

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.3428/DEL/2024
Assessment Year: 2014-15

ITO Delhi	Vs.	Mahavir Singhal 149, Tarun Enclave, Pitampura, Delhi-34 PAN No.AIXPS8088B
(APPELLANT)		(RESPONDENT)

C.O. No.411/D/2025
(In ITA No.3428/DEL/2024)
Assessment Year: 2014-15

Mahavir Singhal 149, Tarun Enclave, Pitampura, Delhi-34 PAN No.AIXPS8088B	Vs.	ITO Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Dheeraj Sharma, Sr. DR
Respondent by	Sh. R. R. Singhla, CA

Date of hearing:	11/08/2025
Date of Pronouncement:	27/08/2025

ORDER

PER SUDHIR KUMAR, JUDICIAL MEMBER:

This appeal by the revenue is directed against the order of the Commissioner of Income Tax (Appeals)/National Faceless

Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] vide order dated 25.05.2024 pertaining to A.Y. 2014-15 arising out the assessment order dated 30.12.2016.

2. The revenue has raised the following grounds in appeal:

"1. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 49,45,330/-on account of unexplained cash credit in form of bogus LTCG through penny stock shares of M/s Kailash Auto Finance Ltd amounting to Rs. 49,45,330/- during the FY 2013-14 by ignoring the fact that the information, enquiries, studies and analysis done by the Investigation wing of the department clearly depicting the fact that M/s Kailash Auto Finance Limited is BSE listed Penny Stock Company.

2. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 2,47,666/-u/s 69C of IT Act 1961 on account of unexplained expenditure for sale/purchase of penny stock shares amounting to Rs. 2,47,666/- during the FY 2013-14 by ignoring the fact that the information, enquiries, studies and analysis done by the Investigation wing of the department clearly depicting the fact that M/s Kailash Auto Finance Limited is BSE listed Penny Stock Company.

3 3. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 49,45,330/- on account of unexplained cash credit in form of bogus LTCG through penny stock shares of M/s Kailash Auto Finance Ltd amounting to Rs. 49,45,330/- during the FY 2013-14 by ignoring the fact that assessee has not provided details of any intermediary through whom the assessee came in

contact with Brijdhara Mercantile Private Limited for buying the shares of Panchshul Marketing Limited.

4.The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 2,47,666/-u/s 69C of IT Act 1961 on account of unexplained expenditure for sale/purchase of penny stock shares amounting to Rs. 2,47,666/- during the FY 2013-14 by ignoring the fact that assessee has not provided details of any intermediary through whom the assessee came in contact with Brijdhara Mercantile Private Limited for buying the shares of Panchshul Marketing Limited.

5. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 49,45,330/-on account of unexplained cash credit in form of bogus LTCG through penny stock shares of M/s Kailash Auto Finance Ltd amounting to Rs. 49,45,330/- during the FY 2013-14 by ignoring the fact that assessee failed to produce the evidence and supporting documents to substantiate its claim in reply dated 26.12.2016 that investment was made on the basis of some expert reports, studies and news on the internet.

6. The Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 2,47,666/-/s 69C of IT Act 1961 on account of unexplained expenditure for sale purchase of penny stock shares amounting to Rs. 2,47,666/- during the FY 2013-14 by ignoring the fact that assessee failed to produce the evidence and supporting documents to substantiate its claim in reply dated 26.12.2016 that investment was made on the basis of some expert reports, studies and news on the internet.

3. The brief facts of the case are that assessee individual filed return of income on 21.02.2015 by declaring total income of

Rs.5,00,670/-. The case of the assessee has been selected for complete scrutiny and notices were issued u/s. 143 (2) of the Act. Further, notices were issued u/s.142 (1) of the Act calling various details from the assessee. The AO verified various details filed by the assessee and also considered information received from the Investigation Wing. From the verification of details, the AO noticed that during the year under consideration, the assessee sold 1,31,000/- shares of Kailash Auto Finance Ltd. The assessee made a long-term capital of Rs.49,45,338/- from the sale of the shares and claimed the same as exempt u/s. 10(38) of the Act. The Ld. AO noted that M/s. Kailash Ltd. is a penny stock company and various intermediaries as such brokers and other middle man have been indulged in the shares of this company and thereby artificially jacked upon the price of the share with short spam of time. The AO further mentioned that the SEBI has temporarily suspended the trading activity of the shares of the said company. The assessee also purchased the shares of M/s. Panchshul Marketing Ltd. through M/s. Brij Dhara Mercantile Pvt. Ltd. situated at Kolkata on 27.11.2012. The Panchshul Marketing Ltd. has been merged with Class Auto Finance Ltd. Company vide amalgamation agreement dated 22.07.2013. The assessee has received 3,00,000 shares of M/s. Kailash Auto Finance Ltd. out of the above shares 1,30,000/- were sold

during the year and made a capital gain of Rs.49,45,329/-. The AO completed the assessment after making the addition of the addition u/s. 68 of the Act of Rs.49,45,329/- as unexplained cash credit and 5% of the sale value of Rs.2,47,666/- under section 69C of the Act.

4. Aggrieved by the order of the AO, the assessee filed the appeal before Ld. CIT A) who vide order dated 25.05.2024 allowed the appeal of the assessee against which the revenue filed the appeal before the Tribunal. The assessee also filed the cross objection before us.

5. The Ld. DR has submitted that M/s. Kailash Auto Finance Ltd. is a penny stock company and this fact was ignored by the Ld. CIT(A) by allowing the appeal of the assessee. He also submitted that the SEBI has conducted the enquiry and restrained the 246 entities from the accessing the securities market and buying, selling of dealing in securities. This is the case of the penny stock transaction. He relied upon the order of the AO. Reliance has placed the decision of Krishna Devi Vs. Income tax Officer ward-38 ITA No. 6356/Del/2019 A.Y. 2014-15.

6. The ld. AR has submitted that in this case M/s. Kailash Auto Finance Ltd. was debarred from online trading by the SEBI vide order dated 29.03.2016 on that basis the AO completed the

Assessment after making the addition u/s. 68 of the Act. He also submitted that the SEBI was invoked the order dated 21.09.2017 and the order was provided to the AO. He also submitted that no adverse was found against the 244 entities. The Ld. CIT(A) rightly allowed the appeal of the assessee.

7. The reliance has been placed on the following decisions :

(i) Sunita Chaudhry V. Income Tax Officer Ward -18(3) (4) Mumbai ITA No. 143/Mum/2022

(ii) Manish Kumar Baid v. ACIT, Cir-35 Kolkata ITA No. 1236 & 1237/ Kol/2017 dated 18-08-2017

8. We have considered the rival submissions and perused the material available on record. We find that during the year the assessee earned the long-term capital gain of Rs.49,45,329/- on the sale of the shares and the same was claimed as exempt u/s. 10(38) of the Act. The return of income filed by the assessee was proceed u/s. 143 (1) of the Act. However, subsequent to the information issued from the directorate of investigation that the assessee is one of the beneficiary, of bogus penny stock transaction, reassessment proceedings were initiated and notice u/s.148 was issued. According to AO the price of share of M/s Kailash Auto Finance Ltd. has sky rocketed without having any corresponding financial results. The parameters which are essential for increase of price of share are not present. The AO also observed that in this matter,

SEBI had directed BSE to suspend trading in several trading in several Penny Stocks which includes the shares you have traded in i.e. of M/s Kailash Auto Finance Ltd.

9. We find that SEBI vide interim order dated 29-03-2016 and 15-06-2016 restrained the 246 entities, including the assessee, from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly in any manner, till the further directions, pending investigation in the script of in the case of Kailash Auto Finance Limited. Subsequent to the interim orders. SEBI carried out an investigation to look into the role of debar entities in price manipulation in script of Kailash Auto Finance Limited., vide order dated 21-09-2017 the earlier interim orders were modified and 244 entities including the Kailash Auto Finance Limited, Panshshul Marketing Pvt. Ltd. & Brijdhara Merchantile Pvt. Ltd. against whom directions were issued vide aforesaid interim orders were found to be not in violation of provision of SEBI Act, 1992. Accordingly SEBI vide order dated 21-09-2017, revoked the interim orders issued earlier in exercise of powers conferred under section 19 of SEBI Act, 1992 read with section 11,11(4) and 11B thereof, with immediate effect. Ld. CIT(A) has observed in his order as under :

5(c). Despite filing of the above supportings, the AO simply proceeded to deny the assessee's claim of

exemption of long term capital gains on sale of above shares. The AO did not make any efforts to establish the non-genuineness of the above transaction, The AO did not issue even a single notice to the brokers u/s. 133(6) of the IT Act. Thus, the AO failed to examine the broker/any other intermediaries involved in the camouflage of these transactions The AO simply relied on the order of the SEBI dated 29.03.2016 which temporarily suspended trading activities of the above shares. ON the basis of the above order of SEBI the AO came to a conclusion that this is a fictitious transaction. This shows that the AO did not carry any independent enquiry whether with brokers or intermediaries and not brought any relevant material to establish the non-genuineness of the above transaction. However, the SEBI subsequently investigated the matter under provisions of (Prohibition of fraudulent and unfair trade practices relating to securities market) PFUTP regulations, 2003 Act and given following findings which are clearly mention at para 5 of the SEBI's order dated 21.09.2017. As per the above order the SEBI has given clean chit to the company Kailash Auto Finance and did not find any adverse evidences to say that violations happened in

trading of the above shares. The SEBI's findings are as under.

Pursuant to the interim order, SEBI conducted a detailed investigation into the role of various entities in price manipulation in the scrip of Kailash Auto so as to ascertain the violation of securities laws. Upon completion of investigation by SEBI, investigation did not find any adverse evidence/adverse findings in respect of violation of provisions of the PFUTP Regulations in respect of the following 244 entities (against whom direction were issued vide the interim order and/or confirmatory orders) warranting continuation of action under section 11B r/w 11(4) of the Act.

Thus, as above SEBI has given a clear finding that there was no adverse findings to say that manipulations happened in trading of shares of the company i.e. M/s. Kailash Auto Finance Ltd. Moreover, the AO also did not carry any independent enquiries with brokers/ entry operators/ other intermediaries to establish the non-genuineness of the above transactions. Thus, the AO failed to bring any

corroborative evidence to establish the non-genuineness of the transaction. Therefore, the addition made by the AO is without any authentic base. Therefore, the same is hereby deleted. The assessee's grounds are hereby allowed.

10. We find that the transaction of the assessee in the script of Kailash Auto Finance Limited., which resulted in long term capital gain to the assessee, has been found to be not violative of the provisions of relevant Act and Rules by the SEBI upon necessary investigation and even the initial restraint order was revoked vide order dated 21-09-2017. Ld. CIT(A) has examined the issue in the correct prospective and rightly deleted the additions towards unexplained cash credit u/ 68 and unexplained expenditure u/s 69 of the Act. We do not find any reasons to interfere with the findings of the Ld. CIT (A). The appeal of the revenue is liable to be dismissed.

C.O. No.411/D/2025 for A.Y. 2014-15

Mahavir Singhal Vs. ITO

Grounds No 1& 2 :

11. Ld. AR submitted that the department has filed the appeal beyond time but no objection has raised by the office. So the appeal has filed within time. The ld. AR also submitted that the

appeal is not maintainable due to the low tax effect. The Ld. DR submitted that this case falls out of the preview of the circular of the CBDT No. 09/2024 dated 17-09-2024 issue by the Department because this is a penny stroke case. We find the force in the contention of the Ld. DR. The grounds raised by the assessee are decided against the assessee.

12. Ground NO: 3 The Ld. AR has submitted that Assessing Officer wrongly assumed the jurisdiction. The Ld. CIT (A) has observed in order as under:

4(a). I have gone through the facts of the case. I have also considered various submissions of the assessee. In these grounds, the assessee contested the jurisdiction as assumed by the AO.

4(b). In this regard, clarification has been called from the AO and the AO has given his reply to the CIT (A)-21, New Delhi vide letter dated 09.10.2017. In this reply, the AO clarified that the original notice u/s. 143(2) was issued by the ITO, Ward-40(1) on 18.09.2015. This notice was issued by the ITO, ward-40(1) on the basis of territorial jurisdiction of the assessee because the assessee is having residential

address at Pitampura, Delhi. However, thereafter it was found that the assessee is a salaried employee and deriving income from salaries, therefore, it was transferred to ITO, Ward-70(2). Accordingly, the ITO, Ward-70(2) issued further notice u/s 143(2) of the IT Act on 22.09.2015. Thus, the notice issued by the ITO, Ward-70(2) is well within the time and having the correct jurisdiction over the salaried employees. Thus, the ground raised by the assessee has no basis and therefore the same is hereby dismissed.

13. Ld. CIT(A) rightly decided the issue holding that the notice was correctly issued by the Assessing officer. We do not find any reasons to interfere with the findings of the Ld. CIA (A). The ground raised by the assessee decided accordingly.

14. In the result, the appeal filed by the revenue and cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 27.08.2025.

Sd/-

(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Neha, Sr. PS
Date: .08.2025

Sd/-

(SUDHIR KUMAR)
(JUDICIAL MEMBER)

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT DELHI