

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 369/Del/2019
(Assessment Year: 1015-16)**

Gaurav Goel, III-J-58, Nehru Nagar, Ghaziabad, Uttar Pradesh (Appellant)	Vs. ITO, Ward-1(2), Ghaziabad (Respondent)
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PAN: AJFPG3853K

Assessee by :	Shri Akhilesh Kumar, Adv
Revenue by:	Shri Pradip Kumar Mishra, Sr. DR

Date of Hearing	22/01/2024
Date of pronouncement	03/04/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.369/Del/2019 for AY 2015-16, arises out of the order of the Commissioner of Income Tax (Appeals)-Ghaziabad [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 337315361181217 dated 31.10.2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 16.11.2017 by the Assessing Officer, ITO, Ward-1(2), Ghaziabad (hereinafter referred to as 'Id. AO').
2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition of Rs 49,33,062/- by denying the exemption u/s 10(38) of the Act in the facts and circumstances of the instant case.
3. We have heard the rival submissions and perused the materials available on record. The assessee is an individual deriving income from salary and other sources. The return of income for the Asst Year 2015-16 was filed by the assessee on 28.8.2015 declaring total income of Rs 6,60,930/-. The assessee purchased

12500 equity shares of CCL International Ltd on 22.8.2011 for Rs 1,25,000/- in off market through a stock broker M/s Narayan Securities in cash. These shares carried a face value of Rs 2 per share and assessee bought the same at Rs 10 per share. The payment for the same was made out of disclosed sources of income by the assessee. Thereafter the Registrar and Transfer Agent (RTA) M/s Alankit Assignment Limited transferred the shares in the name of the assessee. The share certificates for the said purchase duly effecting the share transfer in assessee's name was also carried out as under:-

Distinctive Nos. of Shares	Certificate No.	No. of Shares	Name of the original holder	
			From	To
335001	337500	1135	2500	Hasina Khatoon
7501	10000	1004	2500	Subhash
210001	212500	1085	2500	Shyam Chandra Jha
482501	485000	1194	2500	Urwashi
15001	17500	1007	2500	Rawat Lal Singh
			----- 12500 -----	

3.1. After effecting the share transfer in assessee's name by the RTA, the assessee dematted the shares in his demat account on 3.11.2012. The assessee furnished the copy of sale note, receipt obtained from the broker for the payment made by assessee and share transfer letter from M/s Alankit Assignment Limited in support of purchase of 12500 shares of CCL International Ltd. The assessee sold 9500 equity shares of CCL International Ltd in 4 tranches during the year under consideration as under:-

S. No.	Particulars	Date of Sale Bill	No. of shares sold	Rate	Gross sale value	Net Sale Value
1.	CCL International	22.09.2014	2500	480.00	1200000.00	1197357.88
2.	CCL International	26.09.2014	1900	496.90	944110.00	942027.14
3.	CCL International	25.11.2014	3000	590.98	1772940.00	1769040.85
4.	CCL International	15.01.2015	2100	489.00	1026900.00	1024636.02
	TOTAL		9500		4943950.00	4933061.89

3.2. The aforesaid shares were sold through registered stock broker M/s Trustline Securities Limited at a price quoted on the stock exchange and consideration for the same was received by the assessee through the registered stock broker in regular banking channels. It is not in dispute that the said sale transaction duly suffered Securities Transaction Tax (STT). Since the assessee had held the shares for more than a year from the date of its purchase, the resultant gain from such transfer would be long term capital gains and accordingly, the assessee claimed exemption u/s 10(38) of the Act in the return of income. The assessee furnished the contract notes issued by Trustline Securities Ltd ; Demat statement for the period 1.4.2012 to 28.9.2016; ledger account of assessee in the books of Trustline Securities Ltd for the period 1.4.2014 to 31.3.2015 ; bank statements of the assessee evidencing the fact that sale proceeds of shares were received by the assessee through regular banking channels from Trustline Securities Ltd; copies of audited financial statements of CCL International Ltd for the financial years 2013-14, 2014-15 & 2015-16 ; copies of annual returns and financial statements as filed by CCL International Ltd before the Registrar of Companies (ROC) for the financial years 2013-14 and 2014-15 and Memorandum of Association and Articles of Association of CCL International Ltd. It is pertinent to note that the assessee had sold these 9000 shares in various tranches at prevailing market prices on various dates. The shares were sold at Rs 479.52 , Rs 496.403, Rs 578.271, Rs 585.21, Rs 592.407, Rs 598.401 and Rs 488.511 per share on various dates during the year under consideration.

3.3. After selling 9500 shares during the year under consideration, the assessee held remaining 3000 shares in his demat account. The Id. AO wrongly stated that the assessee had sold these 3000 shares on 8.12.2015 relevant to Asst Year 2016-17. Actually no sale was made by the assessee on 8.12.2015 and these shares were consolidated on 8.12.2015 by the company in the ratio of 5:1 and accordingly assessee was holding 600 shares in his demat account ($3000/5=600$) as on 28.9.2016.

3.4. The Id. AO observed in para 2.10. in page 24 of his order that the assessee was not produced before him for examination. In this regard, we find that the

Chartered Accountant of the assessee vide letter dated 3.11.2017 enclosed in page 69 of the Paper Book had filed a letter before the Id. AO that he was busy in filing income tax returns and accordingly could not produce the assessee for examination physically upto 7.11.2017 and it was requested before the Id. AO to fix the date on any date after 7.11.2017 for production of the assessee for examination. Thereafter no date was fixed by the Id. AO. Forgetting this fact which is on record, the allegation leveled by the Id. AO in his assessment order vide para 2.10. that assessee never appeared before him is devoid of merit.

3.5. We find that the Id. AO had only doubted the veracity of receipt of money in the form of sale consideration of shares of CCL International Ltd by making an addition u/s 69 of the Act. In our considered opinion, the provisions of section 69 of the Act per se could not be made applicable to the facts of the instant case as it talks about 'Unexplained Investments' made by an assessee.

3.6. The Id. AO did not heed to the aforesaid contentions of the assessee and the documentary evidences placed on record by the assessee and proceeded to deny the claim of exemption u/s 10(38) of the Act by classifying the scrip of CCL International Ltd as a penny scrip not capable of justification of the price rise in the market. The Id. AO accordingly added the sale consideration received on sale of shares of CCL International Ltd as income of the assessee u/s 69 of the Act. In this regard, the Id. AR before us placed on record the annual report of CCL International Ltd in page 96 of the Paper Book which stated that the said company was established in the year 1995 , is fastest growing infra-technology focused Mid Size Contracting Company in Highways Sector, fully equipped with latest German and American Road Infra Machineries with offices in Guwahati, Shillong, Tura, Aizawl and other seven sister states. The said company serves complete 360 degree requirements of Geo Survey, Soil Analysis, Engineering, Procurement & Construction need of our valuable clients and end users. The Id. AR also placed on record the Certificate of Accreditation of New / Alternative Materials / techniques technologies / equipments for adoption in the Highway Sector namely "Evocrete ST" issued to the said company by Indian Roads Congress vide letter dated 12.4.2016. The Id. AR also placed on record an award given by CSIR department,

Government of India to CCL International Ltd. This goes to prove that the said company i.e CCL International Ltd is duly recognised by the Government of India. The Id. AR also placed on record the scrutiny assessment orders of CCL International Ltd of various assessment years as under:-

<u>Asst Year</u>	<u>Income Returned</u>	<u>Income Assessed</u>	<u>Order u/s</u>	<u>Date of Order</u>	<u>Page No. of PB</u>
2011-12	247270/-	289526/-	143(3)	28.2.2014	86 & 87
2012-13	7115100/-	7115100/-	143(3)	4.3.2015	88 & 89
2013-14	15775370/-	15846584/-	143(3)	22.2.2016	90 & 91
2014-15	9101530/-	9243927/-	143(3)	21.12.2016	92 & 92A
2015-16	9533430/-	9913390/-	143(3)	16.5.2017	93 to 95

3.7. The aforesaid scrutiny income tax assessment orders clearly go to prove that the said company i.e. CCL International Ltd cannot be construed as a shell company or a penny stock company as alleged by the lower authorities. On the contrary, the said company is regularly carrying on its business deriving income thereon regularly from both Government and Private Sector. Hence the entire allegations leveled by the revenue qua this company falls flat. We find that the Id. AO had not found any material against this company CCL International Ltd. There is no allegation / statement of any party regarding the said company giving any adverse remarks on the ground that the said company's share prices were artificially manipulated in the stock market. No action has been taken by Securities Exchange Board of India (SEBI). Instead the Id. AO had merely adopted the cut paste modus operandi of some other scrips and had made vague allegations of some investigation by department and SEBI which are totally unconnected to the assessee and the scrip dealt by the assessee herein. In our considered opinion, the entire issue has been looked into by the Id. AO from the angle of suspicion by ignoring the aforesaid factual details placed on record proving the credentials of CCL International Ltd. It is trite law that suspicion howsoever strong cannot partake the character of a legal evidence. This is a classic case of the revenue ignoring their own officers scrutiny assessment orders framed on the said company CCL International Ltd duly accepting the fact that the said company is engaged in various businesses and had reported huge incomes year after year. Hence it cannot be classified as a penny stock company at all. Once it is held that this

company is not a penny stock, none of the allegations leveled by the Id. AO and upheld by the Id. CIT(A) in their orders would be applicable to the said company. The Id. AR also stated that the said company is still listed in the stock exchange and is priced at Rs 30 approximately per share. Further we find that the co-ordinate bench of Delhi Tribunal in the case of Reeshu Goel vs ITO in ITA No. 1691/Del/2019 for Asst Year 2013-14 dated 7.10.2019 had categorically given a finding that the said company CCL International Ltd cannot be held to be a paper entity .

3.8. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we hold that the capital gains earned by the assessee on sale of shares of CCL International Ltd is genuine and accordingly the assessee would be entitled for exemption u/s 10(38) of the Act thereon. Hence the addition made u/s 69 of the Act by the Id. AO is hereby deleted. The Ground Nos. 2 to 4 raised by the assessee are allowed.

4. The Ground Nos. 4 & 5 raised by the assessee are challenging the addition made u/s 68 of the Act in respect of unsecured loans received by the assessee in the sum of Rs 29,56,000/- both on law as well as on facts.

4.1. We have heard the rival submissions and perused the materials available on record. The assessee raised loans from the following parties which is subject matter of dispute before us:-

13.8.2014	Kapil Gupta	16,000/-
29.10.2014	Rakesh Gupta (HUF)	17,20,000/-
24.3.2015	Ankita Garg	2,20,000/-
24.3.2015	Ankita Garg	7,00,000/-
25.3.2015	Ankita Garg	3,00,000/-
	TOTAL	29,56,000/-

4.2. The assessee was asked to explain the three necessary ingredients of section 68 of the Act i.e. identity of the lender, creditworthiness of the lender and

genuineness of the transactions, in respect of the aforesaid loan creditors. The observations of the Id. AO in this regard are as under:-

"(i) No explanation was furnished with regard to deposits of Rs. 16,000/- obtained from Shri Kapil Gupta. Therefore, the sum of Rs. 16,000/- is held unexplained cash credit, and added under section 68 of I.T. Act, 1961."

(ii).....

(iii) Regarding loan from Shri Rakesh Gupta, HUF the assessee filed copy of bank account, confirmed copy of account and ITR acknowledgement. Perusal of his bank account revealed that prior to advancement of loan of Rs. 17,20,000/- to the assessee on 29.10.2014 there were credits in his bank account of Rs. 12,16,314.18 and Rs. 5,00,000. The source of credit of Rs. 12,16,314.18 on 1.10.2014 by way of RTGS from M/s Trustline Securities Ltd. which is the same agency/broker from whom the assessee has shown alleged/bogus sale of shares. Therefore, the nature of this credit entry is certainly from such bogus sale of shares of the penny stock company(s) through rigging the price of the shares through circular trading. In the copy of ITR acknowledgement for A.Y. 2015-16 of Shri Rakesh Gupta, HUF the income has been shown Rs. 2,53,340/- only. Therefore, the genuineness, source and creditworthiness of loan/deposit of Rs. 17,20,000/- on 29.10.2014 from Shri Rakesh Gupta, HUF is held unexplained, and added towards assessee's total income under sec. 68 of I.T. Act, 1961 as unexplained cash credit. However, the loan of Rs. 2,50,000/- on 30.12.2014 from him is treated as explained.

(iv) Regarding loan/deposits of Rs. 2,20,000/- & Rs. 7,00,000/- on 24.3.2015, and Rs. 3,00,000/- on 25.3.2015 from Ms. Ankita Garg the assessee filed confirmatory letter dated 1.4.2015, copy of PAN card and her copy of account in the books of M/s Agro Auto Grind Engineers Pvt. Ltd. Neither copy of her bank statement nor the copy of ITR for the relevant assessment year was furnished. Therefore, the loan/deposits of Rs. 12,20,000/- from Ms. Ankita Garg is also held unexplained cash credit and added towards assessee's total income under sec. 68 of I.T. Act, 1961."

4.3. This action of the Id. AO was upheld by the Id. CIT(A).

4.4. With regard to loan received by the assessee from Rakesh Gupta (HUF) amounting to Rs 17,20,000/- , we find that the only grievance of the revenue with regard to the said lender is that the immediate source of credit for the lender was sale proceeds of shares received from Trustline Securities Ltd. We find that the Id. AO had not even bothered to state from which share that the said share sale proceeds was received from Trustline Securities Ltd by Rakesh Gupta (HUF). This shows that the Id. AO had treated the complete existence of Trustline Securities Ltd as a registered share broker by effectively stating that all the transactions carried out through Trustline Securities Ltd should have to be treated as bogus as they had

only dealt with penny stock scrips where share prices have been artificially manipulated. This is absolutely baseless and cannot be sustained in the eyes of law as it is not backed by any evidence. The Id. AO had not brought any material on record with regard to the name of the scrip dealt by Rakesh Gupta (HUF) ; when it was sold ; whether the gains thereon are short term or long term capital gain or loss ; whether STT was suffered on that transaction ; how many shares were sold. Absent all these basic details, the nature and source of credit of Rakesh Gupta (HUF) being sale proceeds of shares received from Trustline Securities Ltd (a registered share broker with SEBI) cannot be doubted. Even if the amounts received by Rakesh Gupta (HUF) from Trustline Securities Ltd is treated as income in the hands of Rakesh Gupta (HUF), still it becomes a valid source for the HUF to advance loan to the assessee herein. Hence creditworthiness of Rakesh Gupta (HUF) is proved beyond reasonable doubt i.e loan was advanced to the assessee out of sale proceeds of shares by Rakesh Gupta (HUF). Hence the said loan is to be treated as genuine. Apart from this, the assessee on its part had furnished confirmation from the lender, bank statement of the lender and income tax return acknowledgement of the lender. All the loan transactions were routed through regular banking channels. It is also pertinent to note that assessee had also received another loan of Rs 2,50,000/- from the very same lender Rakesh Gupta (HUF) on 30.12.2014 which has been accepted as genuine by the same Id. AO in the assessment. Hence the creditworthiness alone, if at all, of the lender could be doubted by the Id. AO in respect of the first loan of Rs 17,20,000/-. We have already stated hereinabove that the assessee had duly explained even the source of source of the lender to be out of sale proceeds of shares received from Trustline Securities Ltd. Hence the creditworthiness of the lender is also proved beyond reasonable doubt. Since all the three necessary ingredients of section 68 of the Act are proved by the assessee herein, no addition could be made u/s 68 of the Act in respect of loan received from Rakesh Gupta (HUF) in the sum of Rs 17,20,000/-. The said addition is hereby directed to be deleted.

4.5. With regard to loan received from Ankita Garg on 24.3.2015 and 25.3.2015 in the total sum of Rs 12,20,000/-, the assessee furnished confirmation from the

lender, copy of PAN card of the lender, copy of ledger account in the books of M/s Agro Auto Grind Engineers Pvt Ltd before the Id. AO. The Id. AO had resorted to add the loan receipt as unexplained cash credit u/s 68 of the Act on the ground that bank statement of the lender was not furnished by the assessee, which fact is evident from the observations of the Id. AO reproduced hereinabove. The bank statement of this lender was filed by the assessee before the Id. CIT(A) as additional evidence. This was rejected by the Id. CIT(A) on the ground that the same was not accompanied with an application in terms of Rule 46A of the Income Tax Rules. We find that the Id. CIT(A) had resorted to an easy approach to reject the plea of the assessee for one reason or other. Infact the bank statement clearly reveal that the immediate source of credit for Ankita Garg was amounts received from Agro Auto Grind Engineers Pvt Ltd on 24.3.2015. It is not in dispute that the ledger account of Agro Auto Grind Engineers Pvt Ltd was duly placed on record by the assessee before the Id. AO itself which fact is even acknowledged by the Id. AO in his observations reproduced hereinabove. Hence there is no reason for the Id. CIT(A) to merely reject this crucial document of bank statement as additional evidence which only supports the documents already placed on record by the assessee before the Id. AO viz. the ledger account of Agro Auto Grind Engineers Pvt Ltd. Hence we have no hesitation to hold that the assessee had duly proved the identity of the lender, creditworthiness of the lender and genuineness of the transactions in respect of loan received from Ankita Garg in the sum of Rs 12,20,000/- and hence the addition made u/s 68 of the Act thereon is hereby directed to be deleted.

4.6. With regard to loan received from Kapil Gupta in the sum of Rs 16,000/-, the same was added as unexplained cash credit u/s 68 of the Act by the Id. AO on the ground that no details were furnished by the assessee. The assessee had filed confirmation from the lender, copy of Income Tax Return acknowledgement of the lender for the Asst Year 2014-15, copy of PAN card of the lender as additional evidence before the Id. CIT(A), which were rejected by the Id. CIT(A) as it was not accompanied by a formal application in terms of Rule 46A of the Income Tax Rules. We find on perusal of the ITR of the lender, the lender had reported taxable

income of Rs 7,04,030/-. Considering the smallness of the amount of Rs 16,000/-, we hold that the lender has got sufficient sources to advance loan of Rs 16,000/- to the assessee on 13.8.2014 through regular banking channel. Hence we have no hesitation to hold that the assessee had duly proved the identity of the lender, creditworthiness of the lender and genuineness of the transactions in respect of loan received from Kapil Gupta in the sum of Rs 16,000/- and hence the addition made u/s 68 of the Act thereon is hereby directed to be deleted.

4.7. Accordingly, the Ground raised by the assessee on merits is allowed. Since relief is granted to the assessee on merits, the Ground No. 4 raised by the assessee that the provisions of section 68 of the Act could not be made applicable to the assessee as no books of accounts were maintained by the assessee, need not be gone into, and the same is hereby left open.

5. The Ground Nos. 1 & 7 raised by the assessee are general in nature and does not require any specific adjudication.

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

Order pronounced in the open court on 03/04/2024.

-Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 03/04/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi