



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.80/CTK/2024**

Assessment Year : 2014-15

Sandeep Kumar Agarwal, C/O. Agarwal Spices and Food processors pvt Ltd., Jagatpur.	Vs.	ACIT, NFAC, Delhi/Cuttack
PAN/GIR No.AARPA 8064 B		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Mohit Sheth, Adv  
Revenue by : Shri Charan Dass, Id Sr DR

**Date of Hearing : 28/05/2024**  
**Date of Pronouncement : 28/05/2024**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 26.2.2024 in Appeal No.NFAC/2013-14/10071861 for the assessment year 2014-15.

2. Shri Mohit Sheth, Id AR assisted by Ms Sweeta Mullia and Ms Rashmi Priya Jena, interns from Madhusudan Law University, Cuttack appeared for the assessee and Shri Charan Dass, Ld Sr. DR assisted by Ms Swetapadma

Pradhan and Shri Swastik Pradhan, interns from Madhusudan Law University, Cuttack appeared for the revenue.

3. It was submitted by Id AR that the assessee is an individual, partner in a partnership firm and also deals in shares. It was the submission that the assessee had invested in shares of AAR Infrastructure Ltd (AIL). The assessee had applied for shares of AIL and the same was allotted to the assessee. Subsequently, AIL was merged with M/s. CCL International Ltd., on 8.10.2011 as per the orders passed by the Hon'ble Delhi High Court. It was the submission that consequently, the assessee was allotted 1,25,000 shares of CCL International Ltd.,. It was the submission that the assessee had sold 15636 shares during the assessment year 2013-14 and had claimed exemption u/s.10(38) of the Act. It was the submission that the return of income filed by the assessee for the assessment year 2013-14 was accepted by the Assessing Officer by issuance of intimation u/s.143(1) of the Act. It was the submission that subsequently, during the assessment year 2014-15, the assessee had sold 1,09,364 shares and had disclosed gain of Rs.77,03,596/-, which was claimed exemption u/s.10(38) of the Act. It was the submission that this claim of the assessee was originally accepted by issuance of intimation u/s.143(1) of the Act and assessment are reopened by issuance of notice u/s.148 of the Act. It was the submission that in the course of reopened assessment, the Assessing Officer relied upon the Investigation report of Kolkata Investigation Unit of

the Income Tax Department. It was the submission that the said investigation report was not provided to the assessee and following the investigation report in respect of penny stock treated the shares dealt with by the assessee in respect of CCL International Ltd., as penny stock and denied the assessee the benefit of exemption u/s.10(38) of the Act. It was the submission that though the assessee had claimed exemption u/s.10(38) of the Act to an extent of Rs.77,03,596/-, the Assessing Officer disallowed the entire sale consideration to make the addition of Rs.81,41,052/-. It was the submission that the Assessing Officer had further made an addition of commission alleged to have been paid to intermediaries to an extent of Rs.4,07,053/- though no evidence of such expenditure was found nor it was claimed by the assessee. It was the submission that during the assessment year 2013-14 also, the assessee had also purchased 100 shares of CCL International Ltd., which has not been disputed by the Assessing Officer. It was the submission that the issue in this appeal was squarely covered by the decision of the Co-ordinate Bench of this Tribunal in the case of brother of the assessee i.e. Hemanta Kumar Agarwal vs ACIT in ITA No.165 & 166/CTK/2022 order dated 23.2.2023, wherein, the Co-ordinate Bench has held as follows:

"6. We have considered the rival submissions. Not every case of purchase and sale of low value shares is an accommodation entry. The peculiarity in the present case is that the shares have been allotted to the assessee as early as in January, 2011. From a perusal of the assessee's demat account, it is clear that the assessee is substantially into purchase and sale of shares. A perusal of the demat account further shows that out of

substantial number of shares dealt with by the assessee the average pricing of each of the shares varies between 10 and 690. The dealt with by the assessee which are above the value of 100 are about 9 out of 55 different shares. Thus, the assessee is substantially into dealing in midcap and small cap shares. The shares of AAR Infrastructure which has been applied for and has been allotted on account of merger with CCL International increased in number but reduced in value. Admittedly, the assessee has no control over such merger. After nearly 2 years, the assessee has started selling the merged shares. There is no evidence produced by the revenue to show that the broker engaged by the assessee was one of the operator identified by the investigation wing at Kolkata as an entry operator. The assessee's name has also not been mentioned by any of the operators, whom the revenue has investigated and whose statements have been recorded. The assessee has not been shown to be in any way connected to any of such brokers who are the alleged operators. Just because the assessee has made a gain in its transaction in a small cap share, it cannot be blindly held to be a transaction which has been done fraudulently for claiming the exemption u/s.10(38) of the Act. Even otherwise the AO himself has accepted the short term capital loss on account of the purchase and sale of CCL International shares for the assessment year 2013-2014 of 500 shares and the short term capital gains in respect of 316 shares of M/s CCL International Ltd. for the assessment year 2014-2015. This being so, we are of the view that the assessee is entitled to the deduction u/s.10(38) of the Act and the order of the Id. AO and Id. CIT(A) are set aside. Our view also finds support from the decision of the coordinate bench of the Tribunal in the case of Smt. Bimala Devi Singhania, referred to supra, wherein in paras 11 to 21, it has been held as follows :-

11. At the outset, we are faced with the decision of the SMC Bench of the Delhi Tribunal in the case of Anip Rastogi & Anju Rastogi(supra). This decision admittedly is in respect of CCL International Ltd. shares and the issue has been held against the assessee therein. The addition in the case of Anip Rastogi was based on a statement recorded from the brokers and the investigation wing's report in respect of bogus claim of long term capital gain. Clearly the facts in the assessee's case are different from that of Anip Rastogi's case cited supra.

12. A perusal of the decision of the Hon'ble Kolkata High Court in the case of Swati Bajaj, referred to by the Id. Sr. DR, prima facie, revolves on the statement recorded from the brokers and the requirement of providing opportunity of cross examination to the assessee in respect of these said brokers whose statements have been used against the assessee therein. One peculiarity that has become evident in the decision of the Hon'ble Kolkata High Court in the case of Swati Bajaj (supra), is that the Hon'ble High Court was given to understand, wrongly, that the investigation report was available in the public domain and that was the very foundation on

which the Hon'ble Kolkata High Court has proceeded on its judgment that the evidence was very much available to obtain. Unfortunately, the Hon'ble Kolkata High Court was wrongly informed. Another portion of the decision of the Hon'ble Kolkata High Court in the case of Swati Bajaj (supra) gave substantial importance insofar as in para 15 of the said order the Hon'ble Kolkata High Court relied on the decision of Kishanlal Agarwalla. The Hon'ble Kolkata High Court itself had held that no natural justice requires that there should be a kind of formal cross examination as it is a procedural justice, governed by the rules and regulations. Further it was held that so long as the party charged has a fair and reasonable opportunity, would receive, comment and criticize the evidence, statements or records on which the charges is being against him, the demand and tests of natural justice are satisfied.

13. As mentioned earlier, investigation report is not in the public domain and secondly the evidence which is used against the assessee clearly is not available to the assessee and the denial of providing these evidences to the assessee along with the opportunity of cross objection becomes a very foundation against the assessee in the course of assessment. It would be worthwhile referred to the decision of the Hon'ble Supreme Court in the case of M/s Andaman Timber Industries, Civil Appeal No.4228 of 2006, wherein the Hon'ble Supreme Court has categorically held that, "As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination." The Hon'ble supreme Court further went to hold that, "Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross examination and make the remarks as mentioned above." In that case, the Hon'ble Supreme Court when on to hold that they were of the opinion that if the testimony of these two witnesses is discredited, there was no material with the department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice therein.

14. The Hon'ble Kolkata High Court further went on to hold that the report submitted by the investigation department cannot be thrown out on the ground urged on behalf of the assessee as the assessee had not shown to be prejudiced on account of nonfurnishing of the investigation report or non-production of the persons for cross examination, as the assessee has not specifically intimated as to how he was prejudiced which coupled with the fact as admitted by the revenue, the statement do not incite the assessee. The Hon'ble Kolkata High Court further went on to hold that unless and until the assessee shows and proves that she/he was prejudiced on account

of such report, a statement mentioning that non-furnishing of the report and non-availability of the person for cross examination cannot vitiate the proceedings. This is to be read along with the indication given by the Hon'ble Kolkata High Court that the said report is available in the public domain and it was available to the assessee and its counsel to download and examine the same and thereafter put up through defence. If the evidence is to be used against the assessee in the course of any assessment or any proceedings, the basic principle of natural justice demands and has been repeatedly upheld by the Hon'ble Supreme Court that such evidences must be put to the assessee and he should be given opportunity to rebut the same. The Hon'ble Kolkata High Court further went onto hold in para 69 of the order that the legal principle which can be culled out from the above decision is that to prove the allegations, against the assessee, can be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled and when direct evidence is not available, it is the duty of the Court to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded so as to reach a reasonable conclusion and the test would be, what inferential process that a reasonable/prudent man would apply to arrive at a conclusion.

15. A perusal of the facts in the present case, clearly shows that there was a survey on the premises of the assessee Shri Radheshyam Singhania. In the course of such survey a statement has been recorded from him wherein he has repeatedly stated that he has done the transaction through proper channels and has claimed the exemption u/s.10(38) of the Act, but he is willing to pay the tax on the income thereon. When filing his returns the assessee did not disclose the said income as "income from other sources" nor paid tax on it. But he claimed the exemption u/s.10(38) of the Act. The AO relied upon the statement of Radheshyam Singhania taken in the course of survey and applying the principle of preponderance of probabilities, denied assessee's claim of exemption u/s.10(38) of the Act and brought to tax the entire sale receipts. It should be mentioned here the AO did not give the benefit of even the cost of purchase to the assessee. Here we are faced with the situation that what is the validity of the statement recorded in the course of the survey. The statement of Shri Radheshyam Singhania admittedly has been recorded u/s.131(1A) of the Act. The statement admittedly has evidentiary value but it is still open to the assessee to prove that his claim of exemption u/s.10(38) of the Act is valid and once it is proved with substantial evidence, the statement recorded u/s.131(1A) will no more have the same strength or the evidentiary value. An assessee is fully entitled to produce substantial evidence to prove that the statement given by

him in the course of survey is erroneous. In such situation it is for the AO to disprove the evidences so produced by the assessee. The evidences produced cannot be wished away by claiming that the assessee has offered to pay tax in the statement. An assessment is not made on the basis of statement recorded, but on the basis of the evidence available and substantiated. There can be no agreement much less any valid agreement between an AO and an assessee in respect of taxing of an income or source of income.

16. Other than the statement recorded from Shri Radheshyam Singhanian, the AO has not relied upon any other evidence, however, the assessee has produced substantial evidence in the form of the first allotment of the shares in AAR Infrastructure Ltd., the merger of AAR Infrastructure with CCL International Ltd., the sale of shares through ISE Security & Services Ltd., a SEBI authorised broker, the proof of payment of STT as also the fact that these shares were in the Demat form. Other than the statement of the assessee showing that he is willing to pay tax on the transaction, there is no shred of evidence available with the AO to presume that the transaction done by the assessee in the purchase of AAR Infrastructure shares, merger of AAR Infrastructure with CCL International Ltd. shares was a colourable device or an attempt at evading tax by using the unscrupulous methods of tax planning bordering on side of tax evasion.

17. The revenue has not relied upon the report of the investigation authorities from the brokers for the purpose of making the assessment. The reliance on the statement of the broker Shri Sanjay Bohra and the investigation report has been made only in the annexures to the ground of appeal filed before the Tribunal. These are clearly evidences produced by the revenue to support its stand in respect of probability and possibility of assessee having indulged in colourable device of tax evasion, fringing of the area of tax evasion. In the present case, as the addition has been made by the AO solely on the basis of the statement of the assessee, the question of cross examination does not arise. The assessee having retracted his statement in principle and in fact in holding on to its claim of exemption u/s.10(38) of the Act as it was supported by proper and adequate evidence cannot be found fault with.

18. A perusal of the order of the Id. CIT(A) also shows that he has considered the fact that the transaction conducted by the assessee fell within the four corners of the requirements for claiming exemption u/s.10(38) of the Act.

19. The Id. Sr. DR had taken serious objection to the finding of the Id.CIT(A) that he has considered the statement of the assessee that the statement was recorded in the course of survey under duress. That issue no more survives, insofar as the statement recorded in

the course of survey admittedly is not conclusive of evidence as has been held earlier.

20. This being so, as the statement recorded from the brokers, who have agreed to penny stock manipulation and the investigation report based thereon having not been relied upon by the Id. AO for the purpose of assessment, the decision relied on by the revenue in the case of Anip Rastogi & Anju Rastogi (supra) as also the decision of Hon'ble Kolkata High Court in the case of Swati Bajaj (supra), does not apply to the facts of the present case. In these circumstances, we find no error in the order of the Id.CIT(A), which calls for any interference and consequently, we uphold the same.

21. In regard to alternate claim of the Id. Sr.DR that the income should be assessed under the head "adventure in the nature of trade", we are unable to accept the contention, insofar as when all the criterion required for claim of exemption u/s.10(38) of the Act has been complied with by the assessee and no fault or error in such claim has been proved much less a falsity in the claim, the income of the assessee at to be exempt u/s.10(38) of the Act, cannot be brought to tax under the head "adventure in the nature of trade". In regard to the plea of Id.Sr. DR that two terms of Short Term Capital Gains has to be assessed also no hold merger insofar as the assessee has not sold the shares or transferred the shares of AAR Infrastructure. In far, the AAR Infrastructure merged with CCL International Ltd. When such merger itself has not considered as transferred to treat that the assessee's shareholding in AAR Infrastructure has got extinguished or has been transferred for the purpose of computing Short Term Capital Gains, will not arise. The assessee has been issued 1.25 lakhs shares of CCL International Ltd. in lieu of 50000 shares in AAR Infrastructure held by the assessee. There is no transfer as a consequence of the merger to treat the same as Short Term Capital Gains. Accordingly, we dismiss the appeal of the revenue filed in the case of Smt. Bimala Devi Singhania in ITA No.212/CTK/2019.

7. In the above circumstances, respectfully following the decision of the coordinate bench of the Tribunal in the case of Smt. Bimala Devi Singhania, referred to supra, we direct the AO to grant the benefit of deduction u/s.10(38) of the Act as claimed by the assessee in both the appeals under consideration.

8. As we have already allowed assessee's claim for deduction u/s.10(38) of the Act, the addition made by the AO and confirmed by the Id. CIT(A) representing 5% alleged commission in both the appeals of the assessee under consideration, stands deleted.

9. In the result, both appeals of the assessee are allowed."

4. It was the submission that the Co-ordinate bench in the case of Hemanta Kumar Agarwal (supra) had followed the decision of the Co-ordinate Bench of this Tribunal in the case of Bimla Devi Singhania vs ITO in ITA No.212/CTK/2019 and Sri Radheshyam Singhania in ITA No.213/CTK/2019 order dated 6.7.2022, which had been upheld by the Hon'ble Jurisdictional High court of Orissa in ITA No.84 & 85 /2022 vide order dated 10.10.2023. Ld AR also drew our attention to the transaction statement in respect of said purchase and sale of shares to show that Securities Transaction Tax (STT) had also been paid. It was the submission that the assessee was entitled to the benefit of exemption u/s.10(38) of the Act and addition made by the AO of 5% representing the commission charges is liable to be deleted.

5. In reply, Id Sr DR drew our attention to the assessment order. Ld Sr DR read out the assessment order and order of the Id CIT(A). It was the submission that the transaction in respect of CCL International Ltd., was a bogus transaction and the Investigation Wing report clearly showed that the transactions were manipulated. When he was informed that the issue in this appeal is squarely covered by the judgment of Hon'ble Jurisdictional High Court, it was his submission that the appeal may be adjourned as the regular Sr DR could represent the matter. It was further submitted by Id Sr DR that the Id CIT(A) has also considered the bogus nature of the

transaction and had upheld the transaction. It was the submission that the order of the Id CIT(A) is liable to be upheld.]

6. We have considered the rival submissions. The facts in the present case clearly show the following:-

The assessee is doing purchase and sale of shares. STT has been paid in respect of transaction of sale of shares. There is no evidence found in the investigation report against the assessee to say that the assessee has indulged in the manipulation of price of shares. The SEBI has investigated many companies and has drawn their conclusions but there is no adverse inference drawn against CCL International Ltd. The assessee has purchased shares as early as in 2011. The Hon'ble Delhi High Court has permitted merger of the shares of AAR Infrastructure Ltd with that of CCL International Ltd. The assessee has sold shares of the said company during the assessment year 2013-14 and has disclosed in his return of income and has claimed exemption u/s.10(38) of the Act. This return of the assessee has been accepted admittedly through intimation u/s.143(1) of the Act. No reopening has been proposed for the assessment year 2013-14. For the assessment year 2014-15, assessee's return admittedly had been accepted u/s.143(1) of the Act and subsequently, reopening has been made. During the assessment year 2014-15, the assessee has again purchased shares of CCL International Ltd. Demat account of the assessee clearly show that the assessee is doing purchase and sale of various shares, and this is not an

isolated act. The transaction of the assessee is through recognised stock exchange. The shares of CCL International Ltd., has also been sold through Edelweiss Broking Limited( EBL). EBL has not been identified as a broker who is indulging in any of the so called bogus transaction. The facts in the assessee's case are substantially identical to the facts of the assessee's brother Hemanta Kumar Agarwal (supra) as also in the case of Bimla Devi Singhania and Radheshyam Singhania (supra). The shares dealt with by the assessee are also in respect of same company. The Hon'ble Jurisdictional High Court of Orissa in the case of Bimla Devi Singhania and Radheshyam Singhania (supra) has upheld the orders of the Co-ordinate Bench of this Tribunal deleting the addition in those cases and directing to grant the benefit of exemption u/s.10(38) of the Act. The Hon'ble Jurisdictional High Court in the case of Bimla Devi Singhania and Radheshyam Singhania has held as follows:

"6. On the basis of the pleadings available on record and also the arguments advanced by learned counsel appearing for the respective parties, this Court, vide order dated 13.09.2023, framed the substantial questions of law to the following effect:-

"I) Whether the learned Tribunal has rightly accepted the claim of the assessee as per law regarding exemption under Section 10 (38) with respect to alleged income under the head "Long Term Capital Gain" on sale of shares of penny stock by ignoring the admission by their group before the Income Tax Authority that complete tax would be paid on the bogus LTCG claimed by the group subsequent to survey operation under Section 133A?

II) Whether the learned Tribunal has rightly dismissed the appeal of the revenue with the observation that as the sale of shares were effected through recognized stock exchange and STT had been paid at the time of transfer, therefore it cannot be held as bogus?"

7. Before delving into the issues in question, the provisions contained under Section 10 (38) of the Income Tax Act, 1961 are extracted hereunder:-

“Any income arising from the transfer of a long term capital asset, being an equity share in a company or a unit of an equity oriented fund [or a unit of a business trust] where-

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No.2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter;

[Provided that the income by way of long term capital gain of a company shall be taken into account in computing the book profit and income tax payable under section 115 JB;]

[Provided also that nothing contained in sub-clause(b) shall apply to a transaction undertaken on a recognized stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency;]

[Provided also that nothing contained in this clause shall apply to any income arising from the transfer of a long term capital asset, being an equity share in a company, if the transaction of acquisition, other than the acquisition notified by the Central Government in this behalf, of such equity share is entered into on or after the 1st day of October, 2004 and such transaction is not chargeable to securities transaction tax under Chapter VII of the Finance (No.2) Act, 2004 (23 of 2004)]”

8. On bare perusal of the aforementioned provisions, it is made clear that for claiming the benefit of exemption under Section 10(38) of the Income Tax Act, 1961 three requirements need to be fulfilled. Firstly, the share should be held for more than one year, secondly, it should be listed and sold on recognized stock exchange and, thirdly, on the said sale necessary Security Transaction Tax (STT) has to be chargeable. If all these requirements are satisfied, then the benefit of exemption under Section 10 (38) of the Income Tax Act, 1961 is admissible.

9. In *Bhoruka Engineering Industries Ltd.* (supra), the Karnataka High Court has also laid down the above mentioned principles. Therefore, applying the provisions contained under Section 10 (38) of the Income Tax Act, 1961 and also the law laid down by the High Court of Karnataka mentioned supra, all the above noted three elements are existing in the present case and, thereby, the respondent-assessee is entitled to get the benefit under Section 10 (38) of the Income Tax Act, 1961. As such, a

survey under Section 133A of the Income Tax Act, 1961 was conducted on 20.08.2015 and, without detecting any incriminating documents or evidence against the respondent-assessee, recorded the statement that tax will be paid on the claim made under Section 10 (38) of the Income Tax Act, 1961 in filing the IT return for the Assessment Year 2013-14 and to be disclosed as income from other source. But the said statement, being without any incriminating evidence against the respondent-assessee, cannot be ipso facto decided against the respondent-assessee. The present income tax appeal filed at the instance of the revenue involved no substantial question of law, as both the appellate authorities have decided on the basis of evidence and documents produced by the respondent-assessee and the revenue and, as such, on the basis of the facts, both the authorities have come to a conclusion that the respondent-assessee is entitled to the benefit under Section 10 (38) of the Income Tax Act, 1961 and held that the appellant-revenue had failed to bring any evidence in rebuttal nor was it proved that the documents produced were false, fabricated or fictitious, hence, the findings, as recorded by the appellate authorities, that the transaction of purchase and sale of shares could not be treated as non-genuine, were essentially in the realm of appreciation of evidence and, as such, no substantial question of law is involved.

10. In *Vijaya Kumar Talwar (supra)*, it has been held that in absence of demonstrated perversity in the finding of the Tribunal, interference cannot be warranted, when on thorough consideration of the material on record it was found that the transaction of purchase and sale of shares could not be treated as non-genuine.

11. In *Khader Khan Son (supra)*, the apex Court held that statement recorded during survey under Section 133A of the Income Tax Act, 1961 has no evidentiary value, as it does not empower any Income Tax Officer to examine on oath, as the assessment has to be made on the basis of materials and documentary evidence and not on a bare statement. Therefore, the substantial questions of law, as formulated, have no legs to stand.

12. It is worthwhile to mention here that, the Security Transaction Tax (STT) under Chapter-VII of Finance (No.2) Act, 2004 is a direct tax levied by Government of India on every purchase and sale of securities that are listed on the recognized stock exchanges in India. The STT was implemented to curb the tax avoidance on capital gains, which is similar to Tax Collected at Source (TCS) to be collected by a recognized stock exchange and both the buyer and seller will pay the said tax, as prescribed rate for carrying out the transaction of securities for financial gains, are liable to pay STT. All gains from such transactions are called capital gains and are classified as LTCG or STCG, depending on the holding period. Therefore, the alleged substantial questions of law as proposed by the Revenue cannot be sustained in the eye of law, as the same is contrary to clauses (a) and (b) of Section 10 (38) of the Income Tax Act, 1961 (Circular No.5/2005 dated 15.07.2005).

13. Mr. T.K. Satapathy, learned Senior Standing Counsel appearing for the Income Tax Department laid emphasis on the CBDT Circular No.23 of 2019 dated 06.09.2019, as the matter related to bogus Long Term Capital Gain on Penny stock. But the said circular can only be applied prospectively not retrospectively, because the present appeal is for the Assessment Year 2013-14. Thereby, the circular relied upon by the Senior Counsel appearing for the revenue has no application to the present case.

14. In view of the facts and circumstances, as well as the law, as discussed above, even though substantial questions of law have been framed vide order dated 13.09.2023, the same are not required to be answered. As such, CIT (A) and Income Tax Appellate Tribunal, being the fact finding courts, relying upon the evidences available on record, having passed the orders impugned, there is no necessity of answering the substantial questions of law framed for adjudication.

15. Thus, both the appeals, being devoid of merits, are hereby dismissed. However, there shall be no order as to costs."

7. As it is noticed that the issues in this appeal are squarely covered by the principles laid down by the Hon'ble High Court of Orissa in the case of Bimla Devi Singhania and Radheshyam Singhania (supra) and as it is also noticed in assessee's case for the assessment year 2013-14, the assessee has been granted the benefit of exemption u/s.10(38) of the Act in respect of same shares, the order of the AO and that of the Id CIT(A) denying the assessee the benefit of deduction u/s.10(38) of the Act is set aside and the Assessing officer is directed to allow the benefit of exemption u/s.10(38) of the Act as claimed. As we have granted the benefit of deduction u/s.10(38) of the act, the addition representing 5% alleged commission as made by the AO would also stands deleted.

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

Order dictated and pronounced in the open court on 28/05/2024.

Sd/-  
**(Manish Agarwal)**  
ACCOUNTANT MEMBER

sd/-  
**(George Mathan)**  
JUDICIAL MEMBER

Cuttack; Dated 28/05/2024  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Sandeep Kumar Agarwal,  
C/O. Agarwal Spices and Food processors  
pvt Ltd., Jagatpur.
2. The Respondent: ACIT, NFAC, Delhi/Cuttack
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT,
5. DR, ITAT,
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**