

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.182/Ahd/2024
Assessment Year: 2017-18**

Income Tax Officer, Ward – 1(3)(1), Ahmedabad.	Vs.	Deval Pranav Patel, L/H. of Late Shri Pranav Mahendrabhai Patel, 2 nd Floor, Anison Building, Swastik Society, Navrangpura, Ahmedabad – 380 009. [PAN – AAWPP 0584 A]
(Appellant)		(Respondent)
Assessee by	Shri Anil Kshatriya, Advocate	
Revenue by	Shri V. Nandakumar, CIT-DR	
Date of Hearing	19.11.2024	
Date of Pronouncement	17.12.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Revenue against order dated 18.07.2024 passed by the CIT(A), National Faceless Appal Centre (NFAC), Delhi for the Assessment Year 2017-18.

2. The Revenue has raised the following grounds of appeal :-

- “1. Whether the CIT(A) was justified in law and on facts in deleting addition of Rs.9,98,11,641/- being bogus Long Term Capital Gain under Section 10(38) of the IT Act without considering the facts of the case ?
2. Whether the CIT(A) was justified in law and on facts in deleting addition made on account of payment of commission amounting to Rs.29,94,349/- under Section 69C of the Act without considering the facts of the case ?

3. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*
4. *it is, therefore, prayed that the order of Ld. CI(A) may be set aside and that of the Assessing Officer be restored.”*

3. As per the details available, the assessee filed return of income declaring income at Rs.4,40,93,190/- for the Assessment Year 2017-18. It was noticed that the assessee claimed bogus Long Term Capital Gain (LTCG) at Rs.7,57,24,817/- during the year under consideration as per the observation of the Assessing Officer. The reasons were recorded and notice under Section 148 of the Income Tax Act, 1961 dated 21.04.2021 was issued to the assessee calling for return of income for Assessment Year 2013-14. In response to the said notice, the assessee filed return of income on 21/04/2021 declaring total income of Rs.4,38,61,310/-. Subsequently notice under Section 143(2) of the Act was issued upon the assessee on 04.02.2024. Notice under Section 142(1) of the Act was issued upon the assessee on 08.02.2022. The assessee filed response to the said notice on 15.02.2022. After taking into account the assessee's submission, a show cause notice was issued on 21.03.2022. The assessee filed reply dated 24.02.2022 but has not furnished any explanation regarding bogus long term and bogus short term capital gains claimed by the assessee as per observation of the Assessing Officer. The Assessing Officer observed that the long term capital gain from sale of shares of scrip of Kushal Group Companies for Rs.4,32,38,309/- and sales proceeds of short term capital gains from sale of Kushal Group Companies for Rs.5,65,73,332/-. In the return of income, it was shown long term capital gain from transaction on which securities transaction tax paid that of Rs.4,32,38,309/- as exempt income in the category of income not to be included in total income and has shown the sales proceeds of short term capital gains from sale of Kushal Group companies for Rs.5,65,73,332/- which has been considered as sales consideration of capital gain offered to tax under short term capital gains. The Assessing Officer observed that as per the information received, the assessee has sold shares of scrip of Kushal Group Companies which has been claimed exempt under Section 10(38) of the Act or claimed as short term capital gains to be taxed at concessional rates. The Assessing Officer further gave analysis of synchronised share trading in Kushal scrip as per SEBI order dated 22.12.2017 and held that conclusion of Investigation Wing is self-explanatory and clear that the trading of shares

of Kushal Limited is non-genuine and manipulated scrip's to generate bogus long term capital gain/loss and short term capital gain/loss. The Assessing Officer further observed that as per paragraph no.11 of the notice under Section 142(1) of the Act issued to the assessee on 08.02.2022 the assessee was asked to explain as to why the sales consideration received on account of alleged transaction of scrips of Kushal Group of Companies should not be treated as unexplained cash credits under Section 68 of the Act. The assessee has not filed any reply to this query and, therefore, the assessee has not been able to prove the unusual rise and fall of share prices to be natural and is based on the market forces. The Assessing Officer made addition of Rs.9,98,11,641/- as unexplained cash credit under Section 68 of the Act and taxed the same under Section 115BBE of the Act. The Assessing Officer further made addition of Rs.29,94,349/-, i.e. 3% of Rs.9,98,11,641/-, and added the same under Section 69C of the Act as unexplained expenditure and taxed under Section 115BBE of the Act.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. This is a Revenue's appeal and the Id. DR submitted that the CIT(A) erred in deleting the addition of Rs.9,98,11,641/- being bogus long term capital gain under Section 10(38) of the Act without considering the facts of the case. The Ld. DR further submitted that the addition made on account of payment of commission amounting to Rs.29,94,349/- under Section 69C of the Act is also not justifiable by deleting the same. The Ld. DR submitted that the Assessing Officer has rightly made the addition as the assessee could not give the details about the genuineness of the trading of shares of Kushal Group of Companies and manipulated the scrips to generate bogus long term capital gain/loss and short term capital gain/loss. The Ld. DR relied upon the Assessment Order.

6. The Ld. AR submitted that the reasons recorded were bad as the approval does not mentions the quantum as to how much amount has been claimed as long term capital gain or on account of payment of Commission. The Ld. AR further submitted that the reasons are recorded without any application of mind. Thus, the Ld. AR

submitted that the Assessment Order itself is bad in law. Besides this, the Ld. AR further submitted that the CIT(A) has categorically mentioned that the assessee has given the details related to purchase of shares made through proper channel. The shares were sold through recognised stock exchange and securities transaction tax were paid. Share trading took place through D-mat Account and there was no evidence of cash exchange in hand as mentioned by the Assessing Officer. The assessee has also given contract-note-cum-invoice explaining source as well as source of source of the said transactions. Thus, at no point of time the assessee is involved in manipulating of scrip transactions and the same was not mentioned in the Assessment Order. Therefore, the CIT(A) has rightly allowed the contentions of the assessee and deleted the addition on merit. As regards the commission, the same was also explained and, therefore, the addition under Section 69C of the Act also does not sustain and rightly deleted by the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) has rightly held that the reasons of reopening was recorded properly and, therefore, rightly rejected the legal point of the assessee. On merit, the CIT(A) has taken cognisance of the evidences produced by the assessee before the Assessing Officer as well as before the CIT(A). which clearly mentions that the assessee at no point of time was involved in the manipulation of the pricing of the scrip of Kushal Group. In fact, the Assessment Order in para no.6 to 8 simply makes the observation that the conclusion of the Investigation Wing is self-explanatory. Therefore, trading of Kushal Group is non-genuine and manipulate scrips to generate long term capital gain/loss and short term capital gain/loss. The connection on this alongwith the assessee's transaction was not established the nexus. The Assessing Officer has not given any finding that the purchase and sale of shares was in doubt. The Assessing Officer has simply relied upon the SEBI investigation report and has not given any independent finding to that extent regarding the purchase and sale of shares and has not established any doubt to that extent in the finding of Assessment Order. Thus, the CIT(A) has rightly deleted the additions including that of commission income under Section 69C of the Act. There is no need to interfere with the finding of the CIT(A).

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 17th December, 2024.

Sd/-
(DR. BRR KUMAR)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 17th December, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

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Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad