

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 4432/MUM/2023

(Assessment Year : 2014-15)

Mohemmed Anwar by Legal Heir

Mohammed Amer,

Anwar House, Ground Floor,
Pandit Nagla Mini Bye Pass Road,
Pandit Nagla, Moradabad
Uttar Pradesh - 244001.
PAN : AADPM9208K

..... Appellant

v/s

Asst. CIT – 17(2),

Mumbai - 400020

..... Respondent

Assessee by : Shri Fenil Bhatt

Revenue by : Ms. Rajeshwari Menon, Sr. AR

Date of Hearing – 22/11/2024

Date of Order - 25/11/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the legal heir on behalf of the assessee challenging the impugned order dated 16/10/2023, passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2014-15.

4. The brief facts of the case, as emanating from the record, are: The assessee was an individual and was a partner in M/s East Coast Industries having a 12% share in the profits of the partnership. During the year under consideration, the assessee declared income from house property, income from business, capital gains and income from other sources. After claiming deduction under section 80C and section 80TTA of the Act, the assessee filed his return of income on 24/12/2014 declaring a total income of Rs. 36,62,870. The return filed by the assessee was processed vide intimation issued under section 143(1) of the Act. Subsequently, on the basis of the information received from the DDIT(Investigation), Unit-2(3), Kolkata that the assessee has entered into a transaction of selling scrip of M/s Kailash Auto Finance Ltd., which is one of the 84 penny stocks investigated by the Investigation Wing, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 28/03/2018. In response, the assessee filed a letter requesting that the original return filed may be treated as a return filed in response to the notice issued under section 148 of the Act. After receipt of the reasons recorded for reopening the assessment, the assessee filed the objections against the initiation of proceedings under section 147 of the Act which were disposed of vide order dated 14/09/2018. The Assessing Officer ("AO") vide order dated 03/12/2018 passed under section 143(3) r/w section 147 of the Act by placing reliance upon the investigation carried out by the Directorate of Investigation, Kolkata in relation to penny stocks, the financial position of the Company in whose shares assessee has transacted and fluctuation in the share rates in a short span of time concluded that the assessee has earned

Marketing Ltd. As per the assessee, all the 2,00,000 shares of M/s Kailash Auto Finance Ltd. were sold by him between 05/11/2013 to 24/12/2013 at the Bombay Stock Exchange ("BSE") through his SEBI registered broker, M/s Multigain Securities Private Limited, for a total sale consideration of Rs. 79,55,296. The relevant details of sales are as follows: -

<i>Name of the company</i>	<i>Date of sale</i>	<i>No. of shares/units</i>	<i>Value per share</i>	<i>Amount</i>
	05.11.2013	33000	39.17	1292481
	25.11.2013	10000	38.97	389668
	26.11.2013	30000	38.97	1169002
	28.11.2013	60000	40.16	2409759
	03.12.2013	15000	43.25	648782
	11.12.2013	40000	40.15	1606109
	24.12.2013	12000	36.62	439497
<i>Total</i>		200000		7955296

7. As per the assessee, the transaction of sale of shares was subject to brokerage, service tax, securities transaction tax, stamp duty, Exchange and SEBI Turnover Charges, etc. Further, the sale consideration for the transfer of shares of M/s Kailash Auto Finance Ltd. was settled through the BSE Settlement System and was directly credited to the broker's bank account by the exchange as per its rules. Thus, after deduction of the aforesaid charges, the sale consideration for transfer of shares of M/s Kailash Auto Finance Ltd. was credited by M/s Multigain Securities Private Limited to the assessee's bank account. Accordingly, as per the assessee, he claimed exemption of the long-term capital gains of Rs.77,55,296 under section 10(38) of the Act from the transaction of sale of shares of M/s Kailash Auto Finance Ltd. during the year under consideration.

9. As regards the submission that the assessee was a regular investor in shares and securities, the assessee has placed on record the transaction statement issued by his broker, which forms part of the paper book from pages 55-59. From the perusal of the statement, we find that apart from the shares of M/s Panchshul Marketing Ltd/M/s Kailash Auto Finance Ltd., the assessee also transacted shares of various other companies, such as Birla Power, Esteem Bio, Power Grid Corporation and Reliance Power. We further find that in his balance sheet for the year ending 31/03/2013, the assessee has also declared the aforesaid investment in shares. Further from the statement of capital gain, forming part of the paper book on page 65, we find that the assessee not only earned long-term capital gains on the sale of shares of M/s Kailash Auto Finance Ltd. but also on short-term capital gains on the sale of shares of various other companies including ITC, Cipla, NTPC, Hindalco, etc. Further, the assessee has also placed on record a copy of its bank statement to support its submission that the shares of M/s Panchshul Marketing Ltd were purchased by payment through the bank. Apart from the above, the assessee has also submitted a copy of contract notes issued by his broker in respect of the sale of shares of M/s Kailash Auto Finance Ltd. From pages 76-81, the assessee has also furnished a copy of his ledger account in the books of its broker for the financial year 2013-14. From the perusal of the aforesaid ledger account, we find that the statement of the assessee that he was a regular investor in shares and securities is duly supported.

racket of accommodation entries. The material relied upon by the AO also does not prove that the assessee has carried out the impugned transaction of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of share prices. The statement of the assessee recorded under section 131 of the Act, which is reproduced in the assessment order, also does not contain any statement that incriminates the assessee in any manner. Further, from the perusal of the aforesaid statement, we find that the assessee replied to all the questions and there is not even an allegation that the assessee was evasive while answering any question. In the absence of any material proving any involvement of the assessee in the alleged bogus transaction of accommodation entry, we are of the considered view that the addition made pertaining to receipt of sale consideration of the impugned transaction cannot be sustained.

11. In support of our aforesaid confusion, gainful reference can also be made to the decision of the Hon'ble Jurisdictional High Court in CIT v/s. Shyam R. Pawar, reported in [2015] 54 taxmann.com 108/229 Taxman 256 (Bom.), wherein the Hon'ble Court held that where DEMAT account and contract note showed details of the share transaction and the AO had not proved the said transaction as bogus, the long-term capital gain earned on said transaction could not be treated as unaccounted income under section 68 of the Act. The relevant findings of the Hon'ble Court, in the aforesaid decision, are reproduced as follows: –

"6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and

investigation into the role of various entities in price manipulation in the scrip of M/s Kailash Auto Finance Ltd., the SEBI did not find any adverse evidence/adverse findings in respect of violation of provisions of the relevant regulations in respect of 244 entities including M/s Kailash Auto Finance Ltd. and Sanskrit Vincom Pvt Ltd. (from whom the assessee purchased the shares of M/s Panchshul Marketing Ltd) warranting continuation of section under section 11B r/w section 11(4) of the Securities and Exchange Board of India Act, 1992.

13. We find that the learned CIT(A) as well as the learned DR has placed reliance upon the decision of the Hon'ble Calcutta High Court in PCIT v/s Swati Bajaj, [2022] 139 taxmann.com 352 (Cal). The perusal of the aforesaid decision of the Hon'ble Calcutta High Court we find that the same was rendered in the peculiar facts, wherein a batch of appeals of different assessee's were disposed of by the Tribunal vide single consolidated order. On the facts involved in the present case as noted above are distinguishable from the above case. It is pertinent to note that the Hon'ble Calcutta High Court has not disturbed the settled principle that circumstantial evidence can be looked into only when direct evidence is not available. In the present case, the assessee has furnished direct evidence, which was completely ignored by the AO to refer to the circumstantial evidence. Further, in the present case, there is not even a reference to any evidence contrary to the claim of the assessee, which is based on detailed documentary evidence. Therefore, we are of the considered view that the decision of the Hon'ble Calcutta High Court cited supra is factually distinguishable, and thus not

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai