

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

[Before Shri Sonjoy Sarma, Judicial Member &  
Shri Girish Agrawal, Accountant Member]

**I.T.A. Nos. 704 & 705/Kol/2023**  
**Assessment Year : 2011-12 & 2013-14**

Ajit Kumar Patni	vs	ITO, Ward-28(1), Kolkata
PAN: AIQPP 6171 R		
Appellant		Respondent

Date of Hearing	04.01.2024
Date of Pronouncement	25.01.2024
For the Assessee	None
For the Revenue	Shri Anup Biswas, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

The above captioned appeals are filed by the assessee directed against two separate orders dated 17.05.2023 by Id. CIT(A), NFAC relevant to A.Y. 2011-12 & 2013-14 respectively.

2. Since the facts and issues involved in both the appeals are common and identical to each other. Therefore, these appeals have been heard together and are being disposed of by this common order. For the sake of convenience ITA No. 704/Kol/2023 is taken as lead case. The assessee has raised the following grounds of appeal:

*"1. For that in view and circumstances of the case the Learned CIT (APPEAL) NFAC has erred on facts and in law in dismissing the appeal filed by the appellant and confirming the addition of LTCG alleged to be bogus on the basis of report received from DIT (INVESTIGATION), KOLKATA on shares of Tuni Textile Mills Limited amounting to Rs. 13,13,436/ under section 68 which was claimed exempt under section 10(38) even though all the evidences, documents, papers for substantiating the genuine LTCG Learned were produced by the appellant before the AO.*

2. For that in view and circumstances of the case the Learned CIT (APPEAL) NFAC has erred on facts and in denying exemption of LTCG of Rs. 13,13,436/ sold on recognized stock exchange held for more than 12 months after payment of STT on mere findings of DIT (INV) mechanically recorded on borrowed inference in disregard of evidence and acted solely on decision of Honorable KOLKATA HIGH COURT ignoring the facts that the issue is not finally decided on merit by Honorable Apex court and majority of High courts in the courts has decided this matter in favour of the assessee and why the assessee will suffer jurisdictional bias.

3. For that in view and circumstances of the case the Learned CIT (APPEAL) NFAC has erred on facts and in law in charging interest under section 234 B of Rs. 4,07,238/ and Rs. 6821/- u/s 234C and initiating penalty proceeding u/s 271(1)(C).

4. For that in view and circumstances of the case the ld. CIT(Appeal) NFAC has erred on facts and in law in confirming the addition of Rs. 7032/- towards commission notionally which was not incurred by the appellant.

5. The appellant craves the right to put additional grounds and/or amend/alter/modify any of the above grounds before or during the course of hearing.”

3. Brief facts of the case are that assessee filed its return of income for A.Y. 2011-12 by showing income of Rs. 10,83,330/-. The return of the assessee was processed and immediately after it notice u/s 148 was issued. In response to the notices, assessee filed its return of income in terms of notice u/s 148 of the Act. Soon after filing of return notices u/s 143(2) and 142(1) were also issued to the assessee which were duly served upon the assessee. In response to the notices, no one turned up before the ld. AO in order to file any supporting document as requisitioned in the notice u/s 142(1) of the Act. Therefore, the ld. AO added entire long term capital gain of Rs. 13,06,406/- in the hands of assessee which was claimed deduction u/s 10(38) on sale of shares of M/s. Tuni Textiles Mill

Ltd. of 10000 shares sold at Rs. 13,06,404/- and same was purchased for Rs. 1 lakh by the assessee. The ld. AO while doing so added another sum of Rs. 7032/- being alleged as commission charged @  $\frac{1}{2}$  per rupee on cheque amount of Rs. 14,06,404/- and calculate interest u/s 234B of the Act of Rs. 4,07,238/- upon the assessee. Similarly, the ld. AO added Rs. 6821/- u/s 234C of the Act upon the assessee.

4. Dissatisfied with the above order assessee went into appeal before the ld. CIT(A) while the ld. CIT(A) dismissed the ground taken by the assessee.

5. Feeling aggrieved by the above order assessee is in appeal before the Tribunal. At the time of hearing no one turned up before the bench and even from the office of registry try to contact the assessee over phone in order to inform the pending of the appeal for adjudication but all have gone in vain. Since no one contact over phone as stated in Form No. 36 of appeal memo. Therefore, we have no other alternative but to decide the appeal with the assistance of ld. DR and on the basis of material available on record.

6. In ground no. 1 & 2 is in relation to disallowance of claim of exemption u/s 10(38) in respect of long term capital gain arising out of sales of shares amounting to Rs. 13,13,436/- u/s 68 which was claimed as exempt income by the assessee. On this issue, the ld. DR stated that since the issue involved in ground no. 1 & 2 are relating to penny stock and same is squarely covered against the assessee by the recent decision of Hon'ble Calcutta High Court vide

common order dated 14.06.2022 in a batch of 90 appeals with a lead case title as PCIT vs Swati Bajaj in ITA No. GA/2/2022 And Others. He further submitted that the facts and issues involved in the instant appeal of the assessee are identical before the Hon'ble Calcutta High Court and Hon'ble High Court has already affirmed the addition made by assessing officer u/s 68 of the I.T. Act in respect of bogus long term capital gain. In view of the above order, ground no. 1 & 2 is hereby dismissed.

7. In ground no. 3, the assessee stated that the ld. CIT(A) erred in facts and in law charging interest u/s 234B of the Act of Rs. 4,07,238/- and Rs. 6821/- u/s 234C of the Act are not correct and view taken by the authorities below may be set aside. On this issue, ld. DR submitted before the bench that section 234B and 234C are consequential in nature while calculation made by the AO while making the addition in the case of assessee. Therefore, the ground taken by the assessee may be dismissed.

8. We after considering the submission of ld. DR found that both the additions are made by the ld. AO while framing the assessment order u/s 234B and 234C are consequential in nature while calculating the tax raised upon the assessee. Therefore, we do not find any infirmity in the impugned order passed by the ld. CIT(A) and accordingly sustained the order of ld. AO on this issue and dismiss the ground taken by the assessee.

9. The assessee also challenged ground no. 4 is in relation with addition made by the AO of Rs. 7032/- towards notional commission made by the assessee to such agents while making the alleged transaction. In this addition made by AO according to the assessee is not correct. On this issue, ld. DR stated that generally share brokers/entry operators charges interest @ .10 to .50 per 100 rupees of cheque amount, hence total unexplained expenditure towards commission charged by the operators applying the rate of .50 per rupees worked out at Rs. 7032/- (on cheque amount of Rs. 14,06,404/-) and the ld. AO rightly made the addition in the hands of assessee. The assessee could not controvert the above fact before the ld. AO as well as ld. CIT(A) therefore the alleged addition of Rs. 7032/- remains to be sustained by the Tribunal.

10. We after hearing the submission and going through the facts of the case noted that the assessee could not controvert the above facts before the authorities below in order to deny the fact and even before us has completely failed to submit any supported document in order to substantiate its claim. Therefore, we do not find any infirmity in the order passed by the authorities below accordingly ground no. 4 taken by the assessee is hereby dismissed.

11. Ground no. 5 is general and consequential in nature, therefore need not required to be adjudicated.

12. Since the issue in ITA No. 705/Kol/2023 is similar to one as decided by us in ITA No. 704/Kol/2023, therefore, our finding in

*ITA Nos. 704 & 705/Kol/2023  
AY: 2011-12 And 2013-14  
Ajit Kumar Patni*

ITA No. 704/Kol/2023 would mutatis and mutandis apply to this appeal as well.

13. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 25.01.2024

Sd/-

Sd/-

(Girish Agrawal)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 25.01.2024  
*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant – Ajit Kumar Patni, 5A, Avani Heights, 59A Chowringhee Road, Chowringhee, Kolkata-700020.
2. Respondent – ITO, Ward-28(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata