

## Claim of LTCG exemption was genuine as even SEBI didn't find any manipulation in scrip price: ITAT

**Summary – The Delhi ITAT in a recent case of Vidhi Malhotra, (the Assessee) held that where once purchase and sale of shares had been made through Bombay Stock Exchange and routed through DMAT account, sale proceeds had to be reckoned from sale of such shares and would be treated as explained credit or investment, and, thus, long-term capital gain shown by assessee was genuine and consequently, liable for exemption under section 10(38)**

### Facts

- The assessee-individual had declared long-term capital gain which was claimed as exempt under section 10(38).
- The assessee had purchased and sold the shares of a company which amalgamated into another company (Kailash) by the order of the High Court of Allahabad.
- The Assessing Officer noted that scrips of Kailash were used by entry providers for providing bogus accommodation entries and that in some other matter in the course of proceedings under section 131 before Investigation Wing, Kolkata, one Chartered Accountant had confirmed that he had provided accommodation entry in the scrips of Kailash and, consequently, treated the long-term capital gain under section 69.
- The Commissioner (Appeals) too had confirmed the said addition mostly based on general observation.
- On appeal:

### Held

- In so far as purchase of shares is concerned, the same has not been doubted, because the Assessing Officer while adding the long-term capital gain has given the benefit of price paid for acquisition of shares. Shares were also purchased through account payee cheque duly reflected in the books and shown by the assessee in the earlier year. In fact assessee has purchased shares of company named Capital in the financial year 2011-12 and the said company was merged with another company *vide* amalgamation order dated 9-5-2013 passed by the Allahabad High Court. Reliance has been placed by the authorities below on the statement of one C.A. However, in his statement he has given list of certain scrips on which he has stated that these were paper companies used for providing accommodation entries. The said statement no doubt is quite incriminating to hold that scrips of Kailash were used for purchase of accommodation entries, however such a statement cannot be the sole ground to implicate assessee and justify the additions especially when, nowhere assessee has been found to be beneficiary of any kind of accommodation entry in any inquiry by the Investigation Wing or any such material has been unearthed by the department. The assessee had duly shown the transaction in cheques right from purchase to sale of shares and all the transactions had been

routed through DMAT account sold in the Bombay Stock Exchange as per quoted price as on that date. Before the Tribunal, it has also been brought on record that SEBI *vide* its order dated 21-9-2017 has revoked the ban on Kailash.

- Thus, the SEBI also did not find any *prima facie* material for manipulation of price of scrip of Kailash. If Assessing Officer had found out that scrips of Kailash was used by certain persons for providing accommodation entry, then he should have carried out some *prima facie* inquiry to find out whether assessee too was involved in routing her own unaccounted money for getting bogus long-term capital on the scrips of such company. General observation about the *modus operandi* of long-term capital gain would be of no use unless and until there is some specific information and material *qua* the assessee. Once purchase of the shares was not doubted and sale had been made through Bombay Stock Exchange routed through DMAT account then consideration received had to be treated from amount of sale of shares whether the price has been rigged or not. One factor which weighed heavily on the authorities below in the instant case is that share price has risen to more than 37 times. Once the SEBI has held that there is no adverse evidence or material that there was any violation of provision of PFUT regulation in respect of Finance and restrain order on the trading had been revoked, then it follows that the share price of which has been sold for genuine quoted price and, therefore, the sale proceeds has to be reckoned from sale of such shares and would be treated as explained credit or investment. Accordingly, on the facts and circumstances of the case, the long-term capital gain shown by the assessee is genuine and, consequently, liable for exemption under section 10(38). Thus, appeal of the assessee is allowed.