs.1,48,13,572/- as cash used in long term capital gain on shares of Kailash Auto Finance Ltd. in AY. 2014-15. Similarly, the amount of*



*Rs.5,88,73,924/- has been declared as cash used in term capital gain on shares of Lifeline Drugs and Pharma Ltd. in AY. 2015-16. It is the contention of the Id. Counsel that the amounts declared in IDS 2016*

*have been accepted by the Department and, therefore, no further addition on this count can be made. Further, the cost incurred for acquiring the shares has to be allowed from the sale consideration. The contention of the Id. Counsel is not acceptable. In the assessee's own words in the IDS declaration, it is mentioned that the amounts declared are cash used in long term capital gain on shares. This means whatever amount has been received by the assessee by way of cheque from the broker is a result of the cash paid by the assessee to the broker. By declaring in IDS 2016, the assessee herself is admitting that this is a sham transaction. If it was a genuine long term capital gain, there was no need for the assessee to declare it as cash in IDS. The case has to be viewed now with this understanding that the assessee has utilized her cash in arranging for long term capital gain. The amount received by the assessee is sale consideration of the 40,000 shares of Kailash Auto Finance Ltd. is Rs.1,52,13,572/-. This means that the assessee had paid an equivalent of cash to the broker to receive cheques to the tune of Rs.1,52,13,572/-. By self-admission the whole transaction is a sham and there cannot be a cost of shares*



*for a sham transaction. Therefore, the Ld.AO has rightly disallowed the difference between the sale consideration and the capital gain amount which was claimed as the purchase cost by the assessee. However, the Ld.AO adopted the figure of Rs.1,53,25,015/- as sale consideration whereas the assessee's claim is that the sale consideration is Rs.1,52,13,572/-. The assessee substantiated her claim with the help of the bank statement where total consideration received is Rs.1,52,13,572/-. While in principle the stand of the Ld.AO in bringing to tax the difference between the sale consideration and the long term capital gain declared by the assessee is upheld, the Ld.AO is directed to verify the correct sale consideration and adopt that figure for calculating the disallowance. If the figure amount of sale consideration is Rs.1,52,13,572/- as claimed by the assessee, then the disallowance would be Rs.4 lacs and not Rs.5,11,443/- as worked out by the Ld.AO. This ground of appeal is Partly Allowed."*

4. I have heard rival contentions and gone through the facts and circumstances of the case. I noted that the assessee has declared long term capital gain of ₹ 1,48,13,578/- under the income declaration scheme 2016 and offered the long term capital gain for taxation and necessary taxes were paid in instalments within the time stipulated under the said scheme. The assessee has purchased 4 lacs shares by investing the sum of ₹ 4 lacs paying the same out of her Union Bank Account, Opera House Branch, Mumbai, Bank Account No. 318802010101918, whereby on



ITA No.4330 & 4331/Mum/2018

12.07.2012 a cheque of ₹ 4 lacs was invested for purchase of shares of Kailash Auto. I noted that now the assessee is only seeking relief of the sum of ₹ 4 lacs. In our view, this investment was made in FY 2012-13, relevant to AY 2013-14 and in any case this amount of 4 lacs is to be considered as unexplained under section 68 of the Act, if at all, in A.Y. 2013-14 but not in AY 2014-15. However, the assessee has paid this amount out of her bank account and purchased the shares of Kailash Auto. This entry cannot be added in AY 2013-14. However, I also noted that this amount is withdrawn out of the bank account and seems to be explained. In view of the above, I am of the view that the sum of ₹ 4 lacs has been considered as investment being cost of the assessee in the FY 2012-13 relevant to AY 2013-14, which is not in dispute. Hence, I delete the addition and allow the appeal of the assessee.

5. Similar are the facts in the case of Vishal Dhandhia HUF in ITA No. 4330/Mum/2018. Following the same, I delete the addition in this appeal also.

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

Order pronounced in the open court on 25-06-2019.

Sd/-  
(महावीर सिंह /MAHAVIR SINGH)  
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 25-06-2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai