



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RANCHI BENCH, RANCHI**

**BEFORE S/HRI GEORGE MATHAN, JUDICIAL MEMBER AND
RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

ITA No.230/RAN/2023
Assessment Year : 2012-13

Reena Khetan, M/s. Anand Vihar, Ranchi Patna Road, Jhumritelaiya, Jharkhand	Vs.	Income Tax Officer, Ward - 1(5)Koderma
PAN/GIR No.ADLPK 5070 G		
(Appellant)	..	(Respondent)

Assessee by : Shri Devesh Poddar, Adv
Revenue by : Shri Khubchand T Pandya, Id Sr DR

Date of Hearing : 20/08/2025
Date of Pronouncement : 20/08/2025

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 28.8.2023 in Appeal No.CIT(A) Hazaribag/10153/2019-20 for the assessment year 2012-13.

2. Shri Devesh Poddar, Id AR appeared for the assessee. Shri Khubchand T Pandya, Id Sr DR represented on behalf of the revenue.

3. It was submitted by Id AR that the assessee is an individual. The assessee had purchased 4000 shares in Sakshi Vyapar Limited from a

Private Limited Company namely; Aashina Mercantile Pvt Ltd. The shares were transferred in the name of the assessee on 3.3.2009. The payment of Rs.4,00,000/- for the shares was made on 13.11.2009 through banking channel. It was the submission that said Sakshi Vyapar Limited and another company namely M/s. Sharp Transport Pvt Ltd., were amalgamated into a company namely M/s. Oasis Cine Communication Ltd., (OCCL) vide order dated 11.6.2009 with the effective date of amalgamation on 1.4.2008. It was the submission that the company OCCL has changed its name and now is M/s Ecowave Infotech Ltd (EIL). On the amalgamation, the assessee had received shares of OCCL in the ratio of 1:8. The assessee had sold shares during the impugned assessment year and derived capital gain of Rs.57,58,331/-. It was the submission that the Assessing Officer treated the capital gains earned by the assessee as bogs on the ground that the transaction of the purchase of shares of Sakshi Vyapar Limited and the amalgamation thereon with OCCL was a penny stock transaction. It was the submission that the payments had been made through proper banking channel and the receipts have also been through banking channel. It was the submission that the sale proceeds were received by the sale of shares in Calcutta Stock Exchange. It was the submission that the Assessing Officer had doubted the transaction on the ground that the Assessing Officer had received information from the Investigation Wing of Kolkata. It was the submission that the issue was now squarely covered by the decision of the

Hon'ble Jurisdictional High Court of Jharkhand in the case of Arun Kumar Agarwal (HUF) in Tax Appeal No.4 of 2011 dated 13.7.2012, which has also been followed by this Tribunal in the case of Rama Shankar Prasad in ITA No.115/Ran/2019 A.Y. 2015-16 order dated 22.8.2023, wherein, the Co-ordinate Bench has extracted the order of the Hon'ble Jurisdictional High Court in the case of Arun Kumar Agarwal (HUF)(supra) and has held in paras 4 7 5 as follows:

"4. After hearing rival contentions and perusing the material on record, we note that undisputedly that M/s. Kailash Auto Finance Limited was classified as penny stock company by the Ministry of Corporate Affairs and SEBI has also passed various orders holding the said stock to be penny stock as the said stock was manipulated in order to give undue accommodation on the platform of stock exchanges in the form of long term capital gain. However, we note that the assessee has invested Rs. 99,500/- in the shares of M/s. Kailash Auto Finance Limited in FY 2012-13 and sold those shares after a period of two years thereby earning a long term capital gain of Rs. 32,95,110/-. The assessee has also furnished the broker's bill and demat statement evidencing purchase and sale of shares and payment thereof through banking channels. Under these circumstances, the gain by way of long term capital gain cannot be doubted as the authorities below could not prove any money received into the share transactions. Besides, the case of the assessee is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of The Commissioner of Income Tax, Jamshedpur Vs. Arun Kumar Agarwal (HUF), Tax Appeal No.4 of 2011 dated 13.07.2012 wherein it has been held that the long term capital gain realized on sale of penny stocks has to be treated as genuine as the assessee has furnished all the evidences in support of his claim. The relevant finding of the Hon'ble High Court of is as under:

"9. Learned counsel for the assessee submitted that a bare perusal of the reasons given in the two impugned orders, one passed by the C.I.T. Tax Appeal No.4 of 2011 with analogous case (Appeals) and another by the I.T.A.T will clearly reveal that the facts of the each case have been carefully considered by the C.I.T.(Appeals) and the facts mentioned in the order have not been disputed by the Revenue in any manner except alleging that the transactions are being sham. It is also not in dispute that the assessee disclosed the shares in their possession in earlier return and statement of accounts and they are duly entered into the books

of accounts of the accounts of the assessee and that was the position since last five years. It is submitted that even if the such transaction was there even that was duly proved by the Bank statement and by disclosure of Bank account number etc. The assessee produced the contract note of the transactions which were discarded by the Assessing Officer without any reason and without their being any evidence to rebut those contracts. It is also submitted that the I.T.A.T has not committed any mistake of fact or law in deciding all the appeals together because of the simple reason that all the appeals were argued as one case and all the facts of the individual assessee was duly considered by the first appellate authority and the I.T.A.T has decided the issues upholding the findings of the appellate authority and in concurring orders detail reasons may not be required to be given in much detail, if from the reasons given, the correctness in the decision of the second appellate authority can be found and in the case in hand, it finds support from the lower appellate authority's given reasons. 10. 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 Tax Appeal No.4 of 2011 with analogous case 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. Fact of tinted broker may be relevant for suspicion but it alone necessarily does lead to conclusion of all transaction of that broker as tinted. In such circumstances, further enquiry is needed and that is for individual case. Such further enquiry was not conducted in that case."

5. In the present case the purchase of shares has not been disputed or doubted however the sale has been disputed in the current year to be bogus and in the nature of accommodation entries. The Hon'ble High Court

of has dealt with the identical issue in the above referred decision. We, therefore, following the decision of the Jurisdictional High court set aside the order of Ld. CIT(A) and direct Ld. AO to allow the long term capital gain claimed u/s 10(38) of the Act.”

4. It was the submission that the addition made by the AO and confirmed by the Id CIT(A) is liable to be deleted.

5. In reply, Id Sr DR submitted that OCCL has been identified as penny stock by SEBI. It was the further submission that the transaction admittedly is shown to have been done on paper and no actual fact has been given, this was nothing but a conversion of black money. It was the submission that the Id CIT(A) has relied upon the decision of Hon'ble Calcutta High Court in the case of PCIT vs Swati Bajaj (2022) 446 ITR 56 (Cal) to dismiss the appeal of the assessee.

6. We have considered the rival submissions. Admittedly, the decision in the case of Swati Bajaj (supra) is of Hon'ble Calcutta High Court. The decision of the Hon'ble Jurisdictional High Court is in the case of Arun Kumar Agarwal (HUF). When there is decision of the Hon'ble Jurisdictional High Court on the issue, then it is not open to the appellate authority to rely upon the judgement of another Hon'ble High Court to deny the assessee relief. This being so, as it is noticed that the assessee has produced all documents to substantiate its claim for deduction u/s.10(38), respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of

Arun Kumar Agarwal (HUF)(supra), the addition as made by the AO and confirmed by the Id CIT(A) stands deleted.

7. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 20/08/2025.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Ranchi ; Dated 20/08/2025
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Reena Khetan, M/s. Anand Vihar, Ranchi Patna Road, Jhumritelaiya, Koderma, Jharkhand
2. The Respondent: Income Tax Officer, Koderma
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT,
5. DR, ITAT, Ranchi
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Ranchi