

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, “A”, “चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, ‘A’ CHANDIGARH**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL  
MEMBER, AND SMT. ANNAPURNA GUPTA,  
ACCOUNTANT MEMBER**

**आयकरअपीलसं./ITA No. 1074/CHD/2019**

निर्धारणवर्ष / Assessment Year: 2014-15

Shri Lalit Jain S.C.O. 371-372, 2 <sup>nd</sup> Floor, Sector-35B, Chandigarh	बनाम	The Assistant Commissioner of Income Tax Circle-4(1), Chandigarh
स्थायीलेखासं./PAN No : AAUPJ 0091Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**आयकरअपीलसं./ITA No. 1075/CHD/2019**

निर्धारणवर्ष / Assessment Year: 2014-15

Smt. Jyoti Jain S.C.O. 371-372, 2 <sup>nd</sup> Floor, Sector-35B, Chandigarh	बनाम	The Assistant Commissioner of Income Tax Circle-4(1), Chandigarh
स्थायीलेखासं./PAN No : AAJPJ 1703A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे/Assessee by : Shri Nikhil Goyal, Adv.,  
Shri Ashok Goyal, CA &  
Shri Pankaj Bhalla, CA

राजस्वकीओरसे/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाईकीतारीख/Date of Hearing : 28.07.2021

उदघोषणाकीतारीख/Date of Pronouncement : 25.08.2021

**(Through Virtual Hearing)**

**आदेश/Order**

**Per Annapurna Gupta, A.M. :**

The present appeals relate to different assessees and have been filed against the separate orders passed by the Commissioner of Income Tax (Appeals)-2, Chandigarh [in short referred to as 'CIT(A)'] both dated 30-05-2019 u/s 250(6) of the Income Tax Act,196 (hereinafter referred to as "Act").

2. At the outset itself, Ld. Counsel for the assessee pointed out that the issue in both the appeals was identical and arose in the backdrop of identical facts and circumstances. He pointed out that the issue related to Long Term Capital Gains on the sale of shares of the same scrip, i.e., M/s Kailash Auto ,which the assessees had originally claimed as exempt u/s 10(38) of the Act, but on survey conducted on both of them on 03.09.2015 u/s 133A of the Act ,where certain evidences relating to the claim of Long Term Capital Gains allegedly being bogus were unearthed ,the assessee surrendered the Long Term Capital Gains as its income by way of filing a revised return declaring an amount of Rs.71,91,150/- in the case of Shri. Lalit Jain and 56,58,000/- in the case of Smt. Jyoti Jain. That the revised return filed by the assessee was assessed as

such in both cases and penalty proceedings u/s 271(1)(c) were initiated. That against the assessment order so framed, the assessee filed appeal before the Ld. CIT(A) and during pendency of the appeal raised additional grounds challenging the assessment of the surrendered income on account of alleged bogus Long Term Capital Gain transactions. The said additional ground was not admitted by the Ld. CIT(A) for adjudication, who thereafter disposed of the appeals dismissing the same since the only other issue remaining related to initiation of penalty proceedings.

The Ld. DR agreed to the commonality of the aforestated facts in both the present appeals.

In view of the same considering that the issue involved in both the appeals was identical they were heard together and are being disposed of by this common consolidated order.

Identical grounds have been raised by the assessee in both the appeals, we are therefore dealing with the grounds raised in ITA No. 1074/Chd/2019 and our decision rendered therein will apply mutatis mutandis to the other appeal also.

Taking up ground no. 1 and 2 which read as under:

“1. That the Ld. CIT(A)-2, Chandigarh has wrongly passed the order u/s 250(6) of the Income Tax Act, 1961 against law & facts of the case.

2. That the Ld. CIT(A)-2, Chandigarh erred in law & facts in not admitting additional ground of appeal without any base & reasons thereof”

Ld. Counsel for the assessee contended that the act of the Ld. CIT(A) in not admitting the additional grounds of appeal was wholly unjustified. Drawing our attention to the order of the Ld. CIT(A) dismissing the admission of the additional grounds at para 6 to 6.1.1 of his order, Ld. Counsel for the assessee pointed out that the reason for not admitting the additional grounds was primarily that it was raised after lapse of nearly one and half years after the appeal was filed and there was no substantial reason for the same.

Ld. Counsel for the assessee contended that the facts were in fact to the contrary and there were valid reasons for raising the additional grounds before the Ld. CIT(A) which could not have been raised earlier. Ld. Counsel for the assessee pointed out that after the surrender made by the assessee of alleged bogus Long Term Capital Gain by way of filing a revised return, it so transpired that the final order of SEBI in the case of the scrip transacted in by the assessee, i.e., M/s Kailash Auto, was passed in which it was concluded that there was no manipulation in the scrip. He contended therefore that all the earlier orders were liable to be quashed. With this fact the surrender made by the assessee was sought to be revoked and therefore additional grounds were raised

before Ld. CIT(A). Ld. Counsel for the assessee contended that on account of the subsequent event after the passing of the assessment order, therefore the said ground was raised as additional ground in appellate proceedings before the Ld. CIT(A). He contended that it is settled position of law that the assessee is well within his right to make a claim for deduction before an appellate authority for the first time.

3. A brief submission in this regard was filed before us as under:

“2.1. Submissions with respect to Ground No. 1 and 2

1. *That the Ld. CIT(A)-2, Chandigarh has wrongly passed the order u/s 250(6) of the Income Tax Act, 1961 against law & facts of the case.*
2. *That the Ld. CIT(A)-2, Chandigarh erred in law & facts in not admitting additional ground of appeal without any base & reasons thereof.*

2.1.1. *The Ld. CIT has erred in law and facts in not admitting additional ground of appeal without any base and reason and by just quoting that the assessee has filed additional grounds of appeal after a lapse of nearly one and half years and there was no substantial reason for the same. Thus, admissibility of additional ground is rejected outrightly.*

2.1.2. *The Sequence of events are explained in brief for explaining the reason that why the assessee filed additional grounds of appeal after a lapse of nearly one and half years.*

- *Assessee filed his original return under section 139(1) for the year under consideration vide acknowledgement no. 300443260310714.*
- *Survey was Conducted at assessee premises and certain evidences relating to bogus Long Term Capital Gain relating to share transactions in scrip name Kailash Auto taken by the Assessee were shown to him. No incriminating*

**document was found at the premises of the assessee. Some other evidences shown to assessee with which he had no correlation**

- **In view of the evidences, and to buy peace of mind the assessee made conditional surrender subject to no penal action at income of Rs.71,91,150/- for the FY 2013-14 and Rs.9,60,450/- for the FY 2014-15 on account of so called bogus exempt long term capital gains. Subsequently, the assessee filled a revised return on 23.10.2015.**
- *Thereafter, Assessment order was passed and the income of the assessee as per revised return and penalty proceedings u/s 274 r.w.s. 271(1)(c) was initiated separately.*
- **Appeal against the Penalty order was filed on 23.12.2016 before Commissioner of income Tax against penalty wrongly initiated by the Ld. AO u/s 271(1) (c).**
- **In the meanwhile. Final order of SEBI in case of M/s Kailash Auto was passed and it was concluded that there is no manipulation in the Scrip of M/s Kailash auto. Thus, all the earlier order are liable to be quashed.**
- *In view of the SEBI order, it was very obvious that Documents shown to the assessee were not showing the true scenario and it was half verified information.*
- **Thus, after taking all the things into consideration and after due verification of all the documents Ld. Counsel of the Assessee raised the additional ground before the Ld. CIT on the basis of facts.**
- *Thus, it is very clear from the above sequence of events that the assessee couldn't have raised the additional grounds earlier as it was proved later that there was no manipulation in the Scrip. Thus, LTCG earned by Assessee is correct and legally exempt u/s 10(38)*

S. no	Particulars	Date
1	ITR Filing	31.07.2014
2	Survey u/s 133A	03.09.2015
3	Revised ITR	23.10.2015
4	SEBI Interim Order	29.03.2015
5	Assessment Order	30.11.2016
6	Appeal	23.12.2016

7	<i>Penalty Order</i>	<i>17.03.2017</i>
8	<i>SEBI Final Order</i>	<i>21.09.2017</i>
9	<i>Additional Grounds of Appeal</i>	<i>24.04.2018</i>

2.1.3. *There is a settled law and various judgments which explains that a further claim of deduction u/s 10(38) can be made before the Worthy CIT(A) when it has not been made at the assessment stage or while filing the return, it is well within the right of appellant to make a claim for deduction before any appellate authority for the first time. This issue has been decided in number of judicial pronouncements*

a) *Reference is placed on the Binding Judgment of Hon'ble Supreme Court in the case of National Thermal Power Corporation reported in 229 ITR 383(SC)*

*Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings, we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. (Para 7)*

b) *Reference is also placed on Hon'ble High Court in the case of Bombay Commissioner of Income Tax vs. Pruthvi Brokers & Shareholders reported in [2012] 23 taxmann.com 23 (Bom.), the findings were that 'if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made....' or 'that the ground became available on account of change of circumstances or law,' does not curtail the ambit of the jurisdiction of the appellate authorities stipulated earlier. They do not restrict the new/additional grounds that may be taken by the assessee before the appellate authorities to those that were not available when the return was filed or even when the assessment order was made.*

*The underlined observations in the above passage do not curtail the ambit of the jurisdiction of the appellate authorities stipulated earlier. They do not restrict the new/additional grounds that may be taken by the assessee before the appellate authorities to those that were not available when the return was*

*filed or even when the assessment order was made. The sentence read as a whole entitles an assessee to raise new grounds/make additional claims :-*

*"if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made..."*  
*if "the ground became available on account of change of circumstances or law"*

*The appellate authorities, therefore, have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The first part viz. "if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made..." clearly relate to cases where the ground was available when the return was filed and the assessment order was made but "could not have been raised" at that stage. The words are "could not have been raised" and not "were not in existence". Grounds which were not in existence when the return was filed or when the assessment order was made fall within the second category viz. where "the ground became available on account of change of circumstances or law."(Para 13)*

*c) Reference is also placed on Hon'ble Supreme Court in the case of **Jute Corpn. of India Ltd vs. Commissioner of Income-tax** reported in [1990] 53 taxmann 85 (SC), the findings were that*

*The above observations are squarely applicable to the interpretation of section 251(1)(a). The declaration of law is clear that the power of the AAC is co-terminous with that of the ITO, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the ITO. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an appellate authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the*



*statutory provisions. In the absence of any statutory provision the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the AAC in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the ITO.(Para 5)*

*d) Similar position in law is affirmed in following judgements*

- *CIT vs. Mahalaxmi Sugar Mills Co. [1986] 160 ITR 920 (SC)*
- *Atlas Cycle Industries Ltd. vs. CIT [1981] 5 Taxman 310 (P&H HC)*
- *DCM Benetton India Ltd. us. CIT [2008] 173 Taxman 283 (Delhi HC)*
- *Amit P. Pandya vs. ACIT [2014] 50 taxmann. com 276 (Mumbai Trib.)*
- *CIT vs. Abhinitha Foundation (P) Ltd. [2017] 83 taxmann.com 100 (Madras HC)*
- *CIT vs. Gangappa Cables Ltd. reported in [1979] 116 ITR 778 (Andhra HC)”*

4. Ld. DR on the other hand supported the order of the Ld. CIT(A).

5. We have heard both the parties. We find merit in the contention of the Ld. Counsel for the assessee that the additional grounds raised by the assessee before Ld. CIT(A) were wrongly refused to be admitted by him. The assessee, we find, has suitably demonstrated before us the reason for revoking the surrender originally made before the Assessing Officer of Long Term Capital Gain as being on account of the scrip transacted in by the assessee having subsequently been found to be genuine by the order of the SEBI. The surrender no doubt was made on account of certain

evidences collected during survey at the assessee's premises to the effect that the claim of Long Term Capital Gains on the sales of M/s Kailash Auto as exempt was bogus. Now the subsequent event of the SEBI order holding the transaction in the said scrip to be genuine was sufficient enough for the assessee to raise a legitimate ground before the Ld. CIT(A) for claiming the Long Term Capital Gains earned as exempt. As rightly pointed out by the Ld. Counsel for the assessee it is settled law that the assessee is entitled to make a claim before the worthy CIT(A), for the first time. The decision of the Hon'ble Apex Court in the case of Jute Corporation of India v. CIT (supra) and the decision of the Hon'ble Bombay High Court in the case of CIT v. Pruthvi Brokers & Shareholders settles the said issue in favour of the assessee.

In view of the above, we direct the Ld. CIT(A) to admit the additional ground raised by the assessee and thereafter adjudicate the same in accordance with law after giving due opportunity of hearing to the assessee. Ground no. 1 and 2 are allowed.

The remaining grounds relating to the merits of the issue are restored to the Ld. CIT(A).

The appeal of the assessee is therefore allowed for statistical purposes.

6. In effect, both the appeals of the assesseees are allowed for statistical purposes.

Order pronounced in the Open Court on .08.2021.

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**Judicial Member**

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**Accountant Member**

**Dated: 25.08.2021**

*GP/Sr.PS*

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant  
Registrar