

आयकर अपीलीय अधिकरण  
रंची 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/2019  
Assessment Year: 2015-16**

***Rama Shankar Prasad.....Appellant  
[PAN: AJFPP 0998 L]***

**Vs.**

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

**Appearances by:**

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

*Sh. Pranob Kumar Koley, Sr. 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 22<sup>nd</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 12.12.2018 for the Assessment Year (in short

'AY') 2015-16. The only issue raised in the various grounds of appeal is against the confirmation of addition of Rs. 32,95,110/- by Ld. CIT(A) as made by the Assessing Officer (in short ld. 'AO') on account of long term capital gain on sale of shares.

2. Brief facts of the case as culled out from the records are that the assessee filed return of income for the instant year on 29.09.2015 declaring total income of Rs. 15,64,360/- which was processed u/s 143(1) of the Act. Thereafter, the case of the assessee was selected for complete scrutiny under CASS and statutory notices were duly issued and served upon the assessee. The first reason for selection for scrutiny was suspicious sale transactions in equity shares and claiming of long term capital gain as exempt u/s 10(38) of the Act. The facts are that the assessee invested a sum of Rs. 99,500/- in the equity shares M/s. Kailash Auto Finance Limited during FY 2012-13 and sold those shares for a gross amount of Rs. 33,94,610/- in FY 2014-15 thereby earning long term capital gain of Rs. 32,95,110/- which was claimed as exemption u/s 10(38) of the Act. According to Ld. AO the Securities and Exchange Board of India has held that share price of M/s. Kailash Auto Finance Limited was artificially increased on the platform of stock exchange and held vide its order dated 29.03.2016 and subsequent order dated 27.10.2016 that M/s. Kailash Auto Finance Limited was manipulated for providing accommodation entry in the form of long term capital gain. Thereafter Ld. AO after discussing the *modus operandi* and also the order passed by the Coordinate Bench of ITAT, Nagpur in the case of *Sanjay Bimalchand Jain Vs. ITO, ITA No. 61/NAG/2013* held that the said capital gain was bogus and accordingly by

issuing notice u/s 142(1) of the Act dated 25.10.2017 called upon the assessee to furnish the details of claim u/s 10(38) of the Act and also to establish the credibility, genuineness and authenticity of the said transactions. Thereafter again Ld. AO issued show cause notice on 10.11.2017 asking the assessee to show cause as to why the assessment should not be framed as *ex-parte* in case assessee fails to reply before the date fixed which was complied with by the assessee by filing written submissions along with details of demat account and other evidences etc. Ld. AO, however, disbelieved the explanation of the assessee and documents filed by him during the course of scrutiny and held that the assessee has failed to discharge its onus as to how the price of the share has increased from Re. 1 per share to Rs. 242.50 per share and finally after observing that Ministry of Corporate Affairs has identified 331 suspected shell companies and similarly SEBI has also directed the Stock Exchange to restrict 95 companies and M/s. Kailash Auto Finance Limited is one of those companies in the list. Finally, Ld. AO held the gain of Rs. 32,95,110/- u/s 68 of the Act as unexplained cash credit of the assessee and the taxability was done as per the provisions of Section 115BBE of the Act in the assessment framed u/s 143(3) of the Act dated 26.12.2017.

3. During the course of appellate proceedings, Ld. CIT(A) also dismissed the appeal of the assessee by upholding the order of Ld. AO.

4. After hearing rival contentions and perusing the material on record, we note that undisputedly that 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 as the said stock was manipulated in order to give undue accommodation on the platform of stock exchanges in the form of long term capital gain. However, we note that the assessee has invested Rs. 99,500/- in the shares of M/s. Kailash Auto Finance Limited in FY 2012-13 and sold those shares after a period of two years thereby earning a long term capital gain of Rs. 32,95,110/-. The assessee has also furnished the broker's bill and demat statement evidencing purchase and sale of shares and payment thereof through banking channels. Under these circumstances, the gain by way of long term capital gain cannot be doubted as the authorities below could not prove any money received into the share transactions. 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*

assesseees 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 assesseees 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.”

5. In the present case the purchase of shares has not been disputed or doubted however 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 decision of 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.

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

***Kolkata, the 22<sup>nd</sup> August, 2023***

*Sd/-*  
[Sonjoy Sarma]  
Judicial Member

*Sd/-*  
[Rajesh Kumar]  
Accountant Member

Dated: 22.08.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Rama Shankar Prasad, Hotel Park The Retreat, Birsa Chowk, Ranchi-834 001.**
- 2. DCIT, Circle-1, Ranchi.**
3. CIT(A), Ranchi.
4. CIT-
5. CIT(DR), Ranchi Bench, Ranchi.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata