

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4631/M/2023  
Assessment Year: 2012-13**

<b>Shri Kishore Hargovind Patel (HUF),</b> 601, Pushp Vihar, V.K.D. Desai Road, Vile Parle (West), Mumbai-400 056 <b>PAN: AAEHK5011R</b>	Vs.	<b>Income Tax Officer- Ward 25(2)(5),</b> 506, C-10, Pratayaksh Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Prakash Jotwani, A.R.  
Revenue by : Shri P.D. Chougule, (Addl. CIT) Sr. DR.

Date of Hearing : 29 . 07 .2024  
Date of Pronouncement : 19 . 08 .2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 30.10.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

**2.** As per computation of income, the Assessee during the assessment year under consideration by filing his return of income had declared its total income at Rs.8,46,291/- by claiming the Long Term

Capital Gains (LTCG) of Rs.49,51,845/- qua sale of shares of M/s. Karma Ispat, as exempted u/s 10(38) of the Act.

**2.1** Subsequently, on the basis of investigation carried out into 84 penny stocks including M/s. Karma Ispat, by the Kolkata Investigation Directorate, the case of the Assessee was also reopened by recording reasons u/s 147 of the Act and consequently notice dated 12.09.2016 u/s 148 r.w.s. 147 of the Act was issued to the Assessee.

**2.2** In response to notice u/s 148 of the Act, the Assessee by filing a letter dated 04.10.2016 submitted that the return of income originally filed on 21.07.2012 may be treated as return filed in compliance with the notice u/s 148 of the Act. The objections raised by the Assessee qua reasons for reopening on 15.09.2017 were also disposed of by the Assessing Officer (AO) vide order dated 22.09.2017.

**2.3** Thereafter, the Assessee was show caused qua LTCG, in response to which the Assessee filed the relevant submissions and the other material in support of its claim. On perusing the details filed by the Assessee, the AO observed that the Assessee has mainly traded in a single scrip of M/s. Karma Ispat and purchased total 20,000 shares on 21.01.2010 and 25.01.2010 through stock brokers M/s. Ajmeera Estates Ltd. at the face value of 29.62 per share totaling to Rs.5,92,400/- and subsequently sold the same in the month of May 2011 at online platform i.e. Bombay Stock Exchange at the average price of Rs.245/- to Rs.275/- approximately and totaling to Rs.55,19,239/- which resulted into a LTCG of Rs.49,26,839/-. There are enough details to conclude the case in favour of the Revenue and against the Assessee. The AO also recorded the statement of the Assessee on oath u/s 131 of the Act on 30.11.2017 and conveyed the findings to the Assessee on 13.12.2017.

**2.4** The AO thereafter finally show caused the Assessee qua LTCG being claimed as exempt u/s 10(38) of the Act. The Assessee in response, by filing its reply dated 11.12.2017 claimed that the transactions were done through Bombay Stock Exchange and STT was paid and the transactions are reflected in D-Mat account, so the question of bogus LTCG does not arise.

**2.5** The AO though considered the reply of the Assessee, however, not found acceptable mainly on the reason that the Assessee do not have any knowledge of penny stock company, despite poor fundamentals of company why the Assessee has bought this penny stock source, the Assessee has not furnished any basis of information and documentary evidence for getting reasonable chances of good return therefore his contention is ambiguous and not believable.

**2.6** The AO ultimately by considering the mode of acquisition of the, sale of shares and unusual rise in the price, findings of the investigation wing, analysis of the transactions, failure of the Assessee to discharge its onus, ignorance of the Assessee about shares and penny stock companies, financial analysis of penny stock companies etc. ultimately considered the LTCG of Rs.49,26,840/- as not allowable being exempt u/s 10(38) of the Act and consequently added the same towards the taxable income of the Assessee u/s 68 of the Act.

**3.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, who on the similar footing and mainly focusing on the investigation carried out by the investigation wing at Kolkata and by considering that the Assessee was found unaware of the financial position and business activities of the company and fundamentals also and also could not explain the reason/basis to buy or invest in such company, ultimately affirmed the addition made by the AO u/s 68 of the Act.

**4.** The Assessee, being aggrieved, is in appeal before us.

**5.** We have heard the parties and perused the material available on record. The Assessee had purchased the shares of M/s. Karma Ispat in the month of January 2010 @ 29.62 per share and subsequently sold the same in May 2010 @ Rs.245/- to Rs.275/- approximately 10 times of purchase price. This is not in controversy here that the Assessee had purchased the shares through online platform of recognized stock exchange and paid the amount by bank cheque as appears from bank statement produced by the Assessee and further dematerialize the same and after keeping more than a year sold the same through online platform itself i.e. Bombay Stock Exchange. It is also not in controversy that the Assessee has duly filed the relevant document such as purchase bills, bank statements, D-mat account statements, sales bills, ledger of broker etc. in order to substantiate its claim. The AO admittedly did not raise any doubt on the documents submitted by the Assessee. The doubt of the AO shrouded on the investigation wing record and lack of Assessee's knowledge qua shares. In our considered view, lack of knowledge of shares cannot be a sole factor for declining the claim u/s 10(38) of the Act, as well as doubting the transaction of shares. Even otherwise, the Assessee has also nowhere accepted that he was having any knowledge about penny stock and/or the scrip of M/s. Karma Ispat that it is a penny stock. Even otherwise there are no allegations against the Assessee or its broker qua rigging of the shares. It is also admitted fact that as on today the company in the name of M/s. Karma Industries Ltd. is still in existence, as it appears from the website of Ministry of Corporate Affairs (kindly refer 84 – 85 of the paper book). On the aforesaid facts and circumstances and documents produced by the Assessee, we are of the considered view that the Assessee has been able to discharge its prima facie onus casted u/s 68 of the Act and therefore no addition is warranted.

**5.1** Even the Hon'ble Jurisdictional High Court in the case of PCIT-31, Mumbai vs. Indra Indravadan Jain HUF (ITA No.454 of 2018 decided on 12.07.2023) almost on the similar facts and circumstances as involved in this case, affirmed the deletion of the identical addition made by the AO on account of alleged bogus claim u/s 10(38) of the Act, by holding as under:

*"4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT(A) also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFI. The CITIA] came to the conclusion that respondent brought 3000 shares of RFI, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT[A] found there was no reason to add the capital gains as unexplained cash credit under Section 68 of the Act. The tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal.*

*5. We also find no infirmity in the order passed by the ITAT and no substantial questions of law as proposed in the appeal arises."*

**6.** On the aforesaid analyzations and respectfully following the dictum laid down by the Hon'ble High Court, we are inclined to delete the addition under consideration; hence, the same is deleted.

**7.** In the result, the appeal filed by the Assessee stands allowed.

**Order pronounced in the open court on 19.08.2024.**

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.