

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA BENCH "SMC", KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.91/Kol/2022  
Assessment Year: 2015-16**

Jyoti Swaroop Kashuka (HUF)		ITO, Ward-30(1), Kolkata
12B, Mandevilla Gardens, Gariahat, Kolkata - 700019.	Vs.	
<b>PAN: AAGHJ 6224 B</b>		
(Appellant)		(Respondent)

**Present for:**

Appellant by : Shri K.K. Goswami, Advocate  
Respondent by : Shri Biswanath Das, Addl. CIT

Date of Hearing : 29.06.2022  
Date of Pronouncement : 26.09.2022

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

Present appeal by the assessee is against the order of Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2021-22/1037888892(1) dated 17.12.2021 against the assessment order passed by Income Tax Officer, Ward – 30(1), Kolkata u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the Act) dated 12.12.2017 for AY 2015-16.

2. Sole issue involved in the present appeal relates to addition made by the ld. AO of ₹ 6,86,400/- as unexplained cash credit u/s 68 of the Act in respect of sale of shares of GCM Securities Ltd, for which

grounds of appeal taken by the assessee are four in number. Same are not reproduced for the sake of brevity.

3. Brief facts of the case are that assessee is an HUF who filed its return of income on 28.08.2015 reporting a total income of ₹ 2,61,690/. In the course of assessment, ld. AO noted that assessee has sold 8000 shares of one scrip GCM Securities Ltd for sale consideration of ₹ 6,86,400/- on 09.12.2014. Since name of the company of which the shares were sold was appearing in the report of the Directorate of Investigation of the Department, which was marked as a penny stock, and name of the assessee was also appearing in the list of beneficiaries, ld. AO show caused the assessee as to why the said transaction of sale of shares of GM Securities Ltd be not treated as non-genuine, bogus and sham and the resultant long-term capital gain arising out of the sale of these shares be treated as unexplained cash credits u/s 68 of the Act.

4. Ld. AO enquired certain facts from the broker relating to the sale transaction of shares who confirmed that 8000 shares of GCM Securities Ltd were sold on 09.12.2014 for ₹ 6,86,400/-.

5. Assessee submitted its reply before the ld. AO stating that a mistake had occurred on the part of the broker who had punched the transaction of other client code against the code of the assessee. It was pointed out that assessee had no holding of shares of the said script which were first sold inadvertently in the name of the assessee by the broker on 05.12.2014. Instantaneously, the mistake was identified and in order to make good the mistake, same quantity of shares of the said script were purchased on 08.12.2014 and were subsequently transferred on 10.12.2014 at the same value to the individual that is

Shri Jyoti Swarook Kashuka, who was actually holding the quantity of shares of the said script and whose shares were sold by mistake in the name of the assessee. To substantiate the claim, copy of ledger from the broker and the relevant contract notes for sale and purchase of the said shares were placed before the ld. AO. Submissions made by the assessee did not find favour with the ld. AO, who by considering the report of the Directorate of Investigation, surrounding circumstances and observing that there was no purchase available in the hands of the assessee, made the addition. Aggrieved, assessee went in appeal before the ld. CIT(A).

6. From the perusal of lengthy order of ld. CIT(A), running into as many as 86 pages, reference is made to para 3 wherein the statement of facts is culled out from Form no. 35. In the statement of facts, assessee has categorically mentioned about the mistake which has occurred in respect of sale of shares of GCM securities Ltd, details of the same already narrated above.

7. Before the ld. CIT(A), assessee made a submission dated 28.09.2021 explaining the factual matrix of the case which has been reproduced by the ld. CIT(A) in paragraph 4. The same is reproduced hereinbelow for ease of reference:

*“The appellant made the following additional submission vide letter dated 28.09.2021:*

*That the shares of GCM Securities Ltd., were never possessed by your appellant Jyoti Swaroop Kashuka (HUF) (hereinafter referred to as HUF). The shares were actually held in the name of Jyoti Swaroop KASHUKA (hereinafter referred to as Individual) in individual capacity. The shares were wrongly sold on 05/12/2014 in the name of HUF instead of Individual.*

*That to meet the delivery norms of the stock market and to save the auction and penalty for non delivery, the shares was temporarily taken from Individual account (Demat Account No. 1205200000039391) to HUF account (Demat Account No. 1205200000044304) and delivery of the same to stock market was made.*

*That again on 08/12/2014 the 8000 equity shares of GCM Securities Ltd., were purchased in the account of HUF. Delivery of the same was received on 10/12/2014 from stock exchange in HUF account (Demat Account No.1205200000044304). The same shares were delivered back to Individual account (Demat account No.1205200000039391) on 11/12/2014, to square up the transaction of shares taken from him earlier.*

*That it clearly states that no shares of GCM Securities Ltd., were possessed by HUF, the transaction was done by mistake. Sir, the shares were actually to be sold in Individual account but were by mistake sold in HUF account, as both client codes are with the same broker. Further a loss of Rs.5724/- was also incurred is squaring up the transaction. Kindly also note that there was no payment made and no payment received.*

*That Individual had also declared sale proceeds consideration under IDS'2016 scheme and paid taxes thereon in Individual capacity.*

*Sir, it is a clear case of mistake, confusion. Both client codes in the name of HUF and Individual are with same broker M/S Karuna Financial Services (P) Ltd. Shares which were supposed to be sold in individual account, were by mistake sold in HUF. Your appellant never possesses such shares earlier to such transaction. Further there was no question of gain arises as there was a loss of Rs.5724/- occurred in squaring up of the transaction.*

*Sir, it may again be taken in to consideration that shares were actually held by Individual and who had also declared the sale consideration of all shares of GCM Securities Ltd., in IDS'2016 and paid taxes thereon.*

*Your Honour is requested to kindly look in to the matter and allow the appeal under consideration.*

*Copies of client ledgers from broker, Demat account details from the depository, bank statement of HUF, Form 4 of IDS' 2016 (In the case of individual, having PAN AIIPK 0662 L) are enclosed herewith which are self explanatory, which your honour may recognize.”*

8. While dealing with the matter, ld. CIT(A) laid his entire emphasis on the report of the Investigation Wing of the Department and made an extensive write-up on the subject matter of black money and plugging of loopholes in the system by the Revenue which has been garnered in the form of bogus long-term capital gain by the assessee through typical features of penny stock companies. The appeal of the assessee was dismissed. Aggrieved, assessee is in appeal before the Tribunal.

9. Before us, Shri K.K. Goswami, Advocate represented the assessee and Shri Biswanath Das, Addl. CIT represented the Department.

10. Ld. Counsel for the assessee reiterated the factual matrix as reproduced above. He pointed out that assessee had by mistake sold 8000 shares of GCM Securities Ltd on Friday, 05.12.2014 for ₹ 6,86,400/-. Assessee was not in possession of the said shares. These shares were in the holding of account of the individual i.e. Shri Jyoti Swaroop Kashuka, with the same broker. Therefore, to comply with the delivery norms and avoid penalty towards non-delivery by the stock exchange, assessee borrowed the shares from the individual account.

11. Thereafter, assessee, on the next working day (6<sup>th</sup> and 7<sup>th</sup> being Saturday & Sunday as non-working days of the stock exchange) i.e. Monday, 08.12.2014, purchased 8000 shares of the same company from the broker and upon receiving their delivery on 10.12.2014, returned the same on the very next day i.e. 11.12.2014 into the individual account for its settlement. Ld. Counsel submitted that the

two transactions have been seen in solidarity by the ld. AO which has been confirmed by the ld. CIT(A), NFAC without giving proper and meaningful cognizance to the submissions made by the assessee on the facts of the case, duly supported by corroborative documentary evidence.

12. Ld. Counsel further submitted that the individual i.e. Shri Jyoti Swaroop Kashuka had declared the sale proceeds consideration in respect of sale of shares of GCM Securities Ltd under the Income Disclosure Scheme, 2016 (IDS 2016) and paid taxes thereon in individual capacity.

13. Ld. Counsel also referred to the assessment order passed under section 143(3) dated 24.11.2017 in the case of the individual Shri Jyoti Swaroop Kashuka for the same assessment year i.e. AY 2015-16, placed in the paper book at page 16 to 20, to submit that long-term capital gain on sale of shares of GCM securities Ltd was duly considered in the assessment by the concerned Assessing Officer. In the same assessment order of the individual, the concerned Assessing Officer has noted that Shri Jyoti Swaroop Kashuka (individual) has disclosed the long-term capital gain being the sale proceeds under the IDS 2016 and paid taxes accordingly which was cross verified from the records available with the Department. Accordingly, the concerned Assessing Officer accepted the returned income of the individual.

14. Thus, ld. Counsel stated that shares were actually held by the individual who had declared the sale consideration of shares of GCM Securities Ltd in IDS 2016 and paid taxes there on. Since these facts have already been considered in the scrutiny assessment of the

individual, addition made in the hands of the present assessee ought to be deleted.

15. Per contra, ld. Sr. DR placed reliance on the order of ld. AO and ld. CIT(A).

16. We have heard the rival contentions and paid used the material placed on record. Admittedly, it is a fact that assessee has brought on record all the details relating to the mistake committed by the broker in respect of executing the sale transaction of 8000 shares of GCM securities Ltd, both before the ld. AO and the ld. CIT(A), along with relevant corroborative documentary evidence. Submissions made by the assessee before both the authorities have been reproduced in their respective orders. In our understanding, once the mistake is brought to fore and is in knowledge of the authority, it is incumbent upon the authority, who is possessed with all the powers, to take a deep dive into the matter to ascertain the correct facts and understand the mistake as well as see how the effect of mistake was mitigated. The factual matrix in the present case evidently demonstrates that a mistake was committed which was mitigated by the assessee and the relevant income arising from the transaction of sale of shares erroneously executed in the account of the assessee, was duly reported in the return of income of the individual, which was offered by the individual in the IDS 2016 and was accepted in the scrutiny assessment made under section 143(3) of the Act of the individual. We note that addition made by the ld. AO and sustained by the ld. CIT(A) is without going into the actual facts of the case.

17. From the perusal of the records placed in the paper book containing 20 pages, we agree with the submissions made by the ld.

Counsel on the factual position of the assessee in respect of the transaction for which addition has been made and accordingly direct to delete the addition made by the ld. AO of ₹ 6,86,400/- under section 68 of the Act towards sale consideration for sale of 8000 shares of GM Securities Ltd. Accordingly, grounds of appeal raised by the assessee are allowed.

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

**Order pronounced in the open court on 26.09.2022.**

**Sd/-  
(SANJAY GARG)  
JUDICIAL MEMBER**

**Sd/-  
(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

Kolkata, Dated: 26.09.2022.  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Jyoti Swaroop Kashuka (HUF)
2. The Respondent: ITO, Ward-30(1), Kolkata.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata