

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" , HYDERABAD**

**BEFORE**

**SHRI MAHAVIR SINGH, VICE-PRESIDENT  
AND  
SHRI MANJUNATHA G. ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.631/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2014-15)

Shri Aditya Mundada, Warangal. PAN : BDSPM1712R.	Vs.	The Income Tax Officer, Ward – 5, Warangal.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आ.अपी.सं / **ITA No.2243/Hyd/2018**  
(निर्धारण वर्ष / Assessment Year: 2015-16)

Purushotham Mundada (HUF), Warangal. PAN : AAHHPOO47D.	Vs.	The Assistant Commissioner of Income Tax, Circle – 1, Hyderabad.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, C.A.  
राजस्व द्वारा/Revenue by: Shri Srinath Sadanala, Sr. AR.

सुनवाई की तारीख/Date of hearing: 23-09-2024  
घोषणा की तारीख/Pronouncement on: 25-09-2024

**O R D E R**

**PER MAHAVIR SINGH, VP:**

These two appeals by assessee are arising from two different orders of Commissioner of Income Tax (Appeals) - 3,

Hyderabad, vide appeal No.0707/ITO-W-5/WGL/CIT(A)-3/2016-17 dt.16.01.2018 and appeal No.0163/ACIT-1/WGL/CIT(A)-3/2017-18 dt.10.10.2018. Assessments in both the cases of two different assessee's are made by the Income Tax Officer, Ward - 5, Warangal and the Assistant Commissioner of Income Tax, Circle - 1, Warangal for the assessment year 2014-15 and 2015-16, both under Sections 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") vide orders dt.29.12.2016 and 22.12.2017.

2. Since the facts and circumstances are identical in both the appeals of assessees and hence, majorly will take the facts from I.T.A No.631/Hyd/2018 for A.Y. 2014-15 in case of Shri Aditya Mundada, Warangal and will take the grounds also and will decide the issue.

3. The only issue in this appeal of assessee is as regards to the order of CIT(A) upholding the action of the Assessing Officer in taxing the entire sale consideration of Rs.1,52,21,982/-, claimed by assessee as long term capital gain and claimed the same as exempt u/s 10(38) of the Act, assessed as unexplained cash credit u/s 68 of the Act. For this, assessee has raised various grounds numbering 1 to 15, which are exhaustive, argumentative and even reference to case laws and hence, will not reproduce the same.

4. The brief facts are that during the relevant assessment year 2014-15, assessee sold shares of M/s. Kailash Auto Finance Limited for a sale consideration of Rs.1,52,21,982/- and after adjusting the purchase cost of Rs.4,00,000/-, worked out long term capital gains at Rs.1,48,21,982/- and claimed the entire long term capital gain as exempt u/s 10(38) of the Act for the reason that the shares were held for more than 12 months. The Assessing Officer noted that Directorate of Investigation, Kolkata carried out a country wide investigation to unearth the organized racket of generating bogus entries provider of long-term capital gains and according to the Assessing Officer, assessee is beneficiary of the penny stock company. According to Assessing Officer, the assessee has purchased the non-listed shares at an unrealistic price and M/s. Kailash Auto Finance Limited jacked up the share price and the assessee has earned 3800% of returns on investment. It was noted by the Assessing Officer that the operators and brokers helped the assessee in providing the arranged long term capital gain and for this conclusion, the Assessing Officer reached on the basis of analysis of SEBI as noted by in his order in Para 7.4 at pages 8 to 10 (the relevant interim order of SEBI has been reproduced). On that basis, the Assessing Officer treated the entire sale consideration received by the assessee for sale of shares of M/s. Kailash Auto Finance Limited as unexplained cash credit u/s 68 of the Act and taxed the entire sale consideration amounting to Rs.1,52,21,982/-.

5. Aggrieved, assessee preferred appeal before the ld.CIT(A).

6. The CIT(A) has passed the order containing 26 pages, out of which, the CIT(A) has reproduced the grounds of appeal, submissions of the assessee and the assessment order in first 22 pages. The findings of the CIT(A) start from Paragraph VII and he has not at all discussed the facts of the case but theoretical discussion was carried out. The CIT(A) considering the gamut of issues dealt with in the assessment order, concurred with the decision of Assessing Officer and upheld the order of Assessing Officer.

7. Aggrieved, assessee is now in appeal before us.

8. We have heard the rival contentions and gone through the facts and circumstances. We noted the facts that during the financial year 2013-14 relevant to assessment year 2014-15, assessee sold shares for a total sale consideration of Rs.1,52,21,982/- of M/s. Kailash Auto Finance Limited of Rs.4,00,000/- shares. The assessee after adjusting the purchase cost of Rs.4,00,000/-, worked out long term capital gain at Rs.1,48,21,982/- and claimed the entire capital gain as exempt u/s 10(38) of the Act. We noted the same from the Bill furnished by the assessee of M/s. Jatadhari Marketing Private Limited, Kolkata as a proof of purchase of shares. The Assessing Officer verified the details and noted that these bills for purchase of shares are on two different dates consisting of 2 lacs shares each i.e., on 22.12.2011 and 01.02.2012, in aggregate to Rs.4,00,000/-. From the Bill issued by M/s. Jatadhari Marketing Private Limited, it is noticed that the

shares purchased by the assessee were pertaining to the company M/s. Careful Projects Advisory Limited and the transaction is not routed through Stock Exchange, but the assessee has purchased these shares through banking channels. The Assessing Officer as well as the CIT(A) noted that the company M/s. Careful Projects Advisory Limited for whom, the assessee holds the shares of Rs.4,00,000/- was merged with M/s. Kailash Auto Finance Limited. During the course of hearing now before us also, the Revenue has admitted this fact but main contention of assessee now before us that the Assessing Officer as well as the CIT(A) has relied on the interim order of SEBI passed on 29.03.2016. The same is reproduced in the order of the Assessing Officer as well as the CIT(A). Now the learned counsel for the assessee before us filed the copy of order of SEBI dt.21.09.2017 and argued that the company is dealing with M/s. Kailash Auto Finance Limited, including the assessee particularly, M/s. Jatadhari Marketing Private Limited, which is mentioned at item No.124 at page 5 of the order, is exonerated. The learned counsel for the assessee took us to page 5 and the Column denoting the name of Entity and particularly, M/s. Jatadhari Marketing Private Limited is being depicted at item no.124, wherein the share price through M/s. Jatadhari Marketing Private Limited are exonerated. The relevant order of SEBI dt.21.09.2017 reads as under :

“1. Securities and Exchange Board of India (“SEBI”) conducted a preliminary examination into the dealings in the scrip of Kailash Auto Finance Limited (“Kailash Auto”) for the period from January 17, 2013 to December 31, 2015 pursuant to unusual price movement and volume in the scrip of Kailash Auto on the Bombay Stock Exchange.

2. Upon preliminary examination, SEBI prima facie found the acts of various entities of Kailash Auto Group involving fraud in connection with dealing in securities and on securities market and in violation of provisions of SEBI Act, 1992 (“Act” and SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“PFUTP Regulations”).

3. Accordingly, SEBI passed Ad interim ex-parte order dated March 29, 2016 (“interim order”), inter-alia, restraining 246 entities from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any matter whatsoever, till further directions. The name of the entities against whom the interim order was passed are as follows :

<b>Sl.No.</b>	<b>NAME OF THE ENTITY</b>	<b>PAN</b>
124	Jatadhari Marketing Pvt. Ltd. / Wondrous Marketing Pvt. Ltd.	AACCJ4617K

4. Subsequently, five confirmatory orders dated June 15, 2016, September 30, 2016, October, 21, 2016, October 27, 2016 and July 13, 2017 were passed, inter-alia, confirming the directions passed in the interim order against 241 entities.

5. Pursuant to the interim order, SEBI conducted a detailed investigation into the role of various entities in price manipulation in the scrip of Kailash Auto so as to ascertain the violation of securities laws. Upon completion of investigation by SEBI, investigation did not find any adverse evidence / adverse findings in respect of violation of provisions of the PFUTP Regulations in respect of the following 244 entities (against whom directions were issued vide the interim order and / or confirmatory orders) warranting continuation of action under Section 11B r/w 11(4) of the Act. The details of the 244 entities are as follows :

<b>Sl.No.</b>	<b>NAME OF THE ENTITY</b>	<b>PAN</b>
122	Jatadhari Marketing Pvt. Ltd. / Wondrous Marketing Pvt. Ltd.	AACCJ4617K

6. *Considering the fact that there are no adverse findings against the aforementioned 244 entities with respect to their role in the manipulation of the scrip of Kailash Auto, I am of the considered view that the directions issued against them vide interim order dated March 29, 2016 and confirmatory orders dated June 15, 2016, September 30, 2016, October 21, 2016, October 27, 2016 and July 13, 2017 are liable to be revoked.*

7. *In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4) and 11B of SEBI Act, hereby revoke the interim order dated March 29, 2016 and confirmatory orders dated June 15, 2016, September 30, 2016, October 21, 2016, October 27, 2016 and July 13, 2017 qua aforesaid 244 entities (paragraph 5 above) with immediate effect.*

8. *The revocation of the directions issued vide the abovementioned orders (at paragraph 7) is only in respect of the entities mentioned at paragraph 5 of this order in the matter of Kailash Auto. As regards remaining entities in the scrip of Kailash Auto, violations under SEBI Act, PFUTP Regulations, etc, were observed and SEBI shall continue its proceedings against them. Hence, the directions issued vide confirmatory order dated June 15, 2016 against the remaining 2 entities shall continue. This revocation order is without prejudice to any other action SEBI may initiate as per law.*

9. *A copy of this Order shall be served on the Stock Exchanges and Depositories, for necessary action.*

Sd/-

DATE : SEPTEMBER, 21, 2017  
PLACE : MUMBAI

MADHABI PURI BUCH  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE  
BOARD OF INDIA”

9. In view of the above, learned counsel for the assessee made submission before us that there is no investigation carried out by the Directorate of Investigation of Kolkata in the case of the assessee or in the case of M/s. Kailash Auto Finance Limited and even now, there is no allegation on assessee and

the entire premise of the Revenue that SEBI has found irregularities of jacking up all the prices which has been exonerated. We have gone through the order of SEBI dated 21.09.2017 and noted that SEBI has particularly exonerated M/s. Kailash Auto Finance Limited, and shares traded through M/s. Jatadhari Marketing Private Limited are not under any investigation. In terms of the above facts and the facts narrated in SEBI Report, we are of the view that there is no charge on the assessee that the assessee has entered into bogus transactions, or the shares of M/s. Kailash Auto Finance Limited was jacked up. Hence, we are of the view that the transactions carried out by the assessee seems to be genuine and there is no evidence against the same. Hence, we delete the addition made by the Assessing Officer and confirmed by the CIT(A) and allow this issue of assessee's appeal.

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

**ITA No.2243/Hyd/2018 for A.Y. 2015-16**

11. Coming to ITA No.2243/Hyd/20218 in the case of Purushotham Mundada (HUF), the issue is exactly identical wherein the shares of same M/s. Kailash Auto Finance Limited was under suspicion transactions. The Assessing Officer treated the sale proceeds of shares of M/s. Kailash Auto Finance Limited as unexplained credit u/s 68 of the Act and taxed the same u/s 115BBE of the Act amounting to Rs.1,13,27,458/-.

12. The brief facts relating to the above issue are that the assessee sold shares of M/s. Kailash Auto Finance Limited through his broker M/s. Anand Rathi Shares and Stocks Brokers Limited and purchase bill was issued by M/s. Jatadhari Marketing Private Limited. The assessee claimed that he has purchased shares of M/s. Careful Projects Advisory Limited, a Private Limited Company, through M/s. Jatadhari Marketing Private Limited of 2 lacs shares each on 22.12.2011 and 01.02.2012, respectively for a total consideration of Rs.4,00,000/-. The assessee informed the Assessing Officer that the shares of M/s. Careful Projects Advisory Limited were received in physical form but later on, this company was amalgamated with M/s. Kailash Auto Finance Limited through merger process and consequently assessee got shares of M/s. Kailash Auto Finance Limited in ratio of 1:1, which is again not denied by the Revenue. The shares were sold by assessee for a total consideration of Rs.1,22,27,458/- out of which after taking the cost of purchase of long term capital gain was disclosed at Rs.1,10,05,958/- but the Assessing Officer treated the entire sale consideration as unexplained cash credit u/s 68 of the Act. Since the facts and circumstances are exactly identical, as discussed above, it is the same scrip of M/s. Kailash Auto Finance Limited and purchased through M/s. Jatadhari Marketing Private Limited and sold through a different broker i.e., M/s. Anand Rathi Shares and Stocks Brokers Limited Except these facts, everything is exactly identical what was in ITA No.631/Hyd/2018, which we have already dealt with.

**:10:**

*ITA Nos.631 & 2243/Hyd/2018*

Hence, for the sake of brevity, we are taking the same and consistent view and accordingly, this issue of assessee's appeal is allowed. We direct the Assessing Officer to delete the addition.

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

14. To sum up, both the appeals of assessees are allowed.

Order pronounced in the Open Court on 25<sup>th</sup> September, 2024.

**Sd/-**

**Sd/-**

<b>(MANJUNATHA G.) ACCOUNTANT MEMBER</b>	<b>(MAHAVIR SINGH) VICE PRESIDENT</b>
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Hyderabad, dated 25.09.2024.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Aditya Mundada, Warangal, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 500082.
2	Purushotham Mundada (HUF), Warangal, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 500082.
3	Income Tax Officer, Ward – 5, Warangal.
4	The Assistant Commissioner of Income Tax, Circle – 1, Warangal.
5	Pr.CIT-3, Hyderabad.
6	DR, ITAT Hyderabad Benches
7	Guard File

*By Order*