

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 132/Ahd/2023
निर्धारण वर्ष/Assessment Year: 2017-18

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|---|--------------------------------|---------------------------------|
| Shama Ajay Patel, 2, Chandroday Society, Opp. Golden Triangle, SP Stadium Road, Navjivan Post, Ahmedabad-380014 PAN : ALXPP 5273 E | Vs. | The CIT(IT & TP), Ahmedabad |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |
| Assessee by : | Shri Sunil Talati, AR | |
| Revenue by : | Dr. Darsi Suman Ratnam, CIT-DR | |

सुनवाई की तारीख/Date of Hearing : 01.02.2024
घोषणा की तारीख /Date of Pronouncement: 26.04.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The present appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income-tax (IT & TP), Ahmedabad [hereinafter referred to as ld. "CIT(IT & TP)" for short] dated 08.02.2023, in exercise of his revisionary powers under Section 263 of the Income-tax Act, 1961 [hereinafter referred to as "the Act"], for the Assessment Year (AY) 2017-18.

2. The grounds raised by the assessee challenging the impugned order of the ld. CIT (IT & TP) reads as under:-

"1. The Ld. CIT has erred in passing Order u/s 263 without jurisdiction and appropriate powers available under the Act. It is submitted that the order passed u/s. 263 is bad in law as A.O. has neither committed any error nor it is prejudicial to the interest of revenue. It be held now.

2. *Without prejudice to the above, it is submitted that observation and finding and mentioning by Ld. CIT that the order of Ld. A.O. is erroneous and prejudicial to the interest of revenue is totally incorrect as no error has been committed by the Ld. A.O. It is submitted that the Ld. A.O. has made full inquiries and the assessee has offered complete details of transactions related to shares of Kushal Limited Company being the only issue in assessment proceedings and Ld. A.O. had verified the same to his complete satisfaction. It is, therefore, submitted that the view so taken of holding that assessment order passed by the Ld. A.O. is an erroneous and prejudicial to the interest of revenue is incorrect and illegal and accordingly, the direction to set aside and to verify this in the manner and method set out by Ld. CIT himself is not correct on the facts and law and the same be held now.*
3. *Without prejudice to the above, the Ld. CIT has erred in passing the order u/s 263 of the Act, both on facts and on law, without appreciating the detailed submission filed before the Ld. A.O. as well as filed before him. It is submitted that none of the points stated by the Ld. CIT remained unexamined or unverified by the A.O. The Ld. AO had verified all the points referred to in the notice issued u/s 263 in great detail and to his full satisfaction on same issue. The Ld. CIT has while setting aside the order, directed the Ld. A.O. to examine the same issue in a different and in detailed manner which cannot be termed as erroneous or prejudicial to the interest of revenue. What kind of inquiry should be made? and what kind of verification should be made? is the sole discretion and decision of Ld. A.O. and Ld. CIT cannot replace the same while passing the order u/s 263 of the Act. It is submitted that the same be held now.*
4. *The order passed by the Ld. CIT is bad in law and contrary to the provision of law and facts. It is submitted that the same be held so now."*

3. As transpires from the order of the ld. CIT (IT & TP), the assessment order subjected to revision as that passed in reassessment proceedings u/s 147 of the Act. The assessee had filed original return of income for the impugned year declaring total income of Rs.72,33,120/-. Subsequently, based on information available on record, the case of the assessee was reopened u/s 147 of the Act and thereafter assessment was finalized accepting the returned income. The ld. CIT (IT & TP), on review of the case records, noticed that there was information available with the Assessing Officer on the Insight portal of the Department that one of the scrips traded in during the year was a bogus

transaction the price of which was rigged so as to enable the unaccounted money to be routed as capital gain of the assessee. The scrip so noted by the Id. CIT (IT & TP) was that of M/s. Kushal Limited, in respect of which the Id. CIT (IT & TP) noted that in pursuance to search and seizure action conducted u/s 132 of the Act on the Kushal Group, it was revealed that the scrip of M/s. Kushal Limited was price rigged. The entire modus operandi was apparently revealed during search with the evidences of cash transactions entered into by the Group for providing Long Term Capital Gain/Loss or Short Term Capital Gain/Loss which were bogus. There was specific information available with respect to the assessee also revealing that the assessee had traded in 30,530 shares of the said company during the year for a consideration of Rs.89,04,447/-, resulting in gain of Rs.51,16,561/-. The Id. CIT (IT & TP) was of the view that, despite the above information available on record, the Assessing Officer had finalized the assessment order accepting the returned income "*without making necessary inquiries or verification*" in this regard. The above facts find mention at paragraph Nos.2 & 3 of the Id. CIT (IT & TP)'s order as under:-

"2. Subsequently, the assessment was selected for review. On perusal of case records, it is noticed that in this case there was information available to the Assessing Officer (AO) on the Insight portal of the Department that a Search and seizure action u/s.132 of the I.T. Act was carried out in the Kushal Group of Ahmedabad on 05.02.2019, wherein certain incriminating evidences regarding price rigging in the scrip of M/s. Kushal Limited was found. Further on investigation by the Investigation Wing, it was found that there were systematic evidences of cash transaction entered by Kushal Group providing long term capital gain/loss or short term capital gain/loss. For ready reference, the excerpt of information relating to the assessee is tabulated hereunder:

| Opening Qty | Opening Value | Buy Qty | Buy Value | Buy days | Buy Trades | Sell Qty | Sell value | Sell days | Sell Trades | Profit (+ve)/ Loss(-ve) |
|-------------|---------------|---------|-----------|----------|------------|----------|--------------|-----------|-------------|-------------------------|
| 19,000 | 1,988,053.35 | 11,530 | 1,799,833 | 1 | 79 | 30,530 | 8,904,447.60 | 1 | 77 | 5,116,561.25** |

3. *On going through the information disseminated by the Investigation Wing, it was observed that the assessee was having 19000 shares of scrip of M/s. Kushal Limited at the beginning of F.Y. 2016-17 for the value of Rs. 19,88,053.35/- and 11530 shares were purchased by the assessee for value of Rs. 17,99,833.00 during the year. After manipulation and rigging of price of the shares, the assessee has sold out 30,530 shares for the consideration value of Rs.89,04,447.60/-, resulting in gain of Rs.51,16,561.25. The information clearly established that by following a set modus operandi, the assessee had obtained bogus capital gain through colourable devices. It is prima facie seen that the assessee has claimed to have earned capital gain in order to route her unaccounted money. **However, despite the above information available on records, the AO has finalised the assessment order accepting returned income without making necessary inquiry or verification.** The Assessing Officer should have made necessary inquiry or verification in this regard. Therefore, the assessment order passed u/s.143(3) rws 147 of the Act dtd.29.03.2022, accepting returned income was found erroneous and prejudicial to the interest of the Revenue within the meaning of Section 263 of the I.T. Act."*

4. The Id. CIT (IT & TP) accordingly issued a show-cause notice to the assessee as to why the assessment order be not revised u/s 263 of the Act on account of the same being erroneous and prejudicial to the interest of the Revenue for the Assessing Officer having failed to making necessary inquiries with respect to the information available with him regarding the alleged bogus capital gain earned by the assessee on trading in the scrip of M/s. Kushal Limited. Due reply was filed by the assessee stating that the transaction was genuine, having been incurred through her NRE account and on which short term capital gain had been earned by the assessee subjected to tax @ 15.45%. The Id. CIT (IT & TP), however, was not convinced with the reply of the assessee and held that, clearly, the Assessing Officer had accepted the impugned transactions as genuine, without making necessary inquiries in relation to the same considering the information available with him and the same had caused prejudice to the Revenue since the impugned short term capital gain had been taxed @ 15% only instead of 30% which was an

applicable tax rate in the case of the assessee. The Id. CIT (IT & TP) accordingly held the assessment order to be erroneous and prejudicial to the interest of the Revenue, and set aside the order for *de-novo* assessment, directing the Assessing Officer to make a fresh assessment after giving due opportunities of hearing to the assessee. The relevant findings of the Id. CIT (IT & TP) at paragraph Nos. 8 & 9 of his order are as under:-

"8. I have gone through the reply of the assessee and it is considered and kept on record. However, the same is not found to be acceptable for the reasons summarized as under.

8.1 The assessee has submitted that she has made investment in shares and Mutual funds for which funds in her NRE account were used. It is also submitted by the assessee that shares of Kushal Limited were purchased in ordinary course just like any other shares. She had earned short term capital gain on the same and TDS was already deducted and taxed at 15.45%. She has submitted that shares were purchased out of legitimate NRE funds and sales proceeds were credited to the same NRE Account. However, the reply of the assessee is not acceptable because, the Search and seizure action u/s.132 of the I.T. Act was carried out in the Kushal Group of Ahmedabad on 05.02.2019 by the Department, wherein certain incriminating evidences regarding price rigging in the scrip of M/s. Kushal Limited was found. Further, on investigation by the Investigation Wing, it was found that there were systematic evidences of cash transaction entered by Kushal Group providing long term capital gain/loss or short term capital gain/loss. On going through the information disseminated by the Investigation Wing, it was observed that in the assessee's case there were 19000 shares of scrip of M/s. Kushal Limited at the beginning of F.Y. 2016-17 and 11530 shares were purchased during the year. The assessee has sold out 30530 shares during the year and shown to have earned short term gain of Rs.51,16,561.25/-. The assessee in details submitted during the proceedings that she has earned short term gain of Rs.50,74,200/-. However, the opening value of shares could not be ascertained from her submission. Therefore, in absence of details, the amount of short term gain is considered of Rs.51,16,561.25 as per information available with the Department.

8.2. The assessee has in her reply submitted that she has offered said short term capital gain for taxation. However, the same is not acceptable because by offering STCG, it cannot be proved that the transactions made are

genuine. The tax rate on short term capital transaction is 15% and for other source of income, the tax rate is 30% if income exceeds Rs.10 lacs. In this case, the income of the assessee for the year under consideration exceeds Rs. 10 lacs and therefore, tax rate would have been @30%. From this transaction, it is clearly established that by following a set modus operandi, the assessee had obtained bogus short term capital gain amounting to Rs.51,16,561.25/- i.e. through colorable devices and offered for taxation at a lower rate of 15% instead of 30%. By offering STCG, the assessee has planned to save 15% tax on income earned during the year. The assessee has claimed said STCG in order to route her unaccounted money. In fact, the bogus income in the instant case would be taxable at a special rate as per provision of section 115BBE of the I.T. Act.

8.3 Here, it is pertinent to discuss something about accommodation entry. The Accommodation entry is a financial transaction between the two parties where one party enters the financial transaction in its books to accommodate the other party. These transactions are accommodation entries mostly in lieu of cash of equal amount and commission charged over and above at certain fixed percentage for providing such accommodation entry. These accommodation entries are taken by various beneficiaries for introducing their unaccounted cash into their books of accounts without paying the due taxes. The above said modus operandi was found during the Search and Seizure operation in the Kushal Group and the assessee was found one of the beneficiaries of availing accommodation entry. In similar circumstances, Department's finding has been upheld by various Courts, latest being the Hon'ble High Court of Kolkata in a recent judgment delivered on 14-06-2022 in the case of Pr. CIT Vs. Swati Bajaj and others in ITA No. 06 of 2022 came heavily upon fraudulent transactions being carried out in the form of shell companies and has strongly held against the assessee and in favour of the revenue observing that this modus operandi in taking undue advantage of the legal procedure and provisions of the Act should not be permitted in the greater interest of the country as a whole. The Hon'ble High Court on analyzing the facts on the issue regarding the entire process adopted by these assesseees in order to fraudulently gain and take advantage for non-payment of the taxes has been specifically held to be unwarranted, illegal and bad in law by the Hon'ble High Court.

Further in case of Dineshkumar R. Tulsyan (HUF) Vs. ITO, the Hon'ble ITAT, Pune 'A Bench in ITA No.813/Pune/2018 for A.Y. 2014-15 held that "We also find that Hon'ble Supreme Court in the case of McDowell & Co. Vs. CTO (1985) 154 ITR 148 (SC) has given a strong verdict against any such arrangements by stating that "colourable devices cannot be a part of tax planning and it is wrong to encourage or entertain the belief that it

is honorable to avoid the payment of taxes by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. In view of Hon'ble Apex Court's verdict, and after examining the entire arrangement as appearing in the facts of this case, it is held that this is merely a colourable device for claiming bogus long term capital gain and exemption u/s 10(38) of the Act. We find that there is a direct investigation report of the Investigation Wing, Kolkata. There is the investigation report of the SEBI which is also on record and all these reports have clearly stated that there is an illegal racket going on where the prices of shares of lesser known company having no financial credentials are jacked up and the prices kept on raising till desired level and thereafter are routed through entry providers in order to obtain bogus long term capital gain and claiming exemption u/s 10(38) of the Act. This is nothing but tax evasion which is not permissible within the frame work of the Income-tax Act."

*8.4 The above information was available to the Assessing Officer on Insight portal of the Department. However, **the AO while passing the order did not consider the provisions of the I.T. Act, 1961 and accepted the contention made by assessee without making inquiries or verification, which should have been done.** The assessment was finalised u/s.143(3) r.w.s.147 of the I.T. Act on 29.03.2022, accepting returned income i.e. Rs. 72,33,120/- declared in response to notice u/s.148 of the I.T. Act. **Therefore, the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of Revenue.***

*8.5. **Reliance is placed on explanation 2 to section 263 of the Act in which it is clearly stated that any order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if the order is passed without making inquiries or verification which should have been made or if the order is passed allowing any relief without inquiring into the claim. The AO while passing the order did not consider the provisions of the I.T. Act, 1961 and has accepted the contentions made by the assessee without making inquiries or verification, which should have been done.***

9. In view of the above mentioned facts of the case, the order u/s 143(3) rws 147 of the Act passed by the AO on 29.03.2022 is found erroneous and prejudicial to the interests of the Revenue within the meaning of Section 263 of the I.T. Act, 1961. Therefore, it would be in the fitness of things that the said order is set aside for de-novo assessment and the Assessing Officer is directed to make a fresh assessment after giving due opportunities to the assessee and keeping in mind the issues raised in this order."

5. Before us, the Id. Counsel for the assessee made detailed submissions challenging the order passed u/s 263 of the Act stating that...

(I) It is not a case of no/inadequate inquiry by the Assessing Officer; that, in fact, reopening was resorted to for the specific reason of examining the information available with the Assessing Officer regarding the trading in share of M/s. Kushal Limited, being managed for routing the unaccounted income of the assessee; that all the necessary inquiry was made by the Assessing Officer during reassessment proceedings to which due reply was filed by the assessee stating that she was an NRE, she had no other source of income except from shares, that she was a regular trader in shares and transactions in shares were managed by M/s. IIFL Securities. The source of fund for trading in shares was through her NRE account, that the scrip of M/s. Kushal Limited was one of the many scrips traded by her during the year, resulting in both short term and long term capital gain earned. All evidences substantiating the aforesaid explanation being her computation of income, copy of bank statement of NRE account, broker's note, and details of all scrips share trading were all filed to the Assessing Officer. The Assessing Officer was satisfied with the reply of the assessee and accepted the short term capital gain earned from trading in the scrip of M/s. Kushal Limited as genuine. Our attention was drawn in this regard to the following documents placed in the paper-book as under:-

(a) Copies of notice u/s 148 and 142(1) issued during the course of assessment proceedings asking to file return of income u/s 148 of the Act;

- (b) Copies of notices u/s 143(2) issued during the course of assessment proceedings showing that all issues raised by the CIT(IT & TP) are already examined and verified in detail by the Id. AO;
 - (c) Acknowledgement of reply filed against notice u/s 143(2) of the Act, before the AO, dated 18.03.2022;
 - (d) Copies of documents submitted vide above acknowledgment in response to notice issued u/s 143(2) of the Act;
 - (e) Copies of acknowledgements for compliances made in respect of notices issued during assessment proceedings and revision proceedings u/s 263 of the Act along with relevant annexures;
 - (f) Acknowledgment of reply filed against notice u/s 142(1) of the Act, before the AO, dated 01.02.2022;
 - (g) Acknowledgement of reply filed against notice us/ 143(2) of the Act, before the AO, dated 28.03.2022
- (II) That the Id. CIT (IT & TP) was informed about all investigations carried out by the Assessing Officer during the assessment proceedings vide letter dated 28.10.2022 and 16.12.2022, placed before us at paper-book page Nos. 57 to 59. All evidences filed to the Assessing Officer proving the genuineness of the transactions were again filed to the Id. CIT (IT & TP).

6. The Id. Counsel for the assessee contended that, in view of the above, it was sufficiently established that the Assessing Officer had made necessary inquiries with respect to the issue and had formed a plausible view that the transaction of trading in shares of M/s. Kushal Limited was a genuine transaction considering the explanation of the assessee that she was a NRE, with her only source of income in India being trading in shares which was done through the broker M/s. IIFL Securities and sourced from her NRE account. That, this was not the only transaction and she was a regular trader

in shares, and the transactions being carried out through her broker from genuine sources and on which due taxes also had been paid by her. That, therefore, the Id. CIT (IT & TP) had erred in holding that the Assessing Officer had conducted inadequate inquiries on the issue so as to hold the assessment order passed to be erroneous, causing prejudice to the Revenue in terms of *Explanation 2* to Section 263 of the Act.

7. The Id. DR heavily relied on the findings of the Id. CIT (IT & TP).

8. We have heard the contentions of both the parties and carefully gone through the order of the Id. CIT (IT & TP), as also the documents referred to before us, filed in the paper-book submitted to us. As noted above, the finding of the Id. CIT (IT & TP) of the assessment order passed in the case of the assessee u/s 147 of the Act being erroneous causing prejudice to the Revenue is on account of the Assessing Officer having not conducted proper inquiries relating to the income/capital gain earned by the assessee from trading in scrips of one M/s. Kushal Limited - particularly when the Assessing Officer was in possession of information that the prices of this scrip were rigged to route unaccounted income of persons trading in these scrips.

9. Having considered all the evidences and documents placed before us, we are convinced, and we agree with the Id. Counsel for the assessee that it is not a case of inadequate inquiry in terms of *Explanation 2* to Section 263 of the Act as found by the Id. CIT (IT & TP).

10. Undoubtedly, the assessment order sought to be revised was passed u/s 147 of the Act on reopening the case of the assessee for the specific reason that the Assessing Officer had information regarding the dubious dealing in shares of M/s. Kushal Limited. Clearly, the scope of reassessment proceedings was confined to the transactions of trading in shares of M/s.

Kushal Limited, which has been identified by the Id. CIT (IT & TP) also for the purposes of holding the assessment order erroneous on account of inadequate inquiries having been conducted on the issue.

11. We have gone through the questionnaires raised by the Assessing Officer during the assessment proceedings and there is no doubt that the Assessing Officer did inquire from the assessee regarding the trading in shares of M/s. Kushal Limited. We have also gone through the reply filed by the assessee to the Assessing Officer placed in paper-book, and we have noted that the assessee explained the genuineness of the transactions by pointing out that she was a NRE whose only source of income was through trading in shares of various companies, that too through a broker M/s. IIFL Securities and the transactions being sourced from her NRE account. All evidences were placed before the Assessing Officer, including her NRE account, broker's statement and the details of all the scrips traded in during the year which revealed that she had earned short term capital gain on trading in 21 scrips amounting to Rs.72,33,120/- and which included the scrip of M/s. Kushal Limited also, and long term capital gain on trading in scrips of 7 companies amounting to Rs.15,627/-, which included loss incurred also in some cases. Based on this reply of the assessee, the Assessing Officer took a view that the trading in scrip of M/s. Kushal Limited was a genuine transaction. All these facts were on record before the Id. CIT (IT & TP) being part of the assessment records and the same were also pointed out by the assessee during the revisionary proceedings to the Id. CIT (IT & TP). The Id. CIT (IT & TP), after considering the reply of the assessee, has only stated that the Assessing Officer has not made proper inquiries in the case, without pointing out as to how the inquiry conducted by the Assessing Officer was inadequate, that what further inquiries were required to be made, and why the view taken by the Assessing

Officer of the transactions being genuine was palpably incorrect in the light of explanation given by the assessee duly substantiated with evidences. The Id. CIT (IT & TP) has pointed out no infirmity noted by him in the reply filed by the assessee explaining the transactions to be genuine. He has failed to point out as to how the explanation did not justify the genuineness of the transactions. He has neither pointed out what information was in the possession of the AO regarding the trading in the scrip being bogus which the failed to inquire into and consider while accepting assessee's explanation of the transaction being genuine.

12. We have also considered the reply of the assessee, and we are of the view that the Assessing Officer was palpably right in accepting the transactions as genuine considering the fact that the trading in shares of M/s Kushal Limited was not the only transaction of the assessee, but was one of the many transactions entered into by the assessee while trading in shares of various companies - that too through an established broker i.e. M/s. IIFL Securities, and sourced through her NRE account. We see no reason to doubt the genuineness of the transactions as explained by the assessee, nor has the Id. CIT (IT & TP) pointed out any such reason. We have also noted that the assessee has given a detailed explanation and description of the company M/s. Kushal Limited regarding the value of its shares at which sold being justified. The said description of the company was given to the Assessing Officer and also to the Id. CIT (IT & TP), and is placed before us at paper-book page Nos.45-51. The brief gist of the same is as under:-

"Appellant has to state that there are some important facts and information relating company Kushal Ltd, which clearly proves that the company has such golden history, which can attracts any investor who is doing regular investment activities.

1. Management of company:

The Company is promoted by Mr. Sandeep Agrawal on 3rd March, 2000 (i.e. age of company is 21 years) who is Chairman and Managing Director. He has professional and business experience of more than 25 years in the area of business trading, finance, human capital management, embracing change and providing overall leadership and direction to the Company. There were other Directors who are also associate with the company since incorporation.

II. Business Profile:

Kushal Tradelink is one of the leading importers of waste paper, which is recycled and made into corrugated paper for the packaging industry, without any additional deforestation. As a business philosophy, it believe in "brown-field" growth over "green-field" growth. In other words, they do not build factories from scratch, but they find it economical to buy out existing capacities in the marketplace at reasonable price and make them more efficient by improving processes and leveraging technology. Therefore, in this year, the Company have changed the main objects and have stepped into the business of merchandise trade of multifarious products, production of motion pictures, development of integrated industrial park and affordable housing and such other diversified business ventures. They amalgamated Three associate paper manufacturing companies viz Kushal Infrastructure Private Limited, Ashapura Paper Mills Private Limited, Riddhi Siddhi Recyclers Private Limited and one of our infrastructure development company viz Kushal Infrastructure Private Limited into Kushal Tradelink Limited. The amalgamation will lead to backward integration resulting in greater control over market with better profitability and help to diversify into paper manufacturing business. Also, the company announced a Bonus issue of 1:1 in January, 2017. Based on the Company's performance, the Board has paid total interim dividend of Rs.2.10 per Equity share out of Profits of the company i.e. 105% dividend in the financial year 2016-17 which was Rs.2.00 per Equity share in previous year.

The company have also incorporated wholly owned subsidiary in Labuan, Malaysia to venture into development of Industrial parks. The diversification of business in and outside India have given impetus to our consolidated revenue and margins.

The Company has built a scalable business across segments to cater the regulated and the emerging markets. In the fiscal 2016-17, they have registered a top line growth of 48.41% from Rs.2359.58crores to Rs.1589.90crores driven by robust performance at global level. The company has expand its global wings year over year coupled with increasing its product base and diversification and

has always and will continue to adhere to all the statutory compliances and reporting requirements. The investor has recognized this growth on the decisive support of its Board, customers, business partners, compliance partners and all valued employees of all the cadre for their significant contribution in the remarkable performance for FY 16-17. Thereby, they take this opportunity to invest in the company considering strategic acquisitions at lucrative valuations and the same will help the company in becoming a leading paper manufacturer in the company.

IV. The performance of last five years of the company is as under:

| Particulars | 2016-17 | 2015-16 | 2014-15 | 2013-14 | 2012-13 |
|--|----------|----------|---------|---------|---------|
| Revenue from Operations/Total Operating Income (TOI) | 2,35,958 | 1,58,990 | 43,301 | 30,252 | 24,614 |
| Other Income | 97 | 87 | 66 | 32 | -3 |
| Total Revenue | 2,36,056 | 1,59,077 | 43,367 | 30,284 | 24,611 |
| Finance Cost | 387 | 1,044 | 1,134 | 992 | 628 |
| Depreciation & Amortisation | 63 | 64 | 52 | 27 | 24 |
| Earnings before Interest, Tax, Depreciation & Amortisation | 16,107 | 11,689 | 2,108 | 1,689 | 1,260 |
| Profit Before Tax | 15,658 | 10,581 | 922 | 669 | 607 |
| Tax | 1,642 | 792 | 265 | 220 | 199 |
| Profit After Tax | 14,016 | 9,789 | 657 | 449 | 409 |
| Equity Share Capital | 4,745 | 2,373 | 2,373 | 2,373 | 1,580 |
| Reserves & Surplus | 19,755 | 11,083 | 3,655 | 2,984 | 550 |
| Total Equity | 24,500 | 13,455 | 6,028 | 5,357 | 2,130 |
| Current Assets | 90,215 | 1,20,192 | 23,074 | 14,764 | 8,468 |
| Current Liabilities | 67,889 | 1,08,759 | 19,246 | 10,612 | 6,100 |
| Working capital/ Net Current Assets | 22,326 | 11,433 | 3,828 | 4,151 | 2,368 |

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- The company Kushal Ltd was involved in multiple business and was continuously growing company during FY 2016-17.

- *The company was paying regular dividend and bonus shares too. During the FY 2016-1, the company has paid 105% dividend compared to earlier year. In January, 2017, had also announced bonus shares in ratio of 1:1.*
- *The Turnover and Profit of the company was tremendously increasing from FY 2012-13 to 2016-17. As can be seen from the above chart submitted that the Turnover of the company was Rs 24,614 Cr in FY 2012-13 and that was increased to Rs 2,35,958 Cr in FY 16-17. Similarly Profit of the company was Rs 607 Cr in FY 2012-13, which was increased to Rs 15658 Cr in FY 2016-17.*
- *In the Financial year 2016-17, the company had reported a top line growth of 48.41% from Rs. 2359.58 Crores to Rs. 1589.90 crores.*
- *The Net worth and Earning Per Share of the company were also increased in last five years, as from 0.17% in FY 2012-13 to 5.91% in FY 2016-17.*
- *From the details of share holding pattern as on 31-3-2017, it can be seen that out of total no. of share holders 32243, the 32227 shareholders are from general public at large like me and only 16 share holders are from promoter group. These 32227 shareholders includes all such as Financial Institutions/ Banks, Foreign Institutional Investors, Individual share holder, Bodies Corporate, NRI and Trusts etc.*
- *Moreover the Kushal Ltd has three operating Paper plants and has tremendous production capacity during the year, which is even increasing day by day and consequently increases the Turnover, profit and overall valuation of the company.*
- *This Kushal Ltd is no one but the same company, whose more than 80,000 advertisement hoardings are there at each and every corner of Ahmedabad. Have you ever seen any company involved in accommodation entries transactions did advertisement like this. Such company always try to hide the company name and its profile, to avoid any inquiry from Government Agencies such as Tax Department, SEBI, ROC etc. In short, the Kushal Ltd is very genuine and well known company and thus there is no question of doubting the transactions of purchase and sale of shares of Kushal Ltd at any point of time even including as on date."*

13. The Ld.CIT(IT & TP) has pointed out no fallacy in the justification of price of shares of M/s Kushal Limited by the assessee. The assessee, therefore,

having justified the value of shares of M/s. Kushal Limited, having demonstrated the shares to have been traded during the regular course of trading in shares through genuine sources and through an established broker, the Assessing Officer, we hold, had taken a plausible view in accepting the transactions of trading in shares of M/s. Kushal Limited as genuine. The Id. CIT (IT & TP) having not pointed out any reason for doubting the explanation of the assessee, we are not in agreement with the Id. CIT (IT & TP) that the Assessing Officer had not made adequate inquiries on this issue. The finding of the Id. CIT (IT & TP), therefore, that the order passed by the Assessing Officer was erroneous is, we hold, not sustainable. The order passed u/s 263 of the Act is, therefore, directed to be set aside. The appeal of the assessee is allowed.

14. In effect, the appeal of the assessee is allowed.

Order pronounced in the open Court on 26/04/2024 at Ahmedabad.

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 26/04/2024

***/

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad