

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA R. KAMBLE, JUDICIAL MEMBER**

**ITA No. 643/Ahd/2023  
Assessment Year: 2015-16**

Rajesh Kanaiyalal Gandhi, 01, Shree Krishna Building, Madanzampa Road, Opp. Moti Tamboliwad, Patthar Gate, Vaoddara-390001 PAN : AFHPG 3235 K	Vs	Income Tax Officer, Ward-3(1)(3), (now Ward 3(1)(4)), Vadodara
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Viranch Modi, AR
Revenue by :		Shri Aashish Rajesh Revar, Sr DR

सुनवाई की तारीख/Date of Hearing : 22/01/2024  
घोषणा की तारीख /Date of Pronouncement : 24/01/2024

**ORDER**

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 24.06.2023 passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Assessment Year 2015-16.

2. The Grounds of appeal are as under :-

*"1.00 ORDER PASSED BY LD. AO U/S 143(3) OF THE ACT IS BAD IN LAW :*

*1.01 On the facts and circumstances of your appellant's case as well as in law, the ld. CIT(A) has erred in not treating the impugned assessment order as Bad in Law as the same was passed without even providing documentary evidences and information obtained from other sources which were relied by ld. AO for consideration and rebuttal of your appellant.*

*1.02 Your appellant prays Your Honour to hold so now and quash the assessment order passed as bad in law.*

*2.00 ADDITION OF RS. 8,55,946/- PRESUMING CLAIM OF EXEMPTION OF LONG TERM CAPITAL GAIN ON SALE OF SHARES AS SUSPICIOUS:*

*2.01 On the facts and in the circumstances of your appellant's case and in law, the ld. CIT(A) erred in confirming the addition of Rs. 8,55,946/- on account of long term*

*capital gain claimed as exempt on sale of equity shares through recognized stock exchange on erroneous plea that purchase of such shares by your appellant is a fabricated transaction and hence same are held as bogus. Accordingly, sale of such shares was sham transaction and aimed only to bring unaccounted money in the guise of exempted long term capital gains.*

2.02 *Your appellant says and submits that he has sold shares which were acquired and sold through recognized stock exchange and hence the gain, which is long term in nature, was rightly claimed as exempt u/s 10(38) of the Act which the ld. CIT(A) failed to appreciate.*

2.03 *Your appellant could not file requisite details and appeal submission before ld. CIT(A) since your appellant came to know about it very late.*

2.04 *Your appellant prays Your Honour to hold so now and direct the ld. AO to delete the addition made to returned income."*

3. The assessee filed return of income on 27.03.2016 declaring total income at Rs.2,11,350/-. Subsequently, the assessee filed a revised return on 27.02.2017 manually, declaring total income at Rs. 2,66,780/- u/s 44AD of the Income Tax Act, 1961. The case was selected for scrutiny by issuing of notice u/s 143(2) of the Act on 26.07.2016 which was served upon the assessee. Notice u/s 142(1) of the Act was issued on 25.04.2017 calling various details and information. In response to the same, the assessee attended the assessment proceedings from time to time and furnished the details/particulars. The Assessing Officer observed that the case was selected for scrutiny to examine "suspicious long term capital gain on shares" under the scope of complete scrutiny. During the year under consideration the assessee sold 3,500 shares (2,500 shares sold on 11.04.2014 and 1,000 shares sold on 02.02.2014) of CCL International Ltd. through recognized stock exchange on delivery basis and also paid Securities Transaction Tax (STT). The assessee purchased 1,000 shares of the company (500 shares on 23.08.2010 and 500 shares on 24.08.2010) through recognized stock exchange on payment of STT which is undisputed fact. The CCL International Ltd. Company after one year sub-divided its share of face value of Rs. 10/- each into face value of Rs. 2/- each. Thus, the same resulted into allotment of 5,000 shares of Rs. 2/- each as against holding of 1,000 shares of face value of Rs. 10/- each. The assessee submitted that allotment of shares on sub-division of face value takes place off-market since shares were held in D-mat form. The assessee sold thereafter, total 3,500 shares

out of 5,000 shares of the Company, 1,500 shares on 11.04.2014 and 1,000 shares on 02.12.2014 through recognized stock exchange on payment of STT. Since the shares were sold after one year and that too through recognized stock exchange on payment of STT, and therefore, the assessee claimed the long term capital gain on sale of shares as exempt u/s 10(38) of the Act. The Assessing Officer held that the broker of the assessee i.e. Kotak Securities mentioned the acquisition of the shares as "off market" and therefore observed that the assessee made suspicious transactions in respect of sale of 2,500 shares credited to assessee's D-mat account with remarks "off market". Thus the Assessing Officer made addition of Rs. 8,55,946/- under Section 68 of the Income Tax Act, 1961 and disallowed the long term capital gain claimed u/s 10(38) of the Act by the Assessee.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that Ground No. 1 is not pressed. The Ld. AR submitted that the allotment of shares on sub-division of face value, takes place off-market since shares were held in D-mat form, therefore, the observation of the Assessing Officer that transactions are sham transactions are far reaching from truth in view of the fact that the assessee has sold the shares almost after two and half years and not in a short span of time to get the benefit of price escalation and also to evade the tax. The Ld. AR further submitted that the transaction was through recognized stock exchanges and payment were made and received to / from the broker through cheques only. The Ld. AR submitted that CIT(A) erred in confirming the addition of Rs. 8,55,946/- on account of long term capital gain claimed as exempt on sale of equity shares through recognized stock exchange on erroneous plea that purchase of such shares by the assessee is a fabricated transaction and hence the same were held as bogus. The Ld. AR submitted that the assessee has rightly claimed the exemption u/s 10(38) of the Income Tax Act, 1961.

6. The Ld. DR relied upon the Assessment order and the order of the CIT(A). The Ld. DR submitted that the Assessing Officer has rightly held that the purchase was off market as the assessee could not explain the quantity of shares increased during the

period 2010 to 2012. The Ld. DR submitted that the sub-division of face value of shares was not explained by the assessee before the CIT(A) as well as before the Assessing Officer and if these records were there then, the matter may be remanded back to the file of CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is undisputed fact that the assessee purchased the 1000 shares of CCL International Ltd. on 23.08.2010 and 24.08.2010. In fact, the assessee has also purchased the various companies shares of during August 2010 to September 2010. These purchases were through authorised broker and through recognized stock exchange (i.e. NSE). Besides this, the assessee has produced the D-mat transaction details dated 20.08.2011 (page 10 of paper book that of Depository Bill Cum Transaction Statement issued by Kotak Securities Ltd.) which clearly shows how the sub division of face value of Rs. 10 to Rs. 2 recorded in respect of the scrip CCL International Ltd. These facts and records were very well explained by the assessee before Assessing Officer as well as before the CIT(A). But both the authorities ignored the same. Besides this the Assessing Officer has also not pointed out as to how the selling of the scrip was bogus and unexplained. The Assessing Officer was simply presuming that the scrip was purchased offline over and above the actual purchase in 2010, but totally ignored the transaction statement issued in 2011. There was no nexus established by the Assessing Officer that there was price manipulation during the transaction. Therefore, the Assessing Officer as well as the CIT(A) was not right in disallowing the exemption claimed by the assessee u/s 10(38) as long term capital gain. The appeal of the assessee is allowed.

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

Order pronounced in the open Court on this 24<sup>th</sup> day of January, 2024.

*Sd/-*

**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 24<sup>th</sup> day of January, 2024**

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Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

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*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*