

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.3704/Mum/2023  
(Assessment Year :2014-15)**

Shri Rohit Devendra Goyal A-001, New High Way Park E-3 CCOP Hsg Soc. Near Avenue Hotel, Thakur Complex Kandivali East Mumbai- 400 101	Vs.	Income Tax Officer-33(3)(2), Mumbai
<b>PAN/GIR No.AFGPG9150C</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rakesh Joshi
Revenue by	Smt. Mahita Nair
<b>Date of Hearing</b>	<b>05/03/2024</b>
<b>Date of Pronouncement</b>	<b>10/04/2024</b>

**आदेश / O R D E R**

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

The aforesaid appeal has been filed by the assessee against the first appellate order passed by learned Commissioner of Income-tax (Appeals) - NFAC, New Delhi ('CIT(A)' in short) dated 11-09-2023, for the quantum of assessment passed under section 143(3) of the Income-tax Act, 1961 (the Act) for the Assessment Year 2014-15.

2. As per the grounds of appeal, the assessee has challenged the denial of exemption of Long Term Capital Gain (LTCG) claimed under section 10(38) of the Act and loan taken from the aforesaid party along with other disallowances. The additions/disallowances against which the assessee is in appeal before us are as under:

- Additions of Rs. 49,85,630/- by treating the LTCG from sale of shares as Unexplained Cash Credits.
- The disallowance u/s 69C of the Act made on account of commission for obtaining LTCG entry amounting to Rs.2,49,281/-
- The addition U/s 68 of Rs.75,00,000/- being loan taken from the M/s Unno Industries Ltd which was treated as bogus loan
- Disallowance of interest on the above loan Rs.1,34,260/-

3. Briefly stated, the assessee, an individual and proprietor of M/s Rohit Developers. He had filed his return of income declaring total income at Rs. 14,51,289/- for the A.Y. 2014-15 in question. The return filed by the assessee was subjected to scrutiny assessment. In the course of scrutiny assessment the income has been assessed at Rs.1,44,10,460/-.

### **Addition on account of LTCG and Commission**

3.1. The ld. AO *inter alia* observed that assessee has declared exempt income derived by way of Long Term Capital Gains (LTCG) under section 10(38) of the Act on account of sale of

shares of M/s Unno Industries Ltd.. On enquiry by the AO, the assessee submitted that he had purchased 160 shares @ Rs. 1250 per share of M/s Pinnacle Vintrade Ltd. at a purchase cost of Rs. 2,00,000/- on 17.10.2011 from M/s. Uniglory Developer Ltd. followed with physical delivery of the share certificates. The shares were later demated on 06.08.2012. Subsequently, the company M/s Pinnacle Vintrade Ltd. issued bonus shares on 23.03.2012 which too were credited to the assessee's Demat a/c on 03.09.2012. The company M/s Pinnacle Vintrade Ltd was amalgamated with M/s Unno Industries Ltd which was informed to the assessee via intimation dated 12.02.2013 from the said company stating that the scheme for amalgamation was approved by the Hon'ble Bombay High Court. The assessee was allotted 145600 shares against its holding in M/s Pinnacle Vintrade Ltd. Thereafter, assessee sold 145600 shares between the period 24.05.2013 to 21.08.2013 and thus claimed Long Term Capital Gain on account of holding of shares in physical form and demat form put together for more than one year. The sale consideration aggregating to Rs. 49,65,788/- were received through banking channel for the shares sold at an average rate of 34.10 per share. The ld. AO however, observed that LTCG claimed as exempt income is only an accommodation entry to launder the unaccounted income of the assessee and introduced it as exempt income in the form of LTCG.

3.2. The ld. AO extensively referred to Investigation Report issued by Directorate of Investigation, Kolkata explaining the general *modus operandi* for rigging of the prices of penny stocks

abnormally high by involvement of multiple intermediaries and take advantage of tax provision to claim exempt income by significant jump in the share prices through such rigging. The Id. AO also referred to the financials of the company and concluded that the same did not have any substantial business activities and assets. The Id.AO also pointed-out certain abnormal defect in trading pattern of the said stock and abnormal price rise. The statements recorded of the promoter of M/s Unno Industries Ltd recorded by DCIT-Unit (8)(1) was also reproduced.

3.3 The Id.AO also observed that the assessee has not indulged in any other share purchase and sale transactions and unrealistic returns received on solitary investment is highly improbable based on the investigation report that these penny stock companies including CCL Ltd. are paper companies. He held that such transactions resulting in large capital gains to be highly implausible and the onus to support such claim of exemption was not discharged by the assessee. Consequently, the Id. AO resorted to provision of section 69A of the Act and treated the Long Term Capital Gains arising from sale of shares of M/s Unno Industries Ltd to be unaccounted income of the assessee to the extent of Rs. 49,85,630/-. The Id.AO also invoked the provision of section 69C and added Rs. 2,49,281/- towards unexplained transaction expense on notional basis.

4. In this regard, the learned Counsel submitted at the outset that the Long Term Capital Gains claimed as exempt under section 10(38) of the Act was fully supported by the documentary

evidences for the purchase and sale of shares before the lower authorities and the Revenue authorities have blindly relied upon the investigation report which primarily narrates general *modus operandi*. The learned Counsel pointed out that the Id.AO has merely relied upon the investigation wing of the Income Tax Department, who has identified M/s Unno Industries Ltd. as one of the penny stock on the basis of orders of the SEBI and stock exchange. But its matter of record that there is no such order of SEBI or Stock exchange passed against the said company or banning the trade of the scrip or any adverse finding has ever been received that there was any manipulation of price in stock exchange. He stated that on the website of SEBI, only one order of SEBI was found which is against the said company was only on the ground that the company was found to be dealing in trading of illiquid shares of other companies, copy of the said order has been placed before us at pages 48-64 of paper book. Similarly, he pointed out that the shares of the company were regularly traded during the period when the assessee was dealing into it. Later in May 2016 the shares were delisted due to technical non-compliance on part of said company. He further submitted that Id. AO issued show cause to the assessee vide notice dated 26/12/2016 wherein vide para 5 of the said show cause he has relied upon certain financial of Shree Shaleen Textiles Ltd and concluded that the said financial and trading pattern clearly proves that there is no substance in the financial details of the company. However, assessee has never dealt with the shares of this company and it is not understood that why AO

is relying on the financial of Shree Shaleen Textiles Ltd. to test financial of Unno Industries Ltd. It was further noted that the same information discussed in assessment order but name of the company changed to Unno Industries Ltd. This clearly shows that the information available with the ld. AO has no relation with the said company. Since the financial details relied upon by the AO has no relation with the Unno Industries Ltd. it clearly proves that the other information such as exit provider etc. also not connected with the same scrip at all. He submitted that, the assessment order seems to be passed on the basis of wrong information. He also contended that ld.AO in para 8.3 of the order given name of various parties who claimed to be exit provider to the assessee but failed to provide any nexus of the said allegation or they any way related to the sale of the shares of UNNO.

5. Ld. Counsel further submitted that assessee is regular investor and he invested in other scrips also, which is evident from his demat statement placed in paper book. The shares were purchased in FY 2011-12 and sold after two years in FY 2013-14. Both purchase and sales done through banking channel and shares were routed through demat account. AO has not doubted any of the documents submitted before him to substantiate the claim. The learned Counsel thus submitted that no adverse inference should be drawn by the AO in the case of the assessee.

6. Ld. Counsel thereafter, referred to the judgment delivered by the jurisdictional High Court in the recent case of **Pr CIT Vs**

**Indravadan Jain, HUF (2023) 156Taxmann.com605 vide order dated 12.07.2023**, wherein the Hon'ble court has held that where shares were transferred through DEMAT account and through banking channels, contract notes were issued by the broker and the shares were sold on the stock exchange, there is no reason to treat capital gains as unexplained cash credits. Further, Learned Council also referred to the case of **Pr. CIT v. Karuna Garg [2023] 457 ITR 591 (Delhi) [ITA no. 477/2022 judgment dated 23-11-2022]** to contend that mere astronomical increase in the share prices of a company which was not commensurate with the financial parameter of the said company is not a good ground for adverse inference. Reference was also made to the judgment rendered in the case of **Pr. CIT v. Prem Lal Gandhi [2018] 94 taxmann.com 156/401 ITR 253 (Punj. &Har.)**, wherein the Hon'ble Punjab and Haryana High Court held that despite purchases made in cash, the gains arising on sale of shares cannot be treated as sham having regard to the facts and the circumstances of that case. Reference was also made to the decisions rendered by the Co-ordinate Bench in the case of **Trivikram Singh Toor v. Pr. CIT [2022] 142 taxmann.com 493/[2023] 198 ITD 533 (Chd. - Trib.)** in favour of the assessee where gain on sale of scrip namely CCL Ltd. was subject matter of consideration.

7. The ld. Counsel thereafter, submitted that department proceeded on gross misconception of facts. It cannot be case of Revenue that assessee has not purchased shares in the wake of dematerialisation of shares in the demat account and thereafter,

transfer thereof on sale of shares. Both purchase and sale transactions have occurred through banking channel. The documentary evidences have been furnished in support of purchase and sale of shares and transfer of shares in demat form. Thus, the onus to prove that the apparent is not real is on the AO and wrongly shifted to the assessee. The AO has proceeded on conjecture and surmises merely because astronomical increase has happened in the share prices of CCL Ltd. which is not uncommon phenomena in capital market. A reference was made to the judgement rendered by the **Hon'ble Delhi High Court in the case of Pr. CIT. v. Smt. Krishna Devi [2021] 126 taxmann.com 80/279 Taxman 148/431 ITR 361** to submit that startling spike in penny stock share prices cannot be regarded as a valid ground for a denial of LTCG exemption. In similar vein, reference was made to the Coordinate Bench judgment dated 16-12-2020 in the case of *Achal Gupta v. ITO* [IT Appeal No. 501 (LKW) of 2019, dated 16-12-2020] to submit that claim of long term capital gains arising on sale of CCL Ltd. was duly accepted by the Tribunal in that case. Another reference was made to the decision delivered by the **Hon'ble Delhi High Court in the case of Reeshu Goel v. ITO [IT Appeal No. 1691 (Delhi) of 2019, dated 7-10-2019]** involving accommodation entries in the scrip of CCL Ltd. wherein the Delhi High Court in that case affirmed the view of the Tribunal in favour of the assessee.

7.1. The learned Counsel thereafter, submitted that there are long lines of judicial precedents to support the case of the

assessee especially on the same scrip wherein the action of the Revenue was found not justified in law and on facts, and similar addition made were deleted.

8. On the contrary the Learned Departmental Representative referred to various observation and finding of AO and also placed reliance on the ruling of Hon'ble ITAT of Delhi in the case of *Abhinav Agarwal V. DCIT 3640/Del/2018* and *Abhinav Agarwal HUF V. ITO ITA 3641/Del/2018* for the AY 2014-15 dated 04.01.2022, wherein the discussion pertaining to the same script i.e., M/s Unno Industries Ltd was undertaken and the appeal was adjudicated against the assessee. Ld. DR further submitted that, once it has been found by the Investigation Wing of the Department that this scrip was used to provide accommodation entry, and on further analysis of the report AO has given his categorical finding that the claim made by the assessee is bogus and sham.

9. We have carefully considered the rival submissions and perused the relevant finding given in the impugned orders and material available on record and also the case laws cited have also been taken into account. As pointed out on behalf of the assessee, the transaction of existence of purchase and sale of M/s Unno Industries Ltd. giving rise to LTCG claimed to be exempt under section 10(38) of the Act was fully corroborated by the documentary evidences, which is not in dispute. The shares have been credited in the demat account and transferred out of demat account at the time of sale. Both purchase and sale

transactions are carried out through banking channel and by transfer of shares. The *prima facie bonafides* of existence of transaction executed cannot thus be doubted. It is not the case of the revenue that the capital gain arising to Assessee is not in the nature of LTCG. The case of revenue is that such transactions is an accommodation entry and thus it is a sham, which is based on report of Investigation wing in many scrips. The abnormal increase in prices of share has led to suspicion on *bonafides* of transaction and was treated as accommodation entry of sham nature. Ld. AO has relied upon the modus operandi as described by the Kolkata Investigation wing without carrying out any independent investigation. To discard the documentary evidences filed by the assessee and to corroborate the findings or report of the investigation, there has to be either concrete information impinging assessee; or there is information about exit providers who have specifically confirmed the purchase of shares to facilitate the accommodation entry; or SEBI has found some discrepancy in manipulation of price in stock exchange or found something irregular leading to inference that this scrip was used for the benefit of person indulging in buying and selling of the shares and banning the trade of the scrip; or the company itself has been investigated and found to be indulged in such activity; or some direct evidence or material is found implicating assessee. Then preponderance of probability goes against the assessee that documents filed by the assessee cannot be conclusive. Presumption can be based against the assessee if all such factors are brought on record and not on

some general report of Investigation Wing. Such report can be triggering point but not conclusive unless some inquiry has been done by the AO or something specific has been brought on record. That is the reason in all the judgments of Hon'ble High Court have held in favour of the assessee under these circumstances.

10. Further, as for the ruling on which the Ld. DR has placed reliance i.e., Hon'ble Delhi ITAT in case of Abhinav Agarwal(supra), it is noticed that even though the discussion was made of the similar script i.e., of M/s Unno Industries Ltd, the facts of the case was different and not applicable to the current case. The ld. AO in the case of Abhinav Agarwal (supra) has conducted an in-depth independent enquiry and has brought on record the evidences wherein the involvement of the assessee was found and substantiated. In this case, ld. AO has not conducted any such enquiries or has brought anything on record to even remotely suggest that the monies received by the Assessee in the form of sale of shares being credits recorded in his books of account represent the undisclosed or unaccounted funds/ income of the Assessee. Apart from alleging that the assessee adopted the standard operating procedures of accommodation transactions and that the shares of the company abnormally increased during the year under consideration which cannot be sole reasons to sustain additions u/s 68. The Ld. A.O has not brought anything on record to disprove/refute the genuineness of the evidences furnished by the Assessee herein. The Ld. A.O have failed to prove that the impugned credits

despite being received from sale of shares though online trading on BSE platform still represents income from suppressed/undisclosed sources of the Assessee herein before nailing the Assessee and fastening the Assessee with impugned liabilities u/s.68. In absence of independent scrutiny of facts, the ruling of Hon'ble Delhi ITAT is distinguishable from the current case and cannot be relied upon.

11. The Hon'ble Bombay High Court in case of *Indravadan Jain HUF* and Hon'ble Delhi High Court in the case of *Karuna Garg (supra)* as well as *Krishna Devi (supra)* has held that an astronomical increase in the share price of a company in itself is not a justifiable ground for holding the LTCG to be an accommodation entry. Here in this case it is not even astronomical increase of price. There has to be other materials to dislodge the claim of the assessee, when existence of purchase of shares and sale is through stock exchange on line is not disputed, then other factors have to brought on record to treat that it was an accommodation entry.

12. The whole basis of making the addition is third party statement and standard modus operandi without there being any linkage with the assessee or any inquiry of the scrip or any adverse finding by agency like SEBI, which regulates the trading in stock exchange. It is trite law that additions merely on the basis of suspicious, conjectures or surmises could not be sustained in the eyes of law as held by Hon'ble Supreme Court in *Omar Salay Mohamed Sait V /s CIT (1959 37 ITR 151)*. The

suspicion however strong could not partake the character of legal evidence as held by Hon'ble Supreme Court in Umacharan Shaw & Bros. V/s CIT (1959 37 ITR 271). Therefore, we find that onus as cast upon revenue to corroborate the impugned additions by controverting the documentary evidences furnished by the assessee and by bringing on record, any cogent material to sustain those additions, could not be discharged by the revenue. The allegation of price rigging / manipulation has been levied without establishing the vital link between the assessee and various entities of Shri Alok Harlalka. We find that the whole basis of making additions is third party statement and without any reference of assessee.

**13. One another peculiar fact in the present case is that, AO while inquiring the loan taken by the assessee of Rs. 75,00,000/- which is also one of the addition challenged before us, from same UNNO Industries, has sent notice u/s 133(6), whereby this lender company has confirmed the transaction by submitting all the documents. But at no point of time, AO has confronted to the same company about the purchase and sale transaction of the shares with respect to claim of LTCG or confronted about any report of investigation wing or any exit providers or inquire about this allegation. If he can inquire about loan then ostensibly he could have inquire about this transaction also, instead of relying upon the report of investigation wing. In this backdrop and facts and circumstances of the facts on record and lack of inquiry by the AO, we are of the view that the addition is**

not justified based on conjecture and surmise and the assessee is discharged primary onus which lay upon it. The Revenue, on the other hand, could not dislodge the perception that apparent is not real.

14. In the light of factual matrix and case laws referred to before us, we see substance in the plea of the assessee that such capital gains arising on sale of shares cannot be regarded as sham profit and consequently, additions under made u/s 68 or section 69A of the Act is not justified. The ld.AO has not provided anything on record to justify additions under section 69C of the Act either. As held above, *modus operandi* spelt by itself is not a adequate ground to impeach the transactions. The judgment in Abhinav Agarwal relied upon by revenue which was heavily relied upon was rendered in the facts of that case and is quite distinguishable. In that case, the as stated above, ld. AO has investigated the facts and bring on record the cash trail and role of assessee in arranging the transaction, however, in this case AO has not carried out any verification and solely relied upon the *modus operandi* in such transactions.

15. Therefore, considering the entirety of facts and circumstances, we are not inclined to accept the stand of Ld. CIT (A) in sustaining the impugned additions in the hands of the assessee. Resultantly, the addition on account of alleged Long-Term Capital Gains as well as estimated commission against the same, stands deleted. The grounds of appeal, to that extent, stand allowed

**Addition U/s 68 of unsecured loan**

16. Next Ground relates to addition U/s 68 on account of loan taken of Rs. 75,00,000/- from Unno Industries Ltd and interest paid thereon of Rs. 1,34,260/-. The AO relying upon the statement of Shri Pawan Dalmia made addition of loan taken U/s 68 of the Act on the allegation that the assessee failed to justify identity, creditworthiness and genuineness of the transactions.

17. Before us, the AR of the assessee submitted that the basic requirement to justify identity, creditworthiness and genuineness of the transactions in the case of the Assessee are prima facie established. Relevant documents were furnished by the Assessee. The Assessee filed copies of confirmation, bank statements, P&L A/c, Balance Sheet, Assessment Orders of the investors/lenders to establish source of funds in the hands of investor/lender companies. The depositor has filed responded notices issued u/s 133(6) and furnished desired details. The A.O has not brought any adverse material to reject the explanations and evidences submitted by the Assessee as well as the lender company. There is no material which has been brought on record by the A.O to prove that the unsecured loan originated from Assessee. The documents submitted conclusively establish that the money came from the depositor's account and nowhere connected with the Assessee, and there is no cash deposit in the bank accounts of the party from whom loan is received, the entire amount was received through normal banking channels, the depositors have also confirmed of having deposited money in the company which

confirmations also reveal source of funds, particulars of bank accounts through which payments have been received and income tax particulars, the depositor company is assessed to tax. Assessee has also paid interest on the loan and TDS deducted thereon. The loan has been repaid in subsequent year. Once assessee submitted all the requisite details the Assessee cannot be fastened with liability u/s 68 unless a causal connection between the cash deposit in the bank account of the depositor and the Assessee is established.

18. Ld. DR strongly relied upon the findings of the AO and CIT (A) and submitted that it same nature of entry provider.

19. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as materials referred to before us at the time of hearing. The issue pertains to addition u/s.68 in the form of unsecured loan and interest paid thereon. The Assessee had taken loans in this year of Rs. 75,00,000/- and paid interest thereon of Rs. 1,34,260/-. This loan was repaid alongwith interest in nest year i.e., FY 2014-15. During the course of assessment proceedings, the Assessee had submitted the following documents in order to substantiate its claim:-

- (i) The confirmation of loans.
- (ii) Acknowledgment of returns of income of loan parties.
- (iii) Copies of relevant pages of bank statements of loan parties.
- (iv) Copies of bank statements of the Assessee

20. During the course of assessment AO issued notice U/s 133(6) to Unno Industries Ltd. which was duly responded by the party and filed the requisite documents. Thus, the identity and the creditworthiness of the investor/subscriber company stands fully established and so also the genuineness of the transaction.

21. However, the Id. AO doubted and rejected the same while relying upon the statement of Mr. Pawan Dalmia, without providing copy of his statement to the Assessee and even without affording any opportunity of cross examination of Mr. Dalmia. It is also not the case that in the said statement person has given any specific reference of the assessee that loan given to him is bogus accommodation entry given for short period. The Assessee in this case, has not only discharged its primary onus by establishing the identity of the parties etc. providing confirmation of loans, acknowledgment of return of income filed by the parties who have duly shown the amount of loan in their returns of income and banks statement of loan parties and the Assessee showing the transactions held, but also shown to have deducted. The enquiry done by the AO by issuing notice U/s 133(6) also did not reveal anything contrary to the stand of the assessee. It is clear that if the A.O. disregards the documents furnished by the assessee to discharge onus u/s. 68 and nothing adverse has been found from his own enquiry, albeit the party has confirmed the transaction with documents directly to the AO, and comes to the conclusion that transaction of receiving money as loan was not a genuine only on the basis of general statement of third party, without the any reference of the assessee at all, the action

of the A.O is not tenable. The A.O has to bring on record some material to show that confirmation and other evidence placed by the Assessee was not genuine, he could not have simply discarded the documents produced by the Assessee.

22. Therefore, on the basis of the general statement made by any 3rd party, without demolishing the case/claim of the Assessee, making of an addition cannot be upheld and we accordingly, delete the made addition U/s 68 of the Act. The disallowance of interest being consequential to the said addition of loan also deleted.

**23. In the result, appeal of the assessee is allowed.**

Order pronounced on 10<sup>th</sup> April, 2024.

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 10/04/2024  
KARUNA, *sr.ps*

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

**Copy of the Order forwarded to :**

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

//True Copy//

*ITA No. 3704/Mum/2023*  
*Shri Rohit Devendra Goyal*

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**