

**THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 754/KOL/2023
Assessment Year: 2014-2015**

***Vivek Mohta,.....Appellant
Flat no. 1A, Floor Castle,
74, Abul Kalam Azad Sarani,
Moulana Lake, Kolkata-700054
[PAN:AISPM0897M]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-3(1), Kolkata,
Aayakar Bhawan, 4th Floor,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Anil Kochar, Advocate, appeared on behalf of the
assessee*

*Shri Kiran K. Chhatrapati, JCIT, Sr. D.R. appeared on
behalf of the Revenue*

Date of concluding the hearing : March 20, 2024

Date of pronouncing the order : June 12, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 29th May, 2023 passed for assessment year 2014-15.

2. The assessee has taken nine grounds of appeal. However, his grievances revolve around a single issue, namely Id. CIT(Appeals) has erred in confirming the addition of Rs.5,93,658/-, which was claimed by the assessee as a long-term capital gain exempt under section 10(38) of the Income Tax Act.

3. Apart from this issue, the assessee has pleaded laws of peripheral arguments surrounding this central point in other grounds of appeal.

4. Brief facts of the case are that the assessee has filed his return of income on 30th July, 2014 declaring total income of Rs.6,76,740/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Id. Assessing Officer that the assessee was working as a Director of M/s. Asansol Steel Castings Pvt. Limited. He has earned income from other sources. The assessee has purchased 15,000 shares @ Rs.2/- per scrip of Kailash Auto Limited on 18.02.2013. These shares were sold in March, 2014 @ Rs.41.57 per scrip. The Id. Assessing Officer has observed that he has received information from Investigation Wing exhibiting the fact that certain individuals were involved in manipulating the shares of certain Companies, who have rigged the price and yielded undue benefits in the form of bogus accommodation entries to large

number of people including entities. The Assessing Officer, therefore, confronted the assessee as to why his claim for exemption under section 10(38) be not treated as bogus. The assessee has tried his best to substantiate his claim but ld. Assessing Officer has rejected all such contentions and made the addition of Rs.5,93,648/-.

5. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

6. Before us, ld. Counsel for the assessee has relied upon the order of ITAT, Guwahati Bench in the case of Seema Holding Pvt. Limited -vs.- ITO. He further submitted that the assessee has filed all details in the shape of bill for purchase of shares, Bank statement from where payment was made, copy of contract note and Demat account.

7. On the other hand, ld. D.R. relied upon the judgment of the Hon'ble Calcutta High Court in the case of Swati Bajaj, wherein Hon'ble High Court has considered a large number of appeals involving identical issue He further submitted that in view of the judgment of the Hon'ble Jurisdictional High Court reported in 446 ITR page 56, the addition deserves to be confirmed.

8. We have duly considered the rival contentions and gone through the record carefully. The major concern, whose scrips are purchased and sold by large number of public is of Kailash Auto Limited. This was the major company, whose details have been

examined by the Hon'ble Calcutta High Court in the case of Swati Bajaj. The Hon'ble High Court has recorded a finding that whosoever has dealt with the shares of this company and claimed long-term capital gain, which deserves to be treated as bogus.

9. As far as the other grounds pleaded by the assessee are concerned, we find that in Grounds No. 1 & 2, the assessee has pressed general pleading and no specific submission was made. In Grounds No. 3 & 5, the only issue challenged by the assessee is with regard to the addition of Rs.5,93,658/-, which we have considered.

10. Grounds No. 6, 7, 8 & 9 are again general grounds of appeal, which do not call for recording of any finding.

11. In Ground No. 4, the assessee has pleaded that the ld. Assessing Officer has failed to confront the assessee with regard to the material possessed by him as required under section 142(3) as well as 142(2), we are of the view that ld. Assessing Officer has examined the issue whether investment made in shares of M/s. Kailash Auto Limited is genuine or not. It is the assessee, who has to supply credible information. This aspect has been looked into by the Hon'ble Calcutta High Court in the case of Swati Bajaj. Therefore, in view of the above, we do not find any merit.

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

Order pronounced in the open Court on 12/06/2024.

Sd/-

(Rajesh Kumar)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 12th day of June, 2024

- Copies to :*
- (1) Vivek Mohta,
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74, Abul Kalam Azad Sarani,
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 - (2) Income Tax Officer,
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Aayakar Bhawan, 4th Floor,
P-7, Chowringhee Square, Kolkata-700069*
 - (3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*
 - (4) CIT- , Kolkata*
 - (5) The Departmental Representative;*
 - (6) Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.