

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**  
**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
**(THROUGH VIRTUAL HEARING)**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.631/CTK/2025  
(निर्धारण वर्ष / Assessment Year : 2015-2016)

<b>Mukesh Agarwal,</b> O-18, Civil Township, Rourkela-769004	Vs	<b>ITO Ward-1, Rourkela</b>
PAN No. : <b>ADIPA 0575 D</b>		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri Ayush Agarwal, AR
राजस्व की ओर से / Revenue by	:	Shri Vijay Singh, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	04/02/2026
घोषणा की तारीख / Date of Pronouncement	:	04/02/2026

**आदेश / O R D E R**

**Per George Mathan, JM :**

This is an appeal filed by the assessee against the order dated 25.08.2025 passed by the Id. Addl/JCIT(A), Agra, for the assessment year 2015-2016.

2. The appeal of the assessee is filed belatedly by 12 days. In this regard, the assessee has filed condonation application along with affidavit stating therein sufficient reasons for condonation of delay. Ld. Sr. DR did not raise any objection to condone the delay. Accordingly, we condone the delay of 12 days in filing the appeal and the appeal of the assessee is admitted for hearing.

3. At the outset, Id. AR submitted that the assessee purchased shares of Panchshul Marketing Ltd. from Overflow Merchandise Pvt. Ltd. via a

SEBI-registered stockbroker and made payment through an account payee cheque. It was the submission that pursuant to the decision of the Hon'ble Allahabad High Court dated 09.05.2013, the shares of Panchshul Marketing Ltd. were merged with Kailash Auto Finance Ltd. and the assessee received shares of Kailash Auto Finance Ltd. It was submission that the exemption u/s. 10(38) of the Act in respect of long term capital gains arising on the sale of shares of Kailash Auto Financial Ltd. was now squarely covered by the decision of the coordinate bench of this tribunal in the case of Manish Kumar Baid Vs. ACIT, passed in ITA No.1236/KOL/2017 dated in 18/08/2017 wherein the coordinate bench of this tribunal in para 6 as held as follows :-

*6. We have heard both the rival submissions and perused the materials available on record. We find lot of force in the arguments of the Id AR that the Id AO was not justified in rejecting the claim of the assessee on the basis of theory of surrounding circumstances, human conduct, and preponderance of probability without bringing on record any legal evidence against the assessee. We rely on the judgement of Special Bench of Mumbai Tribunal in the case of GTC Industries Ltd. (supra) for this proposition. The various facets of the arguments of the Id AR supra, with regard to impleading the assessee for drawing adverse inferences which remain unproved based on the evidences available on record, are not reiterated for the sake of brevity. The principles laid down in various case laws relied upon by the Id AR are also not reiterated for the sake of brevity. We find that the amalgamation of CPAL with KAFL has been approved by the order of Hon'ble High Court. The Id AO ought not to have questioned the validity of the amalgamation scheme approved by the Hon'ble High Court in May 2013 merely based on a statement given by a third party which has not been subject to cross –examination. Moreover, it is also pertinent to note that the assessee and / or the stock broker Ashita Stock Broking Ltd name is neither mentioned in the said statement as a person who had allegedly dealt with suspicious transactions nor they had been the beneficiaries of the transactions of shares of KAFL. Hence we hold that there is absolutely no adverse material to implicate the assessee to the entire gamut of unwarranted allegations leveled by the Id AO against the assessee, which in our considered opinion, has no legs to stand in the eyes of law.*

*We find that the Id DR could not controvert the arguments of the Id AR with contrary material evidences on record and merely relied on the orders of the lower authorities apart from placing the copy of SEBI's interim order supra. We find that the SEBI's orders relied on by the Id AO and referred to him as direct evidence against the assessee did not contain the name of the assessee and/or the name of Ashika Stock Broking Ltd. through whom the assessee sold the shares of KAFL as a beneficiary to the alleged accommodation entries provided by the related entities / promoters / brokers / entry operators. In the instant case, the shares of CPAL were purchased by the assessee way back on 20.12.2011 and pursuant to merger of CPAL with KAFL, the assessee was allotted equal number of shares in KAFL, which was sold by the assessee by exiting at the most opportune moment by making good profits in roder to have a good return on his investment. We find that the assessee and / or the broker Ashita Stock Broking Ltd was not the primary allottees of shares either in CPAL or in KAFL as could be evident from the SEBI's order. We find that the SEBI order did mention the list of 246 beneficiaries of persons trading in shares of KAFL, wherein, the assessee and / or Ashita Stock Broking Ltd's name is not reflected at all. Hence the allegation that the assessee and / or Ashita Stock Broking Ltd getting involved in price rigging of KAFL shares fails. We also find that even the SEBI's order heavily relied upon by the Id AO clearly states that the company KAFL had performed very well during the year under appeal and the P/E ratio had increased substantially. Thus we hold that the said orders of SEBI is no evidence against the assessee, much less to speak of direct evidence. The enquiry by the Investigation Wing and/or the statements of several persons recorded by the Investigation Wing in connection with the alleged bogus transactions in the shares of KAFL also did not implicate the assessee and/or his broker. It is also a matter of record that the assessee furnished all evidences in the form of bills, contract notes, demat statements and the bank accounts to prove the genuineness of the transactions relating to purchase and sale of shares resulting in LTCG. These evidences were neither found by the Id AO to be false or fabricated. The facts of the case and the evidences in support of the assessee's case clearly support the claim of the assessee that the transactions of the assessee were bonafide and genuine and therefore the Id AO was not justified in rejecting the assessee's claim of exemption under section 10(38) of the Act. We also find that the various case laws of Hon'ble Jurisdictional High Court relied upon by the Id AR and findings given thereon would apply to the facts of the instant case. The Id DR was not able to furnish any contrary cases to this effect. Hence we hold that the Id AO was not justified in assessing the sale proceeds of shares of KAFL as undisclosed income of the assessee u/s 68 of the Act. We accordingly hold that the reframed question no. 1 raised hereinabove is decided in the negative and in favour of the assessee.*

4. It was submission that the addition as made by the AO and as confirmed by the Id, CIT(A) is liable to be deleted.
5. In reply, the Id.Sr DR vehemently supported the order of the AO and JCIT(A).
6. We have considered the rival submissions. As it is noticed that the issue in respect of the exemption u/s.10(38) of the Act in respect of the long term of capital gains rising on the sales of the shares of Kailash Auto Finance Ltd. now squarely covered by the decision of the coordinate bench of this tribunal, referred to supra, respectfully following the decision of the coordinate bench of this tribunal, the AO is directed to delete the addition and grant the assessee the benefit of section 10(38) of the Act as claimed.
7. In result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 04/02/2026.

**Sd/-**  
**(LAXMI PRASAD SAHU)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-**  
**(GEORGE MATHAN)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

दिनांक Dated 04/02/2026

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack