

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

**BEFORE  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 4043/Del/2018  
Assessment Year: 2014-15

ACIT, Circle-30(1), New Delhi	<b>Vs.</b>	M/s. Umesh Kumar Arora, C-15, Greater Kailash Enclave-1, Delhi-1100 48 PAN AAAPA4832A
<b>PAN :AAAPA4832A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Shri Gurpreet Shah Singh, Sr. DR
Assessee by	Shri C.S. Anand, CA

Date of hearing	09.01.2023
Date of pronouncement	20.01.2023

**ORDER**

**PER ASTHA CHANDRA, JM:**

The appeal by the Revenue is directed against the order dated 14.12.2017 of the Ld. Commissioner of Income Tax (Appeals)-10, New Delhi (**"CIT(A)"**) pertaining to assessment year (**"AY"**) 2014-15.

2. The Revenue has taken the following grounds:

*"1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.53,83,045/- made on account of the Long Term Capital Gain fraudulently claimed.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.1,61,491/- made on account of unexplained expenditure of payment of commission u/s. 69C of the Income-Tax Act, 1961.*

*3. On the facts and in the circumstances of the case. the Ld. CIT(A) erred in deleting the addition of Rs.1,50,000/- made on account of unexplained expenditure of payment made to M/s. Shivling Mercantile Pvt. Ltd.*

*4. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the prices of share have increased exponentially in 2 months with no cogent evidence on record whereas the holding period of the assessee is just over one year barely sufficient to book exempt LTCG.*

*5. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the investigation conducted by the directorate of investigation, Kolkata where it has been shown that the directors of the company Kailash Auto Finance Ltd. were 1 fact dummy directors of the company itself was a shell company only used by the operators to provide bogus and fraudulent entries for their clients.”*

3. The assessee is an individual. He derived income from house property, business and other sources. He filed his return for AY 2014-15 on 16.03.2015 declaring an income of Rs. 64,08,730. His case was selected for scrutiny under CASS. During assessment proceedings, when confronted by the Ld. Assessing Officer (“AO”), the assessee submitted that he earned Long Term Capital Gain (“LTCG”) of Rs.53,83,045 from sale of script Kailash Auto. He claimed it exempt under section 10(38) of the Income-Tax Act, 1961 (**the “Act”**). However, the Ld. A.O held the share transactions of the assessee as non-genuine for the detailed reasons given by him in the assessment order and added the amount of Rs. 53,83,045 under section 68 of the Act. He further added Rs.1,61,491 being 3% commission charged for providing arranged capital gain under section 69C as unexplained expenditure. He also added Rs. 1,50,000 being purchase value to assessee’s income under section 69C of the Act. Accordingly, the total income was computed at Rs.1,21,03,266 in the assessment order framed under section 143(3) of the Act on 29.12.2016.

4. Aggrieved, the assessee appealed before the Ld. CIT(A). The Ld. CIT(A) disagreed with the Ld. AO’s rejection of assessee’s claim of tax exempt LTCG

of Rs.53,83,045 and also deleted the remaining additions of Rs.1,61,491 and Rs.1,50,000 made under section 69C of the Act by observing as under:

*“5.1f. From the above sub-paras, it can be safely inferred that there is neither any direct evidence against the appellant nor any adverse comments on the evidences produced by him at the assessment stage. The rejection of the appellant’s claim of tax-exempt LTCG in the impugned order is similar to that in **Manish Kumar Bald vs. ACIT** (supra) wherein the ITAT Kolkatta has allowed the assessee’s appeal. Accordingly, the facts mentioned in the above court decision (relied upon by the appellant) are almost identical to those in the present case. Even here, reliance has been placed on SEBI’s interim orders, investigation done by the Income Department (Kolkata) and statements of brokers including Sh. Sunil Dokania, yet no adverse inferences have been drawn in the impugned order on the evidences filed by the appellant. These appear to have been accepted – the reason for the rejection appears to be that the transactions of purchase and sale of shares by the appellant were pre-mediated arrangements’ but the evidences were not found to be false or fabricated in the impugned order.*

*5.1g Accordingly, in view of the above as well as in due deference to the decisions of ITAT Mumbai (SB) in **GTC Industries vs. ACIT** [2017] (supra) and ITAT Kolkata (2017) in **Manish Kumar Baid vs. ACIT** (supra) the rejection of the appellant’s claim of tax-exempt LTCG (Rs.53,83,045) is **deleted**. The grounds of (b), (c), (d), (e) and at (h) are **allowed**. The stipulation in Section 10(38) of the Act is also satisfied.*

*5.2 As regards the grounds at (f) and (g) relating to the additions made in the impugned order u/s. 69C towards purchase of shares of CPAL (Rs.1,50,000) and towards commission @ 3% (Rs.1,61,491/-), it is observed that it is mentioned therein inter alia. “...Therefore, generation of Long Term Capital Gain through the process from purchase to receipt of cheque is totally arranged and actually no capital gain arose, but assessee’s own cash has been routed through different entitles and ultimately reached to his hand by cheque in the disguise of sale proceeds of listed security...*

*The detailed analysis of evidences available on record and the case laws quoted above provide enough support against the arguments of the assessee that his share transactions are genuine. Thus, in view of the elaborate discussion made above, I hereby hold the amount of Rs.53,83,045/- claimed as LTCG by you during the financial 2013-14 (AY 2014-15) stands disallowed and is added back to the total income. Further, it is typical that these transactions are carried out on a commission basis. From various statements it is observed that commission @ 3% has been charged for providing arranged capital gain. Since you have claimed an LTCG of Rs.53,83,045/-, an amount of Rs.1,61,491/- i.e. 3% of Rs.53,83,045/- is being added u/s. 69C as unexplained expenditure. Further, purchase value of Rs.1,50,000/- is added back to your income as unexplained expenditure u/s. 69C.*

*From the above portion of the impugned order, it is observed that the reasons for the additions of the purchase price of the shares of M/s. CPAL and commission @*

*3% on arrangement of LTCG are the rejection of the appellant's claim of LTCG are the rejection of the appellant's claim of LTCG therein.*

*5.2a It is gathered from the appellant's submissions that he has relied on the decision of ITAT Kolkata in **Manish Kumar Bald vs. ACIT** (supra) in this regard. It is mentioned therein inter alia. "...7.1 We have already held that the transactions relating to LTCG were genuine and not the accommodation entries as alleged by the Ld. AO. Consequently the addition u/s 69C of the Act is hereby directed to be deleted. We accordingly hold that the reframed question no.2 raised hereinabove is decided in the negative and in favour of the assessee..." Similarly, in view of my decision in para 5.1 regarding the appellant's contention for LTCG wherein the addition made u/s 68 in the impugned order was deleted, the present addition u/s. 69C regarding commission is also **deleted**. No evidence was observed in the impugned order regarding such payment of commission @ 3% for the accommodation entry as mentioned therein. The ground at (g) is **allowed**.*

*5.2b As far as the addition of the purchase price of the scrips of CPAL (Rs.1,50,000) in the impugned order, it is observed there from that despite any adverse inference on the evidence placed at the assessment stage in this regard – copy of bank statement corroborating the payment made to M/s. Shivling Merchantile Pvt. Ltd. (seller) the addition has been made. Accordingly, in view of the absence of any adverse inference drawn therefore, the addition made u/s. 69C of the Act in this regard (Rs.1,50,000/-) is **deleted**. The ground at (f) is **allowed**."*

5. The Revenue being aggrieved is before the Tribunal and all the five grounds of appeal relate thereto.

6. The Ld. DR relied on the order of the Ld. AO.

7. The Ld. AR drew our attention to certain facts which according to him are relevant for the purpose of deciding the impugned appeal of the Revenue. He pointed out that the Pr. CIT, Delhi-10, passed order on 16.05.2018 authorizing the ACIT, Circle-30(1), New Delhi under section 253(2) of the Act to file appeal to the ITAT in the case of the assessee and stated therein that limitation expires on 28.05.2018. The Ld. AR further pointed out that the CBDT issued Circular No. 23 of 2019 on 06.09.2019 stating therein that notwithstanding anything contained in any circular issued u/s 268A specifying mandatory limits for filing of departmental appeals before ITAT, etc. appeals may be filed on merits as an exception to the said circular, where Board, by way of special order direct filing of appeal on merits in cases involved in organized tax evasion activity. In pursuance thereto, the CBDT

issued an Office Memorandum on 16.09.2019 stating therein that monitory limits fixed for filing appeals before ITAT etc. shall not apply in case of assessee's claiming bogus LTCG/STCL through Penny Stocks and Appeals/SLPs in such cases shall be filed on merits. The Ld. AR submitted that the subject matter of the present appeal filed by the Revenue has low tax effect which fact has not been controverted by the Ld. DR.

8. The CBDT Circular No.23 dated 06.09.2019 and Office Memorandum dated 16.09.2019 carving exception to the monitory limits in cases claiming bogus LTCG/STCL through penny stocks and filing appeals etc. in such cases came much after the authorization to file appeal under section 253(2) of the Act in the case of the assessee before ITAT was given on 28.05.2018 by the Pr. CIT, Delhi-10. Relying on the decision of the Hon'ble Bombay High Court in CIT vs. Surendra Shantilal Peety (2022) 138 Taxmann.com 75 (Bom.), the Ld AR submitted that the aforesaid Circular No.23 of 2019 read with Office Memorandum dated 16.09.2019 not having retrospective effect is inapplicable to the case of the assessee. Therefore, the appeal of the Revenue is not maintainable on account of tax effect being low and deserves to be dismissed.

9. In rebuttal, the Ld. DR had nothing to say.

10. We have considered the submissions of the parties and perused the material available in the records. We have gone through the decision in Surendra Shantilal Peety's case (supra). We find that the issue as to whether CBDT Circular No.23 of 2019 dated 06.09.2019 and Office Memorandum dated 16.09.2019 had any retrospective effect came up for consideration before the Hon'ble Gujarat High Court in Pr.CIT vs. Anand Natwarlal Sharda (2021) 281 Taxman 300 (Guj.) and the Hon'ble Gujarat High Court held that the said Circular read with Office Memorandum could not be construed to have retrospective effect with which the Hon'ble Bombay High Court was in respectful agreement.

11. Finding force in the submissions of the Ld. AR, we hold that the appeal of the Revenue is not maintainable on account of low tax effect as the CBDT Circular No. 23 of 2019 dated 06.09.2019 read with Office Memorandum dated 16.09.2019 is not applicable to the case of the assessee. We, therefore, refrain from deciding the appeal on merits.

12. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 20<sup>th</sup> January, 2023.**

**sd/-**  
**( SHAMIM YAHYA )**  
**ACCOUNTANT MEMBER**

Dated: 20<sup>th</sup> January, 2023

**Mohan Lal**

Copy forwarded to:

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

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation (Order drafted through Dragon software):	
2.	Date on which the draft of order is placed before the Dictating Member:	
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been signed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	