

आयकर अपीलीय अधिकरण  
रांची पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
RANCHI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री राजेश कुमार, लेखा सदस्य  
एवं  
श्री संजय शर्मा, न्यायिक सदस्य  
के समक्ष  
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER  
&  
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 115/RAN/2018  
Assessment Year: 2014-15**

***Akhilesh Pandey.....Appellant  
[PAN: AIDPP 0519 N]***

***Vs.***

***DCIT, Circle-1, Ranchi.....Respondent***

**Appearances by:**

*Sh. Devesh Poddar, Adv., appeared on behalf of the Assessee.*

*Smt. Rinku Singh, CIT D/R, appeared on behalf of the Revenue.*

Date of concluding the hearing : July 7<sup>th</sup>, 2023

Date of pronouncing the order : August 21<sup>st</sup>, 2023

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

This is an appeal preferred by the assessee against the order of Learned Commissioner of Income Tax (Appeals), Ranchi [in short

ld. 'CIT(A)'] dated 28.02.2018 for the Assessment Year (in short 'AY') 2014-15.

2. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of addition of Rs. 5,20,82,628/- by Ld. CIT(A) as made by the Assessing Officer (in short ld. 'AO') on account of bogus long term capital gain by denying the exemption claimed u/s 10(38) of the Act.

3. Brief facts of the case as culled out from the records are that the assessee filed return of income on 12.12.2014 by declaring total income at Rs. 21,68,260/-. The case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served upon the assessee. The case was selected for scrutiny on the ground that the assessee has entered into suspicious transactions relating to sale of equity shares thereby earning bogus long term capital gain on sale of shares. Accordingly, during the course of assessment proceedings Ld. AO issued notice u/s 142(1) of the Act giving detailed questionnaire calling upon the assessee to furnish various information/details which were duly furnished by the assessee before Ld. AO. Ld. AO, upon perusal of such information/details observed that the assessee has earned long term capital gain of Rs. 5,20,82,628/- and accordingly called upon the assessee to furnish the computation and details thereof. Thereafter, after examining the details furnished by the assessee, Ld. AO issued another show cause notice dated 12.12.2016 as to why the said gain should not be treated as bogus and added to the income of the assessee which was replied by the assessee on various occasions. It is pertinent to

note that assessee has furnished before Ld. AO the copy of purchase bill, details of payment, copy of demat account and similar bills in respect of sale, bank statement for receipt of payment. Ld. AO observed that the assessee has purchased 50,00,000 shares on 27.03.2012 @ Re. 1/- and 1,085 shares @ Rs. 38.10 on 27.08.2013 from just one concern namely M/s. Kailash Auto Finance Ltd. Ld. AO noted that these transactions were done through a Kolkata based broker M/s. SMC Global Securities Ltd. According to Ld. AO, these were manipulated transactions of purchase and sale of penny stocks by a group of unscrupulous brokers and operators on stock exchange to give undue favour to various entities and individual of which the assessee is also a beneficiaries as these were just accommodations in lieu of cash. Finally, Ld. AO treated the said sale of shares as bogus and added the same to the income of the assessee in the assessment framed u/s 143(3) of the Act dated 27.12.2016.

4. Ld. CIT(A) dismissed the appeal of the assessee by holding that the shares of M/s. Kailash Auto Finance Ltd. were manipulated which increased from Re. 1/- to Rs. 38/- and to Rs. 40/- per share which was abnormally high and unbelievable. Ld. CIT(A) discussed the facts the assessee has purchased 50 lakh shares on 27.03.2012 @ Re. 1/- each of M/s. Panchshul Marketing Ltd. which was merged with M/s. Kailash Auto Finance Ltd. on 21.05.2013 in the ratio of 1:1 and after merger of the former with latter the value of M/s. Kailash Auto Finance Ltd. grew to Rs. 38/- to Rs. 40/- per share and thereafter, the assessee sold 14,01,050 shares at an average price of Rs. 38.18 per share. Ld. CIT(A) also noted that contact notes were provided to Ld. AO

besides furnishing copy of STT certificate in Form No.- 10DB as these were sold on recognized stock exchange and thus transactions were made on the stock exchange platform. However, Ld. CIT(A) referring to the report of Securities and Exchange Board of India (in short 'SEBI') and also Ministry of Corporate Affairs held that these were just manipulations which yielded the assessee such abnormal gains which cannot be believed to be genuine and thus, dismissed the appeal of the assessee.

5. After hearing rival contentions and perusing the material on record, we note that undisputedly M/s. Kailash Auto Finance Limited was classified as penny stock company by the Ministry of Corporate Affairs and SEBI has also passed various orders holding the said stock to be penny stock which was manipulated by a group of brokers and operators on the platform of recognised stock exchanges in order to give undue accommodation in lieu of cash. However, we note that the assessee has purchased 50,00,000 equity shares on 27.03.2012 at Rs.1.00 per shares from Panchshul Marketing Ltd. Which got merged with M/S Kailash Auto Finance Ltd. On 21<sup>st</sup> May ,2013 and equity shares were issued in the ratio of 1:1. The assessee also purchased 1085 equity shares at Rs. 38.10 per shares on 27.08.2013 of M/s. Kailash Auto Finance Limited in FY 2013-14. In March ,2014 the assessee sold 14,01,050/- at an average price of Rs. 38.18 per share thereby earning long term capital gain of Rs. 5,20,82,628/-. The assessee has also furnished the broker's bill and demat statement evidencing purchase and sale of shares and payment thereof through banking channels etc before the authorities below. Under these circumstances, the gain by way of long term capital gain

cannot be doubted as the authorities below could not establish the money trail. Besides, the case of the assessee is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of *The Commissioner of Income Tax, Jamshedpur Vs. Arun Kumar Agarwal (HUF)*, Tax Appeal No.4 of 2011 dated 13.07.2012 wherein it has been held that the long term capital gain realized on sale of penny stocks has to be treated as genuine as the assessee has furnished all the evidences in support of his claim. The relevant finding of the Hon'ble High Court of is as under:

*“9. Learned counsel for the assessee submitted that a bare perusal of the reasons given in the two impugned orders, one passed by the C.I.T. Tax Appeal No.4 of 2011 with analogous case (Appeals) and another by the I.T.A.T will clearly reveal that the facts of the each case have been carefully considered by the C.I.T.(Appeals) and the facts mentioned in the order have not been disputed by the Revenue in any manner except alleging that the transactions are being sham. It is also not in dispute that the assessee disclosed the shares in their possession in earlier return and statement of accounts and they are duly entered into the books of accounts of the accounts of the assessee and that was the position since last five years. It is submitted that even if the such transaction was there even that was duly proved by the Bank statement and by disclosure of Bank account number etc. The assessee produced the contract note of the transactions which were discarded by the Assessing Officer without any reason and without their being any evidence to rebut those contracts. It is also submitted that the I.T.A.T has not committed any mistake of fact or law in deciding all the appeals together because of the simple reason that all the appeals were argued as one case and all the facts of the individual assessee was duly considered by the first appellate authority and the I.T.A.T has decided the issues upholding the findings of the appellate authority and in concurring orders detail reasons may not be required to be given in much detail, if from the reasons given, the correctness in the decision of the second appellate authority can be found and in the case in hand, it finds support from the lower appellate authority's given reasons.*

*10. We have considered the submissions of the learned counsel for the parties and we are of the considered opinion that the learned*

*Assessing Officer was much influenced by the enquiry report which may has been brought on record by the efforts of the Assessing Officer and that enquiry report was prepared by the SEBI and from the observations made by the Tax Appeal No.4 of 2011 with analogous case Assessing Officer himself, it is clear that after getting that enquiry report, the SEBI prima facie found involvement of some of the share brokers in unfair trade practices. Even in a case where the share broker was found involved in unfair trade practice and was involved in lowering and rising of the share price, and any person, who himself is not involved in that type of transaction, if purchased the share from that broker innocently and bonafidely and if he show his bonafide in transaction by showing relevant material, facts and circumstances and documents, then merely on the basis of the reason that share broker was involved in dealing in the share of a particular company in collusion with others or in the manner of unfair trade practices against the norms of S.E.B.I and Stock Exchange, then merely because of that fact a person who bonafidely entered into share transaction of that company through such broker then only by mere assumption such transactions cannot be held to be a shame transaction. Fact of tinted broker may be relevant for suspicion but it alone necessarily does lead to conclusion of all transaction of that broker as tinted. In such circumstances, further enquiry is needed and that is for individual case. Such further enquiry was not conducted in that case.”*

6. In the present case also the assessee has furnished all the evidences qua purchase and sale of shares such as copies of contract notes, bank statements, copy of D-mat account etc. however, the no further verification was done by the authorities below and they just relied on the modus operandi of the stock brokers in case of penny stocks. In the present case the purchase of shares was not disputed whereas the sale has been disputed in the current year to be bogus and in the nature of accommodation entries. The Hon'ble High Court of has dealt with the identical issue in the above referred decision. We, therefore, following the ratio laid down by the jurisdictional High Court, set aside the order

of Ld. CIT(A) and direct Ld. AO to allow the long term capital gain claimed u/s 10(38) of the Act.

7. In the result, the appeal filed by the assessee is allowed.

***Kolkata, the 21<sup>st</sup> August, 2023***

*Sd/-*  
[Sonjoy Sarma]  
Judicial Member

*Sd/-*  
[Rajesh Kumar]  
Accountant Member

Dated: 21.08.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Akhilesh Pandey, 302, Ishwar Enclave, P.P. Compound, Ranchi-834 001 (Jharkhand).**
- 2. DCIT, Circle-1, Ranchi.**
- CIT(A), Ranchi.
- CIT-
- CIT(DR), Ranchi Bench, Ranchi.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata