

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1378/Mum/2024
(Assessment Year: 2015-16)**

AmitSajjanKumarGupta, 110, Ashirwad, Ahmedabad Street, Carnac Bunder, Mumbai-400009.	बनाम/ Vs.	DCIT-8(2)(1), RoomNo.624, Aayakar Bhavan, M.K.Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABRPG2852N		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Assessee by :	Shri Ravikant Pathak.AR
Revenue by :	Shri Manoj Kumar Sinha, Sr. DR

सुनवाई की तारीख / Date of Hearing	08/08/2023
घोषणा की तारीख /Date of Pronouncement	10/10/2024

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 143(3) and U/sec 250 of the Act. The assessee has raised the following grounds of appeal:

1. On the facts and in the circumstances of the case and in law, the learned CIT (A) NFAC, erred in confirming order made u/s. 143(3) of the Income Tax Act, 1961 which is bad in law, ultra vires and without appreciating the facts, submission and evidences in the proper perspective, without providing copies of material used against the appellant and without providing opportunity of cross examination, is liable to be annulled.

2. On the facts and in the circumstances of the case and in law, the learned CIT (A) NFAC, erred in confirming total sales consideration of Rs. 1,49,37,176/- as unexplained cash credit u/s. 68 of the Act and rejecting genuine long term capital gains of Rs. 1,45,84,697/- on account of shares sold.

3. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.

2. The brief facts of the case are that, the assessee is engaged in the business of trading activities in steel & steel pipes and also investor in shares and securities. The assessee derives income from salary, income from business, income from capital gains and income from other sources. The assessee has filed the return of income for the A.Y 2015-16 on 31.10.2015 disclosing a total income of Rs.4,43,550/-. Subsequently, the case was selected for scrutiny under CASS and notice u/sec 143(2) and U/sec 142(1) of the Act along with the questionnaire are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and filed the details and the case was discussed. On perusal of the information, the Assessing Officer (AO) found that the assessee has claimed long term capital gains on sale of shares of M/s Maa Jagdambe Tradelinks Limited (MJTL) u/sec 10(38) of the Act of Rs.1,49,14,697/- and the assessee was asked to furnish the details of shares purchase, mode of payment, share certificate, broker details, contract note, dematerialization details, bank details etc. It was explained

that, the assessee has purchased 30000 equity shares of Rs.10/- paid up each in the F.Y 2012-13 for Rs.3,30,300/- at Rs. 11/- per share (which includes a share premium of Rs.1/- per share) from M/s Dolex Commercial Pvt Ltd vide invoice dated 02.03.2013 through cheque no 51082335 on 02.03.2013 for Rs.3,30,000/- as per the Union Bank statement of the assessee and the shares were transferred in the assessee name and were credited to assessee demat account maintained with the M/s. LKP Securities Limited. Subsequently these shares were split in the ratio of 1:5 shares and the assessee was allotted 1,50,000 shares of Rs.2/- paid up on 11-01- 2014 and these shares were credited to demat account. Whereas the assessee has sold 1,50,000 shares of M/s Maa Jagdambe Tradelinks Limited in F.Y.2014-15 through SEBI Registered Broker BSE M/s. LKP Securities Limited for a consideration of Rs.1,49,14,697/- and earned Long Term Capital Gains (LTCG) of Rs.1,45,44,159/- and claimed exemption U/sec10(38) of the Act.

3. The AO has dealt on the purchase invoice /confirmation, sale contract notes, bank statements, demat account of shares credit on purchase, shares split, sale of shares and relied on the various factual aspects of share trends, modus operandi and report of the Kolkata Investigation Wing statements recorded, BSE data and has doubted the earning of long term capital gains on shares. Further the AO has

issued summons u/sec 131 of the Act on the assessee on 13.12.2017 and a statement was recorded. Further the AO find that there is no correlation of price rise and the financial/ fundamental statements of the company. Finally the AO was not satisfied with the explanations and material information and observed that the transactions are not genuine and made addition of sale proceeds u/sec 68 of the Act of Rs.1,49,14,697/- and assessed the total income of Rs.1,53,88,790/- and passed the order U/sec143(3) of the Act dated 27.12.2017.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the AO in respect of addition u/sec 68 of the Act and has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed appeal with the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the addition under section 68 of the Act overlooking the facts and submissions that the purchase & sale of shares are genuine and the assessee has substantiated with various details with both the authorities. Further, there is no scope for the AO to make the additions based on the surmises and conjectures as the assessee has filed the documentary material evidence in support of the

claim. The purchase of shares are genuine through banking channels and the assessee has substantiated with various details referred in the assessment order. The Ld. AR explained the basis and reasons for purchase of shares which were in physical form in F.Y.2013-14 and were transferred and credited to the demat account maintained with the M/s. LKP Securities Limited along with other shares and securities held by the assessee. The assessee is a regular investor in shares and securities and derives income from other sources, interest income and the dividend income. The Ld. AR mentioned that no independent enquiry was conducted by the revenue. The Ld.AR substantiated the submissions with the paper book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld.DR submitted that the share transactions are not genuine and are doubted and the Ld.DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The Ld.AR envisaged that the CIT(A) has erred in sustaining the addition u/sec 68 in respect of sale of shares overlooking the material information and evidences filed in the course of the assessment proceedings and appellate proceedings. The Ld. AR submitted that the assessee has furnished the information with evidences of purchase price, financial statements and summary of shares sold in F.Y 2014-15, ledger account copy, copies of bank account statement, copy of the contract notes of sale of the shares,

demat account statement and shares purchase invoice copy. Whereas the assessee has purchased 30000 equity shares of Rs.10/- paid up each in the F.Y 2012-13 for Rs.3,30,300/- at Rs. 11/- per share (which includes a share premium of Rs.1/- per share) from M/s Dolex Commercial Pvt Ltd vide invoice dated 02.03.2013 placed at page 32 of the paper book through cheque no 51082335 on 02.03.2013 for Rs.3,30,000/- as per the Union Bank statement of the assessee placed at page 32 to 34 and the shares were transferred in the assessee name and subsequently credited to assessee demat account maintained with the M/s. LKP Securities Limited. On 21-05-2013 as per demat transaction statement placed at page 44 of paper book. Subsequently these shares were split in the ratio of 1:5 shares and the assessee was allotted 1,50,000 shares of Rs.2/- paid up on 11-01-2014 and these shares were credited to demat account. Whereas the assessee has sold 1,50,000 shares of M/s Maa Jagdambe Tradelinks Limited(MJTL) in F.Y.2014-15 through SEBI Registered Broker BSE M/s. LKP Securities Limited for a consideration of Rs.1,49,14,697/- and earned Long Term Capital Gains (LTCG) of Rs.1,45,44,159/- and claimed exemption U/sec10(38) of the Act. The Ld. AR referred to sale cum bills contract notes, securitization tax (STT) paid at page 51 to 85 of the paper book. Similarly the demat account statement and ledger account reflecting the details of sale of shares at page 90 of the paper book. The

Ld. AR also referred to the share purchase invoice at page 32 of the paper book in F.Y 2012-13 to justify the genuineness of the purchases. The shares are sold through recognized stock exchange where the STT has been paid in respect of listed shares and held for more 12 months. The Ld.AR demonstrated the sales cum contract notes, computation of long term capital gains and copy of the bank statement reflecting the payment for purchase of shares at page 34 and also the bank statement at page 86 to 89 reflecting the receipt of sale value/consideration.

7. Further the Ld.AR relied on the submissions filed before CIT(A) in the appellate proceedings on the share transactions supported by the evidences and judicial decisions. The Ld. AR submitted that the assessee is actively trading in shares and also referred to the details with respect to dematerialization of other shares. The Ld. AR submitted that the shares were purchased through banking channel and the assessee has sold the shares subject to securitization charges/STT. The Ld. AR has referred to the demat statement reflecting the debits on account of sale of shares. The assessee has held the shares for more than one year from the date of purchase and also the ledger account of stock broker placed at page 91 to 94 of the paper book. The A.O. has relied on the statements of the investigation report and no independent inquiry was conducted. The statement of the assessee was recorded u/sec 131 of the Act by the Assessing

officer and the assessee affirmed the genuineness of share transactions with the documentary evidences. The Ld.AR emphasized that the assessee is only a investor and was not involved in the price rigging of shares and no enquiry was conducted by the SEBI and BSE against the assessee. The Ld. AR relied on the fallowing judicial decisions in support of the submissions as under:

- 1 *Shri Yogesh P. Thakkar Vs. DCIT [ITA No.1605/Mum/2021*
- 2 *Ketan Harilal Mehta HUF Vs. ITO [ITA 770/Mum/2023]*
3. *Vikram N. Chandan Vs. ITO [ITANo. 70/Mum/2024]*
- 4 *Nitesh Rajhans Singh Vs. ITO [ITA Nos. 4114/Mum/2023]*

8. The Honble High Court of Bombay in the case of Pr. CIT Vs. Indravadan Jain HUF. ITA No.454 of 2018 dated 12.07.2023 [2023] 156 taxman.com 605 (Bom) has considered the facts of sale of shares and dismissed the revenue appeal as under:

3. Respondent had shown sale proceeds of shares in scrip Ramkrishna Fincap Ltd. (RFL) as long term capital gain and claimed exemption under the Act Respondent had claimed to have purchased this scrip at Rs.3.12/- per share in the year 2003 and sold the same in the year 2005 for Rs.155.04/- per share. It was A.O.'s case that investigation has revealed that the scrip was a penny stock and the capital gain declared was held to be accommodation entries. A broker Basant Periwal & Co. (the said broker) through whom these transactions have been effected had appeared and it was evident that the broker had indulged in price manipulation through synchronized and cross deal in scrip of RFL. SEBI had also passed an order regarding irregularities and synchronized trades carried out in the scrip of RFL by the said broker. In view thereof, respondent's case was re-opened under Section 148 of the Act.

4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year After a period of one year the shares were sold by the said broker on various dates in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT[A] found there was no reason to add the capital gains as unexplained cash credit under Section 68 of the Act. The tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal

5. We also find no infirmity in the order passed by the ITAT and no substantial questions of law as proposed in the appeal arised.

9. Similarly the Jurisdictional High Court of Bombay in the case of CIT Vs. Shyam R. Pawar, 54 taxmann.com 108 has observed as under:

Section 68 of the Income-tax Act, 1961 Cash credit (Share dealings) - Assessment years 2003-04 to 2006-07 Assessee declared capital gain on sale of shares of two companies. Assessing Officer, observing that transaction was done through brokers at Calcutta and performance of concerned companies was not such as would justify increase in share prices. held said transaction as bogus and having been done to convert unaccounted money of assessee to accounted income and, therefore, made addition under section 68 - On appeal, Tribunal deleted addition observing that DMAT account and contract note showed credit/details of share transactions; and that revenue had stopped inquiry at particular point and did not carry forward it to discharge basic onus Whether on facts, transactions in shares were rightly held to be genuine and addition made by Assessing Officer was rightly deleted Held, yes [Para 7] [In favour of assessee]

It was revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange- words showed that the shares were purchased for code numbers S003 and R121 of STPL and RMPL pectively. Out of these two, only RMPL is listed in the appraisal report and it is stated to be involved in dus operandi It is on this material that the Assessing Offices holds that the transactions of sale and purchase of shares are doubtful and not genuine. In relation to assessee's role in all this, all that the Commissioner observed is that the assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the assessee to the accounted income and the assessee utilized the scheme Para 5]

The Tribunal concluded that there was something more which was required, which would connect the assessee to the transactions and which are attributed to the promoters/directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the revenue. A copy of the DMAT account, placed before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available which gave details of the transactions. The contract note is a system generated and prescribed by the stock exchange. From this material, the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client code has been referred to. But the Tribunal concluded that same, by itself, is not enough to prove that the transactions in the impugned shares were bogus sham. The details received from stock exchange have been relied upon for the purposes of faulting the revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in the Tribunal's order are not vitiated by any error of law apparent on the face of the record either. [Para 6]

10. Hon'ble Supreme Court in the case of Pr. CIT Vs. Parasben Kasturchand Kochar, 130 taxmann.com 177 (SC) has observed as under:

Section 10(38) of the Income-tax Act, 1961 Capital gains Income arising from transfer of long-term securities (Shares) Assessment year 2014-15 Assessee-individual engaged in business of trading in shares claimed long term capital gains arising out of sale of shares as exemption under section 10(38) - Assessing officer denied claim and made certain additions into assessee's income on grounds that said gains were earned through bogus penny stock transactions and companies to whom sold shares belonged were bogus in nature Tribunal observing that assessee by

submitting records of purchase bills, sale bills, demat statement, etc., had discharged his onus of establishing said transactions to be fair and transparent, same not being earned from bogus companies was eligible for exemption under section 10(38) High court by impugned order held that no substantial question of law. arose from Tribunal's order - Whether SLP against said impugned order was to be dismissed -Held, yes (Para 2) (In favour of assessee)

11. Similarly Hon'ble High Court in the case of Pr. CIT Vs. Prem Pal Gandhi, (401 ITR 0253) (P & H) has observed as under:

Capital gain-Share transaction-Addition-Deletion thereof-During course of assessment proceedings u/s 153A, it was noticed by AO that assessee had shown long term capital gain on sale of shares of company-AO treated share transaction as non-genuine transaction and amount was shown as long term capital gain on share transaction was added to income of assessee-CIT(A) deleted addition-Tribunal upheld order passed by CIT(A) and dismissed appeal of revenue-Held, assessee sold shares through MTL shares and Stock Broker limited which was SEBI registered Stock Broker- Payment for sale of shares was received through banking channels-All documentary evidence being in favour of assessee, deletion of addition made by CIT(A) was upheld by Tribunal-All these documentary evidences in favour of assessee were rejected by AO merely on basis of some casual replies given by assessee to AO- Documentary evidences were in favour of assessee and CIT(A) had passed very reasoned and speaking order-Dividend amount was received with regard to holding of shares and said amount was disclosed by assessee in his return of income and exemption was claimed accordingly-Thus, addition being without any logical basis was deleted-Revenue's appeal dismissed.

Held:

The CIT(A) examined the matter and the comments of the Assessing Officer in the remand report. It has been recorded by the CIT(A) that the purchase of shares in the financial year 2006-

07 for an amount of Rs. 11 lakhs had been physically transferred in favour of the assessee in the books of the company namely GeeFCee Finance Limited. Further, the said shares were dematerialized and credited in the assessee's account maintained with depository participant i.e. HDFC on 16.10.2006. The dividend amount of Rs. 1,50,000/- had been received with regard to aforementioned holding of shares on 23.10.2007. The said amount had been disclosed by the in his return of income and exemption was claimed accordingly. Thus, the addition being without any logical basis was directed to be deleted. (Para 4)

Assessee had sold shares through MTL shaes and Stock Brokers Limited as is noted by Assessing Officer in reply to question No.24 which is a SEBI registered Stock Broker. Furthermore the payment for sale of shares was received through Banking channels. All these documentary evidences in favour of the assessee were rejected by Assessing Offiver merely on the basis of some casual replies given by assessee to the Assessing Officer. However, the fact remains that all the documentary evidences are in favour of assessee and learned CIT(A) has passed a very reasoned and speaking order and we do not find any infirmity in the same."

12. The Hon'ble High Court of Bombay in the case of CIT Vs. Smt. Jamnadevi Agrawal, 328 ITR 656 (Bom) has observed as under:

Income-Cash credit-Genuineness of share transactions-Assesseees offered long- term capital gains arising from sale of shares-On the basis of material seized during the search in the case of various assesseees who belong to H group, AO did not accept the capital gains and treated the entire sale proceeds of the shares as income from undisclosed sources under s. 68-Not justified-Fact that the assesseees in the group have purchased and sold shares of the same companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence has been produced to establish the genuineness of the sale- Company has confirmed that it has handed over the shares purchased by the assesseees- Similarly, the sale of shares to the respective buyers is also

established by producing documentary evidence-Purchase and sale price of the shares declared by the assesseees is in conformity with the market rates prevailing on the respective dates-Thus, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions-Tribunal has arrived at a finding of fact that the transactions were genuine-Nothing has been brought on record to show that the findings recorded by the Tribunal are contrary to the documentary evidence-Also, no fault can be found with the finding recorded by the Tribunal that the cash credits in the buyers' bank accounts cannot be attributed to the assesseees-Therefore, the decision of the Tribunal is based on findings of fact and no substantial question of law arises.

The fact that the assesseees in the group have purchased and sold shares of similar companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence was produced to establish the genuineness of the claim. From the documents produced, it is seen that the shares in question were in fact purchased by the assesseees on the respective dates and the company has confirmed to have handed over the shares purchased by the assesseees. Similarly, the sale of the shares to the respective buyers is also established by producing documentary evidence. It is true that some of the transactions were off-market transactions. However, the purchase and sale price of the shares declared by the assesseees were in conformity with the market rates prevailing on the respective dates as is seen from the documents furnished by the assesseees. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions. The statement of the broker P that the transactions with the H Group were bogus has been demonstrated to be wrong by producing documentary evidence to the effect that the shares sold by the assesseees were in consonance with the market price. On perusal of those documentary evidence, the Tribunal has arrived at a finding of fact that the transactions were genuine. Nothing is brought on record to show that the findings recorded by the Tribunal are contrary to the documentary evidence on record. The Tribunal

has further recorded a finding of fact that the cash credits in the bank accounts of some of the buyers of shares cannot be linked to the assesseees. Moreover, in the light of the documentary evidence adduced to show that the shares purchased and sold by the assesseees were in conformity with the market price, the Tribunal recorded a finding of fact that the cash credits in the buyers' bank accounts cannot be attributed to the assesseees. No fault can be found with the above finding recorded by the Tribunal. Therefore, the decision of the Tribunal is based on finding of facts. No substantial question of law arises from the order of the Tribunal.-Asstt. CIT vs. Kamal Kumar S. Agrawal (Indl.) & Ors. (2010) 41 DTR (Nag) (Trib) 105: (2010) 133 TT (Nag) 818 affirmed; Sumati Dayal vs. CIT (1995) 125 CTR (SC) 124: (1995) 80 Taxman 89 (SC) distinguished. (Paras 11 to 14 & 16)

Conclusion:

Assesseees having established the genuineness of purchase and sale of shares by producing documentary evidence and declaring the purchase and sale price of shares in conformity with the market rates prevailing on the respective dates, the finding of the Tribunal that the transactions were genuine is a finding of fact based on documentary evidence on record and, therefore, no substantial question of law arises from the order of the Tribunal deleting the addition under s. 68.

13. Similarly Hon'ble High Court of Bombay in the case of Pr.CIT-3 Vs. Ziauddin A Siddique. Income Tax Appeal No 2012 of 2017 order dated 4 March 2022 has observed as under:

1. *The following question of law is proposed:*

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of Rs.1,03,33,925/- made by AO u/s 68 of the I.T. Act, 1961, ignoring the fact that the shares were bought/acquired from off market sources and thereafter the same was demated and

registered in stock exchange and increase in share price of Ramkrishna Fincap Ltd. is not supported by the financials and, therefore, the amount of LTCG of Rs.1,03,33,925/- claimed by the assessee is nothing but unaccounted income which was rightly added u/s 68 of the IT. Act, 1961?"

2. We have considered the impugned order with assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd. ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal.

4. Mr. Walve placed reliance on a judgment of the Apex Court in Principal Commissioner of Income-tax (Central)-1 vs. NRA Iron & Steel (P) Ltd.' but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

6. The appeal is devoid of merits and it is dismissed with no order as to costs.

14. The Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax Vs. Smt. Renu Aggarwal (2023) 456 ITR 249 (SC) dated 3-07- 2023 has observed as under

“CASH CREDITS-TRANSACTIONS IN PENNY STOCKS-FINDING THAT THERE WAS NO ADVERSE COMMENT FROM STOCK EXCHANGE OR COMPANY WHOSE SHARES INVOLVED-ASSESSING OFFICER QUOTING FACTS PERTAIN- ING TO COMPLETELY UNRELATED PERSONS NAME OF ASSESSEE NEITHER QUOTED BY ANY SUCH PERSONS NOR MATERIAL RELATING TO ASSESSEE FOUND IN INVESTIGATION-TRIBUNAL AFFIRMING AND HIGH COURT DIS- MISSING DEPARTMENT'S APPEAL-SUPREME COURT-SPECIAL LEAVE PETI- TION DISMISSED-INCOME-TAX ACT, 1961, ss. 68, 260A.

Where the High Court dismissed the Department's appeal saying that no question of law arose from the order of the Tribunal affirming the order of the Commissioner (Appeals) allowing relief to the assessee, and the findings of the Commissioner (Appeals) to the effect that there was no adverse comment from the stock exchange or the company whose shares were involved in these transactions, that the Assessing Officer quoted the facts pertaining to completely unrelated persons whose statements were recorded and on the basis of unfounded presumptions, that the name of the assessee was neither quoted by any of such persons nor was any material relating to the assessee found at any place where investigation was done by the Investigation Wing, on a petition for special leave to appeal to the Supreme Court special leave to appeal to the Supreme Court

The Supreme Court dismissed the petition. Decision of the Allahabad High Court (printed below) affirmed.

Petition for Special Leave to Appeal (C) No. 13033 of 2023.

Petition under article 136 of the Constitution for special leave to appeal from the judgment and order dated July 6, 2022, of the Allahabad High Court in I. T. A. No. 44 of 2022. The judgment of the High Court (coram: SURYA PRAKASH KESARWANI and JAYANT BANERJI JJ.) ran as follows:

"JUDGMENT

Heard Sri Krishna Agarawal, learned counsel for the appellant. This appeal under section 260A of the Income-tax Act, 1961 has

been filed challenging the order dated January 17, 2022, passed by the Income- tax Appellate Tribunal, Lucknow Bench 'SMC' Lucknow in IT. A. No. 205 of 2020 (assessment year 2014-15).

The basic question involved in the present appeal is with regard to deletion of some amount which was added by the Assessing Officer on the allegation of penny stock.

The appeal of the respondent-assessee was allowed against the assessment order The appeal filed by the assessee was allowed by the Com- missioner (Appeals)Against the appellate order the Revenue had filed the aforesaid income-tax appeal which has been dismissed by the Income-tax Appellate Tribunal.

After detailed discussion, the Income-tax Appellate Tribunal has recorded the following findings of fact The above findings recorded by the learned Commissioner (Appeals) are quite exhaustive whereby he has discussed the basis on which the Assessing Officer had made the additionsWhile allowing relief to the assessee, the learned Commissioner (Appeals) has specifically held that there is no adverse comment in the form of general and specific statement by the principal officer of the stock exchange or by the company whose shares were involved in these transactions and he held that the Assessing Officer only quoted the facts pertain- ing to various completely unrelated persons whose statements were recorded and on the basis of unfounded presumptionsHe further held that the name of the appellants were neither quoted by any of such persons nor any material relating to the assessee was found at any place where investigation was done by the Investigation Wing. The learned Commissioner (Appeals) relying on various orders of the Lucknow Benches and other Benches has allowed relief to the asses- see by placing reliance on the evidence filed by the assessee before the Assessing Officer. I do not find any adversity in the order of the learned Commissioner (Appeals) specifically keeping in view the fact that the Lucknow Benches in a number of cases after relying on the judgment of the hon'ble Delhi High Court in the case of Krishna Devi had allowed relief to various assessees."

The concurrent findings of fact have been recorded by the first appellate authority and the Income-tax Appellate Tribunal. Thus,

no substantial question of law is involved in the present appeal. The matter is concluded by findings of fact.

For the reasons aforesaid, we do not find any good reason to entertain this appeal. Consequently, it is dismissed. Balbir Singh, Additional Solicitor General, (Raj Bahadur Yadav, Prahlad Singh, Samarvir Singh and Prashant Rawat, Advocates, with him) for the petitioner.”

15. Further the Ld.DR placed reliance on the decision of Honble High Court Of Calcutta in the case Pr,CIT Vs Swati Bajaj (139 taxman.com352), whereas the Ld.AR relied on the ratio of decisions of the Jurisdictional Honble High Court of Bombay dealt in the above paragraphs. We find the Coordinate bench of the Honble Tribunal in the case of Shri Yogesh P Thakkar and Ors Vs. DCIT in ITA Nos. 1605 to 1611/Mum/2021 dated 3-02-2023 has considered the decisions of the Jurisdictional Honble High Court and observed at Page27 Para5.13 to 5.16 of the order read as under:

“5.13. We find that the ld. CIT(A) relied on the decision of Nagpur Bench of Hon”ble Jurisdictional High Court in the case of Sanjay Bimalchand Jain vide order dated 10/04/2017 reported in 89 taxmann.com 196 which is against assessee. In this regard, we find that in the facts of Sanjay Bimalchand Jain, that assessee had indulged in dubious share transactions and the broker through which shares were sold did not respond to the notices issued by the ld. AO. However, in the case of the assessee herein, all the materials in support of the share transactions were duly placed on record and are in order and the ld. AO had not drawn any adverse inference on the said documents to treat them as false or fictitious. Hence this crucial distinguishing fact of Sanjay Bimalchand Jain makes it inapplicable to the facts of the case before us. Moreover, we find that the Hon”ble Jurisdictional High Court in the recent case of PCIT vs

Ziauddin A Siddique in Income Tax Appeal No. 2012 of 2017 dated 04/03/2022 had held as under:-

2. We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramakrishna Fincap Ltd ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal.

4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income Tax (Central)- 1 vs. NRA Iron & Steel (P) Ltd (2019) 103 taxmann.com 48 (SC) but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

6. The appeal is devoid of merits and it is dismissed with no order as to costs.

5.14. We find that the ld. DR had relied on the decision of Hon"ble Calcutta High Court in the case of PCIT vs Swati Bajaj reported in 139 taxmann.com 352 which is an elaborate decision rendered after considering various decisions of various High Courts on the subject. In the said decision, it was held that assessee had to establish the genuineness of rise of price of shares within a short period of time that too when general market trend was recessive. But we find that when there are several decisions of Hon"ble Jurisdictional High Court as stated supra are already in favour of the assessee, the same would prevail over this tribunal and this tribunal need not take cognizance of the Hon"ble Non-

Jurisdictional High Court. The law is very well settled by the Hon''ble Supreme Court in the case of Union of India vs Kamalakshi Finance Corporation Ltd reported in 55 ELT 43 (1991) that the decision of Hon''ble Jurisdictional High Court would have higher precedence value than the decision of Hon''ble Non-Jurisdictional High Court on the Tribunal. The Hon''ble Supreme Court emphasised therein that the orders of the Tribunal should be followed by the authorities falling within its jurisdiction so that judicial discipline would be maintained in order to give effect to orders of the higher appellate authorities. The Hon''ble Apex Court has observed that utmost regard must be had by the adjudicating authorities and the appellate authorities to the requirement of judicial discipline. Hence we deem it fit and appropriate to follow the decisions of Hon''ble Jurisdictional High Court referred supra wherein the impugned issue is decided in favour of the assessee. Moreover, when there are two conflicting decisions of various High Courts, the Hon''ble Supreme Court in the case of Vegetable Products reported in 88 ITR 192 (SC) had held that Construction that is favourable to the assessee should be adopted. Hence by following this principle, the decision of Hon''ble Calcutta High Court and other decisions that are rendered against the assessee, need not be followed by this Court in the peculiar facts and circumstances of the instant case."

5.15.

5.16. *Considering the totality of the facts and circumstances of the instant case and respectfully following the judicial precedents relied upon hereinabove, we are not inclined to accept to the stand of the ld. CIT(A) in sustaining the impugned additions on account of denial of exemption for long term capital gains u/s 10(38) of the Act and estimated commission @ 6% against the same. Accordingly, the ground nos. 1 & 2 raised by the assessee are allowed.*

16. Further the Coordinate Bench of Hon'ble Tribunal Mumbai bench in the case of Shri Deepak Valji Karia Vs. ITO in ITA No.259/Mum/2021 for A.Y 2015-16 dated 10-03-2022 has dealt on the same scrip/share and granted relief.

17. The Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax Vs. Kuntala Mohapatra, [2024] 160 taxmann.com 608 (SC), dated 04.03.2024 has observed as under:

SLP dismissed against order of High Court that where shares were purchased via account payee cheques, held in Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax assessee was eligible to claim exempt u/s 10(38) for long term capital gains.

“Section 10(38), read with sections 68 and 69, of the Income-tax Act, 1961 Capital gains Income arising from transfer of long long term securities (Illustrations) - Assessment year 2014-15 Assessee filed its return for relevant year - Subsequently, pursuant to a survey assessee filed revised return and claimed exemption in respect of long-term capital gains on shares under section 10(38) - Assessing Officer rejected assessee's plea and made additions under sections 68 and 69 by relying on statements from 'entry operators' On appeal, Commissioner (Appeals) accepted assessee's claim, noting that shares were purchased via Account Payee Cheques, held in a Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax Tribunal upheld Commissioner (Appeal)'s decision, emphasizing assessee's right to correct mistakes and criticized Assessing Officer's reliance on statements from 'entry operators' to support additions under sections 68 and 69 as those statements were recorded in unrelated proceedings before survey on assessee, and assessee was not afforded an opportunity to challenge or cross-examine providers of those statements - On revenue's appeal, High Court confirmed order of Tribunal - Whether there was no reason to interfere with order passed by High Court and therefore, SLP was to be dismissed Held, yes [Para 3] [In favour of Assessee

18. We have considered the facts, circumstances and the information, find that the assessee has furnished the financials, details of price trend of shares at BSE to substantiate the quote of shares, existence of the company to prove the genuineness of share transactions and the details of stock broker and the transactions status. The AO has doubted the purchase and sale of shares and observed that the price rise is not commensurate with the financials of the company. The assessee has substantiated with all the details and information and the AO has relied on the investigation report and treated the long term capital gains on sale of shares as not genuine. The fact remains that the assessee is a regular investor in shares and has submitted the requisite details in respect of purchase and sale of shares and were not disproved. The transaction of sale of shares is through SEBI registered broker of BSE & NSE supported with the sale bills cum contract notes subjected to Securities Transaction Tax(STT) and the demat account statement reflecting debits on the sale of shares and the sale proceeds are received through banking channel. Further the A.O. has not made any enquiry or independent investigation or cross examination of persons whose statements were recorded by the Kolkata investigation wing but has relied only on the investigation report and the assessee's name is not included in the list of investigation report. The assessee has filed the SEBI order dated 29-06-2020 and in particular at Page 1

and Page 47 highlighting on the facts that the assessee name was not included and he was only a investor and was not involved in price manipulation of shares Accordingly, we considering facts, circumstances, ratio of judicial decisions, submissions, evidences and rely on the judicial precedents and set aside the order of the CIT(A) and direct the assessing officer to delete the addition and we allow the grounds of appeal in favour of the assessee.

19. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10.10.2024.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 10/10/2024

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai