



**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH "SMC", JABALPUR**

BEFORE SHRI KUL BHARAT, VICE PRESIDENT

ITA No. 200/JAB/2024
Assessment Year: 2016-17

Income Tax Officer, Ward-1 Near New collectorate, Jhinhiri-483501.	v.	Aditya Agrawal C/o. Shri Ram Food Product, Industrial Area Bargawan-483501.
PAN:AMEPA0405H		
(Appellant)		(Respondent)

Appellant by:	Shri Rahul Badia, CA		
Respondent by:	Shri N. M. Prasad, Sr. DR-1		
Date of hearing:	18	09	2025
Date of pronouncement:	30	09	2025

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, by the Revenue, is directed against the order of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi dated 30.10.2024, pertaining to the assessment year 2016-17. The Revenue has raised the following grounds of appeal: -

"1. Whether in the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.2,20,137/made on account of unexplained cash credit under section 68 of the Income Tax Act, 1961 by observing that the assessee has established the genuinity of the share transaction and established the identity and creditworthiness aspects as well through supporting documents without appreciating the facts and findings well elaborated by the Assessing Officer that the report of the Investigation Wing clearly mentions that how the scrip of Safal Herbs was rigged and was used to provide entry in the form of exempt income under section 10(38) of Income Tax Act, 1961. It has also not been appreciated by the Ld. CIT(A) that the assessee has failed to furnish Form 10DB as required by the Assessing Officer to establish the payment of Security Transaction Tax which would establish the genuinity of the share transaction.

2. Although the tax effect involved in this case is below the monetary limit for filing appeal before the Hon'ble ITAT as per the Board's Circular No 05/2024 dated 15/03/2024, the case falls under the exceptional clause 3.1(h) for filing of appeal as stated in the aforesaid circular. Therefore, this appeal is being preferred.

3. The appellant reserves the right to add, amend or alter the grounds of appeal on or before the date the appeal is finally heard for disposal.”

2. The Ground Nos. 2 & 3 are general in nature and requires no adjudication.

3. The ground no. 1 is related to deleting of addition of Rs.2,20,137/- made on account of unexplained cash credit u/s 68 of the Income Tax Act, 1961 (“Act”, for short).

4. The facts in brief are that the assessee is an individual who has filed his return of income through electronic mode declaring total income of Rs.5,98,850/- on 26.07.2016 for the A.Y. 2016-17. The assessee during the year under consideration has earned income from the salary, income from other sources and trading of commodity. The case of the assessee was re-opened by the Assessing Officer and a notice u/s 148 of the Act was issued on 29.01.2020. In response thereto, the assessee filed his return of income on 22.02.2020. Thereafter, a notice u/s 143(2) of the Act was issued and served upon the assessee. The Assessing Officer after considering the materials available on record noted that during the year under consideration, the assessee had invested in shares of M/s. Safai Herbs Ltd and declared and claimed exempt capital gain of Rs.1,24,465/-. Thereafter, the Assessing Officer considering the information from the Investigation Wing, Ahmedabad, came to the conclusion that the transaction pertaining to the purchase and shares of M/s. Safai Herbs Ltd as undertaken by the assessee was not a genuine transaction. Therefore, he held it as a penny stock and added back the same amount to the income of the assessee. Aggrieved by this order, the assessee preferred appeal before the Ld. CIT(A) who also deleted the addition and partly allowed the appeal of the

assessee. Thereby, he deleted the impugned addition. Now the Revenue is in appeal before this Tribunal.

5. Apropos to the grounds of appeal, the Ld. Ld. Departmental Representative (DR) for the Revenue vehemently argued that the Ld. CIT(A) was not justified in deleting the addition. He contended that the enquiry conducted by the Investigation Wing had unequivocally found the entity to be non-genuine. Thus, the Assessing Officer was justified in making the impugned addition against the assessee.

6. On the other hand, the Ld. Counsel for the assessee further reiterated the submissions as made before the lower authorities. It was contended that before the lower authorities that the transaction has been executed through banking channel and all the facts are brought to the notice of the lower authorities. He further contended that under the identical facts, the Co-ordinate Bench of this Tribunal in the case of Smt Sudha Agrawal vs ITO, Ward-6(4), Jaipur in ITA. No.532/JP/2024 vide order dated 30.09.2024, had quashed the notice issued u/s 148 of the Act. Further, the Division Bench in the case of Sejal Jignesh Shah vs ITO, Mumbai in ITA. No.444/Mum/2023 vide order dated 20.01.2025 had taken a similar view. Therefore, he prayed that the impugned addition be deleted.

7. Heard the Ld. Representatives of the parties and perused the materials available on records. The Ld.CIT(A), after due consideration of the facts and material placed before him, deleted the addition by observing as under: -

“5.3 Ground no. 5, 6 & 7: In these grounds No. 5, 6 and 7, the appellant had challenged the assessing officer’s action in denying the claim of LTCG claimed by the appellant of Rs.2,20,137- and treating the same as addition to the appellant’s income u/s 68. These grounds no 5, 6 & 7 are

therefore taken up collectively and adjudicated as hereunder. In the assessment order, the assessing officer had made the addition of Rs.2,20,137/- on the basis of the report of the Investigation Wing and had come to the conclusion that the identity, genuineness and creditworthiness for the sum received by the appellant has not been established. However, vide his written submission in reply dated 20.03.2023, the appellant had clearly made out a case about the genuinity of the transaction, and had established the identity and creditworthiness aspects as well through supporting documents. Therefore, I am of the considered opinion that the assessing officer had erred in making an addition of Rs.2,20,137/- u/s 68 while passing of the assessment order u/s 147 r.w.s 144B. In lieu of the above reasoning, I hereby direct the Assessing Officer to delete the addition of Rs.2,20,137/- made u/s 68, and accordingly, allow all the grounds no. 5, 6 & 7 of the appeal in favour of the appellant.”

8. It is transpired from the record that the assessee had furnished various supporting evidences in respect of the impugned transaction. However, the Assessing Officer had based his finding solely on the record of the Investigation Wing. Further, the Assessing Officer observed that during the course of assessment proceedings, the assessee failed to furnish the Form no. 10DB/contract note of purchase/application form with number of allotment letter in respect of shares allotment to him as discussed in respect of M/s. Safai Herbs Ltd. On this basis, the Assessing Officer presumed that the impugned transaction was pre-planned. However, before the Ld. CIT(A), the assessee furnished various details which were stated to have also been placed before the Assessing Authority. Reliance by the Ld. Counsel for the assessee more particularly is placed in the case of Sejal Jignesh Shah vs ITO (supra) in para no. 12, the Tribunal has referred to the decision of the Co-ordinate Bench rendered in the case of Sonal Snehal Shah, in ITA. No.1653/Mum/2024, wherein the Tribunal has observed as under: -

“Even otherwise on the merits of the case, the learned AO was confronted with all the evidences available with the assessee of purchase, dematerialization, sale, transaction by cheque. The names of all the persons from whom the assessee has purchased the shares, the manner of purchasing the shares and how assessee has sold the shares and through which broker assessee has sold the shares are provided to the AO. The learned AO did not make any enquiry and merely on the basis of the report of investigation wing confirmed the addition under s. 68 of the Act.

Therefore, according to us the assessee has discharged his onus under s. 68 of the Act by proving the nature and source of the amount received. It is for the learned AO to throw back onus on the assessee which the learned AO has failed to do so. Therefore, in the circumstances even the addition under s. 68 on the merits of the case is not sustainable.”

9. Therefore, in the light of the binding precedents, I do not find any infirmity in the order of the Ld. CIT(A). Grounds of appeal raised by the Revenue are dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30/09/2025.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 30/09/2025

Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

By order

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Assistant Registrar
ITAT, Jabalpur