

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'DB' AGRA**

(Through Physical/Virtual Hearing)

**BEFORE SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.178/Agr/2024
[Assessment Year: 2016-17]**

Suresh Chandra Sadh, D-41, Greater Kailash, Greater Kailash Enclave, Part-II, New Delhi-110048	Vs	DCIT, Circle-4(1)(1), Marris Road, Civil Lines, Aligarh, Uttar Pradesh-202001
PAN-AEDPS2877J		
Appellant		Respondent

Appellant by	None
Respondent by	Shri Shailender Shrivastava, Sr. DR

Date of Hearing	01.04.2025
Date of Pronouncement	30.06.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi/Ld. CIT(A), dated 15.03.2024, arising out of assessment order passed u/s 147 r.w.s.144B of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), dated 30.03.2022 for Assessment Year 2016-17.

2. None appeared on behalf of the assessee. However, the appeal of the assessee is being decided after hearing the ld. Sr. DR and on the basis of material available on record.

3. The grounds of appeal raised by the assessee are as under:-

1 On the fact and circumstances of the case the learned CIT-Appeal-NFAC has erred in sustaining the addition of Rs.80,17,339 representing Long Term Capital Gain, treating the same as Bogus Capital Gain. The AO has never linked transactions of the assessee to any scam related to bogus LTCG, as alleged in the light of the investigation carried out by the Directorate of Investigation. The AO has failed to appreciate that all the conditions required for claiming exemption u/s 10(38) of the Act. had been met by the assessee. The AO fails to appreciate that the assessee is a genuine investor in shares and securities. Transactions are made through proper banking channels through recognized stock exchange and the said shares had been sold through DEMAT account. Therefore, exemption u/s 10(38) of the Act cannot be denied on mere suspicion in the absence of any proof. thus his action is wholly unjustified

2 The AO has made addition based on the theory of preponderance of probability. purely on guess work, conjectures and surmises. but the findings recorded by the AO is neither supported by any evidence collected during the course of investigation by the Directorate of Investigation, nor the details collected during the course of investigation was provided to the assessee for his comments. in adding such sum by stating that the amount of Rs. 80,17,339 introduced/credited by the assessee out of these purported shares sales receipts as his income through unexplained cash credit Us Sec. 68 of the Act., therefore in view of the facts and in the circumstances, it may be held accordingly.

3 the AO is wholly unjustified in treating the Long-term Capital Gain earned by the appellant as bogus accommodation entry without making his own investigation and without verifying the alleged entry operator and / or such alleged entry operator u/s 131 / 133(6) and in view of the facts and in the circumstances the action of the AO is in complete violation of law and as such the addition so made is bad in law and it may be held accordingly.

4. For that in view of the facts and in the circumstances the AO is wholly unjustified in charging interest u/s 234B & 234D at Rs. Rs. 17,83,656/- & Rs. 1,64,753 respectively

4. Brief facts of the case: The assessee is an individual and filed his return of income on 12.10.2016 declaring total income at Rs.9,71,140/-.

Thereafter, the Assessing Officer received an information from the DDIT

(Investigation), Unit-3(3) New Delhi, that the assessee is one of the beneficiary of obtaining accommodation entries of bogus long term capital gain in respect of sale of share of M/s Yamini Investments Company Ltd. (hereinafter referred to 'YICL') listed in Bombay Stock exchange. On the basis of said information, the Assessing Officer issued noticed u/s 148 of the Act on 30.03.2021 In respect of the said notice, the assessee filed his return of income on 22.04.2011 declaring the same total income as original return of Rs.9,71,140/-. Thereafter, the Assessing Officer called for certain details as listed in para no.4 of the assessment order and after receiving the details from the assessee, the Assessing Officer analyzed the facts of the case and stated that by using the mechanism of selling shares of penny stock and claiming exempt long term capital gain the assessee has introduced unaccounted money. Thereafter, the Assessing Officer noted that shares which were sold were originally purchased @Rs.1.25 per share on 19.02.2014 when the share price of M/s Yamini Investments Company Ltd. was Rs.35 in which M/s FIDELO Power and Infrastructure Limited (hereinafter referred as FPIL) got merged with the listed company M/s YICL. The entire details of shares and post merger of the aforesaid two companies i.e. FPIL with YICL and subsequent sale of the said shares between 08.06.2015 and 10.03.2016 at the Bombay Stock Exchange (BSE) at average rate of Rs.41.33 for a total sale of Rs.82,67,339/- resulting into LTCG of Rs.80,17,339/- (Rs.82,67,339/- -Rs.2,50,000/-) with an appreciation of 33 times has been discussed by the AO in para 8 to 10 of his order which is reproduced later in this order. The AO further noted that on 04.05.2015, the date on which, the assessee was allotted share of YICL, due to amalgamation of FPIL with YICL, the shares price of YICL was

Rs.57. The Assessing Officer noted that the no justification was explained by the assessee as to how the shares of a high priced company were offered to the assessee in exchange for shares of low priced company. The Assessing Officer noted the fact about the amalgamation of M/s FPIL and M/s YICL, approved by the Hon'ble Delhi High Court but observed that such approval cannot be extended to the genuineness or otherwise of Long Term Capital Gains generated by the assessee long after such approval. The Assessing Officer also noted that the assessee did not explain the reasons for investing in this particular share and no evidence was produced to show that financial of the said company were sound. The Assessing Officer also noted the fact that FPIL getting amalgamated with YICL shows the unviability and unsound financials of FPIL. The Assessing Officer further noted that if the reason was any major favourable market announcements, no evidence were furnished in this regard. The Assessing Officer noted that as held in various case laws, the onus is on the assessee to explain how and why he invested in these shares. The Assessing Officer further noted that making payment through cheque for acquiring these shares does not make it a genuine transaction while the issue is that of bogus long term capital gain. Thereafter, the Assessing Officer referring to the various case laws in support of his finding and also held that in view of these particular facts, no cross-examination is required as demanded by the assessee. The Assessing Officer also observed that initial investment in the company of unknown credential and subsequent jump in the share prices of such as company cannot be an accident or windfall but could be possible because of manipulation in the share prices in a pre-planned manner. The Assessing Officer noted the fact that the ld. Counsel for the

assessee failed to justify as to how the share price went up 33 times in short span of time. In view of these facts, the Assessing Officer disallowed the Long Term Capital Gains of Rs.80,17,339/- and made addition of the said amount u/s 68 of the Act. In this regard, the factual finding of the Assessing Officer in para 8 to 12 of the assessment order is reproduced as under:-

“8. The assessee originally invested in 2,50,000 shares of M/s Fidelo Power and Infrastructure Limited in FY 2013-14. These shares were transferred in the name of the assessee on 19/2/2014. Subsequently, the Fidelo Power And Infrastructure Limited got merged with a listed company M/s Yamini Investment Company Limited (YAMINI. As per scheme of arrangement (merger of M/s Fidelo Power & Infrastructure Ltd., & M/s Anax Com Trade Limited with M/s Yamini Investments Company Limited) approved by the Hon'ble High Court, Bombay, the shareholder of FIDELO got the shares of YAMINI in the ratio of 5:4 i.e., for 2,50,000 shares in Fidelo Power And Infrastructure Limited, the assessee got 2,00,000 shares in Yamini Investments Company Ltd. During the financial year 2015-16 and Face value of the shares of Yamini Investment Company Ltd was split from Rs. 10 to Rs. 1 on 4/5/2015

9. Total 2,50,000 shares of Fidelo Power & Infrastructure Ltd were bought for Rs.2,50,000 on 19/2/2014 by the assessee. On 4/5/2015, these shares were converted into 2,00,000 shares of Yamini Investments Company Ltd. at cost price of Rs.1.25 per share. All the 2,00,000 shares of Yamini Investments Company Ltd were sold off between 8/6/2015 and 10/3/2016 at the BSE at the average rate of Rs.41.33 for a total sale of Rs.82,67,339 resulting into LTCG of Rs. 80,17,339 (82,67,339 - 2,50,000) . The appreciation in assessee's share price was stupendous 33 times in a short period of time. The gains generated by the assessee are beyond the preponderance of probabilities.

10. On 19/2/2014, the date on which the assessee purchased the shares of Fidelo Power and Infrastructure Ltd at the rate of Rs. 1 per share, the share price of M/s Yamini Investments Company Ltd., was Rs.35. On 4/5/2015, the date on which the assessee was allotted share of YICL, due to amalgamation of FIDELO with YAMINI, the share price of YAMINI was Rs. 57. No justification was explained by the assessee how shares of a high priced company were offered

to the assessee in exchange for shares of low priced company. Though the High Court of Delhi has approved the Scheme of amalgamation of M/s Fidelo Power and Infrastructure Limited and M/s Yamini Investments Company Limited, the LTCG generated by the assessee cannot be accepted as genuine

11. Though the High Court of Delhi has approved the Scheme of amalgamation of M/s Fidelo Power and Infrastructure Limited and M/s Yamini Investments Company Limited, such approval cannot be extended to the genuineness or otherwise of the LTCG generated by the assessee long after such approval.

12. From the above discussion, it is clear that the assessee purchased/ got the allotment of shares in FPIL through preferential allotment which is one of the two methods of initially buying shares for later generation of bogus LTCG. The assessee has not explained the reasons for investing in this particular share. If it was the sound financials of the company - no evidences were produced. Moreover, this company getting amalgamated with YICL shows the unviability and unsound financials of FIPL. If the reason was any major favourable market announcements - no evidences are furnished in this regard. As held in various case laws referred hereunder, the onus is on the assessee to explain how and why she invested in these shares. Making payment through cheque for acquiring these shares does not make it a genuine transaction while the issue is that of bogus LTCG.”

4. Aggrieved with the assessment order, the assessee filed an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee challenged the reopening of the assessment u/s 147 of the Act vide ground no. 1 to 3 of the appeal filed before the Id. CIT(A). The Id. CIT(A) dismissed the above legal ground by holding that the Assessing Officer initiated the assessment on the basis of information received from Investigation Wing and the assessee did not submit any documentary evidence to contend that the said information was unreliable or incorrect. The Id. CIT(A) also took note of the fact that the reasons for reopening was communicated to the assessee and the case was reopened after obtaining approval as per law. On merits, the Id. CIT(A) took note of the fact that as pointed out by the

Assessing Officer there was no justification given by the assessee as to how the share price went up 33 times in short span of time. The Ld. CIT(A) noted that the documents are to create an illusion that the transaction is not bogus. Accordingly, the Ld. CIT(A) held that the documentary evidence filed does not support the contention of the assessee that the transaction genuine. Hence, the Ld. CIT(A) dismissed the appeal of the assessee.

5. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

6. We have heard the ld. Sr. DR and perused the materials available on record. The factual finding of the Assessing Officer as noted in para 8 to 12 of this order, especially the initial allotment of the shares on 19.02.2014 in FPIL and the subsequent allotment on conversion of the said shares in YICL on 04.05.2015 at the price of Rs.1.25 and selling the same @Rs.41.33, between 08.06.2015 and 10.03.2016 wherein, the appreciation in shares price was 33 times in a short period of time has not been explained by the assessee either during the assessment proceedings or before the ld. CIT(A) or before us. Therefore, no facts have been brought on record or there are any submissions by the assessee on record for us to deviate from the finding of the Assessing Officer and confirmed by the Ld. CIT(A). Therefore, the action of the AO in making the addition of Rs.80,17,339/- u/s 68 of the Act and confirmed by the Ld. CIT(A) is sustained.

7. Ground no.4 is against the levy of interest u/s 234B and 234D of the Act at Rs.17,83,656/- and Rs.1,64,753/- respectively. This ground is

consequential in nature and the Assessing Officer is directed to charge the interest as per law. Accordingly, this ground of the appeal is allowed for statistical purposes.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30 June, 2025.

Sd/-

Sd/-

[SUNIL KUMAR SINGH]
JUDICIAL MEMBER
Dated 30.06.2025.

[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,