

**INCOME TAX APPELLATE TRIBUNAL  
[DELHI BENCH "A": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA. No. 124/Del/2020  
(Assessment Year: 2015-16)

Shri Ankur Aggarwal, 42-Sharda Niketan, Pitampura, Delhi-110034. <b>PAN: AHMPA5007C</b>	Vs.	Income Tax Officer, Ward : 40 (1), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Kapil Goel, Advocate;
Department by:	Shri K. A. Manu, Sr. D.R.;
Date of Hearing :	18/08/2021
Date of pronouncement :	29/09/2021

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

01. This appeal is filed by Shri Ankur Aggarwal (the assessee / appellant) against the order passed by the Id. Commissioner of Income Tax (Appeals)-34, New Delhi, dated 29.08.2019 raising following grounds of appeal where only issue involved is that the lower authorities have considered the capital gain earned by the assessee on sale of shares as a nongenuine capital gain claimed exempt u/s 10 (38) of the income tax act but the revenue authorities charged to tax u/s 68 of the income tax

act along with the alleged commission charges paid for obtaining the alleged nongenuine long-term capital gain:-

“1. On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in confirming the addition of Rs 1,60,38,880/- incorrectly and unjustifiably made by the AO.

2. On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in holding that the transaction of Rs 1,60,38,880/- was a sham transaction.

3. On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in holding that the amount of Rs 1,60,38,880/- received on account of sale proceeds of share was income from other sources liable to be taxed u/s 68.

4. On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in holding that sale proceeds of the shares on account of shares sold in the Bombay Stock Exchange was a bogus transaction.

5. On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in holding that the assessee had not earned any Long Term Capital Gain on sale of shares of Goldline Finvest International Ltd.

6. On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in confirming the addition of Rs 4,81,116/- incorrectly and unjustifiably made by the AO. “

02. The brief facts of the case shows that assessee is an Individual, who filed his return of income on 20.09.2015 declaring income of Rs. 17,32,740/-. The case of the assessee was selected for scrutiny. Notice under Section 143(2) of the Income Tax Act, 1961 (the Act) was issued on 9.08.2016. During the course of hearing, the assessee was given several opportunities and finally show cause notice was issued on

22.12.2017 where the date of hearing was fixed on 29.12.2017. On this date, the assessee submitted an e-mail expressing his inability to file the requisite documents due to paucity of time. Until the finalization of the order by the Assessing Officer, details required of were not filed by the assessee and, therefore, the Assessing Officer decided the case as per material available on record.

03. The Assessing Officer found as per information available with the Department that assessee has acquired equity shares of M/s. Goldline Finvest International Ltd. and has sold 34,200 shares on 22.05.2014, 23.05.2014, 2.06.2014, 4.06.2014, 10.06.2014, 26.06.2014, 6.08.2014, 22.08.2014 and 25.11.2014 in various lots. The total consideration received by the assessee on sale of these shares on Bombay Stock Exchange is Rs.1,60,38,880/-.The assessee disclosed the long term capital gain of Rs.1,55,98,712/- and claimed exemption under Section 10(38) of the Act.
04. The Id. Assessing Officer referred to the investigation report of the Director, Investigation Wing to un-earth organized racket generating bogus entries with long term capital gain, which is exempt from tax. In the case of M/s. Goldline Finvest International Ltd., the Assessing Officer noted that it is a penny stock wherein brokers and entry operators in their statements has accepted that shares of this company were used in providing bogus entries. The Assessing Officer referred to one such statement of Mr. Soumen Choudhury dated 10.02.2015. He gave the details of various companies in which he has provided bogus entries of long-term capital gains. In response to question No. 8 he referred at serial No.

18 the name of M/s. Goldline Finvest International Ltd. having a client code of 538180, which is stated to be a jamakharchi company. He also referred in question No. 9 such of his client, which is annexed as Annexure 'A'. The Assessing Officer also referred to the admission of the entry operator supported by surrender letter wherein the commission income earned as providing the bogus long-term accommodation entries was also mentioned. The Id. Assessing Officer further referred to the financial statement of M/s. Goldline Finvest International Ltd. starting from March, 2012 to March, 2016 and stated that it has a meager turnover and a very small amount of profit. Therefore, he held that this company shows that at the time of investment made by the assessee it was having very poor financial capabilities and no future income prospectus. It has a negative Earning per share (EPS) and cannot be justified as a choice of investment option. Therefore, he held that there is no apparent reason why the assessee invested in the shares of such company. He further noted that appreciation of shares is approximately 4589%, which is astronomical. He further referred to the trading pattern of the above company and noted that it did not move along with the Sensex and it did not have any financial status to show any reason for this extraordinary performance. He further noted that the Investigation Directorate also noted this company to have been used for providing accommodation entries of long-term capital gain. He further noted that DDIT (Investigation) Unit 6/3, New Delhi, vide letter dated 28<sup>th</sup> June 2016 has also mentioned the name of the appellant – assessee as one of the client beneficiary having a PAN: AHMPA5007C. The assessing officer further

noted that the modus operandi adopted by the assessee clearly matches with the modus operandi of penny stock. He further stated that it is against the human probabilities to have earned such a profit. Since no submissions were filed by the assessee before the Assessing Officer, he was left with no option, but to complete the assessment based on material available on record, surrounding circumstances, human conduct, and preponderance of probabilities. Therefore, relying on the decision of the Hon'ble Supreme Court in CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC); decision of the Hon'ble Bombay High Court in Sanjay Bimalchand Jain Vs. Pr. CIT in ITA. No. 18/2017 dated 10<sup>th</sup> April, 2017 held that assessee has indulged in dubious transactions meant for non-genuine credit under Section 68 of the Act. He further relied upon the decision of the Hon'ble Supreme Court in the case of McDowell & Co. Ltd. Vs. CTO (1985) 154 ITR 148 (SC). He further referred to the finding of the Special Investigation Team Report by two highly respected judges of the Supreme Court, Hon'ble Mr. Justice M. B. Shah and Hon'ble Mr. Justice Dr. Arijit Pasayat. He further referred to the decision of the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT 214 ITR 801 (SC) with respect to the test of human probabilities. He further relied on the several judicial precedents and held that assessee has used a pre-arranged device in the form of booking of bogus sale consideration of Rs.1,68,38,880/- during the relevant year to bring into books the unaccounted income of the assessee. Therefore, denying the exemption under Section 10(38) of the Act he applied the provisions of Section 68 of the Act and made an addition of

Rs.1,60,38,880/-. Further he also made addition under Section 69C of the Act about the rate of commission of Rs. 4,81,116/-. Accordingly, the total taxable income of the assessee was determined at Rs. 1,82,52,736/- against the returned income of Rs. 17,32,740/-.

05. Aggrieved by the order of the ld. Assessing Officer the assessee preferred an appeal before the ld. CIT (Appeals). The ld. CIT (Appeals) decided this issue vide order dated 29.08.2019. Before him, the assessee made an application under Rule 46A for admission of additional evidence stating that it could not submit several documents before the Assessing Officer due to inadequate opportunities. The ld. CIT (Appeals) admitted such evidence vide para No. 3.1 of his order and directed the ld. Assessing Officer to submit a remand report. Vide para No. 5.2 he noted that assessee has purchased 50,000 shares on 28.12.2012 at Rs.10/- per share of M/s. Goldline Finvest International Ltd. for Rs.5,00,000/-. These shares were sold in trenches, 34,200 shares at a total consideration of Rs.1,60,38,880/- through a broker of the assessee Parasram Holding Pvt. Ltd. He further noted that the Assessing Officer has recorded the statement of the appellant on 23.05.2019 wherein the assessee has admitted that he did not check the financials of the company and relied only on positive reviews given by his friends. Thus, he noted that assessee has purchased large number of shares in one go which did not have any name in the market and had bad financials. Accordingly, it proves that the appellant had no record of investing in such a company other than pre-arranged conversions of his unaccounted income into long-term capital

gain. Before him, the assessee stated that it has not been allowed cross-examination of the parties based on whose statement the addition has been made. In para No. 5.3 he noted that the finding of the case of the Investigation Wing further corroborated the independent findings of the Id. Assessing Officer and, therefore, the Assessing Officer was not allowed to the appellant the opportunities of cross examination. Thereafter he referred to plethora of judicial precedents to support his finding. He further noted that the picture shown by the appellant is color by the use of sham devices. According to him, the appellant has not been able to explain as to why he purchased the shares of the above company. He further noted that the transactions entered into by the appellant were part of the series of pre-conceived steps, artificial structure, and assumption of abnormal profit. He therefore, held that the transactions could not be accepted at their face value when the entireties of facts are examined. He further held that it is an obvious and plain transaction of tax evasion, which has been clothed with the market scrutiny of subterfuges by the appellant. According to him, the appellant resorted to a ready-made scheme of purchase and sale of shares floated by entry operators. Accordingly, he agreed with the Assessing Officer and upheld the addition of Rs. 1,60,38,880/-. He further confirmed the addition of 3% commission on sale consideration of Rs. 4,81,116/- under Section 69C of the Act. Accordingly, the appeal of the assessee was dismissed. Assessee aggrieved with that order has preferred appeal before us.

06. The ld. AR submitted that assessee has traded in M/s. Goldline Finvest International Ltd., which has never been suspended by the SEBI. He further stated that assessee is not named by any one for the impugned capital gain to hold it ingenuine. He further stated that the name of the assessee never appeared in any of the reports and statement of the so-called entry operators. He further stated that there is no specific allegation made against the assessee. He further claimed that the/broker of the assessee is not at all a tainted broker or its name do not appear anywhere in the reports alleged by the Assessing Officer. He further submitted that summary of his arguments as under:-

- i) The assessee after allotment of shares in January, 2013 got the shares de-materialized in December, 2013 and sold the shares in parts in Bombay Stock Exchange;
- ii) The Investigating Wing report did not show this company has at all been suspended at any time and there are no adverse interim or final SEBI order against the assessee or his broker;
- iii) Despite furnishing the complete details, no meaningful enquiries were made by the Assessing Officer from the broker, stock exchange, or custodian to shift the onus to the assessee;
- iv) Merely artificial price rise alleged and dubious statement has made the sole basis for the addition;
- v) There is no rationale or live nexus between penny stock beneficiaries and the assessee and no cash circulation is traced;

- vi) Assessee is a capital investor;
- vii) Assessee is never confronted with any adverse material qua transactions and, therefore, there is a clear-cut violation of provisions of Section 142(3) of the Act;
- viii) The Assessing Officer as well as the CIT (Appeals) did not bring any cogent material to throw back the onus back on the assessee where the assessee has successfully demonstrated his onus duly discharged under Section 68 of the Act. The addition has been made without any independent enquiry and merely on the basis of vague, suspicious and generalized reports;
- ix) He specifically relied on several judicial precedents in mainly on the decision of Hon'ble Gujarat High Court decision in Parasben Kochar; of Hon'ble Delhi High Court in the case of Krishna Devi 431 ITR 361; ITAT, Mumbai Bench in the case of Jagdish Prajapati dated 17/06.2021 and Suresh Kumar Agarwal dated 29.06.2020. Therefore, he submitted that the addition made by the ld. Assessing Officer and confirmed by the ld. CIT (Appeals) deserves to be deleted.

07. He further referred to the Paper book containing 19 pages wherein various details of copy of purchase bill, de-materialized documents, share certificate and holding statement along with the ledger account of the broker was produced. He further referred to a supplementary paper book containing 46 pages which was submitted which contain

several decisions relied upon as well as the details of purchase and sale of shares. He further referred to the remand report dated 30<sup>th</sup> May, 2019 submitted by the Id. Assessing Officer. Therefore, he submitted that the addition made by the Assessing Officer deserves to be deleted.

08. The Id. DR vehemently referred to the order of the Assessing Officer and submitted that before the Assessing Officer assessee has clearly failed to discharge initial onus cast on him by not submitting any details. He submitted that assessee himself submitted through e-mail his inability to file the requisite documents on 29.12.2017. He further submitted that the first notice was issued to the assessee on 9.08.2016 and till 29.12.2017 the assessee was pleading his inability due to paucity of time. He further referred to the order of the Id. CIT (Appeals) and stated that even after admission of the additional evidence he gave detailed reasons which are not at all rebutted by the assessee even at this stage that why an investor will make an investment in such a dubious company, which will give return of 4589% which is not supported by the Sensex as well as the financial statements. He further referred to various judicial precedents relied upon by the Id. Assessing Officer and the Id. CIT (Appeals). He further submitted that the learned CIT – A has given his own reasons for not granting assessee and opportunity of the cross-examination which is also supported by the decision of the honourable jurisdictional High Court in case of Udit kalra. He therefore submitted that the learned lower authorities of correctly decided the issue on the conduct of the assessee, human probabilities, preponderance of the probabilities et

cetera. He therefore submitted that no fault can be found with the above orders and therefore they should be confirmed.

09. We have carefully considered the rival contentions and various orders of the lower authorities. We have also carefully considered the judicial precedents relied upon by the lower authorities, the learned authorised representative, and the learned departmental representative. In addition, judicial precedents have been considered by us in reaching our decision.
10. At the time of hearing advanced by the ld. Authorised representative, we directed him to show the sale of shares where the time and date stamp along with applicable security transaction tax has been paid. Therefore, we asked the ld. AR to show the contract notes of the actual transaction of the sale of such shares. The ld. AR took us to the Paper book containing 19 pages and referred to page Nos. 15 to 18. We have carefully perused those pages and find that those evidences are not at all the contract notes, but merely a financial ledger of Parasram Stock Broker Holding Pvt. Ltd and copies of the bills. The ld. AR could not show us the contract notes of the sale of shares.
11. The facts of the case shows that for the purchase of shares assessee placed documents at page No. 1 of the Paper book containing 19 pages, which is copy of bill for purchase of shares. This is a bill issued by M/s. Goldline Finvest International Ltd., vide invoice No. GL 28(12)/1 dated 28<sup>th</sup> December, 2012 wherein the discrepancy of goods (shares) are mentioned at M/s. Goldline Finvest International Ltd., having an equity of 50,000 shares @ Rs.10/- per share totaling to

Rs.5,00,000/- . The assessee has made payment by Cheque No. 000077 the above sum of Rs.5,00,000/- which is placed at page No. 2 of the Paper book. Page No. 3 is an acknowledgement slip issued by M/s. Goldline Finvest International Ltd. of Rs.5,00,000/-. Page No. 4 is a letter by M/s. Goldline Finvest International Ltd. dated 15.01.2013 enclosing a share certificate No. 34031 of 50,000 shares comprising of one certificate to the assessee. The same share certificates were dematerialized by the assessee which Parasram Holding Pvt. Ltd. having DPIDIN 303265 on 26<sup>th</sup> November, 2013. Page No. 8 is a share certificate issued on 15.01.2013 and thereafter assessee has given the holding statement with the NSCL depository. Page No. 15 onwards till page No. 19 are the financial ledger of Parasram Holding Pvt. Ltd. and the last page is net position of the securities. Therefore, it is apparent that the assessee did not purchase the shares online but purchased those shares from Goldline Fininvest international limited. It is also not known whether the shares have been purchased by the assessee through private placement or through an off-line deal. The supplementary Paper book containing 46 pages were and page Nos. 2 to 6 of the relevant documents, which also did not have the copies of the contract notes. Therefore, it is apparent that assessee has not produced the contract notes of sale of the shares having date and time stamp of stock exchange along with the payment of securities transaction tax thereon. Thus, there are no contract notes of the stock exchange where the security transaction tax is paid submitted before the lower authorities. No such contract notes were also submitted

before us. Therefore, it is not possible to ascertain that assessee has sold those shares online on a stock exchange platform. Therefore, it is apparent that assessee has failed to produce a contract note for sale of the securities. In the absence of this all the arguments raised by the assessee cannot be accepted at this stage.

12. The reliance placed by the assessee on the decision of the honourable Delhi High Court in case of Krishna Devi Agarwal (Supra) is also misplaced because in that case the assessee purchased shares online and sold those shares online. With respect to the opportunity of the Cross examination, this has been dealt with by the honourable Delhi High Court in case of Udit Kalra (supra) , therefore the lower authorities cannot be found fault for not giving an opportunity of cross examination to the assessee. Further all the other decisions cited before us clearly shows that when the assessee has produced all the information/documents to prove the genuineness of the transaction of the earning of the long-term capital gain which is exempt u/s 10 (38) and the learned assessing officer do not make any enquiry on such documents but merely relied on the report of the SEBI and other material and makes the addition, it cannot be sustained. However, in this case we find that assessee could not produce the contract notes of entering into sale of the above shares on online trading platform of the stock exchange where the time and date stamp and the evidence of payment of security transaction tax is shown, those decisions cannot be applied to the case of the assessee at this stage.
13. As the fact shows that, assessee could not produce the contract notes having the date and time stamp and evidence of payment

of securities transaction tax, which proves that assessee has sold his shares online on stock exchange trading platform. These documents are of the paramount importance to determine the claim of the assessee. In view of this we set-aside the whole issue back to the file of the learned assessing officer to examine the claim of the assessee of earning the long-term capital gain u/s 10 (38) of the income tax act as claimed by the assessee. We also grant full liberty to the assessee to raise all the pleadings raised before us or any further pleadings before the learned assessing officer. The learned assessing officer is also directed to consider all the arguments of the assessee and peruse the evidence produced by the assessee. The assessing officer may also conduct due enquiries after the assessee submits the necessary evidence and decide the issue in accordance with the law.

14. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on : 29/09/2021.

**Sd/-  
( AMIT SHUKLA )  
JUDICIAL MEMBER**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated : 29/09/2021.

\*MEHTA\*

Copy forwarded to

1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	29.09.2021
Date on which the typed draft is placed before the dictating member	29.09.2021
Date on which the typed draft is placed before the other member	29.09.2021
Date on which the approved draft comes to the Sr. PS/ PS	29.09.2021
Date on which the fair order is placed before the dictating member for pronouncement	29.09.2021
Date on which the fair order comes back to the Sr. PS/ PS	29.09.2021
Date on which the final order is uploaded on the website of ITAT	29.09.2021
date on which the file goes to the Bench Clerk	29.09.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	