

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 351/KOL/2023
Assessment Year: 2014-2015**

Piyush Jaiswal,.....Appellant
49/5/2G, Karl Marx Sarani, Khidirpore,
Kolkata-700023
[PAN: AHVPJ6669C]

-Vs.-

Income Tax Officer,.....Respondent
Ward-28(2), Kolkata,
Aayakar Bhawan Dakshin,
Room No. 3, 3rd Floor,
2, Gariahat Road (South),
Kolkata-700031

Appearances by:

*Shri Rajesh Kumar Mishra, Advocate, appeared on behalf
of the assessee*

*Shri Avijit Adhikari, JCIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : January 10, 2024

Date of pronouncing the order : January 11, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee
against the order of Id. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 17.02.2023 passed for A.Y. 2014-15.

2. Though the assessee has taken 25 grounds of appeal running into 11 pages and such grounds of appeal are not in consonance with Rule 8 of Income Tax Appellate Tribunal Rules. They are descriptive and argumentative in nature.

3. In brief, the grievance of the assessee is that alleged capital gain received by it from sale of shares of M/s. Kailash Auto Finance Limited is not entitled for exemption under section 10(38) of the Income Tax Act and it is to be added as unexplained cash credit.

4. Brief facts of the case are that the assessee has filed his return of income on 06.02.2015 declaring income of Rs.2,85,360/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that assessee has shown an amount of Rs.33,22,219/- as profit from sale of shares after claiming some deductions of STT, Service Tax, Brokerage etc. The assessee thereafter claimed exemption under section 10(38) of the Income Tax Act. The ld. Assessing Officer further observed that he has sold 88,000 shares of M/s. Kailash Auto Finance Limited in Bombay Stock Exchange for a consideration of Rs.34,18,000/-. After claiming different expenditures, he has

claimed exemption under section 10(38) of Rs.33,22,219/-. The purchase price of the shares was Rs.88,000/-. In other words, the assessee has purchased shares @ Rs.1/- only per share. The ld. Assessing Officer has observed that the assessee sold the shares in different installments. The average return in the investment with BSE during that period was around 7.80% in F.Y. 2012-13 and 18.70% for F.Y. 2013-14, whereas the profit shown by the assessee was 3,784% on his investment. The ld. Assessing Officer thereafter discussed various circumstances as to why the claim of the assessee is to be construed as penny stock. He disbelieved the version of the assessee and treated the alleged total sale consideration as a stage managed affair and made the addition under section 68 of the Income Tax Act. In other words, the ld. Assessing Officer construed that the assessee has routed his unexplained money for claiming the alleged exemption under section 10(38) of the Income Tax Act.

5. Dissatisfied with the addition, the assessee carried the matter in appeal, but the appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

6. With the assistance of ld. Representatives, we have gone through the record carefully. We find that identical issue has been considered by the Hon'ble Calcutta High Court in the case of Swati Bajaj & Others (2022) 139 taxmann.com 352(Cal.) pronounced on 14.06.2022. In that case, Hon'ble High Court has examined the factual details of all alleged penny

stock companies, whose share prices have been stage managed in order to earn bogus long-term capital gain. In the list of those 84 companies, in whose share the investment was made, M/s. Kailash Auto Finance Limited was one of them and, therefore, the issue in dispute is squarely covered by the decision of the Hon'ble Jurisdictional High Court. We do not find any merit in this appeal, hence it is dismissed.

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

Order pronounced in the open Court on 11/01/2024.

Sd/-

(Girish Agrawal)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 11th day of January, 2024

*Copies to :(1) Piyush Jaiswal,
49/5/2G, Karl Marx Sarani, Khidirpore,
Kolkata-700023*

*(2) Income Tax Officer,
Ward-28(2), Kolkata,
Aayakar Bhawan Dakshin,
Room No. 3, 3rd Floor,
2, Gariahat Road (South), Kolkata-700031*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi*

(4) CIT- , Kolkata;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.