

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA Nos.9560 & 9561/DEL/2019
[Assessment Years: 2014-15 & 2015-16]**

Shri Dinesh Kumar Sachdeva, 23, Vigyan Vihar, Delhi-110092	Vs	Asst. Commissioner of Income Tax Central Circle-56(1), New Delhi
PAN-ABKPS4994C		
Assessee		Revenue

**ITA No.9562/DEL/2019
[Assessment Year: 2015-16]**

Shri Dinesh Kumar Sachdeva (HUF), 23, Vigyan Vihar, Delhi-110092	Vs	Asst. Commissioner of Income Tax Central Circle-56(1), New Delhi
PAN-AABHD6446C		
Assessee		Revenue

Assessee by	None
Revenue by	Sh. S.L. Anuragi, Sr. DR

Date of Hearing	14.07.2022
Date of Pronouncement	14.07.2022

ORDER

PER SHAMIM YAHYA, AM,

These are appeals for two year by the assessee and one by the assessee HUF, against the separate orders of Ld. CIT(A)-37, New Delhi, all dated 26.09.2019, pertaining to Assessment Years 2014-15 and 2015-16 respectively.

2. The issues are common and relate to claim of exempted long term gain on penny stock transaction as under:-

Sl. No.	ITA Nos.	Assessment Year	Amount
1	9560/Del/2019	2014-15	1,23,34,231
2	9561/Del/2019	2015-16	91,00,020
3	9562/Del/2019	2015-16	1,34,29,860

3. For the sake of reference, we are referring to facts and figures and orders in ITA No.9560/Del/2019 for Assessment Year 2014-15. The order of Revenue authorities in the appeals are on similar lines.

4. Brief facts of the case are that the assessee is an individual and derived income other sources. The assessee has also shown Long Term Capital Gains of Rs. 1,23,34,231/- as exempt income under section 10(38) of the Income Tax Act. During the year under consideration, the assessee has claimed long term capital gain by way of sale of equity shares of M/s Jolly Plastics Industries Ltd. (hereafter JPIL), The facts of the case from the assessment order is as follows:-

“The assessee had purchased 1,00,000/- shares of Jolly Plastic through preferential share allotment on 2n^o May, 2012, at an issue price of Rs. 10.5 per share, It is worth nothing at this time, Jolly Plastic was already listed on the BSE, as is evident, from a copy of the letter of allotment reproduced below far reverence. Now, preferential allotment of shares at very low prices is among the most common ways to allow beneficiaries to earn bogus capital gains.....”

It is also worth mentioning here that during this period when the shares were being allotted to the assessee through the “preferential allotment” route, there was little or no trading of this scrip on the BSE. Subsequently, 49,300 of these shares were sold by the assessee at Rs 301/- per share on 11.11.2013, while the remaining 50,700 shares were sold in two parts-50000 on 22.11.2014 and 700 on 25.11.2014 at the price of Rs.120/- per share. It is the sale of these 50700 shares in FY 2014-15 that is under scrutiny for the purpose of assessment proceedings for AY. 2015-16.”

5. The assessee has purchased these shares of JPIL on 02.05.2012 @Rs. 10.5/- per share and earned Long Term capital gain of Rs. 1,23,34,231/-. The assessee has earned a phenomenal return in a short period. The assessing officer received a report from the office of Principal DIT, Investigation, Kolkata, informing that various BSE listed penny stock companies have been used for providing bogus long term capital gain and JPIL, in which transactions were made by the Assessee are two of such penny stock companies. The investigation conducted by the Department has also identified this company, JPIL, which have been used by the entry operators to provide accommodation entries to various persons by artificially inflating the share price of the company. JPIL is one of those identified companies, scrips of which have been used to accommodate bogus LTCG.

6. The AO has emphasised on the following findings to hold these, transactions as sham transaction as these transaction have failed the test of surrounding circumstances, human conduct and preponderance of probability:

- (i) Search & seizure operation have been carried out by Director of Investigation Kolkata and Ahmadabad unearthing entry scam of Long term Capital Gains involving syndicate of operators. These operators manipulate market price of shares and then provide long term capital gains by way of accommodation entries to interested parties.
- (ii) The price of the share were jacked up by the operators within a short period to accommodate the beneficiaries.
- (iii) Buyers of such shares were bogus which use to provide exit, and also the transaction is with the accommodation entry providers.
- (iv) Transaction failed to satisfy the test of human probabilities.

(v) The company's real net worth was poor and it cannot be justified by any stretch of imagination that this company's shares were sold by assessee at price of Rs.301 /- per share.

7. As a result of investigation carried out, the modus operandi involved in generating bogus Long Term Capital Gains was unearthed. Such modus operandi has been discussed in detail in the assessment order. As per the information available with the AO, the shares of JPIL were found to be heavily traded through the top brokers whose activities were being scrutinized by the Investigation Wing. The investigation wing, Kolkata recorded the statement of such brokers and sub-brokers who were involved in purchasing of the scrips of JPIL. The assessing officer has reproduced the relevant parts of the statements of a number of such brokers to delineate the modus operandi of providing bogus long term capital gain. After a detailed analysis of the investigation report and the statement of brokers recorded during the investigation with the materials available on record in the case of the assessee, and on further examination of the financials of JPIL, the AO came to the conclusion that the modus operandi adopted by the assessee follows the pattern discovered by the Investigation wing during various search and survey operations wherein the merger method adopted by the operators/brokers for providing bogus LTCG has been adopted.

8. Further placing reliance on the decision of Hon'ble Supreme Court in CIT versus Durga Prasad More [1971] 82 1TR 540 and Sumati Dayal Vs. CIT (214 ITR 801) (SC) and various other judicial pronouncements, A.O. came to the conclusion that the transactions showing LTCG exempted under section 10(38) of the Act by the assessee are sham

transactions as the surrounding circumstances and the statement of various share brokers prove. Accordingly AO held that it is a clear-cut case of bogus long-term capital gain obtained through brokers and the assessee has used colourable device for avoidance of tax and therefore treated the Long Term Capital gains as not genuine.

9. Upon assessee's appeal learned CIT(A) held as under:-

“4.8 I have gone through the facts of the case and assessment order. I find that on the basis of documents placed before A.O who after detailed examination and discussion and going beyond these documents has established that these documents are mere masks to hide the real nature of transactions. By analysing the balance sheet, Profit & loss account and the trade pattern of JPIL during the period April, 2011 - March, 2015, the A.O. has pointed out that the share price of this company was neither affected by the movement of sensex nor the financials of the company justify such extraordinary jump in the price of its shares. It is noticed that apart from being based on evidences gathered during search and survey operations, analysis of the materials on record and analysis of information from various sources, the findings of the AO is also based on strong surrounding circumstances, preponderance of probability and human conduct in the light of detailed analysis of the modus operandi adopted by brokers and operators engaged in the business of providing entries of long term capital gains to the interested beneficiaries which has come to surface as a result of deep and wide investigation. Initial investment in a company of unknown credentials and subsequent jump in the share price of such a company cannot be an accident or windfall but as clearly brought on record by the AO, was possible because of manipulations in the price of shares in a pre-planned manner by the interested broker and entry operators.

4.9 The appellant's insistence that the transactions leading to long-term capital gains are supported by documents such as sale and purchase invoices, bank statements, brokers notes etc. cannot be accepted in view of the fact and circumstances of the case brought on record by the A.O after proper examination of the material facts and after taking into account the findings of SEBI and corroborating evidences gathered by the Directorate of Investigation,

Kolkata against a network of brokers and operators engaged in manipulation of market price of shares of certain companies controlled and managed by such persons with a purpose to provide accommodation entries in the form of LTCG to those who want to introduce their unaccounted cash in regular books of accounts without paying tax.

4.10 *The appellant's contention that long term capital gains cannot be treated as bogus merely because some investigation with regard to certain company and broker or investigation has been carried out by the Directorate of Investigation, Kolkata only proves that the applicant wants to take shelter under such documentary evidences which themselves have been created as masks to cover up the true nature of transaction. A genuine transaction must be proved to be genuine in all respect. The onus was on the appellant to prove that the transaction leading to claim of LTCG was distinctly genuine transaction and not bogus, premeditated transaction arranged with a view to evade taxes by the AO. The onus was on the appellant to contradict the findings that JPIL was one of those companies whose scrips was capable of being traded at high price as it was the appellant who had traded in the shares of the this company which resulted into claim of long term capital gains exempted under section 10 (38), Once the appellant was made aware of the result of investigation which proved that trading of shares leading to LTCG was not genuine, the onus was on the assessee to prove that he has earned genuine LTCG under section 101 of the Indian Evidence Act, 1972 as it is the assessee who is asserting a claim that he was engaged in genuine share transactions. It is relevant to note here that Hon'ble Supreme Court in the case of Shri Charan Singh versus Chandra Bhan Singh AIR 1988 SC 637 has clarified that the burden of proof relies on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. It has been further held that the party cannot, on failure to establish a prima facie case, take advantage of the weakness of his adversary's case. The party must succeed by the strength of his own right and the clearness of his own proof. He cannot be heard to say that it was too difficult or virtually impossible to prove the matter in question. Since in this case tire appellant had made the claim that he had earned genuine LTCG, all the facts were especially within him knowledge. Section 102 of Indian evidence act makes it clear that initial onus is on person who substantially asserts a claim. If the onus is discharged by him and a case is made out, the onus shifts on to deponent. It is pertinent to mention here that the phrase "burden of proof" is used in two distinct meanings in the law of evidence viz, The burden of establishing a case1, and The burden of*

introducing evidence'. The burden of establishing a case remains throughout trial where it was originally placed, it never shifts. The burden of evidence may shift constantly as evidence is introduced by one side or the others. In this case, once the evidence that assessee has claimed bogus LTCG was introduced by the AO, the burden of evidence shifted to the assessee. During the assessment proceeding and even during the appellate proceeding, the assessee has failed to produce any evidence to prove that the long term capital gain claimed by him was genuine.

4,11 In the present case, I find that the appellant has failed to discharge its burden of proof and the AO, on the other hand, has proved that the claim of the appellant was incorrect. The enquiry conducted by SEBI was further corroborated by the investigation carried out by the Directorate of Investigation which has been thoroughly analysed by the assessing officer to prove that the assessee has introduced bogus LTCG in his books of account by routing his unaccounted income through a tax evasion scheme. The statement of brokers engaged in providing bogus LTCG clearly proves that JPIL such company whose scrips have been manipulated to provide bogus LTCG."

10. Ld. CIT(A) further referred to following case laws:-
- i. Suman Podda vs ITO, ITA No.841/2019 Dated 17.09.2019 (Del.)
 - ii. Udit Kalra vs ITO, ITA No.10774/2019 dated 08.03.2019 (Del.)
 - iii. CIT vs Durga Prasad More (1972) 82 ITR 540 (SC)
 - iv. Sumati Dayal vs CIT 214 ITR 801(SC)
 - v. McDowell & Co. Ltd. (1985) 154 ITR 148 (SC)
 - vi. ACIT vs SoNath Maini (2006 100 TJ Chd 917 (Chandigarh ITAT)
 - vii. CIT vs P. Mohana Kala (15/05/2017) (SC)
 - viii. Haresh Win Chadha in ITA No.3088 to 3098 & 3107/Del/2005, (Del.ITAT)
 - ix. Rajkumar B.Agarwal, vs DCIT (ITA Nos. 1648 & 1649
 - x. Anip Rasto vs ITO in ITA No.3809/Del/2018, dated 08.01.2019 (Del.ITAT)
 - xi. Anju Ratogi vs ITO in ITA No.3810/Del/2018, dated 08.01.2019 (Del.ITAT)

- xii. Shri Abhimanyu Soin vs ACIT, in ITA No.951/Chd./2016, (Chandigarh ITAT)
- xiii. Sajany Bimalchand Jain vs CIT in ITA No.18/2017 (Bom. Nagpur Bench)

11. Thereafter the Ld. CIT(A) held as under:-

“4.23. All these above mentioned cases are applicable to the facts and circumstances of the present case in which the various judicial authorities have decided the cases in favour of revenue after going through the entirety of the facts and circumstances. The case laws relied upon by the by the appellant are apparently in favour of the assessee but probably the role of human conduct, surrounding circumstances and preponderance of probabilities were either not brought to the notice of the Hon’ble Judicial Authorities or were not as dominant or deciding factors as these are found to be in the present case. In addition, the AO, in this case, has very clearly segregated the apparent from the real by using various evidences gathered from reliable sources of information and report.

4.24 In view of the facts and circumstances borne out of the assessment order and legal precedents as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that purchase and sale of shares are arranged transactions to create bogus profit in the garb of tax exempt LTCG by well organised network of entry providers with the sole motive to sell such entries to enable the beneficiary to account for the undisclosed income for a consideration or commission.

4.25 In view of the above discussion, I am of the considered view that share transactions leading to LTCG by the appellant are sham transaction entered into for the purpose of evading tax. Accordingly, it is held that the AO has rightly added the said amount of Rs. 1,23,34,231/- as unexplained income of the appellant u/s 68. Since arranging such accommodation entry necessarily entails payment of commission to entry providers, tire AO’s action in quantifying and adding such unexplained expenditure at Rs.3,70,027/- u/s 69C based on statements of brokers/entry providers is also upheld for the reasons recorded in the assessment order. Accordingly, additions made by the AO are confirmed and the grounds of appeal are dismissed.”

12. Against the above order, the assessee has filed appeal before ITAT.

13. We have heard the Ld. DR. None appeared on behalf of the assessee despite notice. Notices have returned unserved. Hence we proceed to adjudicate the issue by hearing the Ld. DR and perusing the record. We find that this is a classic case of bogus penny stock transaction where unaccounted money is being routed as exempt income. The fantastic increase in the price of the share is absolutely beyond human probability. The orders of revenue authorities are very detailed and do not need any interference in our part. The case laws referred by Ld. CIT(A) are germane and duly support the case of this being bogus penny stock transaction which cannot be treated as exempt long term gain. There is no need of any interference in the order of the Ld. CIT(A). Accordingly, we do not find any infirmity in the order of authorities below. Hence, we affirm the same.

14. Our above order applies mutatis mutandis to all the appeals here.

15. In the result, these appeals by the assessee stand dismissed.

Order pronounced in the open court on 14/07/2022.

Sd/-

Sd/-

**[YOGESH KUMAR US]
JUDICIAL MEMBER**

**[SHAMIM YAHYA]
ACCOUNTANT MEMBER**

Delhi; 14.07.2022.

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi