

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

(THROUGH VIRTUAL HEARING)

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.254/CTK/2025

(निर्धारण वर्ष / Assessment Year : 2014-2015)

Nirmala Chhotray, Deogaon, Rourkela, Sundergarh 769004	Vs	ITO, Ward-5, Rourkela
PAN No. : AARPC 6461 C		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri S.K. Agrawalla, CA
राजस्व की ओर से / Revenue by	:	Shri Vijay Singh, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	22/09/2025
घोषणा की तारीख/Date of Pronouncement	:	22/09/2025

आदेश / ORDER

Per Bench :

This is an appeal filed by the assessee against the order of the Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 05/03/2025 passed in Appeal No. CIT(A), Sambalpur/10306/2016-17 for the assessment year 2014-2015.

2. It was submitted by the Ld. AR that the assessee had received sales consideration on trading of scrip of Kailash Auto Finance Ltd. of Rs.52,76,000/- as against purchase price of Rs.1,37,000/-, resulting into net capital gain of Rs.51,39,000/-. It was also the submission that the assessee has also made trading in CCL International Ltd. but no share trading details in respect of that scrip has been shown by the assessee before the AO. The assessee had subsequently sold the shares of Kailash Auto and had earned the gain of Rs.51,39,000/- which was claimed as

exempt under the provisions of Section 10(38) of the Act. It was the submission that the AO disallowed the entire investments and the gain and brought to the entire sale consideration of 1,37,000 shares of Kailash Auto Finance Ltd. as unexplained credit in the hands of the assessee to an extent of Rs.53,00,409/-. It was submission that the issues is now covered by the decision of the coordinate bench of this tribunal in the case of Ridhi Bagaria, passed in ITA No.76/CTK/2023, dated 18.05.2023, wherein the coordinate bench of this tribunal has considered the all the aspects that also considered the facts that the Hon'ble Jurisdictional High Court has upheld the earlier orders

3. In reply, SR DR vehemently support the order of the AO and CIT(A).

4. I have considered the rival submissions. As it is noticed that the issue is now squarely covered by the decision coordinate bench of this Tribunal in the case of Ridhi Bagaria, referred to supra, wherein the Tribunal in paras 5 to 7 observed as follows :-

5. I have considered the rival submissions. At the outset, the argument of the Id. Sr.DR that opportunity of cross-examination need not be granted, does not come out of the order of the AO or the CIT(A). Neither of the lower authorities have relied upon any statement or any investigation report for the purpose of the making the addition or confirming the same. It is an admitted fact that the assessee is doing the business of purchase and sale of shares. As pointed out by the Id. Sr. DR the assessee is doing purchases in IPOs. Thus, there is no dispute that the assessee earns her income from transaction in shares. Just because the assessee has shifted from the IPOs and has made a purchase of the shares in M/s Panchshul Marketing Ltd., would not shift the head of income from "capital gains" to the "Adventure in the nature of trade", insofar as the assessee is an investor in the shares and is not in the business of dealing in shares. This being so, the decision relied on by the Id. Sr. DR would no more survive for consideration.

6. Now, I am faced with the decision of the coordinate bench of the Tribunal in the case of Deepansu Mohapatra, referred to supra, wherein the coordinate bench of the Tribunal in the case of that assessee has also dealt with the shares in the case of M/s Kailash Auto Finance Ltd. and has been held to be eligible for exemption u/s.10(38) of the Act. In the said decision, there was another issue also considered insofar as in the course of survey the assessee therein had surrendered the claim of deduction u/s.10(38) of the Act and the coordinate bench had held that the retraction from the surrender was permissible. When the revenue filed appeal against the said decision of the coordinate bench of the Tribunal before the Hon'ble Jurisdictional High Court of Orissa, the question was raised as to whether after making certain statements in the survey the Assessee not claiming exemption under Section 10(38) of the income Tax Act, 1961 at the stage of the assessment proceedings, could the Assessee turn around and make such claim of wanting to cross-examine persons make adverse statements against the Assessee at the stage of the appeal before the ITAT?" The revenue did not challenge the factual finding of the coordinate bench of the Tribunal in the case of Deepansu Mohapatra (supra) in regard to the claim of deduction/s.10(38) of the Act. By not challenging the merits of the addition, the revenue has accepted the decision of the coordinate bench of the Tribunal in the case of Deepansu Mohapatra & Others (supra). Following the decision rendered in the case of Deepansu Mohapatra & Others (supra), the Single Member Bench of this Tribunal has decided the issue in the case of Rashi Agrawal, passed in ITA No.56/CTK/2023, order dated 04.05.2023 after having the following observations :-

7. I have considered the rival submissions. At the outset, the argument of the Id. Sr.DR that opportunity of cross-examination need not be granted, does not come out of the order of the AO or the CIT(A). Neither of the lower authorities have relied upon any statement or any investigation report for the purpose of the making the addition or confirming the same. It is an admitted fact that the assessee is doing the business of purchase and sale of shares. As pointed out by the Id. Sr. DR the assessee is doing purchases in IPOs. Thus, there is no dispute that the assessee earns her income from transaction in shares. Just because the assessee has shifted from the IPOs and has made a purchase of the shares in M/s Panchshul Marketing Ltd., would not shift the head of income from "capital gains" to the "Adventure in the nature of trade", insofar as the assessee is an investor in the shares and is not in the business of dealing in shares. This being so, the decision relied on by the Id. Sr. DR would no more survive for consideration.

8. Now, I am faced with the decision of the coordinate bench of the Tribunal in the case of Deepansu Mohapatra, referred to supra, wherein the coordinate bench of the Tribunal in the case of that assessee has also dealt with the shares in the case of M/s Kailash Auto Finance Ltd. and has been held to be eligible for

exemption u/s.10(38) of the Act. In the said decision, there was another issue also considered insofar as in the course of survey the assessee therein had surrendered the claim of deduction u/s.10(38) of the Act and the coordinate bench had held that the retraction from the surrender was permissible. When the revenue filed appeal against the said decision of the coordinate bench of the Tribunal before the Hon'ble Jurisdictional High Court of Orissa, the question was raised as to whether after making certain statements in the survey the Assessee not claiming exemption under Section 10(38) of the income Tax Act, 1961 at the stage of the assessment proceedings, could the Assessee turn around and make such claim of wanting to cross-examine persons make adverse statements against the Assessee at the stage of the appeal before the ITAT?" The revenue did not challenge the factual finding of the coordinate bench of the Tribunal in the case of Deepansu Mohapatra (supra) in regard to the claim of deduction/s.10(38) of the Act. By not challenging the merits of the addition, the revenue has accepted the decision of the coordinate bench of the Tribunal in the case of Deepansu Mohapatra & Others (supra). In these circumstances, the decision of the coordinate bench of the Tribunal on merits in the case of Deepansu Mohapatra (supra) have become final and binding on a Single Member Bench of the Tribunal as the said decision has been rendered by a Division Bench of this Tribunal. In view of the above, respectfully following the decision of the coordinate bench of the Tribunal in the case of Deepansu Mohapatra (supra), which has also been affirmed by the Hon'ble Jurisdictional High Court of Orissa in the appeal filed by the revenue, the addition as made by the AO and as confirmed by the CIT(A) in respect of the claim of exemption u/s.10(38) of the Act in respect of sale of shares of M/s Kailash Auto, stands deleted.

7. In view of the above, respectfully following the decision of the coordinate bench of the Tribunal in the case of Deepansu Mohapatra (supra), which has also been affirmed by the Hon'ble Jurisdictional High Court of Orissa in the appeal filed by the revenue and also the decision of the SMC Bench of the Tribunal in the case of Rashi Agrawal (supra), the addition as made by the AO and as confirmed by the CIT(A) in respect of the claim of exemption u/s.10(38) of the Act in respect of sale of shares of M/s Kailash Auto, stands deleted.

5. Respectfully following the decision of coordinate of this tribunal in the case of Ridhi Bagaria, referred to supra, the AO is directed to allow the assessee's claim of exemption under Section 10(38) of the Act.

6. In the result appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 22/09/2025.

Sd/-

(राजेश कुमार)
(RAJESH KUMAR)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(जार्ज माथन)
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

दिनांक Dated 22/09/2025

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Nirmala Chhotray, Deogaon, Rourkela, Sundergarh 769004
2. प्रत्यर्थी / The Respondent- ITO, Ward-5, Rourkela
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack