

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'SMC': NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER**

**ITA No.1000/DEL/2019  
[Assessment Year: 2015-16]**

Sobha Jain, 2316, Dharam Pura, Dariba kalan, Chandni Chowk, Bgagirath Palace, Delhi-110006	Vs	ITO, Ward-47(5), Room No.216, Drum Shape Building, I.P. Estate, New Delhi-110002
<b>PAN-AAGPJ0542C</b>		
Assessee		Revenue

Assessee by	Sh. Kanhaiya Lal, Adv.
Revenue by	Sh. Om Prakash Sr. DR

<b>Date of Hearing</b>	<b>29.03.2022</b>
<b>Date of Pronouncement</b>	<b>29.04.2022</b>

**ORDER**

**PER R.K. PANDA, AM,**

This appeal filed by the assessee is directed against the order dated 04.01.2019 of the Ld. CIT(A)-16, New Delhi, relating to Assessment Year 2015-16.

2. Although a number of ground have been raised by the assessee however, these all relate to the order of the Ld. CIT(A) in confirming the addition of Rs.18,81,961/- made by the AO by disallowing the claim u/s 10(38) of the Act and confirming the addition Rs.94,099/- made by the AO u/s 69C

of the Act being unexplained expenditure for obtaining the accommodation entry.

3. Facts of the case, in brief, are that the assessee is an individual and derives income from house property and income from other sources. She filed her return of income on 25.08.2015 declaring total income of Rs.6,09,460/-. The case was selected for scrutiny and statutory notices u/s143(2)/142(1) were issued and served on the assessee along with questionnaire.

4. During the course of assessment proceedings, the AO noted that the assessee has claimed exempt income u/s 10(38) of the Act amounting to Rs.18,81,961/- earned from sale of 50000 shares of M/s Kailash Auto Finance Limited. From the various details furnished by the assessee, the AO noted that purchases and sale of the shares of M/s Kailash Auto Finance Limited are as under:-

Sl. No.	No. of Shares Sold	Date	Total Sale Price	Cost of Shares		
				Date	Cost Price	LTCG
01	25000	30.04.2014	10,42,639/-	17.01.2013	50000	18,81,961
02	10000	29.05.2014	4,13,163/-			
03	10000	02.06.2014	3,18,167/-			
04	5000	03.06.2014	1,57,992/-			
		<b>Total</b>	<b>19,31,961/-</b>			

5. During the course of assessment proceedings, the assessee submitted that such transaction has been made through the registered broker M/s Bonanza Portfolio (P) Limited and the assessee filed the copy of contract note of the said broker. The AO examined the details of purchase and sale of the particular scrip and noted that the assessee has earned a return approximately 3763% over a very short period of just over 15 months. He noted that the financial results of M/s Kailash Auto Finance Limited are not very good and there was no chance of lucrative gain at the stage of purchase of the shares. From the details furnished, he noted that the shares were purchased by the assessee on 17.01.2013 from M/s Bonanza Portfoli (P) Ltd. in offline mode but the payment was made by cheque. The AO examined the modus operandi of the transaction, analysed the price/volume movement of the scrip and acquisition of promoter share of both PML, CAPAL and KAFL. He also examined the order of SEBI and noted that M/s Kailash Auto Finance Ltd. was found to be guilty of price manipulation of the scrip and had jacked up the rate so as to provide a Long Term Capital Gain entry to its investors. Accordingly, the AO after detailed analysis of the transaction

held that the transaction of sale resulting in Long Term Capital Gain of Rs.18,81,961/- was in fact a sham transaction used as sophisticated device to launder assessee's black money. Rejecting the various explanation given by the assessee and relying on various decisions, the AO treated the LTCG as an unexplained credit entry in the hands of the assessee and made an addition of this amount after invoking provisions of section 68 of the Act. Similarly, the AO made addition of Rs.94,099/- being the commission @5% of such accommodation entries paid to the broker by invoking the provisions of section 69C of the Act. The AO accordingly determined the total income of the assessee at Rs.25,85,520/- as against the returned income of Rs.6,09,460/-.

6. In appeal, the ld. CIT(A) upheld the action of the AO.
7. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.
8. The ld. counsel for the assessee strongly challenged the order the ld. CIT(A) in sustaining the addition made by the AO. He submitted that the assessee is a regular investor and trader in the capital market in blue chip companies, midcap

and small cap which is verifiable from the statement of holding in past as well as in subsequent years. He submitted that the assessee has purchased 100000 shares on 10.09.2012 of Panchsheel Marketing Ltd.(in short PML) through Jatadhar Marketing P. Ltd. and payment was made by cheque which was cleared on 05.01.2013. PML was subsequently amalgamated with Kailash Auto Finance Ltd. vide decision of the Hon'ble Allahabad High Court dated 09.05.2013 and thereafter the company has reduced the face value of the shares from Rs.10 to Rs.1 and all these shares have been put in DP. Out of 100000 shares, the assessee sold 50000 shares in F.Y.2013-14 which was accepted by the AO. The balance 50000 shares were sold in F.Y. 2014-15 resulting in Long Term Capital Gain of Rs.18,81,961/-. The ld. counsel for the assessee submitted that the shares were purchased on 10.09.2012 and sold between April-June 2014 which is much before the SEBI report which is of 2015. Referring to the copy of the order of SEBI, he submitted that SEBI has passed final order dated 21.09.2017 particularly on the scrip Kailash Auto by revoking the interim order as para 6 of order. He submitted that the assessee has shown the transaction duly supported by admissible evidence by way of

purchase bill, sale bill, bank account payment, etc. The proceeds were duly credited in Dena Bank. Referring to the decision of the Co-ordinate Bench of the Tribunal in the case of Vidhi Malhotra vs ITO in ITA No.93/Del/2018 and in the case of Santosh Mendiratta vs ITO in ITA No.94/Del/2018, for AY 2014-15, order dated 20.12.2018, he submitted that the Co-ordinate Bench of the Tribunal has allowed the claim of Long Term Capital Gain on account of sale of shares of M/s Kailash Auto Finance Limited. He submitted that since, the assessee in the instant case has produced all relevant documentary evidences, therefore, the ld. CIT(A) was not justified in sustaining the addition made by the AO by rejecting the claim of Long Term Capital Gain and further making addition of Rs.94,099/- being unexplained expenditure u/s 69C of the Act for availing the accommodation entry. He also relied on the following decisions:-

- i. Uma Charan 37 ITR 271(SC)
- ii. Omar Salvemoh.sait 37 ITR 151(SC)
- iii. Smt. Krishna Devi ITA No.125/2020, order dated 15.01.2021(Delhi High Court)
- iv. Amit Jindal in ITA No.1547/2019, order dated 24.02.2022 (Del. ITAT)

- v. Mahavir Jhanwar in ITA No.2474/2018, order dated 01.02.2019
- vi. Mukta Gupta in ITA No.2766/2018, order dated 26.11.2018
- vii. Rajiv Agarwal & Sons 6087/2018, order dated 21.01.2019
- viii. Navneet Agarwal ITA No.2281/2017, order dated 20.07.2018

9. The ld. DR on the other hand, heavily relied on the order of the AO and the Ld. CIT(A).

10. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the assessee in the instant case claimed Long Term Capital Gain of Rs.18,81,961/- as exempt income u/s 10(38) of the Act being sale of 50000 shares of M/s Kailash Auto Finance Limited. I find the AO rejected the deduction claimed u/s 10(38) of the Act on the ground that the assessee has earned a return of approximately 3763% over a very short period of just over 15 months and the financial results of M/s Kailash Auto Finance Limited are not very good. While doing so, the AO examined the modus operandi of the transaction, analysed the price/volume movement of the scrip and acquisition of promoter share of both PML, CAPAL and KAFL and examined

the order of SEBI wherein SEBI has held that M/s Kailash Auto Finance Ltd. was guilty of price manipulation of the scrip and had jacked up the rate so as to provide a Long Term Capital Gain entry to its investors, I find the ld. CIT(A) upheld the action of the AO. It is the submission of the ld. counsel for the assessee that the assessee was holding 100000 shares of M/s Kailash Auto Finance Ltd., out of which 50000 shares were sold in FY 2013-14 relevant to AY 2014-15 and it was accepted by the Revenue. Therefore, following the rule of consistency alone, the shares sold during the impugned assessment year should not have been doubted. It is also his submission that the SEBI had passed the final order on 21.09.2017 and the SEBI has revoked the ban of M/s Kailash Auto Finance Ltd.

11. I find an identical issue had come up before the Co-ordinate Bench of the Tribunal in the case of Vidhi Malhotra vs ITO (supra), where identical issue was the subject matter before the Tribunal. I find the Tribunal after considering the final order of SEBI revoking the ban on M/s Kailsh Auto Finance Ltd. has allowed the claim of Long Term Capital Gain u/s 10(38) of the Act on account of sale of shares of M/s Kailash Auto Finance Ltd. by observing as under:-

“8. On perusal of the material placed on record, we find that in so far as purchase of shares is concerned the same has not been doubted, because AO while adding the long term capital gain has given the benefit of price paid for acquisition of shares. Shares were also purchased through account payee cheque duly reflected in the books and shown by the assessee in the earlier year. In fact assessee has purchased shares of Capital Projects Advisory Limited in the financial year 2011-12 and the said company was merged with M/s. Kailash Auto Finance Ltd. vide amalgamation order dated 9.5.2013 passed by Hon’ble Allahabad High Court. Reliance has been placed by the authorities below on the statement of Shri Sunil Dokania. However, in his statement he has given list of certain scrips on which he has stated that these were paper companies used for providing accommodation entries. The said statement no doubt is quite incriminating to hold that scrips of M/s. Kailash Auto Finance Limited were used for purpose of accommodation entries, however such a statement cannot be the sole ground to implicate assessee and justify the additions especially when, nowhere assessee has been found to be beneficiary of any kind of accommodation entry in any inquiry by the Investigation Wing or any such material has been unearthed by the department. The assessee had duly shown the transaction in cheques right from purchase to sale of shares and all the transaction has been have been routed through DMAT account sold in the Bombay Stock Exchange as per quoted price as on that date. Before us it has also been brought on record that SEBI vide its order dated 21<sup>st</sup> September 2017 has revoked the ban on Kailash Auto Finance Ltd. Para 5 of the said order reads as under :-

“Pursuant to the interim order, SEBI conducted a detailed investigation into the role of various entities in price manipulation in the scrip of Kailash Auto so as to ascertain the violation of securities laws. Upon completion of investigation by SEBI, investigation did not find any adverse evidence/adverse findings in respect of violation of provisions of the PFUTP Regulations in respect of the following 244 entities (against whom directions were issued vide the interim order and / or confirmatory orders) warranting continuation of

*action under section 11B/r/w11 (4) of the Act. The details of the 244 entities are as follows.”*

*And vide para 8 there is direction of revocation. Thus, SEBI also did not find any prima facie material for manipulation of price of scrip of Kailash Auto Finance Limited. If AO had found out that scrips of Kailash Auto Finance Limited was used by certain persons for providing accommodation entry, then he should have carried out some prima facie inquiry to find out whether assessee too was involved in routing her own unaccounted money for getting bogus long term capital on the scripts of such company. General observation about the modus operandi of long term capital gain would be of no use unless and until there is some specific information and material qua the assessee. Once purchase of the shares are not doubted and sale has been made through Bombay Stock exchange routed through DMAT account then consideration received has to be treated from amount of sale of shares whether the price has been rigged or not. One factor which has weighed heavily on the authorities below in the present case is that share price has a risen to more than 37 times. Once the SEBI has held that there is no adverse evidence or material that there was any violation of provision of PFUT regulation in respect of Kailash Auto Finance Limited and restrain order on the trading has been revoked, then it follows that the share price of which has been sold for genuine quoted price and therefore, the sale proceeds has to be reckoned from sale of such shares and would be treated as explained credit or investment. Accordingly, on the facts and circumstances of the case, we hold that the long term capital gain shown by the assessee is genuine and consequently liable for exemption u/s 10(38). Thus, appeal of the assessee is allowed.*

9. *Exactly similar facts are permeating in the case of Smt. Satosh Mendiratta, wherein the assessee has shown long term capital gain of Rs. 36,59,773/- on similar scrip. Even the finding of the AO and Ld. CIT(A) are exactly the same, therefore, our finding given above will apply mutatis mutandis for this appeal also. Accordingly the appeal of the assessee is allowed.”*

12. Since, the facts of the instance case are identical to the facts of the case decided by the Tribunal cited (supra), therefore, respectfully following the same, I set-aside the order of the Ld. CIT(A) and direct the AO to delete the addition made by him rejecting the claim of deduction u/s 10(38) of the Act. Since, I have deleted the addition of Rs.18,81,961/-, the addition made by the AO of Rs.94,099/- u/s 69C of the Act is also deleted.

13. In the result, the appeal filed by the assessee is allowed.

Order was pronounced in the open court on 29/04/2022.

**Sd/-**  
**[R.K.PANDA]**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated: 29<sup>th</sup> April, 2022.

*Shekhar, Sr. P.S*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi