

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1746/MUM/2018  
Assessment Year: 2014-15**

M/s. Uttung Hitendra Thakur, 1 <sup>st</sup> Floor, Thakur Arcade, Station Road, Virar (West) – 401 303 <b>PAN: AJJPT3513H</b>	Vs.	Income Tax Officer, Ward 4(5), Thane, Room No.8, 'A' Wing, 6 <sup>th</sup> Floor, Ashar IT Park, Road No.16z, MIDC, Thane (W) – 400 604
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Mukund Bakshi, A.R.  
Revenue by : Shri Rajeev Gubgotra, D.R.

Date of Hearing : 26.06.2020  
Date of Pronouncement : 01.07.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 13.12.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. The only issue raised by the assessee is against the confirmation of addition of Rs.98,93,959/- by Ld. CIT(A) as made by the AO towards unexplained cash credit by treating the long term capital gain on sale of shares which were claimed by the assessee as exempt under section 10(38) and Rs.66,948/- on account of commission paid for sourcing the long term capital gain.

3. The facts in brief are that the assessee filed the return of income electronically on 28.11.2014 declaring an income of Rs.18,24,000/-. The case of the assessee was selected under scrutiny in CASS to examine the suspicious long term capital gain on shares. The AO observed that the assessee is beneficiary of long term capital gain of Rs.98,93,959/- during A.Y. 2014-15 by purchasing and selling the scrips of M/s. Jolly Plastic Industries Ltd. the details of transaction of purchase and sale by the assessee in this share are given as under:

Scrip Purchased	Jolly Plastic Industries Ltd.
No. of shares purchased	43,000
Date of purchase	08.05.2012
Amount paid	6,96,600
Broker through whom purchased	South Asia Portfolios Private Limited, Delhi
No. of shares sold	43,000
Amount received	10627540

4. The AO after analyzing the balance sheets of the company M/s. Jolly Plastic Industry Ltd. came to the conclusion that share of the said company spiraled without bearing any profit etc. The AO also observed that the parameters which are necessary for increase in the value of shares were not present in this case. The AO noted that the market price of the share was Rs. 14.03 per share having a face value of 10 in August 2012 thereafter the price went up to Rs.300/- in 13 months till September 2013 thereby registering an increase in price of 22 times. The AO observed that the net worth of the above company was negligible and there were virtually no business activities. The prices of the shares were rigged by the group of operators including Shri Pravin Agarwal to accommodate

beneficiaries seeking long term capital gain and losses to evade the taxes. The AO also noted that the SEBI found evidences of share price rigging to create non genuine long term capital gain to benefit various beneficiaries and consequently passed order under section 11(1), 11(4) and 11(e) of SEBI Act, 1992. The AO also relied on the statements recorded of the chairmen and main directors of the Companies involving in rigging of prices. Finally, the AO came to the conclusion that it was an organized way of doing price rigging, securing gains to beneficiaries by paying STT on the sale and purchase of shares done on the recognised stock exchange and finally treated the said long term capital gain as unexplained cash credit under section 68 of the Act and thus made an addition of Rs.98,93,959/- and further added Rs.66,948/- towards commission paid for securing such capital gain by framing assessment under section 143(3) of the Act dated 30.12.2016.

5. In the appellate proceedings, Ld. CIT(A) dismissed the appeal of the assessee by upholding the order of AO by holding that the long term capital gain on sale of shares of M/s. Jolly Plastic Industry Ltd. was earned through a racket as established by director of investigation, Kolkata and further proved by the AO at the time of assessment proceedings.

6. The Ld. A.R., at the outset, submitted that the issue involved in the present appeal is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in the case of Akshay Jain vs. DCIT, Circle-1, Ghaziabad ITA No.4199/Del/2018 A.Y. 2014-15 vide order dated 17.01.2019 in which the scrip of the same company M/s.

Jolly Plastic Industry Ltd. was accepted by the co-ordinate bench of the Tribunal by holding that shares were purchased through brokers who have undertaken the transactions of shares lying with the assessee purchased in earlier years and same were sold after paying due taxes in the form of STT. The Ld. A.R. submitted that the co-ordinate bench of the Tribunal held that the scrips were fully explained and had it been a case of routine own unaccounted money then material has to be brought on record and link has to be established. The Ld. A.R. relying on the said decision of the co-ordinate bench of the Tribunal prayed before the Bench that the issue may kindly be decided in favour of the assessee based on the ratio laid down in the said decision.

7. The Ld. D.R., on the other hand, relied heavily on the order of authorities below by submitting that it was a big racket which was brought out by the director of investigation, Kolkata who conducted raid on the companies and operators who were engaged in providing bogus entries of long term capital gain by manipulating the prices of share on recognized stock exchange and the entire modus operandi was brought to fore. The Ld. D.R., therefore, relied heavily on the order of AO and Ld. CIT(A) and prayed before the Bench that the same may kindly be upheld by dismissing the appeal of the assessee.

8. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that the assessee purchased 43000 shares of M/s. Jolly Plastic Industries Ltd. on 08.05.2012 at a cost of Rs.6,96,600/- through South Asia Portfolio Pvt. Ltd., Delhi. Thereafter, the

same number of shares i.e. 43000 equity shares were sold for a consideration of Rs.1,06,27,540/- within 13 months from the date of purchase. From the perusal of the decision of coordinate bench of the Tribunal in the case of Akshay Jain vs. DCIT (supra) we observe that the issue of long term capital gain on sale of shares of M/s. Jolly Plastic Industries Ltd. was decided in favour of the assessee by observing and holding as under:

“10. After hearing the rival submissions and on perusal of the material referred to before us, I find that the assessee had purchased 10,000 equity shares of M/s. Jolly Plastic Industries Ltd. from a broker on 1st June, 2012 for Rs.1,34,000/-. Thereafter, the shares were dematerialised on 24.10.2013 showing the purchase of 10,000 share of M/s. Jolly Plastic Industries Ltd. The said shares have been sold for Rs.30,19,500/- in the Bombay Stock Exchange through a recognized broker, South Asian Stock Ltd. who has traded the shares between 15:03 to 15:06 @ 309.10 per shares. The contract note for sale shows the transactions timing, trade number and the amount of STT paid on such shares. After the sale of shares on 29.10.2013, the amount of sale proceeds have been credited in the bank account of the assessee on 01.11.2013 and 05.11.2013. The bank statement clearly shows RTGS credit from South Asian Stock Ltd. These documents ostensibly go to show that the credits appearing in the bank account is from sales of shares only and the source of credit in the bank account stands well established as required under section 68. The issue raised by the learned Assessing Officer and Ld. CIT(A) are that it is an unaccounted money which has been routed sham transaction of Long Term Capital Gain because for the reasons that; • Firstly, the trading of the shares of M/s. Jolly Plastic Ltd. was suspended by SEBI; and • Secondly, prices of the shares of the said company were being manipulated without any financial fundamentals. Both the authorities have quoted the general modus operandi and catena of judgment including that of Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT (1995) 214 ITR 801 and Mc. Dowell & Co. Ltd., 154 ITR 148. 11. From the perusal of the entire assessment and appellate order nowhere there is any discussion or whisper that there is any material or information with the Department that assessee's name has appeared as a beneficiary of accommodation entry in any kind of inquiry or investigation conducted by the Department or assessee has routed his unaccounted money in the garb of Long Term Capital Gain. The entire emphasis is on the fact that there is an astronomical rise in the price of the shares in BSE. From the perusal of the historic price of shares of M/s. Jolly Plastic Industries Ltd., it is seen that the price of the said shares had been steadily growing since December, 2012 and had reached to its zenith around October, 2013 and trading in such shares was continuing uptill January, 2015. It was only in January 2015, the SEBI has suspended its trading which was much after the assessee had sold the shares. Apart from that, the copy of balance sheet of M/s. Jolly Plastic Industries Ltd. as filed by the learned counsel available in the public domain, it cannot be held that the said company did not had any operations or sales as the figures of sale as on 31st March, 2013 and as on 31st

March, 2014 has already been incorporated above. If what is apparent is not real, then Department has to bring some cogent material on record to prove that assessee's contention/explanation are incorrect or are not substantiated. Here, in this case, addition has been sought to be made u/s.68 which postulates that assessee has to prove the nature and source of credit appearing in his books of account. Here, from the perusal of the nature of credit, it is seen that the same has come through sales of shares which fact has also not been doubted by the Department. The source of money is through broker who has undertaken the transaction of the shares lying with the assessee purchased in the earlier years and same has been sold after paying due taxes in the form of STT. Thus, nature of the credit stands fully explained. If it is to be held that assessee has routed his own unaccounted money, then there has to be some material to provide live link nexus to show that the unaccounted money has been routed under the garb perusal of the historic price of shares of M/s. Jolly Plastic Industries Ltd., it is seen that the price of the said shares had been steadily growing since December, 2012 and had reached to its zenith around October, 2013 and trading in such shares was continuing uptill January, 2015. It was only in January 2015, the SEBI has suspended its trading which was much after the assessee had sold the shares. Apart from that, the copy of balance sheet of M/s. Jolly Plastic Industries Ltd. as filed by the learned counsel available in the public domain, it cannot be held that the said company did not had any operations or sales as the figures of sale as on 31st March, 2013 and as on 31st March, 2014 has already been incorporated above. If what is apparent is not real, then Department has to bring some cogent material on record to prove that assessee's contention/explanation are incorrect or are not substantiated. Here, in this case, addition has been sought to be made u/s.68 which postulates that assessee has to prove the nature and source of credit appearing in his books of account. Here, from the perusal of the nature of credit, it is seen that the same has come through sales of shares which fact has also not been doubted by the Department. The source of money is through broker who has undertaken the transaction of the shares lying with the assessee purchased in the earlier years and same has been sold after paying due taxes in the form of STT. Thus, nature of the credit stands fully explained. If it is to be held that assessee has routed his own unaccounted money, then there has to be some material to provide live link nexus to show that the unaccounted money has been routed under the garb of transaction of purchase and sale of shares. If the availability of shares is not in doubt then the sale of the same also cannot be doubted in wake of the evidences as discussed above. Even for the sake of repetition, it is reiterated that it is not a case here that any such information or material was found or discovered that the assessee beneficiary of any accommodation entry nor there is any such statement or material either from the broker or from the stock exchange or from elsewhere. Thus, in the facts and circumstances of the case, we do not find any reason to sustain the addition made u/s.68 by the Assessing Officer and Id. CIT (A) and accordingly same is directed to be deleted.

12. In the result, the appeal of the assessee is allowed."

9. Since the facts of the present case are similar to one as decided by the co-ordinate bench of the Tribunal, we are,

therefore, respectfully following the decision of the co-ordinate bench of the Tribunal direct the AO to delete the addition made under section 68 of the Act by setting aside the order of Ld. CIT(A).

10. So far as the second addition of Rs.66,948/-, which was made by the AO towards commission paid for procuring the long term capital gain on 43,000 equity shares of M/s. Jolly Plastic Industries Ltd., is concerned, we have already adjudicated the main issue in favour of the assessee by holding that the addition of long term capital gain of Rs.98,93,959/- was wrong and directed the AO to delete the same. Therefore, this being consequential ground and AO is also directed to delete the addition of Rs.66,948/-.

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

**Order pronounced in the open court on 01.07.2020.**

**Sd/-  
(Mahavir Singh)  
VICE PRESIDENT**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 01.07.2020.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.