

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT

ITA No. 2797/DEL/2025 (AY 2013-14)

ACIT, CIRCLE-2(1),
GHAZIABAD

VS. SONAL NARAIN,
201-202, 2ND FLOOR,
NEAR PURANI HAPUR CHUNGI,
GHAZIABAD UP
(PAN: AAOPG9123G)
(RESPONDENT)

(APPELLANT)

Appellant by : Sh. Manoj Kumar, Sr. DR .

Respondent by : Sh. Amit Rai, CA

Date of Hearing	03.09.2025
Date of Pronouncement	19.09.2025

ORDER

This appeal by the Revenue is directed against the order of the NFAC, Delhi passed relating to assessment year 2013-14. The Revenue has raised the following grounds:-

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in relying upon the order of ITAT, Lucknow whereas the Department has contested the order of ITAT, Lucknow before the Hon'ble Allahabad High Court and the matter is subjudice and has not attained finality.
2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs. 23,41,057/- made by the AO by treating entire receipts from the sale of shares of M/s CCL International Ltd. As unaccounted income u/s. 69 of the 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. Briefly stated, facts are that in this case, the assessee e-filed its ITR for A.Y. 2013-14 on 19.11.2013 declaring total income of Rs.5,78,180/-. During the year the assessee claimed a sum of Rs. 23,41,087/- as exempt u/s 10(38) of the I.T. Act, 1961. 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 the notice u/s 148 of the IT Act, 1961. In response to the notice assessee did not file any ITR for the year under consideration. Therefore, assessment was completed u/s 147 r.w.s 144 of the Act. 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 claimed exempt Long Term Capital Gain as per the provisions of section 10(38) of the I.T. 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. Further, assessee reproduced the contents of the decision in the order in the case of Achal Gupta and others passed by ITAT, Lucknow wherein, the issue regarding Script of M/s CCL International Ltd. has been fully discussed and decided that Trading of Shares of CCL International LTD is treated as genuine trading and the LTCG earned by the assessee be exempted as per the provisions of section 10(38) of the I.T. Act, 1961. However, the decision on the issue of considering the capital gain and exemption u/s 10(38) of the CCL International Ltd. was agitated in High Court Allahabad and it has not attained finality at the time of assessment proceedings, the claim u/s 10(38) in ITR for the year under consideration to the tune of Rs.23,41,057 /- on sale of shares was treated as bogus and disallowed. In appeal, Ld. CIT(A) by following the decision of the jurisdictional Tribunal held that the impugned transactions cannot be treated as bogus / non-genuine/accommodation entries in a general manner without specific enquiry in this regard, hence, he deleted

the addition in dispute by allowing the appeal of the assessee. Aggrieved, the Revenue is in appeal before the Tribunal.

3. At the time of hearing, Ld. DR submitted that 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 scrip 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 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 exemption 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, 23,41,057/-, is not justifiable, hence, the same deserve to be upheld.

4. Per contra, Ld. AR has relied upon the order of the Ld. CIT(A) and submitted that he has passed a well reasoned order which does not need any interference on my part.

5. I have heard the rival contentions and gone through the facts of the case. I find that Ld. CIT(A) has discussed the issue in dispute elaborately by observing as under:-

“On merits of the case as per grounds no. 2 to 12 of appeal, the appellant has submitted detailed submission to point out that these shares were transacted through registered brokers and has submitted copy of contract notes etc. in this regard along with the list of monthly loss and high rates of shares of M/s. CCL International Ltd. from January, 2012 to December, 2021. The appellant has also relied upon various case laws to claim that the impugned transactions were genuine and further the identity, source of funds and genuineness of transactions stands established as these transactions have been transacted through settlement scheme approve by SEBI and sold through SEBI registered stock broker. The appellant has pointed out that the price of these shares has crossed Rs. 600/- per share at one point of time whereas the appellant has nor sold the shares at such peak value but at an average price of less than Res, 150/- per share. The appellant has claimed that no action has been taken against this script-M/s. CCL International Lid by SEBI and that it is not name in the list of 331 shell companies uploaded by SEBI on Internet. The appellant

has claimed that genuineness of this company M/s. CCL International Ltd. has been accepted by the Department in assessments o various cases in current year, subsequent / previous year in the cases of various assesseees and the appellant has filed copies of such orders where M/s. CCL International Ltd. has not been held as penny stock, in order to substantiate her arguments. The above claims of the appellant is found prima-facie correct based on perusal of these assessment / appellate order filed by the appellant. Further, the appellant has claimed that the same script M/s. CCL International Ltd., Hon'ble ITAT Delhi and Hon'ble ITAT Lucknow has allowed the appeal in the favor of those appellant in their cases and therefore the matter is squarely covered by such Jurisdictional Bench Orders like in cases such as Mohanlal Agarwal HUF Vs. ITO, Achal Gupta and others - ITA No. 501 to 505 / LKW /2019 dated 16.12.2020 (ITAT Lucknow), Reeshu Goyal Vs. ITO-ITANo.1691/DEL/2019 dated 07.10.2019(ITAT-Delhi) etc.

It is noted on perusal of these decisions that after analyzing the financials of this script, ITAT had held that it cannot be held as a paper entity from the bare perusal of the financials. No specific enquiry into the broker of the appellant etc., had been carried out in these cases. ITAT held that documents in these cases demonstrated that shares were purchased through brokers, payment received through banking channels and transactions were carried through demat account etc. In view of the above, Ld. CIT(A) observed held that the impugned transactions cannot be treated as bogs / non-genuine / accommodation entries in a general manner without specific enquiry or evidence in this regard. Accordingly, the addition of Rs. 23,41,057/- made by the AP are directed to be deleted.”

6. In the background of the aforesaid discussions and upon careful perusing the finding of the Ld. CIT(A), as reproduced above, I note that Ld. CIT(A) has rightly deleted the addition of Rs. 23,41,057/- made by the AO, keeping in view of the fact that the issue in dispute is squarely covered in favour of the assessee in the aforesaid cases, as referred by the Ld. CIT(A) in his finding wherein, it was noted by the Tribunal that it cannot be held as a paper entity from the bare perusal of the financials. No specific enquiry into the broker of the assessee etc. had been carried out in these cases. The Tribunal further held that documents in these cases demonstrated that shares were purchased through brokers, payment received through banking channel and transactions were carried out through demand account. Even otherwise, it is an undisputed fact that the Department has contested the order of the ITAT, Lucknow before the Jurisdictional High Court and the matter has not yet attained finality, hence, no such binding is upon the Tribunal in not following the rule of

consistency on the identical situated facts. Further, no contrary decision has been placed before me by the Ld. DR in this regard, the identical issue in favour of the Department. Further, it is noted that Ld. Chief Commissioner of Income Tax (OSD), Ghaziabad while submitting the Statement of Facts has admitted that the tax effect involved is Rs. 7,23,386/- which is below the prescribed limit of Rs. 60 lakhs for filing the appeal before the ITAT as provided in CBDT's Circular No. 09/2024. In view of the aforesaid factual matrix and in the interest of justice, I affirm the action of the Ld. CIT(A) and accordingly reject the grounds raised by the Revenue.

7. In the result, the Revenue's appeal stands dismissed.

Order pronounced on 19.09.2025.

SD/-

(MAHAVIR SINGH)
VICE PRESIDENT

Date: 19-09-2025

SR Bhatnagar

Copy forwarded to: -

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

ASSTT. REGISTRAR, ITAT

