

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.390/M/2020
Assessment Year: 2014-15**

M/s. Anusmriti Sarkar, Flat No.2506, A Wing Adani Western Heights, Opp Gurudwara, JP Road, Four Bungalow, Andheri (West), Mumbai – 400 058 PAN: BDTPS2583M	Vs.	ITO 16(1)(1), 436A Room No., Aayakar Bhavan, Churchgate, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vishnu Agarwal, A.R.
Revenue by : Shri Satya Pinisetty, D.R.

Date of Hearing : 24.03.2021
Date of Pronouncement : 07.06. 2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 19.11.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. The issue raised in ground No.1 is against the confirmation of addition of Rs.1,01,71,119/- by Ld. CIT(A) as made by the AO under section 68 of the Act towards long term capital gain accruing on sale of listed shares.

3. The facts in brief are that the assessee filed the return of income on 09.10.2014 declaring income of Rs.13,96,530/-. The case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. During the course of assessment proceedings the AO observed that assessee has earned a long term capital gain of Rs.1,01,71,119/- from the sale of shares of M/s. Surabhi Chemical and Investment Ltd. and M/s. Kailash Auto Finance Ltd. The appellant had purchased 500 shares of M/s. Surabhi Chemical and Investment Ltd. on 11.07.2012 (purchase Bill Attached). Then the company has issued bonus in the ratio of 1:9 on 11.08.2012. So the number of shares with the appellant has become 5,000/- equity shares. Then on 12.04.2013 the company has split the share from every one equity share of Rs. 10/each to Rs. 1 each which has resulted to 50,000 equity shares with assessee. The appellant had purchased the 2,00,000/- shares of M/s Panchshul Marketing Ltd. on 12.06.2012 (Purchase bill attached). Then the company has merged with listed company M/s Kailash Auto Finance ltd. vide hon'ble high court (copy enclosed). There after the appellant had received the 2,00,000/- shares of M/s Kailash Auto finance Ltd (Amalgamated Company). The AO treated the capital gain as bogus and fictitious on the basis of report of the investigation wing and findings of the SEBI which is also discussed in detail in the assessment order. The assessee filed during the course of assessment proceedings the copies of D-mat account, supporting contract notes evidencing purchase and sale of shares and payments and receipts by account payee cheques. Undisputedly, these shares were held for a period of more than

12 months. Finally, the AO issued show cause notice to the assessee as to why the claim u/s 10(38) of the Act should not be rejected on account of being bogus and finally added the same along with the commission @ 3% to the income of the assessee in the assessment framed under section 143(3) of the Act dated 30.12.2016 after taking into account the submissions of the assessee.

4. In the appellate proceedings, the Ld. CIT(A) also dismissed the appeal of the assessee by upholding the order of AO.

5. The Ld. Counsel, at the outset, pointed out that the issue involved in the present appeal of long term capital gain on sale of shares of M/s. Kailash Auto Finance Ltd. is squarely covered by the various decision of the co-ordinate benches of the Tribunal in the following cases.

1. Manish Kumar Baid vs. ACIT, Cir-35, Kolkata I. T.A. No. 1236/Kol/2017
2. Mahendra Kumar Baid vs. ACIT, Cir-35, Kolkata I. T.A. No. 1236/Kol/2017
3. Smt. Sonal Bajaj vs. I.T.O., Ward-36(2J), Kolkata I. T.A. No. 239/Kol/2018
4. Mr. Sanjiv Shroff vs. ACIT, Cir-36, Kolkata I. T.A. No. 1197/Kol/2018
5. Mr. Shankarlal Shroff vs. 1TO, Ward-36(2), Kolkata I. T.A. No. 1197/Kol/2018
6. Smt. Dipika Shroff vs. ITO, Ward-34(3J), Kolkata I.T.A. No. 1197/Kol/2018
7. Shri. Udit Goyal vs. ITO, Ward-36(4), Kolkata I. T.A. No. 1637/Kol/2018
8. Shashi Bala Bajaj vs. ITO, Ward-36(2), Kolkata I. T.A. No. 1547/Kol/2018

6. The Ld. A.R. therefore submitted that the addition in this case may kindly be deleted following the said decisions of the co-ordinate benches of the Tribunal. The Ld. A.R. further submitted that in both the shares, the assessee has filed the following documents evidencing the purchase and sale of shares.

- a) Detailed Summary chart of Purchase and Sale (Page no 6 of paper book)
- b) Contract notes/Broker notes for the sale of shares through stock exchange, in which no of shares sold, rate, date etc. has been duly mentioned (Refer page no. 7 to 16 of paper book).

- (c) Copy of Demat/ Transaction Statement for the period 01.04.2013 to 31.03.2014. (Page no. 17 of paper book)
- d) Copy of Purchase bills of shares (Page no. 19 & 26 of paper book).
- e) Ledger copy of share broker.
- f) Ledger copy of parties from whom shares were purchased.
- g) Bank statement duly highlighting the Payment for purchase (Page no. 22 & 29 of paper book).
- h) Bank statement duly highlighting the receipt of sale consideration from shares (Page no. 18 of paper book).
- i) Computation of Income
- j) Copy of High Court Order of Merger of the Company (Page no. 33 to 63 of paper book).

It is vital to note that the contract-cum-bill (copy enclosed) contains the details of the order no, trade no., name of shares, quantity, rate, etc..

7. The Ld. A.R. submitted that all the necessary evidences were filed before the authorities below, however, the AO as well as Ld. CIT(A) have proceeded on the surmises and presumption that the investigation and SEBI report suggest that these are accommodation entries and prices of shares were manipulated without doing any verification on the evidences produced by the assessee. The Ld. A.R., therefore, prayed that the addition as made by the AO may kindly be deleted.

8. The Ld. D.R., on the other hand, relied heavily on the order of authorities below.

9. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that the assessee has earned a capital gain of Rs.1,01,71,119/- on the sale of scripts namely M/s. Surabhi Chemical and Investment Ltd. and M/s. Kailash Auto Finance Ltd. The facts qua the purchase and sale of shares and necessary evidences were already discussed hereinabove and are not being repeated for the sake of gravity. We note that assessee has filed all the evidences comprising summary of sale and purchase of shares,

contract notes/broker notes, details of Dmat account/transaction statement, copies of purchase bills, evidences of payment through banking channels along with bank statements etc. We note that the authorities below have relied merely on the report of investigation wing and SEBI by ignoring the facts on record. We further note that in the case of M/s. Kailash Auto Finance Ltd. the various co-ordinate benches of the Tribunal at Kolkata have decided the issue in favour of the assessee. The operative part of the decision in ITA No.1236 & 1237/Kol/2017 is reproduced as under:

“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 leveled 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 Broking 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 order 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 bonafide 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 case 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 decided in the negative and in favour of the assessee."

10. We note that the assessee has filed all the evidences and the authorities below could not bring out any material to prove that the capital gain earned by the assessee is bogus except the attribution by the investigation wing and SEBI. In view of these facts and circumstances, the order of Id. CIT(A) can not be sustained . Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

11. The issue raised in ground No.2 is connected with ground No.1 and has already been adjudicated as above.

12. The issue raised in ground No.3 is against the order of Ld. CIT(A) confirming the addition of Rs.3,05,134/- by Ld. CIT(A) as made by the AO under section 69C of the Act towards commission of accommodation entries on long term capital gain. Since we have already decided the issue on merit in favour of the assessee, therefore this addition is automatically deleted as being consequential. The AO is directed to delete the addition accordingly. Ground is allowed.

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

Order pronounced in the open court on 07.06.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

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

Mumbai, Dated: 07.06.2021.

* 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.