

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member
And
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.707/Hyd/2020**
(निर्धारण वर्ष / Assessment Year: 2015-16)

Shri Subhash Kumar Kedia Hyderabad PAN:AFVPK8915Q (Appellant)	Vs.	Asstt. C. I. T. Central Circle 3(1) Hyderabad (Respondent)
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आ.अपी.सं / **ITA No. 405/Hyd/2020**
(निर्धारण वर्ष / Assessment Year: 2015-16)

Shri Bikash Kumar Kedia Hyderabad PAN:AFAPK8794E (Appellant)	Vs.	Asstt. C. I. T. Central Circle 3(1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by:		Shri P Murali Mohan Rao, CA
राजस्व द्वारा / Revenue by:		Shri Vamshi Krishna, DR
सुनवाई की तारीख / Date of hearing:		09/10/2024
घोषणा की तारीख / Pronouncement:		29/10/2024

आदेश/ORDER

Per Manjunatha, G. A.M

These two appeals filed by different assesseees are directed against the separate, but identical orders dated 31/01/2020 of the learned CIT (A)-11, Hyderabad relating to

A.Y.2015-16. Since the facts and issues involved in these two appeals are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assesseees have raised more or less common grounds of appeal and therefore, for the sake of brevity, the grounds of appeal filed by the assessee in ITA No.707/Hyd/2020, in case of Shri Subhash Kumar Kedia are reproduced hereunder:

“1. The order of the Ld. CIT (A) is erroneous both on facts and in law.

2. The Ld. CIT(A) erred in allowing the appeal in part.

3. The Ld. CIT(A) erred in not separately adjudicating grounds of appeal of Assessee of AY 2015-16 and applying the decision taken for the AY 2014-15 without verifying the documents and submissions made.

4. The Ld. CIT(A) ought to have annulled the assessment on the ground that it is not a 'pending assessment and that the additions made are not based on incriminating material found in the search.

5. The CIT(A) ought to have appreciated the fact that additions/disallowance u/s 143(3) rws 153A was made based on information already available in the return filed.

6. (a) The Ld. CIT(A) ought to have appreciated that mere statements of third parties, which are general in nature, cannot be equated with "incriminating material" as referred to in section 153A r.w.s. 132 of the Income Tax Act, 1961.

(b) The Ld. CIT(A) ought to have appreciated that there is no incriminating material found in the search so as to make the impugned additions.

(c) The Ld. CIT(A) erred in holding that the material which was already on record and the so-called evasive statement of the constituted "incriminating material" warranting proceedings u/s 153A of the Act.

(d) The Ld. CIT(A) ought to have appreciated that the statement of the entry operator Mr. Rajesh Kumar Kedia and that of the assessee's associate Mr. Manish Arora are general as to the modus operandi and that nothing is stated there in about the impugned share transactions of the appellant for the assessment year under consideration.

(e) The Ld. CIT(A) ought to have appreciated that the assessment has been made not based on the seized material in the appellant's case and that the appellant's case has been developed on the basis of information received from third party i.e., DIT (Invn.) Kolkata.

(f) The Ld. CIT(A) ought to have appreciated that the addition u/s 68 of the Act has been made by the Assessing Officer not based on the "incriminating material" but based on the analysis of the financial position of M/s. Surabhi Chemicals and Investment Limited.

7. (a) The Ld. CIT(A) erred in upholding the addition of Rs.5,47,80,269/- made u/s 68 of the Act.

(b) The Ld. CIT (A) & A.O erred in determining the LTCG at Rs.5,47,80,269/- as against sale consideration of Rs. 4,78,75,867/ in respect of M/s. Surabhi Chemicals and Investment Limited during the year under consideration.

(c) The Ld. CIT (A) & A.O erred in determining LTCG at Rs.1, Rs.1 Rs.5,47,80,269/- by taking in to account of the sale Rs.1 Consideration of sale of shares of M/s Unno Industries Ltd of Rs.67,97,337/-.

(d) The Ld. CIT (A) & A.O erred in not adopting the correct Rs.1 LTCG of Rs. 4,71,61,117/- and in not giving credit of cost price of Rs. 7,50,000/- which is against the principles of Natural Justice

(e) The Ld. CIT(A) erred in holding that the transaction of Long Rs. Term Capital Gains declared by the assessee was not genuine, merely based on statements of third parties, which statements were not specifically related the transaction of the appellant, but only are general in nature and on suspension of share trading activity of M/s. Surabhi

Chemicals and Investment Limited for various violations which took place subsequent to the transactions of the appellant.

(f) The CIT(A) ought to have appreciated the fact that AO Rs erroneously treated the sale of shares as sham without any material evidence in possession, nor made enquiries, nor enquired into about the genuineness or otherwise of the sale of shares of M/s Surabhi Chemicals and Investment Limited, and without considering material evidences submitted

(g) The Ld. CIT(A) has erred in holding that it is clearly proved that the assessee has indulged in a dubious share transaction meant to account for the undisclosed income in the garb of Long Term Capital Gains.

(h) The Ld. AO ought to have accepted the admission of long term capital gains on the sale of shares of M/s Surabhi Chemicals Pvt Ltd., since the purchase of shares were admitted in the balance sheets as at 31-03-2013 and as at 31-03-2014 and as were accepted in the assessments completed u/s 153-A for the said assessment years 2013-14 & 2014-15 without finding any discrepancy in the purchase of the said shares.

(i) The Ld. AO ought to have appreciated that the purchase of R shares were ultimately resulted in conversion into electronic form and credit of the same in the D-Mat account and thereby the sale of shares through stock exchange after paying Securities Transaction Tax and was correctly claimed the exemption u/s 10(38), transaction of sale of shares were to be regarded as genuine in nature

(i) The Ld. CIT(A) erred in stating that fantastic sale price of E shares was not at all possible on the ground that there was no economic or financial basis to justify the price rise.

8. The Ld. CIT(A) erred in relying on the Supreme Court decisions in the case of Sumati Dayal v. CIT and Durga Prasad More v. CIT which are distinguishable on facts and in holding that the Assessing Officer had rightly made the addition u/s 68 of the Act for Rs. 547,80,269/-.

9. (a) Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that the consideration of Rs.4,78,75,867/- on the sale of the impugned shares has already been admitted in his return of income under the

head "Income from Long Term Capital Gains" as per the provisions of section 45 of the Act and E that the addition of the same u/s 68 of the Act towards "unexplained credit is in contravention of the Provisions of the Income Tax Act, 1961.

(b) Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that the sale consideration of Rs. 4,78,75,867 / has been credited in the books of account of the assessee through banking channel only and that the Assessing Officer has erred in treating the same as unexplained credit u/s 68 of the Act.

10. (a) Without prejudice to other grounds, the Ld. CIT(A) ought to have deleted the addition of Rs. 5,47,80,269/- on the ground that no show-cause notice/letter has been issued to the assessee, proposing to make the addition, during the course of assessment proceedings for the assessment year under consideration.

(b) Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that the fact of non-issue of show-cause notice/letter proposing the addition of Rs. 5,47,80,269 /- can be established, beyond doubt, from the very assessment order wherein show-cause notice issued in respect of all the related persons viz., Smt. Asha Kedia and Sri Bikash Kumar Kedia have been extracted.

(c) Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that the act of mentioning about the issue of show-cause notice dated 01.12.2017 in para no.4 of the assessment order and enclosing the same to the assessment order by way of "Annexure-A" is only an "after thought" and that no such notice has been served on the assessee at any time during the course of assessment proceedings.

(d) Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that the fact of non-issue of show-cause notice in respect of the addition of Rs. 5,47,80,269/- can also be established, beyond doubt, from para no.9.0 of the assessment order wherein the details of additions proposed u/s 68 of the Act in respect of the assessee and other related persons viz., Bikash Kumar Kedia and Smt. Asha Kedia have been incorporated for the assessment years 2014-15 and 2015-16.

11. The appellant may, add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal”.

3. The brief facts of the case are that the assessee is an individual, filed his return of income for the A.Y 2015-16 on 12/08/2014 declaring total income of Rs.10,54,520/-. A search and seizure action u/s 132 of the I.T. Act, 1961 was conducted in the case of Shri Subhash Kumar Kedia and his wife Smt. Jaya Kedia along with their other group concerns M/s. MSB Finance & Investments (P) Ltd and M/s. K. Rolling Mills Pvt. Ltd etc., on 29/10/2015. The search proceedings and post search investigations revealed that the assessee is one of the beneficiary of bogus Long-Term Capital Gain provided by the entry operators on trading of shares of Surabhi Chemicals & Investments Ltd and this fact is revealed by the Directorate of Investigation, Kolkata where search and survey operations was conducted by the Department reveals modes operandi of entry providers in providing Long-Term Capital Gain for trading in penny stock companies. Consequent to search, notice u/s 153A of the I.T. Act, 1961 was issued on 21/07/2016. In response to the notice, the assessee has filed his return of income for the A.Y 2015-16 on 6/9/2017 declaring total income of Rs.10,54,520/-.

4. During the course of assesment proceedings, the Assessing Officer, on the basis of information received from the Directorate of Investigation, Kolkata and statement recorded from

the assessee during the course of search noticed that, the assessee has purchased 50000 equity shares of Surabhi Chemicals & Investments Ltd at Rs.1.5 per share in the financial year 2012-13 for a total consideration of Rs.7,50,000/-. These shares were sold by the assessee in the financial year 2014-15 for a consideration of Rs.5,47,80,269/- and declared the Long-Term Capital Gain and also claimed exemption u/s 10(38) of the I.T. Act, 1961. The Assessing Officer, based on the information received from the Directorate of Investigation, Kolkata coupled with the inquiries conducted during the course of search in the case of the assessee issued a detailed show cause notice on 1/12/2017 and called upon the assessee to explain as to why the consideration received for transfer of shares of Surabhi Chemicals & Investments Ltd (SCIL) cannot be treated as unexplained cash credit u/s 68 of the I.T. Act, 1961. In the said show cause notice, the Assessing Officer has discussed the modes operandi of entry providers including the findings of the survey operation conducted on 13/06/2014 in the case of M/s. Baba Bhoothanath Trade & Commerce Ltd, Kolkata and observed that the assessee is one of the beneficiary of bogus capital gain entry provided by the Broker. The Assessing Officer had also discussed the issues at length in light of statement recorded from Shri Rajesh Kumar Kedia on 13/06/2014 and also statement recorded from Shri Dipen Patel Jesinghbhai, promoter of Surabhi Chemicals & Investments Ltd and observed that both the parties have admitted the fact of providing Long-Term Capital Gain benefit to various persons. The Assessing Officer further noted that Shri Rajesh Kumar Kedia has

admitted in the statement that he has used the scrips of SCIL for booking bogus Long-Term Capital Gain and for this reason, the market regulator authority in India, SEBI has suspended the trading of shares of such bogus companies. The Assessing Officer further noted that the prices of shares of SCIL has raised from Rs.0 to Rs.108/- within a short span of time which is not possible considering the fact that there was practically no viable activity in the company and this fact is confirmed by the Director of SCIL Shri Dipen Patel Jesinghbhai while recording statement u/s 131 of the I.T. Act, 1961. Therefore, called upon the assessee to explain as to why Long-Term Capital Gain declared from sale of shares of SCIL cannot be treated as unexplained cash credit.

5. In response, the assessee submitted that, he has purchased 50,000 shares of SCIL for a consideration of Rs.7,50,000/- and the said shares has been allotted on preferential basis for a face value of Rs.10/- per share with a premium of Rs.5/- per share. The investment in shares was made on 9/11/2012 and payment has been made through bank account. The shares were credited to demat account on 19/3/2013. Later the shares were split into face value of Rs.1/- each and hence the total number of 50,000 equity shares becomes Rs.5,00,000 lakhs equity shares. The above shares have been sold during the financial year 2014-15 on various dates as per contract note through stock exchange and the total amount of STT of Rs.47,983 has been paid. The assessee has received sale consideration in his ING Vaishya Bank Account. Since the shares

were held for more than 12 months, the resultant capital gain arising on transfer of shares has been declared and claimed exemption u/s 10(38) of the I.T. Act, 1961. Therefore, the question of treating entire sale consideration as unexplained cash credit does not arise. The assessee had also replied to the show cause notice and argued that the allegations made in the show-cause notice on the basis of investigation report of Income Tax Department, Kolkata is purely on assumption and suspicion basis because neither in the investigation report nor in the statement of the persons from whom statement was recorded refers to the name of the assessee and his role for converting his income into bogus Long-Term Capital Gain.

6. The Assessing Officer, after considering the relevant submissions of the assessee and also taken note of the modes operandi of entry providers as per the investigations carried out by the Directorate of Investigation, Kolkata observed that, although the assessee has declared Long-Term Capital Gain from transfer of equity shares of SCIL, but on verification of relevant facts and statements of the persons who involved in facilitating trading of shares clearly shows that the assessee is one of the beneficiary of the bogus capital gain provided by Shri Rajesh Kumar Kedia for trading in shares of SCIL. The Assessing Officer further observed that although many issues has been raised in the show-cause notice in respect of capital gain derived from sale of shares, but the assessee is silent on the issue in respect of investment in shares of SCIL. Further, the assessee himself

accepted that Shri Rajesh Kumar Kedia, Director of Baba Bhoothanath Trade & Commerce (P) Ltd through whom investment in SCIL was made who inter alia accepted that he is providing accommodation entries of share capital and bogus Long-Term Capital Gain. There is no explanation from the assessee in respect of admissions made by Shri Manish Arora who is a long term associate of Shri Rajesh Kumar Kedia wherein he has explained the modes operandi involved in arranging bogus capital gains. The assessee did not offer any explanation about the reasons in sudden increase in share price of SCIL which has raised from Rs.0 to Rs.108/- within a short span of 2 years. The assessee's explanation is silent on the admission made by Shri Dipen Patel Jesinghbhai, Director of Surabhi Chemicals & Investments Ltd in respect of providing bogus entries of capital gain. The assessee did not offer any explanation on the issue of buyers of scrips who have not filed the return of income and some have not even filed return of income at all. The assessee is also silent on the issue of admission made by certain brokers in respect of providing bogus entries of Long-Term Capital Gain. The assessee failed to explain the issues raised in show cause notice with regard to suspension of scrips by the SEBI and surveillance measures. Though, the assessee was provided with all statements recorded from various persons on the issue, but the assessee claims that the transaction is genuine and simply saying that the Assessing Officer has not provided the cross examination of the persons from whom statements were recorded by the Revenue and tries to shift the entire burden on the Department to provide

these persons for cross examination, without giving any explanation or making any efforts from his side in providing material evidence in support of his claim. Therefore, rejected the argument of the assessee and made addition of Rs.5,47,80,269/- towards sale consideration received for transfer of SCIL shares as unexplained credit u/s 68 of the I.T. Act, 1961.

7. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee reiterated his argument made before the Assessing Officer and also filed various evidences, including relevant contract notes, demat account, bank account and also confirmation from the parties to prove the transaction is genuine. The assessee further contended that although the Assessing Officer refers to the Investigation Report of the Directorate of Investigation, Kolkata and statement of certain persons, but nowhere either in the investigation report or in the statement of the persons any reference to the name of the assessee or his involvement in taking benefit from bogus Long-Term Capital Gain. Therefore, submitted that the Assessing Officer is completely erred in making addition u/s 68 of the I.T. Act, 1961.

8. The learned CIT (A) after considering the relevant submission of the assessee and also by following certain judicial precedents observed that the findings recorded by the Assessing Officer on analysis of financial position of SCIL which clearly indicates that there was no force for such a magical increase in

the price of scripts. The Assessing Officer has also referred to the statement of various persons, all of whom admitted to be providing accommodation entries. The SEBI suspended share trading activity of this company for various violations. All these facts cumulatively took to the irresistible conclusion of the non-genuineness of the transaction of Long-Term Capital Gain as declared by the assessee. The fantastic sale price was not at all possible as there was no economic or financial position to justify the price rise. It is clearly proved that the assessee had involved in a dubious sale transaction to account for the undisclosed income in the garb of Long-Term Capital Gain. Therefore, following certain judicial precedents including the decision of the Hon'ble Delhi High Court in the case of Suman Poddar vs. Income Tax Officer in ITA No.841/2019 order dated 17/09/2019 and also the decision of the Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT (1995) (214 ITR 801) (S.C) rejected the explanation of the assessee and sustained the additions made by the Assessing Officer towards the consideration received for sale of shares u/s 68 of the I.T. Act, 1961.

9. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

10. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining the addition made towards the consideration received for sale of shares u/s 68 of the Act, as unexplained credit without appreciating the fact that the assessee

has furnished all evidences including relevant contract notes for purchase and sale of shares through demat account, bank account for payment of sale consideration for purchase of shares through bank account and also receipt of sale consideration through bank account. The assessee had also furnished relevant details of STT paid on transaction and proved that these shares were sold through stock exchange and received consideration through bank. The learned Counsel for the assessee further submitted that although the Assessing Officer refers to the investigation report of the Directorate of Investigation, Kolkata and modes operandi of certain people involved in providing entries of Long-Term Capital Gain, but neither referred to the name of the assessee in the said investigation report, nor make out a case of involvement of the assessee in the said transaction. Further, the Assessing Officer has referred the statement of various persons and claimed that they have admitted the fact of providing Long-Term Capital Gain entries for many people and came to the conclusion that the assessee is also one such beneficiary. But, fact remains that neither the Assessing Officer has given copies of statement of those persons from whom the statement was recorded, nor provided an opportunity to cross examination to the assessee to rebut their claim. Further there is no reference of name of the assessee in any of the statement, nor proved involvement of the assessee in the alleged bogus activity. In absence of any reference or findings, it cannot be alleged that the assessee is one of the beneficiary of the Long-Term Capital Gain derived from sale of shares and said transaction is sham or bogus

which can be assessed as unexplained credit. In this regard, he relied upon the decision of the ITAT Hyderabad Benches in the case of Ishoo Narang vs. Dy. CIT in ITA No.450/Hyd/2022 dated 25/09/2024 and also the decision in the case of Shri Aditya Mundada vs. Income Tax Officer in ITA No.631/Hyd/2023. The learned Counsel for the assessee further submitted that the Assessing Officer refers to the interim order passed by the SEBI to suspend trading of shares of SCIL, but fact remains that in the final order, the SEBI has not made any observation in respect of broker M/s. Baba Bhoothnath Trading & Commerce and their involvement in trading of shares which is evident from the final order passed by the SEBI in the matter of Surabhi Chemicals & Investments Ltd on 30/09/2024 where there is no reference of any involvement of the above broker. Therefore, he submitted that the addition made by the Assessing Officer towards the consideration received for sale of shares u/s 68 of the Act, is purely on suspicion basis but not based on any evidences and same needs to be deleted.

11. The learned DR, on the other hand, supporting the orders of the Assessing Officer and the learned CIT (A) submitted that show cause notice issued by the Assessing Officer in light of investigation report of the Directorate of Investigation, Kolkata, coupled with statements recorded from various persons including the promoter of SCIL clearly shows involvement of various persons in the organized activity of providing bogus Long-Term Capital Gain for various people. Further, the Assessing Officer has brought out clear facts in the case of appellant in light of

investigations made by the assessee in the shares of SCIL and revealed that the assessee is not aware of the company and its business activities. Further, it is uncommon for any person to invest in shares of a company which he does not know or aware of their activities. The Assessing Officer and the learned CIT (A) after considering the relevant facts has rightly treated the consideration received for sale of shares as unexplained cash credit and their orders should be upheld. In this regard, the learned DR relied upon the decision of the Hon'ble Delhi High Court in the case of Udit Kalra vs. Income Tax Officer in ITA No.220/2019.

12. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant case law cited by the learned Counsel for the assessee and the learned DR present for the Revenue. There is no dispute with regard to the fact that the appellant has purchased 50,000 equity shares of SCIL on preferential allotment for a consideration of Rs.7,50,000 and paid the amount by cheque. The shares of SCIL has been subsequently split into a face value of Rs.1 per share and thus, 50,000 shares purchased by the assessee with a face value of Rs.10/- becomes 5,00,000 equity shares of face value of Rs.1 per share. The above shares have been subsequently credited to demat account on 19/03/2013. The appellant has sold shares of SCIL during the financial year 2014-16 on various dates as per contract note through Bombay Stock Exchange and paid STT on

said transaction. The assessee had also received consideration in his ING Vaishya Bank Account. These are the undisputed facts. In fact, the appellant has furnished all evidences and the Assessing Officer never disputed the fact that the assessee has furnished all evidences to prove the transactions. But the only dispute is with regard to the nature of transactions carried out by the assessee and its genuineness. The Assessing Officer doubted the genuineness of transactions in light of investigation report submitted by the Directorate of Investigation, Kolkata and the modes operandi unearthed during the said investigation. The Assessing Officer had also referred to the statement recorded from various persons including Shri Rajesh Kumar Kedia, Director of Baba Bhootanath Trade & Commerce and statement recorded from him on 13/06/2014 and also the statement recorded from Director of SCIL Shri Dipen Patel Jesinghbhai and come to the conclusion that on the basis of their admission, it is very clear that the transaction of purchase and sale of shares of SCIL is bogus in nature. The Assessing Officer discussed the issue at length in light of financials of SCIL and their business activities and sudden spike in share price from Rs.0 to Rs.108 within a snort period and observed that it is humanly impossible to get such a huge return within a short period of 2 years by any investor in the normal course of investment activity in the stock market. Therefore, he finally concluded that the consideration received for sale of shares is unexplained credit.

13. We have given our thoughtful consideration to the reasons given by the Assessing Officer to treat the Long-Term Capital Gain derived by the appellant from sale of shares of SCIL as bogus in nature in light of various averments made by the learned Counsel for the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for the simple reason that, except discussing the modes operandi unearthed during the investigation carried out by the Department in the case of search & survey conducted on certain persons alleged to have been involved in the activity of providing bogus Long-Term Capital Gain, but there is no credible evidence with the Assessing Officer to allege that the Long-Term Capital Gain derived by the appellant is bogus in nature which is assessable as unexplained cash credit. Further, neither in the investigation report of the Directorate of Investigation, Kolkata, nor in the statement of various persons, any reference of the name of the assessee or his involvement in alleged activity of taking benefit of Long-Term Capital Gain u/s 10(38) of the I.T. Act, 1961 by trading in shares of SCIL. No doubt, in the statement recorded from various persons including Shri Rajesh Kumar Kedia of Baba Bhoothanath Trade & Commerce and statements recorded from Shri Dipen Patel Jesinghbhai, Director of SCIL, it was admitted that the shares of SCIL was used for providing bogus Long-Term Capital Gain for various persons, but the Assessing Officer failed to implicate the assessee in the said alleged activity with any evidence and also failed to make out a case of the role of the assessee in indulging in the alleged activity of providing bogus

capital gain. We further note that in any of the statements, there is no reference of name of the assessee or his involvement. The parties who have given the statement neither stated the role of the assessee and further they have not given any indication that the assessee is also one of the beneficiary of said transaction. In absence of any evidences in support of the findings of the Assessing Officer in the assessment order that the assessee is one of the beneficiary of alleged bogus Long-Term Capital Gain, in our considered view, based on the discussion on modes operandi of entry providers and admissions made by certain persons in the statements, the assessee cannot be implicated and the transaction of the assessee cannot be treated as bogus in nature. Further, there may be an alleged scam or activity of providing bogus Long-Term Capital Gain by trading in scrips of SCIL, but unless the role of the assessee is linked to such alleged scam, it cannot be said that the assessee is also one of the beneficiary of the said alleged activity. Take an example, there may be several persons involved in the alleged activity of trading in scrips of SCIL for deriving bogus Long-Term Capital Gain. The assessee being an Ace Investor knowingly or unknowingly by seeing the price rise of the shares of SCIL might have invested in the scripts and in the process may have earned gain or loss but investment made by the assessee and resultant profit or loss derived from the activity cannot be linked to the alleged activities unless there is sufficient evidences with the Assessing Officer which proves that the assessee is also colluded with other persons and derived undue benefit of exemption by trading in shares of SCIL. In the present

case, neither the Assessing Officer brought out any evidences to link the assessee to the alleged activity of bogus Long-Term Capital Gain nor the learned CIT (A) made out a case that the assessee is also one of the beneficiary of the alleged activity. Therefore, in our considered view, in absence of any evidence, it is difficult to accept the reasons given by the Assessing Officer to treat the consideration received for sale of shares as bogus in nature.

14. The assessee has relied upon the decision of the ITAT Hyderabad Benches in the case of Ishoo Narang vs. DCIT in ITA No.450/Hyd/2022. The Coordinate Bench has considered an identical issue of Long-Term Capital Gain derived from trading in penny stock and after considering the relevant facts has held as under:

“10. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant case laws referred to by the Assessing Officer and the learned CIT (A) in support of their findings and various case law relied upon by the learned Counsel for the assessee to support his argument. As regard the first legal ground taken by the assessee on reopening of the assessment u/s 147 of the I.T. Act, 1961, we find that the assessment has been reopened in consequent to the findings recorded during the course of survey conducted u/s 133A of the Act, where a statement on oath u/s 131 was recorded from the appellant in light of purchase and sale of shares of M/s Turbo Tech Engineering and M/s. Sharp Trading Company and ascertained that the appellant has claimed exemption u/s 10(38) of the I.T. Act, 1961 towards Long-Term Capital Gain. Based on the said information, the Assessing Officer recorded reasons for

reopening of the assessment and observed that there is an escapement of income from tax on account of under assessment of Long-Term Capital Gain derived from purchase and sale of shares. From the above, it is undisputedly clear that there is fresh tangible material in the form of material, found during the course of survey which is subsequent to completion of assessment for the impugned A.Ys and therefore, the argument of the learned Counsel for the assessee that the reopening of the assessment was not based on any fresh tangible material but merely on change of opinion is devoid of any merit and unsustainable. Further, the Hon'ble Apex Court in the case of Raymond Woollen Mills Ltd. vs Income-Tax Officer And Ors 236 ITR 34, (1999) had an occasion to consider the validity of reopening of the assessment and held that in determining whether commencement of re-assessment proceedings was valid, it has only to be seen whether there was any prima facie material on the basis of which the Department reopened the case. Sufficiency or correctness of the material is not need to be considered at this stage. From the reasons recorded for reopening of the assessment, we are of the considered opinion that there is a prima facie material on the basis of which the Assessing Officer formed reasonable belief of escapement of income and thus, the reopening of the assessment u/s 147 of the Act is on sound footing and valid. Accordingly, we reject the grounds taken by the assessee.

11. *Having said so, let us come back to the issue on hand. Admittedly, the appellant has purchased 42,500 equity shares of Sharp Trading Company on 29.3.2012 for a consideration of Rs.4,25,000/-. The appellant had also purchased 50,000 equity shares of Turbo Tech Engineering on 26/12/2011 for a consideration of Rs.1,00,000/-. The assessee has sold the shares of Sharp Trading Company for a consideration of Rs.4,14,90,8432/-. Similarly, the shares of Turbo Tech Engineering were sold for a consideration of Rs.2,30,85,623/-. Thus, the appellant has derived Long-Term Capital Gain of Rs.6,40,51,466/- and claimed exemption u/s 10(38) of*

the I.T. Act, 1961, because the holding period of above shares are more than 12 months and becomes Long-Term Capital Gain which is exempt as per the provisions of section 10(38) of the I.T. Act, 1961. There is no finding either from survey team or from the Assessing Officer with regard to the number of shares sold by the appellant in respect of both the companies. Although, the appellant claims that it has sold part of equity shares and remaining shares are still held by the appellant, but no evidence has been filed. Be that as it may, the facts remains that the purchase of above shares two years back is through proper banking channels and Demat Account. Further, sale of above shares is also through proper banking channels and through Demat Account. The appellant has sold the shares through stock brokers in Demat format and received consideration in cheque. In fact, there is no dispute on these two facts, either from the Assessing Officer or from the learned CIT (A). The only dispute is with regard to the nature of transaction carried out by the appellant in light of statement recorded u/s131 of the I.T. Act, 1961 during the course of survey conducted in the business premises of the assessee on 15/09/2015.

12. *During the course of survey, a statement u/s 131 was recorded from the assessee where he has stated that the Long-Term Capital Gain represents his unaccounted income routed through purchase and sale of shares of above two companies to his books of account. The appellant has also admitted for disclosure of additional income for the A.Y 2014-15 which is evident from the statement recorded during the course of survey. Admittedly, the appellant has filed a letter along with affidavit dated 30.09.2015 i.e. within 15 days from the date of recording statement u/s 131 of the I.T. Act, 1961 during the course of survey and stated that the statement was recorded in a state of confusion mind and whatever stated in the statement is incorrect and also capital gain derived from sale of shares is genuine which is supported by necessary evidences. Accordingly, the appellant has not admitted any income in re-assessment proceedings.*

13. *The sole basis for the Assessing Officer to make addition towards Long-Term Capital Gain u/s 68 of the I.T. Act, 1961 is survey conducted u/s 133A of the I.T. Act, 1961 and statement recorded from the assessee u/s 131 of the Act. Although the Assessing Officer rests his observation on the basis of statement recorded u/s 131, but in principle said statement is no longer in existence because the appellant has withdrawn the above statement by a sworn affidavit dated 30.09.2015. Be that as it may, if we go by the statement recorded u/s 131 of the I.T. Act, 1961, the Assessing Officer has recorded the confession of the assessee with regard to the bogus nature of capital gain, but there is no reference to any material either in the form of report from Investigation Wing or any other material which suggests the role of the appellant in the alleged scam of bogus nature of capital gain provided by entry providers in Kolkata. Further, although the Assessing Officer refers to Investigation Report in Para 3 of his assessment order, but said reference is only in 3 lines without any details as to what is the findings of the Investigation Wing with regard to the modes operandi of entry providers and the role of appellant. In our considered view, there may be an alleged scam of providing entry in the form of Long-Term Capital Gain or unsecured loan, but unless the Assessing Officer links the appellant activities to said alleged scam, it cannot be alleged that the appellant is also part of alleged scam of bogus Long-Term Capital Gain provided by entry operators and the appellant has derived benefit by claiming exemption towards Long-Term Capital Gain u/s 10(38) of the I.T. Act, 1961. In our considered view, if we go by the observation of the Assessing Officer in the assessment order, it is general in nature without there being any specific observation with regard to the role of the assessee in respect of above two shares. Further, although the Assessing Officer refers to the financials of the above two companies and sudden jump in share price during short period, but that alone itself is not a ground to allege that the assessee is also a part of such alleged scam and Long-Term Capital Gain derived from the appellant from purchase and sale of above*

shares is bogus in nature. Take an example, there may be a group of people who are in collusion with each other may have traded a particular share to jack the share price artificially in the stock market, but a common investor in stock market by watching the moment of share price of particular share may invest accidentally and derives some profit or loss. Therefore, merely for the reasons that there is a sudden jump in share price, it cannot be alleged that the assessee is also a part of that group of people who are involved in providing bogus entries for deriving Long-Term Capital Gain. In the present case, the Assessing Officer neither brought out any material which suggests the role of the appellant in the alleged scam of bogus Long-Term Capital Gain nor any reference in the investigation report before coming to the conclusion that the Long-Term Capital Gain derived by the assessee is bogus in nature.

14. *At this stage it is relevant to consider the decision of the Hon'ble Supreme Court in the case of CIT vs. S Kadar Khan & Sons (Supra), where it has been clearly held that the Assessing Officer does not have the power to examine any person on oath during survey u/s 133A of the I.T. Act, 1961. Further, the statement recorded u/s 131 during the course of survey has no evidentiary value and any admission made during such statement cannot be made the basis of addition. Similar view has been taken by the Hon'ble Telangana & Andhra Pradesh High Court in the case of Gajjam Chinna Yellappa vs. Income Tax Officer (Supra), where it has been held that where assessment order has been based on sole basis of statement recorded during the course of survey and after retraction of statement, the Assessing Officer did not produce any other material to support under assessment of sale consideration of land, assessment order was to be set aside. A similar view has been taken by the Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co. Ltd vs. State of Kerala (1973) 91 ITR 18 (S.C). The sum and substance ratios laid down by various Courts is that addition cannot be made on the basis of statement recorded u/s 131 during the course of survey u/s 133A of the I.T. Act,*

1961, but it should be supported by corroborative evidences and in absence of any evidence, no addition can be made on the basis of statement alone. In the present case, going by the reasons given by the Assessing Officer and the learned CIT (A), the additions towards the consideration received for sale of shares u/s 68 of the I.T. Act, 1961, in our considered view, said addition is made solely on the basis of statement recorded from the assessee but not based on any material. Therefore, the addition made by the Assessing Officer cannot be sustained.

15. Coming back to the case law on the issue of additions made towards Long-Term Capital Gain u/s 68 of the I.T. Act, 1961. The Hon'ble Supreme Court in the case of *PCIT vs. Parasben Kasturchand Kochar (Supra)* had considered an identical issue of addition made towards Long-Term Capital Gain derived from sale of shares and claimed exempt u/s 10(38) of the I.T. Act, 1961 and after considering the relevant facts, held that where the assessee individual engaged in trading of shares had discharged his onus of establishing Long-Term Capital Gain arising out of sale of different shares as fair and transparent by submitting record of purchase and sales bills, demat statement etc., and thus not being earned from bogus company was eligible for exemption u/s 10(38) of the Act. The relevant observation of the Hon'ble Supreme Court is as under:

“2. We take notice of the fact that the issue in the present appeal is whether the assessee earned long term capital gain through transactions with bogus companies. In this regard, the finding of fact recorded by the Tribunal in paras 9, 10 and 11 reads thus:-

“9. In our considered opinion, in such case assessee cannot be held that he earned Long Term Capital gain through bogus company when he has discharged his onus by placing all the relevant details and some of the shares also remained in the account of the appellant after earning of the long term capital gain.

10. Learned A.R. contention is that no statement of the Investigation Wing was given to the assessee which has any reference against the assessee.

11. In support of its contention, learned A.R. also cited an order of Coordinate Bench in ITA No.62/Ahd/2018 in the matter of Mohan Polyfab Pvt. Ltd. Vs. ITO wherein ITAT has held that A.O. should have granted an opportunity to cross examine the person on whose statement notice was issued to the assessee for bogus long term capital gain. But in this case, neither statement was supplying to the assessee nor cross examination was allowed by the learned A.O. Therefore, in our considered opinion, assessee has discharged his onus and no addition can be sustained in the hands of the assessee.”

3. Thus, the Tribunal has recorded the finding of fact that the assessee discharged his onus of establishing that the transactions were fair and transparent and further, all the relevant details with regard to such transactions were furnished before the Income Tax authorities and the Tribunal also took notice of the fact that some of the shares also remained in the account of the appellant.

4. We take notice of the fact that the assessee has a Demat Account maintained with the ICICI Securities Ltd. and has also furnished the details of such bank transactions with regard to the purchase of the shares. In the last, the Tribunal took notice of the fact that the statements recorded by the investigation wing of the Revenue with regard to the Tax entry provided were informed to the assessee despite giving him opportunity to meet such an allegation. In the overall view of the matter, we believe that the proposed question cannot be termed as a substantial question of law for the purpose of maintaining the appeal under Section 260-A of the Act, 1961.”

16. *Similar view has been taken by the Hon'ble Supreme Court in the case of CIT (Central) vs. Sunita Dhadda in Special Leave Petition (Civil) Nos.9432/2018 dated 28/03/2018 wherein the Hon'ble Supreme Court has upheld the order of the Hon'ble Rajasthan High Court.*

17. *Coming back to the case law relied upon by the learned DR. The learned DR relied upon the decision of the ITAT Hyderabad Benches in the case of Anirudh Venkata Ragi vs Income Tax Officer in ITA*

No.352/Hyd/2019 dated 21/11/2023 and in the case of Shri Govind Kumar Agarwal vs. Income Tax Officer in ITA Nos.125/Hyd/2020 & Others dated 21/11/2023. We find that, although the Coordinate Bench has taken contrary view on this issue and held that the Long-Term Capital Gain derived from sale of shares of company is bogus in nature, but fact remains that the Hon'ble Supreme Court has considered very similar issue in light of purchase and sale of shares of companies and held that once necessary evidence has been filed to prove purchase and sale of shares including Demat statement etc., then the Long-Term Capital Gain derived from sale of shares was to be allowed u/s 10(38) of the I.T. Act, 1961. Therefore, we are of the considered view that once the issue has been decided by the Hon'ble Supreme Court, in our considered view, the other judgments relied upon by the learned DR including the decision of the Coordinate Benches of Hyderabad ITAT has no binding precedent and thus are not considered.

18. *In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the learned CIT (A) is erred in sustaining the addition made by the Assessing Officer towards Long-Term Capital Gain derived from sale of shares and claiming exemption u/s 10(38) of the I.T. Act, 1961 as unexplained credit u/s 68 of the I.T. Act, 1961. Thus, we set aside the order of the learned CIT (A) and direct the Assessing Officer to delete the additions made towards consideration received for sale of shares u/s 68 of the I.T. Act, 1961.”*

15. Coming back to another observation of the Assessing Officer in light of interim order passed by the SEBI in the matter of SCIL The Assessing Officer has observed that, the SEBI has temporarily suspended the trading of shares of SCIL in the Stock Exchange on the basis of investigation carried out by the Market Regulator and thus, opined that the shares of SCIL has been used for providing bogus Long-Term Capital Gain. We find that the

learned Counsel for the assessee has filed the final order passed by the SEBI u/s 15(1) of Securities & Exchange Board of India (procedure for holding inquiries and imposing penalties) Rules, 1995, in the matter of SCIL on 30/09/2021, and we find that, in final order, the SEBI has exonerated the observations in the interim order in respect of Baba Bhoothanath Trade & Commerce, a broker who facilitated purchase and sale of shares of SCIL shares for the assessee and from the order of the SEBI, it is very clear that there is no role of the assessee and their broker in trading in shares of SCIL in collusion with other persons for giving bogus Long-Term Capital Gain. Therefore, we are of the considered view that the observation of the Assessing Officer in light of interim order passed by the SEBI and adverse inferences drawn against the assessee on the basis of the said order is incorrect and devoid of any merit and thus, rejected.

16. The assessee had also relied upon the decision of the Coordinate Bench of the ITAT Hyderabad Bench in the case of Aditya Mundada vs. Income Tax Officer in ITA No.631/Hyd/2023 dated 25/-09/2024, The Coordinate Bench of the ITAT has considered an identical issue of purchase and sale of shares of penny stock company in light of investigations carried out by the Directorate of Investigation, Kolkata and observations made by the Assessing Officer in light of the order passed by the SEBI suspending the trading of shares of said company and held as under:

“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 :

S.No.	Name of Entity	PAN
124	Jatadhari Marketing Pvt Ltd/ Wondrous Marketing Pvt Ltd	AACCJ 4617K

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 :

S.No.	Name of Entity	PAN
124	Jatadhari Marketing Pvt Ltd/ Wondrous Marketing Pvt Ltd	AACCJ 4617K

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 MADHABI PURI BUCH

WHOLE TIME MEMBER
PLACE : MUMBAI
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."

17. In this view of the matter and considering the facts and circumstances of the case and also by following the decisions of the Coordinate Benches of the ITAT in the above cases, we are of the considered view that the Assessing Officer is erred in holding that the Long-Term Capital Gain derived by the assessee from sale of shares of SCIL is bogus in nature and assessable under section 68 of the I.T. Act, 1961 as unexplained credit. The learned CIT (A) without appreciating the relevant facts simply sustained the additions made by the Assessing Officer. Thus, we set aside the order of the learned CIT (A) and direct the Assessing Officer to delete the addition made u/s 68 of the I.T. Act, 1961.

18. In the result, appeal filed by the assessee in ITA No.707/Hyd/2020 is allowed.

ITA No.405/Hyd/2020 Shri Bikas Kumar Kedia

19. The facts and issues involved in this appeal is identical to the facts and issues which we had considered in ITA No.707/Hyd/020, in the case of Shri Subhash Kumar Kedia for A.Y 2015-16. But for figures, the reasons given by us in preceding paragraph Nos.13 to 17 shall mutatis mutandis apply to this appeal as well. Therefore, for similar reasons, we set aside the

order of the learned CIT (A) and direct the Assessing Officer to delete the addition made u/s 68 of the I.T. Act, 1961.

20. In the result, appeal filed by the assessee is allowed.
21. To sum up, both the appeals are allowed.

Order pronounced in the Open Court on 29th October, 2024.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 29th October, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Sri Subhash Kumar Kedia & Shri Bikas Kumar Kedia c/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	ACIT, Central Circle 3(21) Hyderabad
3	Pr. CIT -Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order