

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 256/Kol/2023
Assessment Year : 2014-15

Deo Kishan Mohta PAN: AIXPM 1291 N Appellant	Vs.	ITO, Ward-1(2), Kolkata Respondent
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Date of Hearing	15.05.2023
Date of Pronouncement	24.07.2023
For the Assessee	Shri A. Kochar, AR
For the Revenue	Smt. Ranu Biswas, Addl. CIT, DR

ORDER

Per Sonjoy Sarma, JM:

The present appeal has been preferred by the assessee against the order dated 31.01.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee has raised the following grounds of appeal:

- “1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.*
- 2. For that the Ld. CIT (A) erred in dismissing the appeal of the appellant on the alleged grounds without properly considering all relevant documentary evidences submitted before the lower authorities in support of earning of Long Term Capital Gains.*
- 3. For that the Ld. CIT (A) ought to have appreciated the facts on record which indicated that the appellant having filed all evidences relating to purchase and sale of shares and having earned Long Term Capital gains, the Ld. CIT (A) ought not to have dismissed the appeal on surmises and conjectures in view of the fact that the evidences adduced by the appellant in support of earning of Long Term Capital Gains have not been assailed or controverted.*
- 4. For that the appellant had earned Long Term Capital Gains amounting to Rs.6,69,840/- in respect of which the appellant has submitted relevant acceptable evidences before the A.O. who simply proceeded on the basis of some information which were not verified*

by him and that the Ld. CIT(A) erred in dismissing the appeal of the appellant on the alleged grounds.

5. For that the Ld. CIT (A) ought to have taken into consideration the fact that the A.O. passed entirely an illegal order proceeding on the basis of statements of some persons without affording any opportunity to the appellant to cross examine them.

6. For that the order of assessment passed by the Ld. A.O. had been arbitrary and the Ld. CIT (A) was wrong in confirming the same.

7. For that the use of statements of some persons without affording any opportunity to the appellant to cross examine is against the established law and hence the assessment framed by the A.O. ought to have been annulled by the Ld. CIT (A).

8. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

2. Brief facts of the case are that the assessee filed its return of income at Rs. 8,03,920/-. The case of the assessee was selected for scrutiny assessment under CASS. During the assessment proceeding, ld. AO noticed that the assessee has claimed long term capital gain on sale of shares of M/s. Kailash Auto Finance Ltd. of Rs. 6,34,840/- as being exempt income. During the assessment proceeding, ld. AO noted that in an investigation conducted by the Directorate of Income Tax (Inv.), Bombay Stock Exchange and SEBI found the shares of 84 companies were manipulated and used for providing bogus accommodation entries of long term capital gains. M/s. Kailash Auto Finance Ltd. was one of the 84 companies whose shares were used for providing bogus long term capital gain and the appellant was a beneficiary as per the investigation report. The ld. AO after examination of the relevant evidence contained in the report and the depositions of the share broker involved in manipulation of shares of the said penny stock companies, the ld. AO issued a show cause notice to the appellant. The ld. AO not being satisfied with the reply of the appellant passed an order u/s

143(3) dated 26.12.2016 by treating the sale proceeds from the sale of shares of M/s. Kailash Auto Finance Ltd. as unexplained credit u/s 68 of the Act and added the same to the income of the assessee.

3. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Aggrieved by the above order, assessee is in appeal before this Tribunal raising 8 grounds of appeal. However, effective grounds for adjudication before us is regarding the order passed by ld. CIT(A) by sustaining the order of ld. AO by making an addition of Rs. 6,69,840/- in the hands of assessee in respect of profit earned from long term capital gain on trading of shares. The ld. AR in order to substantiate his claim before us he stated that view taken by the ld. AO is arbitrarily as well as contrary to the provisions of law. As all the alleged transactions are carried out by the assessee through banking transaction and recognized stock exchange. Moreover, all the shares were transferred by the assessee through D-mat account. In such scenario, the addition on the part of AO and sustained by the ld. CIT(A) only on the ground of mere statement of third party is not proper, therefore, the impugned order passed by ld. CIT(A) is liable to be set aside.

5. On the other hand, ld. DR supported the decision rendered by the authorities below and vehemently opposed the submission made by the ld. AR before this Tribunal.

6. We after hearing the submission of the parties and on perusal of the material available on record. We notice that the assessee booked a profit of Rs. 6,69,840/- from the transaction of shares of M/s. Kailash Auto Finance Ltd. and the alleged company from which assessee booked a profit from long term capital gain is also identified as one of the 84 BSE listed companies which are manipulated and used for providing bogus accommodation entries of long term capital gain and while dealing with the instant issue by the Id. CIT(A) dismissed the appeal of the assessee by sustaining the order passed by the Id. AO. We, therefore, going through the present facts and circumstances of the case, we do not find any infirmity in the order passed by authorities below and following the decision rendered by the Hon'ble Jurisdiction High Court in the case of Swati Bajaj & Ors. (2022) 139 taxmann.com 352 (Cal) where the Hon'ble High Court has taken a view on same facts and circumstances of the case by sustaining the addition in the hands of assessee. We, therefore, find no infirmity in the order passed by the Id. CIT(A) by sustaining the order of Id. AO and following the decision rendered by Swati Bajaj (supra) and dismiss the appeal filed by the assessee.

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

Order pronounced in the open court on 24.07.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 24.07.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- Deo Kishan Mohta, Flat 1A, Floor Castle, 74, Abul Kalam Azad Sarani, Kolkata-700054.
2. Respondent – ITO, Ward-1(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata