

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1939/Kol/2018
Assessment Year: 2014-15**

Rohit Agarwal C/o Salarpuria Jajodia & Co. 7, C. R. Avenue, Kolkata- 700072. (PAN: ANNPA0403B)	Vs.	Assistant Commissioner of Income Tax, Circle-36, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddharth Jhajharia, FCA

Respondent by : Shri Manas Mondal, Addl. CIT, Sr. DR

Date of Hearing : 01.06.2023

Date of Pronouncement : 05.06.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This captioned appeal filed by the assessee is against the order of Ld. CIT(A)-10, Kolkata vide order No. 211/CIT(A)-10/C-36/2014-15/2016-17/Kol dated 02.07.2018 against assessment order of Ld. ACIT, Circle-36, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 28.12.2016 for AY 2014-15.

2. Grounds raised by the assessee are reproduced as under:

“1. For that in view of the facts and in the circumstances the Ld. CIT(A) erred in confirming the addition of Rs.46,97,718/- as unexplained cash credit u/s 68 and in view of the facts and in the circumstances the transaction carried out by the appellant being genuine, the action of the Ld. CIT(A) affirming the order of the AO is wholly bad and illegal and it may be held accordingly.

2. Without prejudice to Ground No.1 above, the AO had made the addition u/s 68 on the transaction carried out by the appellant in sale and purchase of shares, merely on assumption and presumption, surmises & conjectures and is without any evidence and as such the action of the AO and the Ld. CIT(A) is wholly bad and illegal and it may kindly be held accordingly.

3. Without prejudice to Grounds No.1 & 2 above, the Ld. CIT(A) erred in affirming the action of the AO in making addition of Rs.1,17,443/- as unexplained expenditure u/s.69C towards aforesaid transaction in shares and such action of the AO and Ld. CIT(A) is wholly bad and illegal and it may kindly be held accordingly.

4. For that in view of the facts and in the circumstances the Ld. CIT(A) is wholly erred in levying interest u/s. 234B & 234C and your petitioner completely denies its liability for any such interest and hence such interest charged may kindly be deleted.

5. For that your petitioner craves the right to put additional grounds and I or to alter/amend/modify the present grounds at the time of hearing.”

3. Brief facts of the case are that assessee filed its return of income on 31.07.2014 reporting total income of Rs.39,43,860/-. In the course of assessment proceedings, Ld. AO noted that assessee has purchased shares of Ashika Credit Capital Ltd. through broker Globe Capital Market Ltd., 609, Ansal Bhavan, 16, K. G. Marg, New Delhi. Details of purchases are tabulated as under:

Sl No	Name of seller	Name of script	No. of shares	Date of purchase	Amount
1	Globe Capital Market Ltd	Ashika Credit Capital Ltd.	5950	17.10.2013	8,73,181.81
2	Globe Capital Market Ltd	Ashika Credit Capital Ltd.	5000	18.10.2013	7,45,203.95
3	Globe Capital Market Ltd	Ashika Credit Capital Ltd.	5000	21.10.2013	7,64,805.27
4	Globe Capital Market Ltd	Ashika Credit Capital Ltd.	3000	22.10.2013	4,64,608.48
5	Globe Capital Market Ltd	Ashika Credit Capital Ltd.	5000	23.10.2013	7,72,160.25
6	Globe Capital Market Ltd	Ashika Credit Capital Ltd.	10000	24.10.2013	15,51,079.27
7	Globe Capital Market Ltd	Ashika Credit Capital Ltd.	20000	25.10.2013	31,67,594.80
TOTAL					83,38,633.83

3.2. Details of shares sold by the assessee are tabulated as under:

Name of script	Date of sale	No. of shares	Purchase value	Sale value	Gains
Ashika Credit Capital Ltd	14.11.2013	13000		30,42,769.65	
Ashika Credit Capital Ltd	18.11.2013	7000		16,70,655.21	
Ashika Credit Capital Ltd	20/11/2013	5000		11,94,465.96	
Ashika Credit Capital Ltd	21.11.2013	5000		11,91,970.76	
Ashika Credit Capital Ltd	22.11.2013	14800		35,10,424.21	
Ashika Credit Capital Ltd	25.11.2013	9150		22,32,534.58	
Total		53950	83,38,633.83	1,28,42,820.37	45,04,186.54

3.3. Assessee made a significant gain within a span of few months amounting to Rs.45,04,187/-. Ld. AO called for the explanation in respect of gains earned by the assessee on these share transactions which has been identified as a penny stock. After considering the submissions made by the assessee, Ld. AO observed that extensive survey operation was carried out by Director of Income- tax (Inv.), Kolkata into some brokers of Kolkata. In their statement, they in turn accepted to have provided accommodation entries of short term capital gains. In this list of shares, Ashika Credit Capital Ltd. (in short ACCL) also found its name. Thus, Ld. AO concluded that assessee has introduced/credited capital of Rs.46,97,718/- during the year in his books, the shares of which he explained as proceeds from sale of shares. By holding that the explanation offered by the assessee as unsatisfactory, Ld. AO added the amount of Rs.46,97,718/- as income being unexplained cash credit u/s. 68 of the Act (taxable @ as provided u/s. 115BBE of the Act). Ld. AO also made an addition of Rs.1,17,443/- being 2.5% of Rs.46,97,718/- towards commission for getting bogus short

term capital gain as unexplained expenditure u/s. 69C of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A) who confirmed the addition. Aggrieved, assessee is in appeal before the Tribunal.

4. We find that there are large number of assesseees, who have transacted with such kind of equity shares and claimed exemption under section 10(38) of the Act. Apart from this scrip, there are other scrips also in Kolkata, who were found to be penny stock and transactions on papers only. Hon'ble Jurisdictional Calcutta High Court has recently considered this aspect in its judgment in the case of Swati Bajaj & Others (2022) 139 taxmann.com 352(Cal.). In a number of appeals, we have also rejected the claim of the assesseees, where the assessee transacted in such shares. All these transactions with common modus operandi have been held as bogus by the Hon'ble Jurisdictional High Court. Therefore, respectfully following and relying upon the decision of the Hon'ble Calcutta High Court (supra), we are of the view that Revenue Authorities have rightly rejected the claim of the assessee and made the additions. We do not find any merit in this appeal. Accordingly, it is dismissed.

5. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 5th June, 2023.

Sd/-

(Rajpal Yadav)
Vice President

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 5th June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A)-10, Kolkata
 4. CIT, Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata