

**IN THE INCOME TAX APPELLATE TRIBUNAL, VARANASI  
BENCH**

**BEFORE: SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
&  
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No.81/VNS/2019  
(Assessment Year :2014-15)**

**&**

**ITA No.198/VNS/2019  
(Assessment Year :2015-16)**

Anju Jhunjunwala K-67/85-2, Jhunjunwala Bhawan Nati Imli Varanasi-221001	Vs.	Principal CIT Varanasi Aayakar Bhawan M.A. Road Varanasi Uttar Pradesh
<b>PAN/GIR No.ABRPJ2024P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Shishir Bajpai
Revenue by	Shri Robin Chaudhary
<b>Date of Hearing</b>	<b>26/09/2023</b>

**ITA No.199/VNS/2019  
(Assessment Year :2015-16)**

**&**

**ITA No.80/VNS/2019  
(Assessment Year :2014-15)**

Adarsh Jhunjunwala K-67/85-2, Jhunjunwala Bhawan Nati Imli Varanasi-221001	Vs.	Principal CIT Varanasi Aayakar Bhawan M.A. Road Varanasi Uttarpradesh
<b>PAN/GIR No.AEVPJ9948P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri A K Pandey
Revenue by	Shri Robin Chaudhary
<b>Date of Hearing</b>	<b>26/09/2023</b>

**ITA No.84/VNS/2019**  
**(Assessment Year :2014-15)**

Vishal Kanodia (HUF) D-63/12, Flat 35 A-Block, Virat Villa Mahmoorganj Varanasi-221010	Vs.	Principal CIT Varanasi
<b>PAN/GIR No.AAGHV0574E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Arvind Shukla
Revenue by	Shri Robin Chaudhary
<b>Date of Hearing</b>	<b>27/09/2023</b>

**ITA No.85/VNS/2019**  
**(Assessment Year :2014-15)**

Vishal Kanodia D-63/12, Flat 35 A-Block, Virat Villa Mahmoorganj Varanasi-221010	Vs.	Principal CIT Varanasi
<b>PAN/GIR No.AKCPK2992F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Arvind Shukla
Revenue by	Shri Robin Chaudhary
<b>Date of Hearing</b>	<b>27/09/2023</b>

**ITA No.111/VNS/2020**  
**(Assessment Year :2015-16)**

Gopi Krishna Vinod Kumar (HUF) Saraf Sadan, Gandhi Nagar, Golghar Gorakhpur – 273001	Vs.	Pr. Commissioner of Income Tax, Gorakhpur
<b>PAN/GIR No.AACHG7673R</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri S.K. Garg & Shri.Shubham Singh
Revenue by	Shri Robin Chaudhary
<b>Date of Hearing</b>	<b>26/09/2023</b>

**ITA No.112/VNS/2020**  
**(Assessment Year :2015-16)**

Vinod Kumar Saraf(HUF) Saraf Sadan, Gandhi Nagar, Golghar Gorakhpur – 273001	Vs.	Pr. Commissioner of Income Tax, Gorakhpur
<b>PAN/GIR No.AACHV9768A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri S.K. Garg & Shri. Shubham Singh
Revenue by	Shri Robin Chaudhary
<b>Date of Hearing</b>	<b>26/09/2023</b>

**ITA No.252/VNS/2019**  
**(Assessment Year :2015-16)**

Sarvesh Kumar Agarwal(HUF) C-26/2, Kabir Chaura Varanasi	Vs.	Pr. Commissioner of Income Tax, Varanasi
<b>PAN/GIR No.AAJHS7747H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Apramay Ghabhawala
Revenue by	Shri Robin Chaudhary
<b>Date of Hearing</b>	<b>26/09/2023</b>

<b>Date of Pronouncement</b>	<b>07/12/2023</b>
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### आदेश / O R D E R

#### **PER AMIT SHUKLA (J.M):**

In these bunch of appeals of different appellants for assessment years 2014-15 & 2015-16, the appellants have challenged separate impugned orders passed by ld. PCIT, Varanasi in his revisionary jurisdiction u/s. 263, cancelling the assessment orders passed u/s 143(3), holding to be erroneous and prejudicial to the interest of the Revenue and directed the AO to pass fresh assessment order, almost on similar reasoning on same issues in all the cases.

2. Though there are six different assessees, but observations and the findings of the ld. PCIT Varanasi in cancelling the assessment orders are by and large based on the same reasoning on one issue, that Assessing officers have erred in accepting the

Long Term Capital Gain on sale of various scripts as genuine, despite information received from Investigation Wing, therefore, for the sake of convenience, we are passing consolidated order, though will discuss facts and issues of each case.

**Anju Jhunjhunwala**

**ITA No.81/VNS/2019 & ITA No.198/VNS/2019**

3. The aforesaid appeals have been filed against separate impugned order dated 22/03/2019 and 07/08/2019 for the A.Ys. 2014-15 and 2015-16 respectively. We will take up the appeal for A.Y.2014-15 and our finding given therein will apply in the appeal for the A.Y.2015-16 also as facts are similar. Assessee is an individual who had shown long term capital gain of Rs.2,74,43,119/- on sale of shares to M/s. Rander Corporation Ltd. The assessee has filed return of income on 30/07/2014 declaring total income of Rs.7,30,510/-. The case was selected for compulsory scrutiny on the precise issue of examining long term capital gain on the sale of shares of M/s. Rander Corporation Ltd. The assessment was completed vide order dated 30/12/2016 u/s. 143(3) accepting the return of income and also the long term capital gain.

4. The Id. CIT on examination of records was of the view that order passed by the AO was erroneous in so far as prejudicial to the interest of the Revenue. Accordingly, he issued detailed show-cause notice to the assessee which has been incorporated in the impugned order. In his show-cause notice he has stated that the case was selected for scrutiny for the reason that

Investigation Wing of the department at Kolkata and Delhi had conducted investigations whereby it was unearthed that there was racket involved in giving accommodation entry of exempt long term capital gain and how penny stocks were manipulated. In the said report there was an information regarding sale of shares of M/s. Rander Corporation Ltd. also and AO was given the statement of Shri Amar Chandra Rander, a promoter of M/s. Rander Corporation Ltd. wherein he has admitted that share prices of the company, M/s. Rander Corporation Ltd. was manipulated by Shri Natwar Lal Daga for providing accommodation entries in the form of capital gains to various beneficiaries. Further, there was also statement of one person from Kolkata named, Shri Sajendra Mookim who also accepted that he was involved in racket of providing bogus long term capital gains in survey conducted on him on 30/03/2015, wherein he has named various Jama Kharchi or shell companies used for providing accommodation entries. According to Ld. PCIT, AO has overlooked the information and evidences supplied by the Investigation Wing. He has also noted the increase of share prices from Rs.1.3 per share to Rs.49-59/- per share within a period of two years. Accordingly, he issued a show-cause notice to the ld. AO holding that AO did not make enquiries and verification while accepting long term capital gain declared by the assessee. In response, assessee has given her detailed submissions which have been incorporated in the assessment order.

5. However, ld. PCIT has rejected the submissions and set aside the assessment order holding it to be erroneous and prejudicial to the interest of the Revenue and to pass fresh assessment order. In his entire order, ld. PCIT has made various observations which can be summarized in the following manner:-

(i) In so far as assessee's contention that AO has conducted detailed enquiry on the basis of information received from the Investigation Wing including brokers from the company M/s. Rander Corporation Ltd. and other enquiries which is apparent from the replies and notice sent by AO during the course of assessment proceedings, Ld. PCIT held that, once AO was provided with the report of the investigation wing, Directorate Kolkata that certain persons were manipulating the prices of the shares of many companies to provide bogus long term capital gain and these details were also provided to the AO, he should not have accepted the transaction. **He though acknowledged that AO had conducted some inquiry and called for details regarding long term capital gain exemption claimed by the assessee and also wrote letters to the share brokers to whom assessee claimed to have sold her share, the parties to whom assessee claimed to have sold the shares and also inquired from the company, M/s. Rander Corporation Ltd. Based on the details provided by the assessee and the confirmations given by these parties, AO has accepted the transaction to be genuine.** However, he held that AO has completely ignored the investigation report and the evidences placed before him and

the statement of Director Shri Amar Chandra Rander, one of the brokers in Kolkata Shri Sajendra Mookim and some of the companies who had purchased shares of M/s. Rander Corporation Ltd. He has also referred to another entry operator of Kolkata Shri Anil Kumar Khemka who has accepted that M/s. Apex Commotrade Pvt. Ltd; Runicha Merchants Pvt. Ltd and Signet Vinimay Pvt. Ltd. were shell companies who were providing long term capital gains accommodation entries. Despite such evidences, AO has accepted the explanation and documents given by the assessee. He further held that AO should have enquired about the investigations which has been conducted by the Investigation Wing and looked for the incriminating evidences about these transactions. AO should have identified the evidences related to the transactions which have been investigated by him and should have confronted these evidences in the form of statements of entry operators, brokers & Company Director.

(ii) He observed that the share prices of the company M/s. Rander Corporation Ltd. has increased from Rs.1.3/-per share to the range of Rs.49-59/- per share within a period of two years and therefore, AO should not have accepted that such abnormal and unrealistic transaction as genuine of their face value without enquiring about the incriminating material collected by the Investigation Wing and thereafter, he has referred to the decision of the Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT reported in 214 ITR 801; Chuhar Mal vs. CIT reported in (1988) 172 ITR 250; Dhakeshwari

Cotton Mills vs. CIT reported in (1954) 26 ITR 775 and the decision of the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd reported in (2019) 412 ITR 161/262.

5.1 In so far as the contention of the assessee that the conditions prescribed in Explanation 2 is not satisfied, ld. PCIT held that the order of the AO is erroneous on multiple grounds, because as per him, the enquiries and verification which AO should have made has not been done and therefore assessment order is deemed to be erroneous in terms of Explanation 2. He further noted that Investigation Wing has given the name of the entities, who have purchased the scrip of M/s. Rander Corporation Ltd., namely, M/s. JVL Agro Industries Ltd; Smt. Anju Jhunjunwala and Shri Adarsh Jhunjunwala, thus this was tainted transactions.

5.2 He further observed that, in the case of M/s. JVL Industries Agro Ltd, a family concern, the ACIT (Central Circle) has treated the long term capital gain on the same scrip as bogus and has made the addition of Rs.4,61,95,860/-. Though this addition has been deleted by the ld. CIT (A), however, against the said decision ld. PCIT Central has authorised an appeal before the Tribunal which is still pending. Thus, AO was aware of the fact that department has filed an appeal in the case of M/s. JVL Agro Industries Ltd. n 23/05/2016.

5.3 Lastly, Ld. PCIT has held that decisions cited by the assessee are not applicable in the facts of the case of the

assessee and has distinguished certain judgments relied upon by the assessee. He has also incorporated certain excerpts of statement of Shri Anil Kumar Khemka wherein there are list of certain companies out of which assessee has sold the shares who were found to be shell companies. Thus, he held that since AO has ignored many incriminating evidences against assessee and did not make enquiries or verification which he should have made, therefore, the order of the AO is erroneous on various grounds as discussed by him.

6. Before us, Id. Counsel for the assessee first of all drew our attention to various documents filed before the AO in support of purchase of shares, D-mat Account in which shares were transferred and finally online sale of shares on Bombay Stock Exchange through broker M/s. Karvy Stock Broking Ltd. He further pointed out that in this case, AO had made inquiry from the company, M/s. Rander Corporation Ltd. and also from the broker, M/s. Karvy Stock Broking Ltd. which is evident from the order sheet entry dated 18/10/2016. Both the parties have given the details and confirmations directly to the AO. Apart from that, AO has made inquiry from the purchasers of the shares on the basis of Investigation wing report who in response had filed their confirmations alongwith transaction details of stock exchange, bank account and copies of ledger account and reply to the AO. The AO has sent the notices to all the five buyers who have directly given their detailed replies alongwith transaction statements and the bank details. Regarding prices of the shares, it was submitted that assessee was allotted preference shares of

M/s. Rander Corporation which had a locking period for one year. The shares were purchased on allotment. Thus not only all the replies and explanations were specifically filed before the AO in response to the queries raised by him from time to time, but once the assessee has filed all the details, the AO has made his necessary inquiries from various persons concerned with the transaction about the purchase and sale of the shares done through stock exchange by broker. Thus, it cannot be held that AO has not made any enquiry. Therefore, ld. PCIT could not have cancelled the assessment order holding it to be erroneous and prejudicial to the interest of the Revenue for lack of enquiry. In support Ld. Counsel has relied upon catena of judgments, especially on this particular script and similar facts where the courts and tribunal have deleted the addition, however the same are not discussed by us as we are confining our finding based on facts and material on record and the finding of the Ld. PCIT in his order.

7. On the other hand, ld. DR submitted that first of all AO has not discussed the issue in the assessment order at all. Secondly, ld. PCIT has discussed in detail about the various information gathered by the Investigation Wing and many statements including the statement of the Director of M/s.Rander Corporation Ltd. who had accepted that the prices of the shares were manipulated by one Shri Natwar Lal Daga and also the statement of various brokers who have given accommodation entry on the scrip of M/s. Rander Corporation Ltd. Once these

voluminous information / evidences were there on record, then AO should have made enquiry in line of these informations and record before him. He referred in detail to various observations and the finding of the ld. PCIT as recorded in the impugned order. Ld. DR too has relied upon certain decisions

### **DECISION**

8. We have heard the rival submissions, perused the relevant finding given in the impugned orders, as well as various documents referred to before us from the paper book. As stated above, ld. PCIT has discussed at length about racket of various brokers providing bogus long term capital gains and the investigation report by the Investigation wing highlighting the complete *modus operandi* about how these accommodation entries were provided including the name of the scrips including M/s. Rander Corporation used for the manipulations. He has *firstly*, referred to the statement of Shri Amar Chandra Rander, who was the promoter and director of M/s. Rander Corporation. His statement was recorded on oath u/s.131 on 13/06/2014, wherein he admitted that share prices of the company were manipulated by one person, Shri Natwar Lal Daga for providing accommodation entries. *Secondly*, he has referred to one statement of Shri Shri Sajendra Mookim who has also accepted that he was involved in long term capital gain entries and he has given list of companies who were involved. *Thirdly*, he has commented upon abnormal raise of prices of M/s. Rander Corporation Ltd.

9. In all these cases, nowhere the ld. PCIT has pointed out as to what specific inquiry should have been done by the AO and from whom which he has not done, instead of stating that AO should have made enquiry in line of the Investigation wing. Does the inquiry by the AO was to call Shri Amar Chandra Rander or Shri Sajendra Mookim or Shri Anil Kumar Khemka for cross examination or blindly rely on the general statement given by them during survey on them. Once these persons have not given any specific information or statement about the assessee which assessee might have denied, then perhaps AO could have called these persons for cross examination or burden of proof would have fell upon the assessee or could have sent notices to them to verify the transactions. Ld. PCIT has also not referred to any material where assessee might have dealt with these persons directly or indirectly or the transaction of the assessee was through broker who was involved in the racket. When assessee has not done purchase or sale of shares from these persons, then where is the question of making inquiry from them. For the purpose of assessment proceedings, what is relevant is, whether there is any information or material against the assessee or something has been found against the assessee which will define the scope of inquiry by the AO and degree of discharge of onus and burden of proof by the assessee. Assessment cannot be framed on some general perception and extraneous factors not germane to the assessee. Some live-link nexus has to be there between the information and material on record and the assessment of the assessee and not any and every information

not pertaining or relating to the assessee be the basis of assessment.

10. In so far as his observation about the companies, namely M/s. Apex Commotrade Pvt. Ltd; Runicha Merchants Pvt. Ltd and Signet Vinimay Pvt Ltd, who had purchased the shares from the assessee, here in this case AO did made enquiry from these parties directly, who have sent their entire details alongwith bank transactions, transaction statement and purchase details of the shares through Bombay Stock Exchange. If AO has conducted this enquiry then what was the defect in such enquiry and what further enquiry AO should have done from these parties has not been elaborated by the ld. PCIT. His entire tenor of his order is that, AO based on information and statement should have simply made the addition. Then, perhaps, AO deemed to have carried out all the necessary enquiries himself. In his order he wanted the AO to corroborate the finding of the Investigation Wing by carrying out further enquiry from the same persons who have not dealt with the assessee. What enquiry should have been done by the AO, which he has not done, has to be elaborated and specified by him, except repeating many times that AO should have made the enquiries. The AO during the course of assessment proceedings as was required had asked for the explanation of the assessee and evidences of the transaction and based on these explanation and evidences, he has carried out necessary verification and inquiry to satisfy himself the purchase and sale transaction of shares. The general information and report from the Investigation wing can be at best the starting

point for the AO to examine the transactions, but it does not mean he should rely and accept blindly such information and do not apply his mind independently. Had there been specific information or material against assessee, then ostensibly Id. PCIT was correct that AO should have carried out enquiry based on those specific information against assessee before accepting the transaction.

11. Another very important fact is that, nowhere it has been brought on record that SEBI has ever banned the trading of the shares or has found anything against M/s. Rander Corporation Ltd. or any action has been taken for any kind of alleged manipulation of prices in stock exchange. If the SEBI would have found any malpractice or any manipulation of the prices of the shares, then the Id. PCIT perhaps could have assume that there was manipulation of prices. What has been the fate in the cases of the person who have given their statement has not been brought on record. If the shares were traded in the stock exchange throughout and is still being traded and there is no malpractice found by SEBI, then it does not mean all the persons who have purchased and sold the said scrip across the country, all were beneficiary of accommodation entry and all the transactions *ipso facto* should be held to be non-genuine.

12. In so far as reference of statements which Id. PCIT has made many times, there is no whisper against the assessee and in case of Shri Anil Kumar Khemka wherein he has referred to certain companies, the AO has himself made enquiry from these

companies through whom assessee has undertaken sale transaction of the shares. Now what is defect in such enquiry or what was lacking has not been elaborated or dealt by the Id. PCIT. Simply stating that AO has not made enquiry without specifying as to what further enquiries or with whom the enquiry should be made, he cannot cancel the assessment. According to him, AO was obliged to make enquiry from the brokers from Kolkata who has not even dealt with the assessee. Once the company whose scrips are the subject matter of the purchase and sale has been enquired by the AO and also the persons who have bought the scrips then what else was required to be enquired by the AO has to be specified. If the Id. PCIT is cancelling the assessment order passed by the AO, then he has to give his finding based on the material on record that AO has not conducted any enquiry or has accepted the transaction without verification and if there is a lack of enquiry then, what was the specific enquiry AO should have done or would have asked the AO to conduct enquiry.

13. It is a trite law that Id. PCIT while exercising revisionary jurisdiction under Section 263, *firstly*, has to specifically pinpoint what is erroneous and prejudicial to the interest of the Revenue in the order and *secondly*, what was the enquiry which AO has not done. He has to specify where AO has lacked in his enquiry and it should not be a mere bald statement that AO has not done any enquiry. He himself has the power to conduct enquiry or would have asked the AO to conduct enquiry and for that, some specific material should be there on record which

material affects the assessment and which AO should have inquired or would have verified. Ld. PCIT cannot sit upon the judgment of AO that his inquiry was not correct unless he points out that such enquiry was merely on paper and there was no actual action taken by the AO. It is incumbent upon ld. PCIT to give his finding and specify nature of enquiry which AO should have done or the enquiry done by the AO was purely futile exercise. We are unable to understand in the present case that, whether AO should have conducted same enquiry which was done by the Investigation Wing or cross examine all those persons whose statements were recorded *de-hors* any direct connection with the assessee. The Investigation Wing had unearthed certain *modus operandi* whereby, the brokers had provided accommodation entry in some of the scrips including that of M/s. Rander Corporation Ltd. Based on the information various cases had been reopened or the cases have been selected for scrutiny whereby the AO were required to examine the explanation / evidences filed by the assessee and to conduct further enquiries which here in this case AO has done and verified. The information and material can be a triggering point but that cannot itself be a conclusive ground for making the addition. Otherwise, there is no role of the AO except for mechanically passing the assessment. Based on these reports and calling for explanation / evidences from the assessee will become a mere formality. If there is any specific information relating to the assessee, then the entire burden shifts on the assessee and if AO has not carried out any specific enquiry

based on those materials and information and simply accepts the explanation then in that case one can say that AO's order is deemed to be erroneous and prejudicial to the interest of the Revenue in terms of Explanation 2. Here in this case, as stated above, AO has duly applied his mind and verified all the details and carried out his enquiry before accepting the transaction of purchase and sale of share from stock exchange and nothing has been brought on record that sale of the scrip has been adversely viewed by the SEBI or trading has been banned or this company was involved in any kind of malpractice for rigging the price of the shares by the SEBI. There might have been cases where accommodation entry would have been provided to various persons, but unless any specific information or material relating or pertaining to the assessee have been found or the enquiry has resulted anything against the assessee, then merely because few brokers have given accommodation entry in this scrip cannot be universally applied to all the buyers and sellers across the country who have transacted through stock exchange. Thus, the order of the Id. PCIT is unsustainable and same is set aside and the order of the AO is restored.

14. In the result, appeal of the assessee is allowed.

15. In so far as appeal relating to A.Y.2015-16, exactly similar facts are permeating except that long term capital gain claimed by the assessee in this year was Rs.4,32,07,326/-. Our aforesaid finding given will apply *mutatis mutandis* in this year also.

16. In the result, appeals of assessee are allowed.

**ITA No.199/VNS/2019 (AY 2015-16) & ITA No.80 / VNS /2019 (AY. 2014-15) (Adarsh Jhunjunwala)**

17. The aforesaid appeals have been filed by the assessee against order dated 22/03/2019 for A.Y.2014-15 and 07/08/2019 for A.Y.2015-16. As admitted by both the parties, the facts and issues involved in the aforesaid case for both the years are exactly pari-materia to the case of Anju Jhunjunwala, wherein similar finding has been given by the Id. PCIT for the same scrip M/s. Rander Corporation Ltd. Here also the manner of assessment and the documents placed before the AO are the same, therefore, our finding given in the case of Anju Jhunjunwala will apply *mutatis mutandis* in these appeals also, because Id. CIT has discussed this issue for both the cases belonging to same family members. Accordingly, the order of the Id. PCIT for A.Y.2014-15 and 2015-16 is hereby set aside and the assessment order passed by the AO is upheld.

**ITA No.111/VNS/2020(AY :2015-16)-Gopi Krishna Vinod Kumar (HUF) & ITA No.112/VNS/2020 (AY :2015-16)- Vinod Kumar Saraf (HUF)**

18. We will first take up the appeal of Gopi Krishna Vinod Kumar (HUF). This appeal is filed by the assessee against order dated 17/03/2020 passed by Id. PCIT, Gorakhpur in his revisionary jurisdiction under Section.263 for the A.Y.2015-16.

19. At the outset, this appeal is time barred by 28 days. In the petition of condonation of delay, it has been stated that the order under Section.263 was passed on 17/03/2020 and due date for

filing the same was 14/05/2020. The appeal memo was prepared and sent to the concerned office of ITAT Varanasi by speed post on 18/05/2020 i.e. within the due date due bit due to wide spread of Covid 19, there was lockdown and accordingly, the same was delayed by 28 days i.e. on 11/06/2020. Accordingly, there is reasonable cause and delay is beyond the control of the assessee, therefore, delay in filing of the appeal is condoned.

20. The brief facts of the case are that the return of income was filed on 28/08/2015, declaring total income of Rs.16,23,280/-. In the return of income assessee has claimed exemption of long term capital gain earned from sale of shares at Rs.49,83,123/-. The assessee had earned long term capital gain from sale of shares of 'Kailash Auto Finance Ltd.' The assessee's case was selected for scrutiny to examine the sale transaction in shares and exempt long term capital gain shown in the return of income. From the perusal of the assessment order, it is seen that AO after following entire evidences and explanations had observed and held as under:-

*In this return of income, the assessee has claimed exemption on LTCG earned from securities at Rs. 49,83,123/- u/s 10(38) of the I.T. Act 1961. Apart from dividend income claimed u/s 10 (34) and deduction u/s 80C.*

*Vide various questioners issued from time to time, the assessee was asked to substantiate his claim for exemption and deduction and also the confirmations regarding interest income earned by him.*

*In the compliance to above Shri Pawan Sultania duly authorized representative for the assessee appeared and filed replies on the dates fixed.*

*Regarding income earned from interest from various sources and LTCG earned from Franklin Templeton Mutual Fund, UTI Mutual Fund and Aditya Birla Private Equity Fund, relevant paper have been filed which have been examined and placed on record.*

*Regarding LTCG of Rs. 48,38,904/- earned from the sale of shares of Kailash Auto Finance Ltd., the assessee has submitted that during A.Y. 2013-14, shares of Punchshool Marketing Ltd., were purchased which are appearing in the Balance Sheet on 31.03.2013.*

*Later on during A.Y. 2015-15, M/s Puhchshool Marketing Ltd. merged with company Kailash Auto Finance Ltd. by the order of Hon'ble High Court of Allahabad and as a result equal numbers of shares of Kailash Auto Finance Ltd. were allotted which are appearing in the Balance Sheet as on 31.03.2014.*

*These shares were sold during A.Y. 2015-16 resulting in a profit of Rs. 48,38,904/- which has been claimed exemption u/s 10(38). Which has been claimed exemption u/s 10(38).*

*In support of above, the assessee has filed Copy of purchase bill, copy of order passed by Hon'ble High Court of Allahabad approving the merge, Balance Sheets as on 31.03.2013, 31.03.2014 and 31.03.2015 alongwith relevant copy of D-mat account with Stock Holding Corporation of India Ltd., copy of sale bills/contract notes and bank statements.*

*The above documents filed by assessee have been pursued. It is found that [payment for purchase has been made through. The receipt and delivery of shares is through D-mat account and sale consideration after being subjected to STT has been received in the bank account].*

*The assessee was specifically asked to explain the huge increase in shares prices in such a short period. In reply the assessee has submitted quotation from stock exchange on the dates of sale.*

*The assessee has further quoted few case laws in support of his contention, which is placed on record. I have carefully considered the submissions made by assessee.*

*As per proviso of section 10(38) of the I.T. Act, 1961 wherein it is define as "any income arising from the transfer of a long term capital asset, being on equity share in a company or a unit of an*

*equity oriental oriented fund [or a unit of a business trust] where-*

*(a) The transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No.2) Act, 2004 comes into force, and*

*(b) Such transaction is chargeable to securities transaction tax under that chapter."*

*"Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115]B"*

*From, a bare reading of the said section and Literal construction of the same about which there is not ambiguity, it is evident that the only requirement to be complied with by an assessee for claiming exemption under section 10(38) is that the consideration should be realized on transfer of long term capital asset in the form of shares and STT must have been paid on the same. In the instant case the said condition has been fully satisfied.*

*Further the case laws as quoted by the assessee also fully support the case of the assessee for allowing the exemption claimed u/s 10(38).*

21. Thereafter, ld. PCIT on examination of records observed that AO has accepted the long term capital gain and has not made any addition on this issue. In show-cause notice, he stated that AO from the departmental computer system was provided a complete investigation report about penny stock manipulation and has again referred to enquiries made by the Investigation Wing of the department at Kolkata, Mumbai and Delhi whereby he has unearthed the racket involved in long term share prices of penny stock companies and provided accommodation entries of exempt LTCG to some beneficiaries. In the said investigation report, the scrip of Kailash Auto Finance Ltd was also found to

be suspicious company which was use for providing accommodation entry. He has referred to the statement of one Shri Sunil Dokania recorded u/s.131 on 12/06/2015, wherein he has stated that he has manipulated the share prices of Kailash Auto Finance Ltd to provide accommodation entries of LTCG. Here in this case assessee had purchased Rs.2 lakh shares of Panchshul Marketing Ltd. from Sanskriti Vincom Pvt. Ltd and the payment was made through cheque and this company was later merged with M/s. Kailash Auto Finance Ltd in lieu of which assessee got same amount of shares of Rs.2 lakhs of Kailash Auto Finance Ltd. He thus, observed that AO should have made further enquiry about the purchase of shares of Panchshul Marketing Ltd, instead AO accepted the entire transaction without any enquiry. In response to the show-case notice, assessee has filed detailed reply which has been incorporated in the impugned order of PCIT from pages 6-21 of his order. He noted that assessee had submitted the copies of purchase bills, copy of the order passed by Hon'ble Allahabad High Court approving the merger, balance sheet of company as on 31/03/2013 to 31/03/2015 alongwith relevant copy of D-mat account, copy of sale bills, contract notes and the bank statements and AO has accepted the claim of the assessee as genuine. He held that once there was information from the Investigation wing, then, AO should not have overlooked information / evidences supplied by the Investigation wing and he has not taken into cognizance the statement of entry provider Shri Sunil Dokania. He further held that it was the duty of the

AO to confront his statement to the assessee and AO should not have accepted the sale proceeds of the shares sold by the assessee as genuine, he should have enquired in detail about the parties who had purchased these shares from the assessee and about the identity and capacity of these parties to make payment for such share purchases.

21.1 Here, assessee had acquired the shares for Rs.2 lakhs in 2012 and had sold them for Rs.50,38,904/- in F.Y.2014-15 and thus, earned capital gain of Rs.48,38,904/-. Thus, according to Ld. PCIT such abnormal increase in the price is unusual which AO should not have accepted it. One very important fact which was brought on record that assessee has claimed that SEBI has not held Kailash Auto Finance Ltd as a penny stock company and its shares are still being traded. However he held that action of SEBI do not have any bearing on the proceedings of the Income Tax department. His entire focus was that once evidences have been collected by the department that itself should be sufficient for making the addition. Some of his observations are reproduced hereunder:-

*“4.1 First of all the assessee has claimed that finally SEBI has not held Kailash Auto Finance Ltd. as a penny stock company and its shares are still being traded. In this regard, I am of the opinion that the actions of SEBI do not have any bearing on the proceedings of the Income Tax Department. The evidences collected by the Department through detailed investigations show that some entry operators ran an organised racket to manipulate the prices of the shares of this company. The investigation Wing of the Department had itself carried out investigations in such manipulations. The AO did not take cognisance of these investigations. In the investigation report made available to the AO, he was informed that the prices of the*

*shares of company M/s Kailash Auto Finance were manipulated by the entry operator to provide accommodation entries. He was also informed that the parties to whom the beneficiaries have shown to have sold their shares are actually jamakharchi/shell companies through whom the unaccounted money of the beneficiaries has been brought in their books in the guise of the sale proceeds of shares. Still he even did not collect the details of such entities and stopped the enquiry with the sale bill given by the broker. Thus the AO did not carry out the Inquiries which he should have carried out. The shares of M/s Kailash Auto Finance are still being traded or not is not relevant here. The AO should have inquired about the Information available with him that during F.Yr 2014-15 the share prices of this company had been manipulated*

*4.2 Secondly, the assessee has submitted that during the assessment proceedings as required by the assessing officer entire details of share transaction were provided which included copy of contract note, copy of demat account, bank account through which purchase price was paid and sale proceed were received,*

*It is further submitted that the Assessing Officer had duly examined the account of the assessee, therefore, it is wrong to presume that the share transaction In question were not examined by the Assessing Officer. This argument of the assessee is not acceptable in view of the facts of this case. It is seen that during the assessment proceedings the assessee submitted the copies of the contract notes, purchase bill, sale bill, demat account and bank accourits and on the basis of these the AO accepted the exempt LTCG as genuine But it may be noted that this case was selected for scrutiny because the Investigation Wing of the Department had othe conducted investigations in case of a racket which was involved in manipulating the share prices of some penny stock companies and providing accommodation entries of exempt LTCG to some beneficiaries who wanted to launder their unaccounted cash, In respect of these penny stock manipulations detailed investigation report was made available to the A.O. through departmental computer system. In this Investigation report complete modus operandi about how these accommodation*

*entries were provided, names of the scrips used for these manipulations, persons Involved in this racket, assessee who have taken benefit of these manipulations etc. were given along with supporting evidences.*

*The AO was duty bound to examine and appreciate the incriminating evidences about the racket of accommodation entries detected by the Investigation Wing and carry out enquires in this regard. He should have enquired about the investigations which had been conducted by different Wings of the Department and looked for incriminating evidences about these transactions which had been gathered about the companies and entities with whom the assessee had done transactions related to the LTCG exemption claimed by him. Here, it is important to understand that in organized rackets which are operated on a large scale by a syndicate and the beneficiaries are spread all over the country, the syndicate members will not name each and every beneficiary in his statement. The A has to identify the evidences which are related to the transactions which are being investigated by him. The AO should have confronted these evidences in the form of the statements of entry operators, brokers, company directors etc. to the assessee and questioned her about these contrary evidences, From the assessment records I find that the AO has simply sat on the incriminating evidences and did not make any effort in enquiring or verifying the Incriminating material about the assessee's transactions related to LTCG exemption claimed by him.*

*Further from the assessment records it is seen that in the calculation for the LTCG purported to be earned by the assessee, he has claimed that he purchased 2,00,000 shares of Panchshul Marketing Ltd. (which merged in M/s Kailash Auto Finance Ltd.) from Sanskriti Vincom Pvt. Ltd for Rs 2,00,000/- in August 2012 and sold them for Rs. 50,38,904/- during FY 2014-15 and thus earned capital gain of Rs. 48,38,904. This means that the price of the shares of the company M/s Kailash Auto Finance Ltd. increased by 2419%. This increase of about 2400% is unusual and does not happen even in case of the most reputed and promising companies The A.O. should not have accepted such abnormal and unrealistic transaction, as genuine*

*on their face value without inquiring about the incriminating material collected by the investigation wing of the department. The A O should not have accepted such abnormal and unrealistic transaction as genuine on their face value without enquiring about the incriminating material collected by the Investigation wing of the department. It may be noted that many courts have suggested that tax authorities have legitimate power to go behind any transactions and lift any corporate veil'. Some of such court decisions are briefly mentioned below.*

22. Thereafter, Ld. PCIT has referred to certain decisions which are noted in his order, thereafter he kept on repeating that once there was a statement of entry made by Shri Sunil Dokania, the relevant excerpts have been incorporated by him, he held that AO should have taken into cognizance such statement wherein he has clearly admitted that he has provided long term capital gain in the scrips of Kailash Auto Finance Ltd and AO should have made the addition.

23. The ld. Counsel for the assessee drew our attention to various notices and queries raised by the AO and various additional information sought by him from time to time on this issue. In support, he has also filed copy of the order sheet entries of the assessment proceedings to highlight the nature of enquiries and queries raised by him from time to time. Apart from that, he drew our attention to explanations and various documents which were furnished before the AO and PCIT in support of the claim which have been also filed before us in the form of paper book. Based on these documents, he submitted that AO has enquired and verified all the facets of transaction.

The relevant documents filed in Volume III before us is as under:-

<i>Sl. No.</i>	<i>Particulars</i>	<i>Page No.</i>
1.	<i>Copy of Order sheet entries, during the course of assessment proceedings under section 143(3)</i>	157-160
2.	<i>Notice under section 143(2) dated 02.08.2016</i>	161
3.	<i>Reply to notice under section 143(2) dated 02.08.2016 submitted on 23.09.2016 , along with Copies of : (i) Income Tax Return for the Assessment Year 2015-16 (ii) Acknowledgment for filing of Income Tax Return for the Assessment Year 2015-16 (iii) Statement showing Computation of Income for the Assessment year 2015-16</i>	162 163-174 175 176-178
4.	<i>Notice under section 142(1) dated 28.06.2017</i>	179
5.	<i>- Reply to above referred notice dated 28.06.2017, submitted on 29.06.2017 , along with Copies of : (i) Income &amp; Expenditure Account of appellant HUF as on 31.03.2015 (ii) Capital Account of HUF as on 31.03.2015 (iii) Balance Sheet as on 31.03.2015</i>	180-181 182 183 184
6.	<i>Additional information sought for on 03.07.2017, by the Ld. Assessing Officer, whereby specific query/information was made/ sought on issues of: (i) Case Laws regarding exemption claimed under section 10(38). (ii) Copy of All Bank Statements</i>	185
7.	<i>Reply to above referred query dated 03.07.2017 submitted on 05.07.2017, wherein Specific reply with respect to claim for exemption income under section 10(38), along with copies of and documents in support of such income, had been placed before Ld. Assessing officer [the list of same is starting from sub-point no - (iv) to(v): (i) Ledger copy of Bank statements from our books of accounts; (ii) Consolidated Chart of computation of Long Term Capital Gain. (iii) Documents in support of Exempt income under section 10(38):</i>	186-190  191 195

a. Copy of <b>Purchase Bill</b> from Sanskrit! Vincom Pvt. Ltd., for purchase of shares in Panchshul Marketing Ltd.	196
b. Copy of <b>Balance sheets</b> as on <b>31.03.2013 &amp; 31.03.2014</b> , alongwith Summary of Investments held (wherein the shares bought, had duly been reflected).	197-200
c. Copy of Bank statement showing payment of Rs.2,00,000 vide <b>Cheque No.029354</b> , dated <b>11.08.2012</b> , for purchase of shares in Panchshul Marketing Ltd.	201
d. Copy of <b>De-mat Account</b> , held with <b>Stock holding Corporation of India</b> , a Government of India undertaking, showing credit of Shares therein, consequent to amalgamation of <b>Panchshul Marketing Ltd. with Careful Advisory Ltd.</b>	202-204
e. Copy of Corporate Announcement (as extracted from official website of Bombay Stock Exchange) on the update of <b>Merger of Panchshul Marketing Ltd, with Kailash Auto Finance Ltd.</b>	205
f. Copy of Order of Hon'ble Allahabad High Court, with respect to amalgamation of (i) Panchshul Marketing Ltd. and (ii) Careful Advisory Ltd, into M/s Kailash Auto Finance Ltd.	206-235
g. Copy of Summary of Shares Sold.	
h. Copy of concise statement, depicting details of shares sold along with charges paid in the form of : STT, Brokerage, Service Tax on Brokerage, SEBI Charges, Service Tax on SEBI Charges & STC Day with reference to volume of sales of shares (in monetary terms).	236
i. Copy of Summary narrating Receipt of Sales Consideration.	237
j. Copy of Sale Bills and Contract Notes for sale of 2,00,000 shares in Kailash Auto Finance Ltd. through registered broker Anuriti Multy Broking Pvt. Ltd., listed at stock exchange.	238
k. Copy of relevant extract of Bank statement showing receipt of sale consideration.	239-246
l. Copy of De-mat account showing delivery of 2,00,000 (exit entries) shares in M/s Kailash Auto Finance Ltd.	
m. Copy of ledger A/c of Gopi Krishna Vinod Kumar (HUF) maintained by Anuriti Multy Broking Pvt. Ltd. in their books.	247-249
n. Copy of Consolidated Statement of Sales and payment of consideration to appellant, as provided by Anuriti Multy Broking Pvt. Ltd.	250-251
o. Copy of Chart Showing Rate at which shares of Kailash Auto Finance Ltd. were sold at different dates and High/Low prices of the share in question at the same dates.	252
p. Relevant quotation from Stock Exchange (BSE) showing prices on different dates of sale.	253
q. Copy of Statement from Franklin Templeton Investments.	254

	r. Extract of Bank statement showing dividend received from Franklin Templeton. s. Copy of Statement from UTI Mutual Fund. t. Copy of Payment reference of Dividend from UTI Mutual Fund. u. Extract of Bank statement showing dividend received from UTI Mutual Fund. v. Copy of Statement from Aditya Birla P Equity – Fund-I	255-257 258 259 260 261-262 263-264
8.	<b>Additional information sought for by the Id. Assessing Officer, wherein specific query/information had been raised/sought on the issue of Shares in M/s Kailash Auto Finance Ltd., rendering as under :</b> (i) You have purchased the shares offline/online. (ii) Why there is unusual price rise in the shares of M/s Kailash Auto Finance Limited, as traded from Rs. 1/-to Rs. 19.95/- 30.50/- within a short period of time? (iii) Whether you have utilized the such types of brokers who were engaged in manipulating & rigging the prices of shares in order to provide benefit to shareholders ? (iv) As the same phenomenon reflecting in your case, please show cause as to why the exemption claimed under section 10(3 8) may not be treated as arranged/fabricated." Case adjourned for 12.07.2017.	265
9.	<b>Detailed Reply/Submission, to query dated 05.07.2017, on 12.07.2017, with respect to exemption under section 10(38) duly supported by relevant case laws</b>	266-319
10.	Copy of Assessment order dated 21.07.2017 under section 143(3).	320-322
11.	Copy of Show cause notice issued under section 263,dated 05.02.2020.	323-326
12.	Reply to above show cause notice on 02.03.2020	327-338

24. Ld. Counsel further submitted that, nowhere ld. PCIT has commented as to what further enquiries or information should have been sought by the AO, instead stating that AO should have considered the Investigation report and should have made

enquiries or verification from the same persons who have been examined by the Investigation Wing, which was not pertaining to the assessee. Thus, in line with the documents filed before the AO and Id. PCIT, on which no infirmity has been found by the Id. PCIT, assessment order cannot be cancelled and set aside and to pass a fresh order. Before us, Id. CIT DR relied upon the order of the Id. PCIT and referred to various observations made and also his submissions made in the appeal of Anju Jhunjhunwala.

### **DECISION**

25. After considering the relevant finding given in the impugned order as well as material referred to before us, here in this case also, it is seen that the entire thrust of the Id. PCIT is that *firstly*, AO was in possession of the investigation report which was made available to him but he did not make any effort in enquiring or verifying the incriminating material about the assessee's transaction relating to LTCG. *Secondly*, AO has not considered the statement of Shri Sunil Dokania and abnormal increase of the prices in a period of less than three years. For the sake of ready reference, the relevant statement of Shri Sunil Dokania as incorporated in the order of PCIT is reproduced hereunder:-

*"Q.12 As you stated above, you are engaged in providing accommodation entry in form of share capital, Share premium, unsecured loan and LTCG/STCG/STCL. Please furnish the details of scripts being controlled and managed by you for providing bogus LTCG/STCG/STCL*

*Ans. Sir, Accommodation entry in form of bogus LTCG/STCG/STCL provided through the scripts of Kailash Auto to various clients was Sir, S these scripts are controlled and*

*managed by me. No actual business activities is carried out by these companies.*

*Q.13 Please state who are Directors of Kailash Auto Finance Limited.*

*Ans. Sir, Mr. Dipan Patel Jesingbhai, Vanita Parmar, Babalu Prasad Keshari, Deepak Kunjbihari Dave, Probir Kumar and Vidisha Gehani are Directors in Kailash Auto Finance Limited. However, they are only dummy directors and company is controlled and managed by me.*

*Q.15 Please explain the modus operandi of getting bogus long capital gain through Scrips controlled and managed by you. term*

*Ans. Generally, beneficiaries approached to the broker entry operators search of generation of capital in an easier manner without paying Brokers identify the various bogus scrips to provide in any tax on it. LTCG as the same is exempt from the tax. Kailash Auto is such scrips which is engaged in providing accommodation entry in form of LTCG/STCL to various beneficiaries. Beneficiaries are allotted the shares at nominal price and the price of the shares rise artificially by using loopholes of stock exchange mechanism and the shares were sold at desired level to various bogus entities. These bogus entities are paid by the unaccounted money of the beneficiaries in cash. As a result, unaccounted income ploughed back in the file of individuals and HUFs in the form of bogus LTCG cut paying income tax on also booked by the in process the bogus Short Term Capital Loss entities who wants to reduce their taxability.*

*Q.16 Please specifically mention modus operandi of providing Aegus LTCG in scrips of Kailash Auto Finance.*

*Ans. Sir, in this scrips of Kailash Auto Finance we have followed amalgamation method. Initially beneficiaries were allotted shares of Ltd. and Careful Projects Advisory Limited companies got amalgamated Panchshul Marketing Pvt. on high premium. Later on, these two vide high court order into Kailash Auto Finance Ltd. By the virtue of amalgamation shareholders of*

*Panchshul marketing Pvt. Ltd. and Careful Projects Advisory Limited got shares of Kailash auto Finance. Valuation of shares are so arranged that beneficiaries of LTCG get number of shares of Kailash Auto Finance in place of higher Panchshul Marketing Pvt. Ltd. and Careful Projects Advisory Limited. After holding the shares of Kailash Auto for one years, we direct our clients to sell the shares of KALFIN on abnormally higher rate. At this stage we get equal amount of cash from the beneficiaries and get it deposited to various undisclosed proprietorship concerns and get it layered through various accounts and finally transfer it to bogus shell companies who purchases shares from our beneficiaries.*

26. First of all from the perusal of the above statement it is seen that though the statement have been recorded by the Investigation wing wherein he has stated that he has provided bogus LTCG etc. in the scrip of Kailash Auto Finance Ltd of various clients and there are certain directors of the Kailash Auto Finance Ltd. who were dummy directors of the company was controlled and managed by him only. However, in the statement, nowhere it has been provided that all the persons who have purchased and sold the shares were in the nature of accommodation entry and all the persons were beneficiaries of LTCG or STCG or STCL. It is not the case that any specific information regarding the assessee was found or unearthed by Investigation Wing which ld. AO has failed to carry out any inquiry. This statement per se does not incriminate the assessee albeit it only states that through these scrips, they have provided accommodation entry to various clients. Finally, what has been the fate and the status of such statement in the case of Shri Sunil Dokania has not been brought on record by the ld. PCIT. If in his revisionary jurisdiction he is cancelling the assessment

order based on certain material which according to him has not been enquired by the AO, then it was incumbent on the Id. PCIT that such a material was relevant piece of material. If this statement is to be taken as only relevant piece of evidence, then entire transaction of these shares in the stock exchange from last several years should be treated as bogus and this scrip was used only for providing accommodation entries. Such information and report as held earlier in the case of Anju Jhunjunwala would at best be a triggering point for reopening or selecting the case for the scrutiny but cannot be the sole basis for making the addition. The AO is required to examine all the documents relevant for the purchase and sale and based on whose documents and information on record, he has to form his opinion. The Id. PCIT has not clarified as to whether AO should have made enquiry from Shri Sunil Dokania or should have called him to cross examine once the name of the assessee has not been figured as any of the beneficiary.

27. One very important fact is which has a bearing in this case is that, SEBI has not taken any adverse view or has suspended the trading of the shares of Kailash Auto Finance Ltd or it has been found it to be a penny stock company. Once there is no infirmity found in the listing or trading of the shares of Kailash Auto Finance Ltd or for the rigging of the prices, then how the Id. PCIT can say that the prices of the Kailash Auto Finance Ltd were manipulated in the stock exchange for providing accommodation entry. If the shares were held by the assessee

three years ago and purchases shown in the books have been accepted in the earlier years and later has been sold online through stock exchange, then it cannot be held that sale of shares have been sold on manipulated price, when it was listed on stock exchange and no adverse finding by SEBI. There is no reference of the assessee in any of the report or any other person or entity stating that assessee was beneficiary of some *modus operandi* of accommodation entry. There may have been accommodation entry provided in this script to several beneficiaries but it does not lead to conclusive inference that all the buyers and sellers across country buying and selling the shares online on stock exchange have entered into bogus transaction, unless specific information or material has been found. Here it is important to bear, that it is not the merits of the addition and whether burden has been discharged by the assessee or addition is sustainable on merits, but the issue is when AO has accepted the transaction of LTCG in the same scrip after verification then in revisionary jurisdiction u/s 263, can assessment order be set-aside without pointing out what specific inquiry or verification should have been done when there is no specific information pertaining to the assessee has been found. For establishing that order of AO is erroneous and prejudicial to the interest of revenue, it is incumbent upon the Ld. PCIT to give specific finding from the records and point out lack of inquiry and that to be which specific inquiry should have been done and not mere observation of lack of inquiry.

28. Be that as may be, if the AO on examination of the entire records and documents have accepted the transaction to be genuine in the present case, then Id. PCIT on facts and material on record should have at least specified as to what further enquiry should have been done and from which person or entity rather than referring to some general report of Investigation Wing without any specific mention of the assessee. If he meant to inquire from the same persons who have given their statement, then those persons have not been dealt by the assessee nor have they provided any information about the assessee. Such general remark without specifying what the enquiry AO should have done, Id. PCIT cannot cancel the assessment. Our finding and observation made above in the case above will also apply here and accordingly, the order of the Id. PCIT is set aside and order of the AO is restored.

**ITA No.112/VNS/2020 (AY :2015-16)- Vinod Kumar Saraf (HUF)**

29. The facts and issues involved in the aforesaid case is exactly similar belonging to the same family group of same scrip of Kailash Auto Finance Ltd wherein exactly similar documents have been filed before the AO which has been examined and verified by him and accepted the transaction on sale of shares of Kailash Auto Finance Ltd also the Id. PCIT order is exactly same. Thus, our finding given in the appeal for Gopi Krishna Vinod Kumar (HUF) will apply *mutatis mutandis*.

30. In the result, both the appeals of the assessee are allowed.

**ITA No.84/VNS/2019 (A.Y.2014-15)- Vishal Kanodia (HUF) & ITA No.85/VNS/2019 (A.Y.2014-15)- Vishal Kanodia**

31. The facts in both the appeals are similar. We will take up the appeal of Shri Vishal Kanodia (ITA No.85/VNS/2019).

32. This appeal has been filed by the assessee against order dated 28/03/2019 passed by Id. PCIT, Varanasi for the A.Y.2014-15 cancelling the assessment order dated 30/06/2016 in his revisionary jurisdiction u/s.263. During the year assessee has shown long term capital gain of Rs.96,38,938/- which was claimed as exempt u/s.10(38) in the return of income filed on 27/04/2014. The assessee's case was selected for complete scrutiny through CASS to examine long term capital gain on shares as per the input from Investigation Wing.

33. The assessee in the return of income had shown following calculation of long term capital gain.

S. No.	Particulars	Sale Date	Sale consideration	Purchase date	Purchase cost	Index Cost	Exp	Gain/Loss
1	Sharp Trad (Shares)	03.03.2014	7809010	05.03.2012	80000	80000	9957	7719053
2	Sharp Trad (Shares)	07.03.2014	1942360	05.03.2012	20000	20000	2475	1919885
	Total		9751370		100000	100000		9638938

34. During the course of assessment proceedings, assessee had filed contract note issued by Gigantic Securities Pvt. Ltd. in which it was shown assessee had sold 8000 shares online in Bombay Stock Exchange of Sharp Trading and Finance Pvt. Ltd. on 03/03/2014 at Rs.97.10 per share and 2000 shares of the same company @Rs.92.15 on 07/03/2014. Assessee had purchased 10,000 shares at the face value of Rs.10/- on 05/03/2012. Before the AO assessee submitted the details of purchase and sales in D-mat account alongwith contract note for purchase as well as sales of the shares. After examining his details AO has accepted long term capital gain. As against the return of income of Rs.8,18,930/-, AO has assessed the income at Rs.8,48,930/- vide order dated 30/06/2016. Thereafter, on examination of record, the ld. PCIT issued show-cause notice u/s.263 observing that assessment order passed by the AO is erroneous and prejudicial to the interest of the Revenue. In the show-cause notice ld. PCIT like in earlier cases has referred to the Investigation report and the general *modus operandi* adopted by various entry providers. It was observed that Sharp Trading & Finance Ltd. was changed to Omni Petroleum Ltd which later merged with Trinity Trade Link Ltd. In Trinity Trade Link Ltd one of the Director Shri Vikrant Kayan has given statement u/s.131 on 09/06/2014 he accepted that he provided bogus long

term capital gain in the scrip of Trinity Trade Link Ltd. to many beneficiaries including some at Delhi. In response to the show-cause notice assessee submitted that the AO during the course of assessment proceedings had raised specific query and in response assessee has filed reply with all the evidences including contract note from the broker, bank account, copy of D-mat account, sequences of events etc. Regarding the contents in the show-cause notice about the statement of Director Shri Vikrant Kayan on Trinity Trade Link Ltd, it was submitted -

- i. That there is no information about any activity of the assessee as per your notice. The departmental system had provided the names and PAN of persons involved in the racket but whether the name of the assessee appeared there or not is not stated. And if the assessee's name was not there then how can he be implicated.
- ii. There is information about clandestine activity through the script of Trinity Trade Links Ltd. and the assessee never purchased any shares of such company.
- iii. That the change in name of the company was obviously made subsequent to the sale of shares of Sharp Trading & Finance Pvt. Ltd by the assessee and thus there was no incriminating information about this company till the date of sale of its Scripts by the assessee.

iv There is no information or statement which indicates, directly or indirectly, providing of any accommodation entry to the assessee by any party.

v. That even alleged statement of the said Director mentions about providing entries of Trinity Trade Link Ltd. to beneficiaries including some in Delhi. Please appreciate that the assessee has his address and PAN at Varanasi and not Delhi besides the information about Bogus LTCG in Script of Trinity Trade Link Ltd and not Sharp Trading & Finance Pvt. Ltd.

vi Lastly, the A.O. made enquires about the LTCG and after being satisfied with the replies and documentary evidences provided he accepted the claim.

35. It was further submitted that there was nothing on record or in the show-cause notice that there was any involvement of the assessee or information / material received against assessee. Apart from that various judicial citations were cited.

36. The ld. PCIT in his order has referred to the investigation report allowing the *modus operandi* about the accommodation entries and director of Trinity Tradelink Ltd. had given statement that he has provided bogus long term capital gain in his report which AO has completely overlooked and he did not make any enquiries or verification on such report. Thereafter, he

has highlighted the history of the company from Sharp Trading and Finance Pvt. Ltd. incorporated on 30/03/1985. Later on same was changed to Omnitech Petroleum Ltd on 19/04/2011 and merged with Trinity Tradelinks Ltd. w.e.f. 01/04/2012 by the order of the Hon'ble High Court. When the assessee purchased the shares in March 2012 of Sharp Trading and Finance Pvt .Ltd. its name had been changed to M/s. Omnitech Petroleum Ltd. and when assessee showed sales the name of the company was changed to Trinity Tradelinks Ltd. Thus, once the manipulation in the shares of Trinity Tradelinks Ltd. is being found by the Investigation Wing, then AO had committed the error by not enquiring whether the name of the company of shares claimed to have been sold by the assessee, existed on the date of purchase and sale of such shares. He further held that the assessee's D-mat account located at Delhi even though assessee belongs to Varanasi and his PAN is from Varanasi. He again referred to the same Investigation /observation and has reiterated the contents of his show-cause notice and held that AO did not enquire about the correctness of the sale of shares claimed to be made by the assessee and did not enquire about the identity and credit worthiness of the parties to whom the shares were claimed to be sold by the assessee. Thus, he cancelled the assessment order holding it to be erroneous and prejudicial to the interest of the Revenue

and directed the AO to pass a fresh assessment order after carrying out necessary enquiries. Similar observations and judgments have been relied upon by him which is a copy and paste of earlier order.

37. We have heard both the parties and also perused the documents furnished before us. First of all, there is no specific information relating to the assessee that the assessee was in kind of a beneficiary of some kind of accommodation entry of bogus long term capital gain. First of all, it is not in dispute that the purchases were made in March 2012 and when assessee had purchased the shares of Sharp Trading and Finance Pvt. Ltd. and later on name was changed to Omni Petroleum Ltd. At the time of sale, this company was merged with Trinity Tradelinks Pvt. Ltd. by the order of the Hon'ble High Court and the sales were made of these shares held in the D-mat account and was sold after two years through online in Bombay Stock Exchange. Nowhere, ld. PCIT has pointed out that in the statement of Shri Vikrant Kayan is there any specific mention about the assessee or any material pertaining to assessee. In any case, even though there was investigation report, then ld. PCIT should have specified as to what enquiry AO should have done and from whom. In so far as purchase are concerned no doubt has been casted either for the cost of acquisition or source of purchase amount and shares were in the D-mat form and sale transaction has been

done through registered broker and the contract note shows they were sold in the Bombay Stock Exchange on two dates on the price listed in the stock exchange. There is no information or material that the trading of this scrip was banned or any adverse order has been passed by SEBI against manipulation of prices. This scrip is listed in stock exchange and purchase and sales have been made through recognised mode and through stock exchange. Thus, without any specific material and finding against assessee it cannot be held that AO while accepting these documents was incorrect. Merely because AO had the investigation report and then compulsorily he should have made addition is not what he required. The AO has to apply his mind independently and verify the informations qua the transaction of the assessee. The general information in a particular scrip does not lead to inference that assessee is automatically part of some racket or beneficiary of bogus long term capital gain. Like in the earlier orders, ld. PCIT has not specified as to what further enquiry should be done and what should be the nature of enquiry. At least, ld. PCIT himself should have asked the AO to carry out specific enquiries. Thus, we hold that there was no failure on part of the AO to conduct the enquiry. If the order of the AO is erroneous and prejudicial to the interest of the Revenue then the ld. PCIT has to demonstrate the failure on part of the AO and what kind of specific enquiry he

should have done and from whom, which he has failed to do so. Making a general remark that AO should have done the enquiry in light of the report of the investigation wing that does not lead to inference that order of the AO is erroneous or prejudicial to the interest of the revenue. He has to specify the specific nature of enquiry which AO was supposed to do. The AO while scrutinizing the records has to verify the details of the transaction and secondly, whether assessee's name has been specifically highlighted in the report or there is any some adverse material against assessee or there is a concrete evidence of material that the person with whom, assessee had transacted was found to be manipulating price in the stock exchange or there was any kind of ban or embargo looking to some kind of malpractice adopted by the company. Thus, our finding given in the earlier orders will apply *mutatis mutandis* for this appeal also and accordingly, the order of the 1d. PCIT is set aside and order of the AO is restored.

38. In the case of Shri Vishal Kanodia (HUF), the same finding and observation has been given with regard to the same share except for long term claimed was Rs.35,59,179/-. Since, similar facts are involved, therefore, our finding give above will apply in this appeal also, accordingly, order of the 1d.PCIT is set aside and order of the AO is restored.

39. In the result, both the appeals of the assessee are allowed.

**ITA No.252/VNS/2019 (A.Y.2015-16)- Sarvesh Kumar Agarwal (HUF)**

40. The aforesaid appeal has been filed by the assessee against order dated 15/10/2019 passed by PCIT-Varanasi for A.Y.2015-16 wherein the ld. PCIT has cancelled the order passed by AO u/s.143(3) dated 05/04/2017 holding it to be erroneous and prejudicial to the interest of the Revenue in his revisionary jurisdiction u/s.263.

41. The brief facts are that assessee has filed the return of income for A.Y.2015-16 on 21/09/2015 declaring total income of Rs.12,08,120/-. In the return of income assessee had shown long term capital gain of Rs.1,76,90,447/- in the shares of Kailash Auto Finance Ltd. Here, in this case also assessee's case was selected for scrutiny to examine the long term capital gain. Here in this case summon u/s.131 was issued to the assessee on 06/08/2015 by ADI (Investigation) and again on 18/02/2016. In the statement, assessee had given the details of purchase and sale of the shares before the Investigation Wing and also submitted the entire details. The statement of the assessee has been placed in the paper book from pages 35-42. Thereafter, AO has also raised queries with respect to purchase of shares in support of which assessee filed the entire details alongwith audited returns in the

earlier years in the copy of bank statements showing purchase consideration in proof of acquisition of shares and allotment of shares. Based on this statement AO has raised queries from time to time which assessee had responded by filing all the details. The AO after examining the price history of Kailash Auto Finance Ltd. and other material facts on record alongwith genuineness of D-mat account, justification on huge raise in shares, AO accepted the transaction of long term capital gain. Various queries and submissions made before the AO during the course of assessment proceedings has been placed in the paper book from pages 1-176 alongwith various judgments on the sale of some shares during the same period. In response to show-cause notice by the ld. PCIT, assessee has filed all the details which are by and large the same in other cases. Further, ld. PCIT has made similar observation as in the case of Vinod Kumar Saraf (HUF) in ITA No.11/VNS/2020 had cancelled the assessment.

42. After hearing both the parties and on perusal of the records, following chronology of events which are evident from the assessment record are highlighted as under:-

Date	Particulars
06.03.2013	4,00,000 Shares of Careful Projects Advisory Limited was purchased from M/s. Ritudhare Vincome Pvt. Ltd.
19.03.2013	4,00,000 Shares of Careful Projects Advisory Limited was credited in D-mat Account of the assessee with SHCIL.
22.07.2013	4,00,000 Shares of Kailash Auto

	Finance Limited was credited in D-mat Account in lieu of shares of Careful Projects Advisory Limited in the scheme of Amalgamation
02.07.2014	1,94,245 shares of Keilash Auto Finance Limited was sold through SHCIL and STT paid
03.07.2014	2,05,755 shares of Kailash Auto Finance Limited was sold through SHCIL and STT paid
6.8.2015	Summon u/s 131(1A) issued by ADI (Inv.), Unit-1, Varanasi
28.8.2015	<p>Written Submission filed in compliance to above summon explaining transaction of Long Term Capital Gain from sale of shares of Kailash Auto Finance Limited alongwith Following Documents:-</p> <hr/> <p>Copy of Cheque No 003586 dt. 6.3.2013 as a proof of payment for purchase of 4,00,000 shares of Careful Project Advisory Limited from M/s. Ritudhara Vincom Pvt. Ltd.</p> <hr/> <p>Copy of Account of M/s Ritudhara Vincom Pvt. Ltd.</p> <hr/> <p>D-mat Account Statement from SHCIL showing -</p> <p>Share of Careful Project Advisory Limited received in d-mat account. 4,00,000 share of Kailash Auto Finance Limited received in lieu of share of Careful Project Advisory Limited in the scheme of amalgamation</p> <hr/> <p>Notice of AGM from Kailash</p>

	<p>Auto Finance Limited</p> <hr/> <p>Contract Notes for sale of shares of Kailash Auto Finance Limited</p> <hr/> <p>Account statement from SHCIL</p> <hr/> <p>Bank Account Statement showing sale consideration received through banking channel</p>
21.09.2015	IT Return filed claiming long term capital gain exempt from sale of shares of Kallash Auto Finance Limited u/s 10(38).
18.02.2016	Summon u/s 131(1A) Issued by ADI (Inv.), Unill-1, Varanasi
21.03.2016	Statement of assessee has been recorded by ADI (Inv.), Unit-1, Varanasi
19.09.2016	Notice u/s 143(2) issued by ITO-1(1)
15.12.2016	Case transferred to DCIT, Circle-1, Varanasi who issued notice u/s 142(1)
27.12.2016	Written submissions filed with details and documents in support of purchase /sale of shares of Careful Projects Advisory Limited, Kailash Auto Finance Limited and claim of exempt long term capital gain.
08.02.2017	Copy of High Court order for merger of Careful Projects

	Advisory Limited into Kailash Auto Finance Limited filed
15.02.2017	Written Submissions filed with price history of shares of Kailash Auto Finance Limited
01.03.2017	Written Submissions filed along with case laws relied upon
05.04.2017	Books of accounts, Bills, Vouchers, Bank Statements etc, produced
05.04.2017	Assessment Order Passed u/s. 143(3)

43. Here in this case ADI (Investigation), Varanasi had summoned the assessee on two occasions to enquire on the transaction of purchase and sale of shares of Kailash Auto Finance Ltd. In compliance thereof assessee had submitted his reply alongwith purchase bills, sale bills, bank account, D-mat account, contract notes and documents wise entry and all the entries and in the entire statement, nothing adverse has been confronted or found against assessee. Despite enquiries done by the Investigation wing from the assessee and AO himself has examined all the records and details and then has accepted the transaction of long term capital gain , then it cannot be said that no enquiry or verification has been done by the AO. During the course of assessment proceedings, assessee had submitted following documents:-

- Copy of Audit Report, Profit & Loss A/c, Capital A/c, Balance sheet with schedules.
- Details of all the shares of listed and unlisted companies purchased and sold during the year under consideration
- Purchase Bill for purchase of 4,00,000 share of M/s. Careful Projects Advisory Limited from M/s. Ritudhara Vincom Private Limited.
- Copy of Cheque and Bank Statement showing payment of the purchase consideration of shares.
- Demat Account Statement with Stock Holding Corporation of India Limited (SHCIL) showing the assessee was acquired 4,00,000 shares of Careful Projects Advisory Limited.
- Copy of order approving the scheme of amalgamation and copy of petition filed before Hon'ble Allahabad/Bombay High Court regarding amalgamation of M/s. Careful Projects Advisory Limited into M/s. Kailash Auto Finance Limited.
- Demat Account Statement with (SHCIL) showing the assessee was allotted 4,00,000 shares of Kailash Auto Finance Limited as against 4,00,000 shares of Careful Projects Advisory Limited.
- Notice for AGM from M/s. Kailash Auto Finance Limited.
- Contract Notes of SHCIL, a member of BSE through whom the assessee sold shares of M/s. Kailash Auto Finance Limited.
- STT has been paid on sale of shares of Mis. Kailash Auto Finance Limited.

- Finance Statement with SHCIL showing delivery of shares of Kailash Auto Finance Limited on sale of shares.
- Financial Statement with SHCIL showing sale of shares of Kailash Auto Finance Limited and payment of sale consideration.
- Bank Statements showing receipt of sale consideration from SHCIL by account payee cheques.
- All the books of accounts, bills, vouchers, bank statement etc.

44. In the case of Kailash Auto Finance Ltd, we have already given our detailed observation and findings in the case of Vinod Saraf (HUF) and our finding given therein will apply mutatis mutandis for this appeal also. As held in that case, first of all there is no order of SEBI banning the trading of the scrip; the shares were listed on National Stock Exchange; purchase and sales are duly supported by the contract notes of registered broker; shares were routed through D-mat account; and the sale consideration has been received through process of settlement and through banking channels. At least, there should be some material or information relating to or pertaining to the assessee to hold that AO has lacked in conducting specific enquiry which needs to be done which he has failed to do so. Thus, in view of our finding given in the all the above cases, we hold that order of

the ld. PCIT cannot be sustained and is accordingly, set aside and order of the AO is sustained.

45. In the result, appeal of the assessee is allowed.

**46. In the result, appeals of all the assesseees are allowed.**

Order pronounced on 7<sup>th</sup> Dec, 2023.

**Sd/-  
(B R BASKARAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

Varanasi; Dated 07/12/2023  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT
5. Guard file.

//True Copy//