

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.2040/M/2024
Assessment Year: 2012-13**

Mr. Harshit Kishor Patel Shop 1 & 2 Shreenath Building, Bajaj Road, Vile Parle (West) Mumbai - 400056 PAN: ATVPP1125H	Vs.	ITO Ward, Mumbai 33(1)(5) C-12/710 BKC, Mumbai - 400051
(Appellant)		(Respondent)

Present for:

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

Date of Hearing : 10.09.2024
Date of Pronouncement : 23.10.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 08.04.2024, 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. In the instant case, the Assessee had purchased 20,000 (in 02 lots) equity shares of M/s. Karma Ispat Ltd. (scrip code 512584) on 12.01.2010 and 14.01.2010 on a total consideration of Rs.5,95,499/- and subsequently, sold the same on various dates i.e. 11.05.2011, 13.05.2011, 20.05.2011 & 23.05.2011 on a total consideration of Rs.56,61,715/- and consequently earned the Long Term Capital Gain (LTCG) of Rs.50,66,215/- and claimed the same as exempt u/s 10(38) of the Act by filing its original return of income dated 28.08.2012 declaring total income of Rs.2,08,829/-.

3. Subsequently, the case of the Assessee was reopened by issuing the notice u/s 148 of the Act on 19.09.2016, in response to which the Assessee submitted that his return of income filed on 28.08.2012 may be treated as return filed in response to the notice u/s 148 of the Act. The Assessing Officer (AO) thereafter analyzed the case of the Assessee, the financials of M/s. Karma Ispat Ltd., the statements of Shri Rajkumar Kedia and Shri Arav Kumar Kaitan {operators and exit providers} and other persons whose statements were recorded on various dates by the investigation wing. The AO also issued notices u/s 133(6) of the Act to the buyers who purchased the shares from the Assessee. Two purchasers have duly replied the notices, however, two purchasers have not replied. Therefore, the AO vide show cause notice dated 21.11.2017 show caused the Assessee *"as to why the Long-Term Capital Gain (LTCG) claimed as exempt u/s. 10(38) of the Act should not be brought to tax u/s 68 of the Act by rejecting the claim of exemption"*.

4. The Assessee before the AO by filing letter dated 29.11.2017 claimed that he vide letter dated 21.09.2017 has given complete details along with evidence of purchase and sale of shares such as Dmat statement, broker notes and bank statements etc.. The Assessee further submitted that the payments for purchases and sale were done through cheques and the shares were bought and sold via stock exchange, STT was duly paid at purchase and sale of shares, shares were reflected in

Dmat account, broker note reflects entire detail of transactions entered into, time of transaction and STT paid thereon. Therefore the transaction done by the Assessee cannot be treated as bogus/sham transaction and said capital gains cannot be said to be non genuine or bogus.

5. The AO though considered the reply of the Assessee, but not found the same as acceptable and ultimately rejected the claim of the Assessee u/s 10(38) of the Act and consequently treated the amount of Rs.56,61,715/- (sale proceeds on sale of shares) as un-explained cash credit u/s 68 of the Act and added the same to the income of the Assessee. Further, the AO also added the amount of Rs.1,69,851/- i.e. 3% of Rs.56,61,715/- (sale price of shares) in the income of the Assessee u/s 69C of the Act.

6. The Assessee, being aggrieved, challenged the said additions before the Ld. Commissioner, who affirmed the aforesaid additions by holding that the Assessee did not respond to any of the notices and the findings, observations and statements made by the AO in para-no. 6 to 10 of the assessment order are valid, relevant and hence confirmed. The Ld. Commissioner further held that the Assessee's claim of exemption u/s 10(38) of the Act is rightly rejected and same is added back as unexplained cash credit u/s 68 of the Act.

7. The Assessee being aggrieved is in appeal before us and at the outset by drawing our attention to page No.58 & 59 of the paper book demonstrated that vide notice dated 26.12.2019 the Assessee was asked to attend the proceeding in person or through his representative on 06.01.2020 at 12:30 P.M.. In response the Assessee vide letter dated 06.01.2020 though had sought for adjournment, however, the Ld. Commissioner without taking into consideration the adjournment sought for by the Assessee, decided the appeal of the Assessee on merits. The Assessee further demonstrated that before the AO it has filed computation of income, balance sheet as on 31.03.2012 and income &

expenditure account for the year ended 31.03.2012, capital account for the year ended 31.03.2012, broker's ledger account, Dmat account, bank statements etc. and purchase bills to demonstrate the genuineness of its claim for purchasing the shares in hand. The Assessee further demonstrated that the purchase and sale transactions have been carried out on recognized stock exchange platform and the amounts have been paid/received through banking channel/cheques and no investigation has ever been carried out against the Assessee and even otherwise no role has been assigned to the Assessee for rigging the share prices and/or any manipulation and/or any irregularities. The AO by simply relying on the investigation wing and the statement of the promoter and exit provider, doubted the transaction carried out by the Assessee and made the additions which are not sustainable in view of the judgment passed in PCIT31, Mumbai vs. Indra Indravadan Jain HUF (ITA No.454 of 2018 decided on 12.07.2023) by the Hon'ble Jurisdictional High Court, which was taken into consideration by the Hon'ble Co-ordinate Bench of the Tribunal in the case of Shri Kishore Hargovind Patel HUF vs. Income Tax Officer, Ward 25(2)(5), ITA No.4631/M/2023 decided on 19.08.2024 in deciding the identical additions.

8. On the contrary the Ld. D.R. refuted the claim of the Assessee and reiterated the orders passed by the authorities below.

9. We have heard the parties and perused the material available on record and considered the rival contentions of the parties and observe that in the case of Shri Kishore Hargovind Patel HUF (supra), the then Assessee had also purchased the share of Karma Ispat Ltd. which is under consideration before us and the Hon'ble Co-ordinate Bench of the Tribunal while analyzing the peculiar facts and circumstances of the case, as well as the judgment of the Hon'ble Jurisdictional High Court in the case of PCIT Mumbai Vs. Indravadan Jain HUF (supra), ultimately deleted the identical addition made on account of sale of shares of M/s Karma Ispat, by observing as holding as under:

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 PCIT31, 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 CIT[A] 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.

10. As the Hon'ble Co-ordinate Bench of the Tribunal in the aforesaid case has also dealt with the identical scrip, facts and circumstances and issues as involved in this, hence respectfully following the decision of the Hon'ble Co-ordinate Bench of the Tribunal, we are inclined to delete the addition of Rs.56,61,715/- (sale proceeds on sale of shares) which was made and affirmed as unexplained cash credit u/s 68 of the Act and added to the income of the Assessee. As we have deleted the substantive addition, hence the addition of Rs.1,69,851/- being commission @ 3% of Rs.56,61,715/- (sale price of shares) as made and affirmed u/s 69C of the Act has lost its existence, hence the same is also deleted.

11. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 23.10.2024.

**Sd/-
(GIRISH AGRAWAL)
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.