

**IN THE INCOME TAX APPELLATE TRIBUNAL RANCHI BENCH
VIRTUAL HEARING MODE**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**IT(SS)A Nos.24 & 25/RAN/2023
Assessment Years: 2013-14 & 2015-16
&
ITA Nos. 80 to 82/RAN/2023
Assessment Years: 2011-12 to 2013-14**

Smt. Saroj Agarwal Flat No. 1402, Sri Block 4 th Floor, Sri Ram Garden, Kanke Road, Ranchi-834008. (PAN: ACMPA8936H)	Vs	Asstt. Commissioner of Income Tax, Central Circle-1, Ranchi/ITO, Ward-3(1), Ranchi.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Debesh Podder, Advocate
Respondent by : Shri Shadab Ahmed, CIT, DR

Date of Hearing : 01.05.2025
Date of Pronouncement : 01.05.2025

ORDER

Per Bench:

These two IT(SS)A Nos24 & 25/Ran/2023 have been filed by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals), Patna-3 [hereinafter referred to as “the Ld. CIT(A)”] vide Order No. ITBA/APL/S/250/2022-23/1051519501(1) and ITBA/APL/S/250/2022-23/1051386591(1) dated 28.03.2023 and 27.03.2023 and the three ITA Nos. 80 to 82/Ran/2023 have been filed by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals), Patna-3 vide Order No. ITBA/APL/S/250/2022-23/10515112532(1) dated 28.03.2023 and ITBA/APL/S/250/2022-

23/1051383800(1) and ITBA/APL/S/250/2022-23/1051380702(1) both dated 27.03.2023 passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AYs 2013-14, 2015-16 and 2011-12 to 2013-14 respectively.

2. Shri Debesh Podder, Advocate appeared on behalf of the assessee and Shri Shadab Ahmed, CIT, DR appeared on behalf of the revenue.

First, we take up IT(SS) A Nos. 24 & 25/Ran/2023.

3. It was submitted by the Ld. AR that there was a search on the Parliwal Group on 07.02.2019. As a consequence of the search, notice u/s. 153A of the Act came to be issued. It was the submission that the return filed by the assessee came to be processed and for the assessment years 2013-14 and 2015-16 the Assessing Officer has disallowed the assessee's claim of exemption u/s. 10(38) of the Act in respect of the purchase and sale of shares of M/s. Global Capital Markets Ltd. and had consequently made addition of Rs.4,97,450/- for the AY 2013-14 and Rs.1,97,726/- for the AY 2015-16. It was the submission that no incriminating material has been used or found in course of the search in relation to these impugned assessment years. It was also the submission that no incriminating material has been used in the assessment also for the impugned assessment years. It was the submission that in view of the decision of the Hon'ble Supreme Court in the case of Pr. CIT Vs. Abhisar Buildwell Pvt. Ltd. [2013] 454 ITR 212 (SC) as there was no no incriminating material has been used nor found in the course of search which has led the addition, the assessment passed u/s. 153A is liable to be quashed.

4. In reply, the Ld. CIT, DR vehemently supported the orders of the Assessing Officer and the Ld. CIT(A).

5. We have considered the rival submissions. A perusal of the assessment order shows that the Assessing Officer has not brought out any incriminating material much less any material found in the course of search which could give reason that the assessee has claimed bogus Long Term Capital Gain (LTCG). As no material has been found in the course of search in the impugned assessment years for the purpose of disbelieving the claim of LTCG u/s. 10(38) of the Act, in view of the principles laid down by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra), the assessment orders for both the assessment years i.e. AYs. 2013-14 and 2015-16 stand quashed.

6. In the result, both the appeals filed by the assessee stand allowed.

Now, We take up ITA Nos. 80 to 82/Ran/2023.

7. It was submitted by the ld. AR that the issues in these appeals were against the confirmation of the addition made by disallowing the assessee's claim of exemption u/s. 10(38) of the Act in respect of shares in the case of M/s. Global Capital Market Ltd. It was the submission that in the case of the assessee's son Shri Saurav Parliwal an order u/s. 147/143(3) of the Act was passed on 19.09.2018 for the AYs 2011-12 to 2013-14, wherein the reopening had been initiated for the purpose of verifying the alleged bogus capital gains disclosed in respect of the shares of M/s. Global Capital Market Ltd. It was the submission that the assessment came to be completed on 19.09.2018 accepting the LTCG and the same has been accepted u/s.10(38) of the Act. It was the submission that in the case of the assessee's son in Global Capital Market Ltd. the transaction has been accepted as genuine and the LTCG has also been allowed as exempt u/s. 10(38) of the Act. It was the submission that in the case of the assessee another Assessing Officer has taken a divergent view to hold that the

transactions are bogus. It was the submission that the reopening of the assessment itself in the case of the assessee would now be questionable in the case before us and is debatable issue. It was also the submission that the Hon'ble jurisdictional High Court at Ranchi in the case of Arun Kumar Agarwal in TA No. 04 of 2011 vide order dated 13.07.2012 has held that merely because a person which bona fidely entered into a share transaction of a company which is identified as a manipulated company on mere assumption such transaction cannot be held to be a sham transaction. The Hon'ble jurisdictional High Court has held as follows:

"We have considered the submissions of the learned counsel for the parties and we are of the considered opinion that the learned Assessing Officer was much influenced by the enquiry report which may has been brought on record by the efforts of the Assessing Officer and that enquiry report was prepared by the SEBI and from the observations made by the Assessing Officer himself, it is clear that after getting that enquiry report, the SEBI prima facie found involvement of some of the share brokers in unfair trade practices. Even in a case where the share broker was found involved in unfair trade practice and was involved in lowering and rising of the share price, and any person, who himself is not involved in that type of transaction, if purchased the share from that broker innocently and bonafidely and if he show his bonafide in transaction by showing relevant material, facts and circumstances and documents, then merely on the basis of the reason that share broker was involved in dealing in the share of a particular company in collusion with others or in the manner of unfair trade practices against the norms of S.E.B.I and Stock Exchange, then merely because of that fact a person who bonafidely entered into share transaction of that company through such broker then only by mere assumption such transactions cannot be held to be a shame transaction.

At this juncture, it would be relevant to mention here that it is not disputed by the Revenue before us that the shares of these assesseees were already shown in the earlier Balance Sheet submitted by the assesseees, and therefore, in that situation, how the revenue condemned the transaction even on the ground of steep rise in the shares. If within a period of one year, the share price has risen from Rs.5 to 55 and from 9 to 160 and one person was holding the shares much prior to that start of rise of the share, then how it can be inferred that such person entered into sham transaction few years ago and prepared for getting the benefit after few years when the share will start rising steeply. In present case even there was no reason for such suspicion when the shares were purchased years before the unusual fluctuation in the share price. Here in this case, we have given example of one of the Tax Appeal wherein the shares were purchased in the year 2004 and were sold in the year 2006, which is said to be one of the case wherein the gap in the purchase and sale of the shares was narrowest. In other cases as we have noticed from the various orders of the CI T(Appeals) that, the shares of some of the companies were purchased by the assesseees even five years ago from the time of sale and those

purchasers were already disclosed in the Balance Sheet of the assessee, then from any angle, it is proved that the assessee had held the shares much prior to 12 months of the sale of the shares. Hence, these Appeals are dismissed.”

8. It was the submission that this decision of the Hon'ble jurisdictional High Court has also been followed by the coordinate Bench of this Tribunal, Ranchi Bench. The Ld. AR has drawn our attention to the decision in the case of Rama Shankar Prasad in ITA No. 115/Ran/2019 dated 22.08.2019 wherein following the decision of the Hon'ble jurisdictional High Court of Ranchi in the case of Arun Kumar Agarwal (supra) the coordinate Bench of this Tribunal has deleted the addition made by disallowing the claim of exemption u/s. 10(38) of the Act. It was the submission that the addition as made by the Assessing Officer and as confirmed by the Ld. CIT(A) may be deleted.

9. Ld. CIT, DR vehemently supported the orders of the lower authorities.

10. We have considered the rival submissions. A perusal of the facts of the present case shows that in the case of the assessee's son Saurav Kumar Paliwal in the assessment year 2011-12 the transactions in respect of the same company being Global Capital Markets Ltd. has been accepted by the Assessing Officer as genuine and has granted the benefit of exemption u/s. 10(38) of the Act. In the case of the assessee, it is noticed that the Assessing Officer has relied on certain investigation report of the Investigation Wing of the Department and had disallowed the assessee's claim of exemption u/s. 10(38) of the Act. No evidence whatsoever connecting the assessee to such alleged manipulation has been found nor shown by the revenue. This being so, as also

considering the principles laid down by the Hon'ble High Court of Ranchi in the case of Arun Kumar Agarwal (supra), the addition as made by the Assessing Officer and confirmed by the Ld. CIT(A) by disallowing the assessee's claim of exemption u/s. 10(38) of the Act stands deleted. All the three appeals of the assessee are allowed.

11. In the result, all the captioned appeals of the assessee are allowed.

Order dictated and pronounced in the open court.

Sd/-
(Ratnesh Nandan Sahay)
Accountant Member

Sd/-
(George Mathan)
Judicial Member

Dated: 1st May, 2025

JD, Sr. P.S.

Copy to:

1. The Appellant : Smt. Saroj Agarwal
2. The Respondent. ACIT, Central Circle-1, Ranchi/ITO, Ward-3(1), Ranchi
3. CIT(A), Patna-3
4. Pr. CIT,
5. DR, ITAT, Ranchi Bench,
6. Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Ranchi Bench