

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 74/Ahd/2024
Assessment Year 2015-16**

Suresh B Agrawal HUF, A-16, Saumya Apartment, Near Navrang School, Navrangpura, Gujarat-380009 PAN: AAEHS7339L (Appellant)	Vs	The ITO, Ward-5(2)(4), Ahmedabad (Respondent)
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Assessee Represented: None
Revenue Represented: Shri Aashish Rajesh Rewar, Sr.D.R.

Date of hearing : 20-11-2024
Date of pronouncement : 06-01-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the order dated 06.12.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2015-16.

2. Brief facts of the case are that the assessee is Kartha of HUF and filed his Return of Income for A.Y.2015-16 on 10.12.2015 declaring total Income of Rs. 9,42,510/-. The case was selected for Complete Scrutiny assessment and notice u/s 143(2) of the Act was issued on the assessee.

2.1. On verification of computation of income, the AO observed that during the financial year, the assessee has claimed exemption u/s 10(38) of the Act, long-term capital gain of Rs.92,01,732/- in respect of sale of shares of M/s. Kailesh Auto Finance Limited. The assessee claimed that 3,00,000 shares of M/s. Careful Projects Advisory Ltd. had been purchased on 13.03.2013 @1/-per share. Subsequently, M/s. Careful Projects Advisory Ltd. was merged with M/s. Kailesh Auto Finance Ltd. in a scheme of amalgamation.

2.2. The AO referred to the investigation carried out by the DIT(Inv) Kolkatta regarding bogus LTCG/STCL/trading loss through dealings in shares of 'penny stocks' and 84 companies listed in the Bombay Stock Exchange were identified as penny stock companies, one of which is M/s. Kailash Auto Finance Ltd. The AO referred to the sworn statement of Shri Sanjay Dhirajlal Vora, Regional Director (East Zone) of M/s Anand Rathi Shares & Brokers Ltd., recorded on 8.4.2015, wherein Shri Vora confirmed that M/s. Kailash Auto Finance Ltd. is a penny stock company. Statement of Shri Sunil Dokania, accommodation entry provider, recorded on 12.06.2015 was also relied upon, wherein Shri Dokania lists M/s. Kailash Auto Finance Ltd. as one of the paper companies managed and controlled by him to provide accommodation entries in the

nature of LTCG/STCL etc. Statement of Shri Anil Khemka was recorded by DDIT(Inv.) Kolkatta, wherein he identifies Kailash Auto (511357) as one of the scrips through which accommodation entry has been provided by his concerns. The AO examined the financials and the trading patterns of the scrip M/s. Kailash Auto Finance Ltd. and found that the company had no assets. The price movement is also abrupt and unrealistic. The AO further noted that the assessee does not generally deal in shares on a regular basis.

2.3. Therefore the AO concluded that the transactions were sham transactions and aimed only to bring unaccounted money in the guise of exempted long term capital gains and the paperwork was done merely to give a colour of authenticity to the transaction and for creating a facade of legitimate transactions. In view of the above, the AO held that the genuineness of the sale consideration of Rs. 95,01,732/- in respect of shares of M/s. Kailash Auto Finance is not proved. Accordingly, the amount credited in the bank account of the assessee in respect of sale proceeds of the shares was added to the total income u/s 68 of the Act and demanded tax thereon.

3. Aggrieved against the assessment order, assessee filed an appeal before Ld. CIT(A). During the appellate proceedings, the Ld. CIT(A) called for a Remand Report, In response, the A.O. submitted the report dated 25-04-2019 confirming that the sale consideration received on sale of Kailash Auto Finance Ltd. share are not genuine transaction and is only accommodation entries in the form of Long Term Capital Gain. Therefore the Ld. A.O. requested to sustain the

addition made u/s. 68 of the Act. The Ld. CIT(A) considered the above submissions and confirmed the addition made by the Assessing Officer by observing as follows:

“.....7.2 Grounds no. 1 and 2 relate to holding the LTCCG as bogus and bringing to tax the sale consideration of Rs. 95,01,732/- u/s 68 as unexplained cash credit. Facts in brief are that during the year under consideration, the appellant had earned Long- Term capital gain of Rs. 92,01,732/- on sale of shares of Kailash Auto Finance Ltd. The LTCCG was claimed as exempt u/s 10(38) of the IT Act. The facts related to the transaction have been discussed in detail in para 4 to 4.3 above, 300000 shares of Careful Projects Advisory Ltd. had been purchased in March 2013 @ Rs. 1/- per share. Subsequently, Careful Projects Advisory Ltd. was merged with Kailash Auto Finance Ltd. In a scheme of amalgamation.

7.3 Kailash Auto Finance Company Ltd. has been identified as a 'penny stock' company. The modus operandi of penny stock companies and the entire process of obtaining bogus Long Term Capital Gain/Short Term Capital loss entries through price manipulation of the shares of the 'penny stock companies' has been discussed by the AO in the assessment order. Kailash Auto Finance Ltd. has been listed amongst the 84 'penny stock companies' identified by the Investigation Wing Kolkatta, after a prolonged investigation. Trading in the shares of Kailash Auto Finance Ltd. was suspended by the Exchange after directions from SEBI vide notice No. 20160804-24 dated 04.08.2016. The financials and the trading pattern of the scrip have been independently examined by the AO and it is seen that they fall within the general framework of the financials and scrip trading patterns of 'penny stock companies'. The share prices have fluctuated in a bell shape curve, irrespective of the general market trend. The AO has referred to the statements of the following persons, wherein they have admitted that Kailash Auto Finance Ltd. is engaged in providing accommodation entries/bogus LTCCG/bogus STCL:

1. Statement of Shri Shri Sanjay Dhirajlal Vora, Regional Director (East Zone) of M/s Anand Rathi Shares & Brokers Ltd., recorded on 8.4.2015, wherein Shri Vora confirmed that Kailash Auto Finance Ltd. is a penny stock company.
2. Statement of Shri Sunil Dokania, accommodation entry provider, recorded on 12.06.2015, wherein Shri Dokania lists Kailash Auto Finance Ltd. as one of the paper companies managed and

controlled by him to provide accommodation entries in the nature of LTCG/STCL etc.

3. Statement of Shri Anil Khemka recorded by DDIT(Inv.) Kolkatta, wherein he identifies Kailash Auto (511357) as one of the scrips through which accommodation entry has been provided by his concerns.

7.4 The main contention of the appellant is that the addition is based on conjectures and there is no evidence linking the appellant with the persons whose statements have been relied upon by the AO. It has sold the shares through Jhaveri Securities Ltd. and has no connection with Anand Rathi Shares and Brokers. The appellant further states that it has all the documents which prove the veracity of the purchase and sale transactions. Sales were made on a recognized stock exchange, through a SEBI registered broker. Further, the name of Careful Projects Advisory Ltd., whose share it had actually purchased, does not appear in any of the statements. The onus is on the AO making the addition to adduce proof for the addition and the AO has failed to do so.

7.5 At this juncture it is relevant to refer to the decision rendered by the Hon'ble High Court of Kolkatta in the case of PCIT v/s Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta). Relevant extracts are reproduced below:

"3. ..The assessing officer noted that within a short span to time of 17 to 21 months, the assessee managed to sell the shares with increased value of about 2823% that to when the general market trend was recessive. It appears that there were several such transactions which led to an investigation being commenced by the Directorate of Income-tax Investigation, Kolkatta. A report in this regard was submitted by the Deputy Director of Income-tax Investigation, Unit II (3), Kolkatta dated 27-4-2015 which report was furnished to the Director General of Income-tax Investigation in Mumbai, Delhi, Ahmedabad, Bengaluru, Bhopal, Chandigarh, Chennai, Delhi, Hyderabad, Jaipur, Kochi, Kolkatta, Lucknow, Patna, Pune and Director General (International Taxation) Mumbai. The investigation report dated 27-4- 2015, which is available in the public domain narrates the modus operandi adopted for the purpose of claiming bogus LTCG. The stocks which were the subject matter of transaction were referred to as "penny stocks" and the companies whose shares were traded in the various stocks exchanges. The report further states that in the whole project total 84 BSE listed penny stocks have been identified after which several

search and survey operations were conducted in office premises of more than 32 share broking entities who have accepted that they were actively involved in bogus LTCL/STCL scam. Surveys were also conducted in the office premises of many accommodation entry providers and their statements were recorded in which they have admitted their role in the scam. The beneficiaries of more than Rs. 38,000 crores have been identified and segregated, totally 60,000 Pan Nos. of the beneficiaries have been identified which is in the process of being reported to the assessment wings through the DGITs. Further the report states that in numbers more than 5000 paper/shell companies are involved in providing bogus accommodation of various kinds. Statements from most of the Directors of the Companies have been recorded and were appended to the Report.....

4. The report dated 27-4-2015 appears to have triggered action throughout the country and the appellant would state that the Directorate of Investigation vide a letter dated 3-7-2015 reported that prices of shares of penny stocks were artificially rigged to benefit of assesseees through bogus claims of LTCCG. It is further stated that the report submitted by the Directorate of Investigation mentions about the prices of shares of various companies which includes Surabhi Chemicals and the prices were artificially rigged to provide bogus LTCCG. It is submitted that the trade pattern of the shares follows a "bell" shape, the company which has hardly any business activity, splitting of shares takes place after which price of the shares on the exchange goes down automatically in proportion with the ratio of split and one does not see anything adverse happening in the scripts. Further the shares of the company were very thinly traded and gradually the value is jacked up to a desired level in a period of about one year so as to provide desired amount to selected beneficiaries. The companies which are involved has neither made any announcement nor does it have any history of dividend rights from financial year 2009-2010 up to 2013-2014 and it is rather peculiar to note that from December, 2011 to August 2013, the share market were almost flat and even the investments in peers have not resulted into any gain but the shares of Surabhi Chemicals had risen to such a level without any fundamentals which is beyond anyone's imagination.

.....

75. While it may be true that M/s. Swati Bajaj, Mr. Girish Tigwani or other assesseees who are before us could have been regular investors, investors could or could not have been privy to the information or modus adopted. In our considered view, what is important is that it is the assessee who has to prove the claim to be genuine in terms of section 68 of the Act. Therefore, the assessee cannot escape from the burden cast upon him and unfortunately in these cases the burden is heavy as the facts establish that the shares which were traded by the assesseees had phenomenal and fanciful rise in price in a short span of time and more importantly after a period of 17 to 22 months, thereafter has been a steep fall which has led to huge claims of STCL. Therefore, unless and until the assessee discharges such burden of proof, the addition made by the assessing officer cannot be faulted.

76. It was argued that unless there are foundational facts, circumstantial evidence cannot be relied on. This argument does not merit acceptance as wealth of information and facts were on record which is the outcome of the investigation on the companies, stock brokers, entry operators etc. Based on those foundational facts the department has adopted the concept of "working backward" leading to the assesseees. While at that relevant stage the sounding circumstances, the normal human conduct of a prudent investor, the probabilities that may spill over, were all taken into consideration to negative the claim for exception made by the assessee. Therefore, the department was fully justified in taking note of the prevailing circumstances to decide against the assesseees.

.....

87. Mr. Agarwal sought to distinguish the decision in Manish D. Jain by pointing out the facts of the case and the modus operandi of the assessee. As pointed out earlier, what we are required to examine in a judgment is the ratio and if we bear the said concept in mind, we would be guided in a proper manner. In the said decision, the judgment in Sumati Dayal was referred to which decision was followed in Sanjay Kaul (supra) wherein it was held that where the assessee was not a regular investor in shares and had only invested in high risk stocks of obscure companies with no business activities or assets, which were identified as the penny stocks, the assessing officer had correctly concluded that the assessee entered into a pre-arranged sham transaction so as to convert unaccounted money into accounted money in guise of

capital loss and therefore, the alleged Short Term Capital Loss (STCL) was rightly disallowed. Similar view was taken in Sanjay Bimalchand Jain (supra), in the said case the assessee had purchased shares from the penny stocks companies for a lower amount and within a year, sold such shares at higher amount and the assessee had not tendered cogent evidence to explain as to why the shares in unknown company had jumped to such a higher amount in no time and also failed to provide details of persons, who purchased the said shares and the transaction was held to be an attempt to hedge the undisclosed income as LTCG. In Suman Poddar (supra) it was held that the share transactions were bogus because the company whose shares were allegedly purchased was a penny stock and this decision was affirmed by the Hon'ble Supreme Court in Suman Poddar (supra)."

3.1. Further Ld. CIT(A) considered the Judgment passed by Hon'ble Delhi High Court in the case of Sanjay Kaul and confirmed the sale transaction of M/s. Kailash Auto Finance Ltd. as penny stock and dismissed the appeal filed by the assessee.

4. Aggrieved against the same, the assessee is in appeal before us raising the solitary Ground of Appeal:

1. The Ld. CIT (Appeal) has erred on law as well as in fact while confirming the addition of Rs. 95,01,732/- made by Ld A.O. in the assessment order u/s 143(3) on ground of unexplained cash credit u/s 68 on sale of shares. The Addition is confirmed on conjecture and surmises and on the basis of law and fact of the case the same is required to be deleted.
2. The Ld. CIT has not passed speaking order as the Ld. CIT has not considered the facts of the case and purely on presumption passed appellate order.
5. Today is the 10th time of hearing of this appeal, none appeared on behalf of the assessee and no Authorization given in favour of any Representative. Even in the previous occasion only stereo-typic adjournment letters were filed by the assessee and no evidence or

Paper Book filed by the assessee. This clearly shows that the assessee is not interested in pursuing the above appeal. Further the ground raised by the assessee is also general in nature without adducing any evidences in support of its claim. In the absence of the same, the Ld. CIT(A) confirmed the addition after calling for Remand Report from the Assessing Officer. Further the case laws relied by the A.O. and CIT(A) are in favour of the Department. Thus the findings arrived by Ld. CIT(A) does not require any interference and the ground raised by the assessee is devoid of merits and liable to be rejected.

6. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 06-01-2025

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 06/01/2025

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद