

**THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA No.5624/Del/2024
(Assessment Year 2013-14)**

ACIT Room No. 201, CGO-1 2 nd Floor, Near Purani Hapur Chungi, Ghaziabad, UP- 201002	Vs.	Rohan Agarwal KD-42, Kavi Nagar Ghaziabad UP – 201001
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AIUPA3170F		
Appellant	..	Respondent

Appellant by :	Sh. Amit Rai, CA
Respondent by :	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	05.06.2025
Date of Pronouncement	25.06.2025

ORDER

PER KHETTRA MOHAN ROY, AM:

The instant appeal preferred by the Revenue is directed against the order dated 14.10.2024 passed by the Ld. NFAC, Delhi, arising out of the Assessment Order dated 31.03.2022 passed by AO, Delhi, under Section 147r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for the Assessment Year 2013-14.

- “1. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs. 95,25,646/- made by the AO by treating entire receipts from the sale of shares of M/s CCL International Ltd. as unaccounted income u/s 69A of the IT Act, without considering the fact that M/s.CCL International Limited was one of the identified penny stock company as established by the Investigation Wing of the Department which was used for providing accommodation entry and creation of bogus capital gains exempt u/s 10(38) of the I.T. Act, 1961.
2. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in relying upon judgment of Hon'ble ITAT, Lucknow in the case of Achal Gupta I.T.A. No.501/Lkw/2019, without considering verdicts of jurisdictional ITAT, CMC Bench, New Delhi in the case of Anip Rastogi & Anju Rastogi in ITA Nos. 3809/Del/2018 & 3810/Del/2018 dated 08.01.2019 wherein Ld. ITAT has observed that the financials of penny stock company M/s CCL International Ltd. and movement of its price are abrupt and unrealistic.
3. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. Fact of the case as culled out from statement of facts annexed in Form 36 are as below:

“In this case, The assessee filed the return of income for AY 2013-14 on 28.09.2013 declaring total income of Rs. 10,58,210/-. During the year the assessee claimed a sum of Rs.80,88,456/- as exempt under section 10(38) of the IT Act, 1961 being Long Term Capital Gain from the sale of equity Shares. The name of the assessee was flagged as a person who had traded in Penny Stock Scrip of M/s CCL International Limited by the Investigation Wing of the Department. Thus, the assessment was re-opened by issuing of notice u/s 148 on 30.03.2021. In response to the notice u/s 148, the assessee filed a return of income on 06.04.2021, making no changes from the return filed under section 139 of the IT Act, 1961. Notice u/s 143(2) was issued on 08.10.2021. During assessment proceedings, the AO observed that the method used by the assessee in short span of time by investing in paper unlisted company and making payment after 12 months of investments, and sale of shares through creating Demat account thereby earning Rs.95,25,646/- in a span of 12 months without paying any taxes was nothing but a colourable devices or subterfuges to evade tax and it is a clear cut case of accommodation entry of Long Term Capital Gain arranged through brokers at Kolkata as established by Investigation Wing of the Department and subsequent delisting of the Company, and action taken against the broker, dealt with by the assessee, by SEBI. The AO also ascertained that shares of M/s CCL International Limited was managed by accommodation entry providers and used by the assessee to route their undisclosed income through transactions in these penny stock and claim exempt Long Term Capital Gain as per the provisions of section 10(38) of the IT

Act, 1961. M/s CCL International Limited was one of the identified penny stock by the Investigation Wing which was used for such purpose. With the aforesaid observation, the AO concluded that assessee's own money was being routed in through the mechanism of penny stocks/long term capital gain. Hence, entire receipts from the sale of shares Rs.95,25,646/- was taxed as unaccounted income. Finally the assessment was completed u/s 147 r.w.s. Sec. 144B of the Act at total income of Rs. 105,83,856/- on 31.03.2022 after adding entire receipts from the sale of shares Rs.95,25,646/- as unaccounted income u/s 69A of the IT Act.

2. Being aggrieved with order of AO, the assessee filed appeal before CIT(A) who vide his order under consideration has allowed the appeal of the assessee. CIT(A) quoted the judgments of Hon'ble ITAT, Lucknow in the case of Achal Gupta I.T.A. No.501/Lkw/2019 and Reeshu Goel Vs. Income Tax Officer in I.T.A. No. 1691/Del/2019 dated 07/10/2019 wherein the same scrip from which the assessee had obtained Long Term Capital Gain, had been held to be genuine by recording detailed findings that the scrip of CCL International Ltd is genuine and not a penny stock and paper entity. Thus, having relied upon the aforesaid judgments of Hon'ble Tribunals, Ld. CIT (A) has held that that the scrip of M/s CCL International Ltd is genuine and not a penny stock and paper entity and therefore, the appeal is being allowed on merits.

3. The order of Ld. CIT (A), is not acceptable as he has not considered the fact that as per the enquiry conducted by Investigation Wing of the Department and also from NSE, it had been established that there were scrips which were managed by accommodation entry providers and were used by the assessee to route their undisclosed income through transactions in these penny stock and to claim exempt Long Term Capital Gain as per the provisions of section 10(38) of the Act and M/s CCL International Limited was one of the identified penny stock Company by the Investigation Wing of the Income Tax Department which was used for such purpose. In such facts and circumstances, the amount as claimed exempt u/s 10(38) of the Act by the assessee on sale of shares of M/s CCL International Ltd for a total consideration of Rs. 95,25,646/-, is not justifiable.

4. In this case, Although tax effect i.e. Rs.29,43,424/- which is below the prescribed limit of Rs. 60 Lakhs for filing of appeal before Hon'ble ITAT as provided in CBDT's circular no. 09/2024 dated 17.09.2024. But, the present case falls under exceptions mentioned at para (h) of para 3.1 of the Board's circular no. 05/2024 dated 15.03.2024, for filing appeal before Hon'ble ITAT, therefore, further appeal in this case is recommended.”

3. We find in the similar matter in ITA No. 1691/Del/2019 the Coordinate Bench has held as follows:

“18. The entire premise of the Assessing Officer for treating the entire transaction to be a bogus Long Term Capital Gain and making addition u/s. 68 is that, firstly, M/s. CCL International Ltd. did not have much financial worth

to justify such a price rise; secondly, the SEBI had suspended the trade of the share for a brief period; thirdly, he has pointed out the history of price rise between 06.02.2010 to 25.11.2014 and then has drawn adverse inference that price of these shares were manipulated and rigged in the stock exchange which was solely to provide accommodation entries to the various parties; and lastly, he has also referred to certain inquiry report of Investigation Wing Kolkata during the course of which certain brokers have admitted that they had provided accommodation entries in the scrip of M/s. CCL International. But nowhere in the entire assessment order, there is any reference to any material or evidence that assessee or assessee's broker have been found to be indulged in any kind of accommodation entry in this scrip. No inquiry whatsoever has been made from the broker of the assessee. Further, during the period in which assessee had purchased the shares and had sold them whether the SEBI had suspended the trading has not been mentioned, in fact, Assessing Officer himself mentions that there was brief suspension in the year 2010, whereas the assessee has purchased shares in the year 2011 and sold them in the year 2012. Coming to the financials, as culled out from the records, the revenue from the operation of M/s. CCL International Ltd. from March, 2010 to March, 2012 was between Rs. 55.25 crore to Rs. 79 crore. Thus, it cannot be held that it was mere a paper entity. From a bare perusal of the history of listing and trading of shares and the quote of Bombay Stock Exchange as quoted in the assessment order, it clearly reflects that as on 06.02.2010, the closing price was Rs. 50 and there was a steady increase and within the period of 4 years the price had reached up to Rs.609 on 25.11.2014. Nowhere, it has been pointed out that the rise was beyond the cap laid down by the SEBI, because the price of the scrip cannot rise beyond the cap prescribed by the SEBI. If the shares have been purchased and sold from the stock exchange on a quoted price with proper contract number, trade time and after paying STT, then it is very difficult to assume that the sale proceeds received from sale of such shares is bogus, especially when purchase of shares are not in dispute. This inter alia means assessee was in possession of shares which were also dematerialised. To prove that such a transaction was in the nature of bogus or colourable transaction, there has to be some inquiry or material to nail the assessee that she was some kind of a beneficiary in some accommodation entry operation. No defect has been pointed out in the documents submitted by the assessee nor has the broker of the assessee been inquired upon. Simply relying upon the general modus operandi and statement of some brokers recorded by the Kolkata Investigation Wing does not mean that all the transactions undertaken of the scrip M/s. CCL International Ltd. through the country by millions of subscribers are bogus. Thus, in absence of any material or evidence against the assessee, we do not find any reason as to why the claim of Long Term Capital Gain from sale of such share should be denied. Consequently, the addition on account of commission is also deleted. Accordingly, we delete the addition made by the Assessing Officer.

19. In the result, the appeal of the assessee is allowed.”

4. Per contra, the Ld. CIT, DR placed reliance on the judgment of 3809/Del/2018 the appeal was held as against the assessee made holding as follows:

“7. I have heard both the parties and perused the records especially the impugned order. I note that the assessee has shown Long Term Capital Gain amounting to Rs. 22,28,172/- earned during the FY 2014-15 and exempt u/s. 10(38) of the I.T. Act, 1961. The assessee was asked to explain the source of aforesaid Long Term Capital Gain during the course of scrutiny proceedings. The explanation offered that it is sale proceeds of shares are found to be unsatisfactory. The explanation of the assessee is general in nature that as the transaction is through Stock Exchange and the payment is by cheque, the transactions should be treated as genuine. Further, regarding the statement of Sh. Jai Kishan Poddar the assessee has only stated that in the statement there is no specific link with the claim of exemption in respect of Long Term Capital Gain of Rs. 22,78,172/- u/s. 10(38) by him. He has not stated a thing with respect to the statement of Sh. Jai Kishan Poddar in which he has accepted that facilitation of accommodation entries of long term capital gain / long term capital loss through his share banking firm has been done to few beneficiaries with the help of different accommodation entry operators, promoters of the scripts of various penny stocks other brokers etc. Sh. Jai Kishan Poddar also gave details of different bogus scripts/ penny stocks which have been used for providing the accommodation entries of LTCG and LTCL to different beneficiaries using his brokerage company Consortium Capital Pvt. Ltd. and the name of CCL International Limited having scrip name CCL Inter appears in the list whose shares were sold by the assessee and exemption on LTCG amounting to Rs. 22,28,172/- claimed u/s. 10(38) of the Act. After perusing the records, I find that in the instant case the investment in shares made by the assessee reveals that he has not been dealing in shares on a regular basis and the entries of LTCG have also been taken by other members of the assessee company and the purchase of these shares were claimed to be through off market deals and not through Stock Exchange. The financials of penny stock company M/s CCL International Ltd. and movement of its price are abrupt, unrealistic and based upon any realistic parameters. From the perusal of financial statements of the aforesaid company M/s CCL International Ltd. from the Ministry of Corporate Affairs website (MCA) examining the information available in the public domain from where it was observed that there is no extraordinary increase in the profits of the company to justify the increase in value of the shares. I further note that Investigation Wing had recorded the statement of Sh. Jai Kishan Poddar who is one of the Director of M/s Consortium Capital Pvt. Ltd. which is one of the entities utilised for providing entry of bogus long term capital gain of M/s CCL International Ltd. who had admitted that he was involved in scam of providing bogus long term capital gains through shares of M/s CCL International Ltd. had also admitted that they were also involved in trading of these Jamakharchi Companies through which manipulative transactions in securities to either artificially raise or lower the market rate of the shares are being done. I also note that the independent

findings of the AO, which are corroborated by the information given by the Investigation Wing, the assessee has failed to substantiate the genuineness of alleged share transactions in respect of long term capital gain u/s. 10(38) of the Act. In view of above discussions, the landmark decision of the Hon'ble Supreme Court in the case of McDowell and Company Limited, 154 ITR 148 are squarely applicable in this case wherein it has been held that tax planning may be legitimate provided it is within the framework of the law and any colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by dubious methods. However, the case laws cited by the Ld. counsel for the assessee are on distinguished facts, hence, not applicable in the instant case. The assessee has not argued any other ground mentioned in the grounds of appeal, but only argued on merit for which assessee has failed to substantiate his claim before the lower revenue authorities as well as before this Bench. In view of above discussions, I am of the considered opinion that Ld. CIT(A) has rightly confirmed the addition in dispute, which does not need any interference on my part, therefore, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Assessee. In the result, the appeal of the assessee is dismissed.”

5. Upon consideration of the entire facts, we find that the order of single bench has hinged on the unfavourable statement which has been held as against the assessee and the assessee has purchased the share in the off market mode. In this case the assessee has purchased shares by cheque and hence, the facts are materially different. There is no whisper of any statement in the order. The order of the division bench is exactly on the same issue is held to be appropriate in this matter to be followed. Accordingly, the appeal is allowed.

6. The appeal of the Revenue is allowed.

Order pronounced in the open court on 25.06.2025

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Sd/-
(Khettra Mohan Roy)
ACCOUNTANT MEMBER

Dated 25.06.2025

Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI