

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

**ITA No.102/Mum/2021
(Assessment Year :2014-15)**

ITO- MUMBAI. Kautilya Bhavan, 9 th Floor, Room No- 945, BKC, Bandra(E), Mumbai, Maharashtra, 400051	33(1)(1)	Vs.	SMT. RANJANA SUBHASH SHINDE MUMBAI. 101, 102, Pradhan House, Dahanukarwadi, Kandiwali (E), Mumbai, Maharashtra, 400101
PAN/GIR No. EVSPS6147D			
(Appellant)		..	(Respondent)

Assessee by	Shri. Chetan Shinde
Revenue by	Shri. Pratap Sharma
Date of Hearing	27/10/2022
Date of Pronouncement	13/12/2022

ORDER

PER M.BALAGANESH (A.M.) :

1.This appeal in ITA No. 102/Mum/2021 preferred by the Revenue arises out of order passed by the learned Commissioner of Income Tax (Appeals) 45 , Mumbai [hereinafter referred to as Id. CIT(A)] in Appeal No. ITBA/APL/S/250/2020-21/1027951136(1) dated 11.09.2020 against the order

passed by the learned Income Tax Officer -33(3)(1), Mumbai [hereinafter referred to as Id. AO] under section (u/s) 143(3) of the Income Tax Act [hereinafter referred to as the 'Act'] on 28.12.2016 for the Assessment Year (A.Y.) 2014-15.

2. Though the assessee has raised several grounds before us, I find that the effective issue to be issued in this appeal is as to whether the Id. CIT(A) was justified in deleting the action of the Id.AO in disallowing the short term capital loss claimed on sale of shares of Shree Shaleen Textiles Ltd, in the facts and circumstances of the case. The inter connected issue involved therein is whether the Id. CIT(A) was justified in deleting the addition @ 3% of amount of short term capital loss as unexplained expenditure u/s 69C of the Act in the facts and circumstances of the case.

3. I have heard the rival submissions and perused the materials available on record. The assessee is an individual having income from house property, capital gain and other sources. She had filed her return of income for the Asst Year 2014-15 on 29/07/2014 declaring total income of Rs 7,83,880/-. In the said return, the assessee claimed short term capital loss on sale of shares of M/s Shree Shaleen Textiles Ltd, which was sought to be examined by the Id. AO in the scrutiny proceedings. The assessee submitted the workings of short term capital loss on sale of shares of Shree Shaleen Textiles Ltd as under:-

Scrip Name: Shree Shaleen Textiles Ltd.				Sell				
Buy								
Date of purchase/ Sale	Quantity	Rate	Amount	Date of Sale	Quantity	Rate	Amount	Loss
17.02.2014	58800	34.1	2005080	26.03.2016	58800	16.8	974429	1036309
19.02.2014	77800	31.66	2457081	26.03.2016	77800	16.8	137040	1150002
	136600		4442120		136600		22,94,880	21,86,311

4. The assessee maintained Demat account with Kantilal Chhaganlal Securities Pvt Ltd and the shares bought by the assessee were immediately dematted by the assessee. From the Demat account, the said shares were also sold by the assessee within a gap of one month at prevailing market prices, which resulted in short term capital loss to the assessee. The assessee purchased and sold the shares in the secondary market at prevailing market prices after suffering Securities Transaction Tax (STT) on both the occasions.

5. The assessee furnished the following documents in support of his contentions before the lower authorities :-

a) Contract notes for both purchase and sale of shares in online platform through a registered share broker.

b) Bank statements of the assessee evidencing the fact of making payments for purchase of shares by account payee cheques and receipt of sale proceeds by account payee cheques.

c) Demat statement evidencing the fact of credit into the said account at the time of purchase of shares and outflow of shares from the said demat account while selling the shares.

d) Source of making investment in shares were duly explained by the assessee by furnishing the bank statement from which account payee cheques were issued by the assessee.

6. The Id. AO had relied on the findings of the investigation wing of Kolkata which are reproduced in his assessment order and proceeded to disallow the short term capital loss incurred by the assessee in the sum of Rs 21,86,311/- as unexplained cash credit u/s 68 of the Act. The Id. AO discussed the modus operandi of buying and selling penny stock shares by some persons with the help of some brokers and exit providers and alleged that the shole scenario revealed that the move to acquire the shares of M/s Shree Shaleen

Textiles Ltd by the assessee was a pre-determined move which had sole aim to reduce the income and evade tax. He observed that as the investment was made when the financial situation of M/s Shree Shaleen Textiles Ltd was not good shows that the assessee had intention to make loss by dubious methods and concluded that the loss shown by the assessee was not genuine. The Id. AO also observed that the net worth of M/s Shree Shaleen Textiles Ltd was negligible and despite that the share prices were rigged by the group operators to accommodate the persons seeking long term capital gain or losses. Since the receipt of sale proceeds was treated as bogus, the Id. AO also proceeded to add estimated commission @ 3% for arranging the said bogus transaction as unexplained expenditure u/s 69C of the Act.

7. I find that each and every averment of the Id. AO were duly met by the assessee before the Id. CIT(A) in his written submissions filed before the Id. CIT(A). The Id. CIT(A) deleted the additions by observing as under:-

3.4. I have carefully considered the facts of the case, the views held by the AO in the assessment order and contentions of the appellant. I have also considered judicial pronouncements relied upon by the AO and the appellant. In her submissions the appellant argued that she purchased the shares and sold the shares of Shree Shaleen Textiles online on a recognized Stock Exchange through registered broker and payment was made through proper banking channels. The AO has not disproved these facts by bringing any evidence on record Further, it is seen from the record that shares of Shree Shaleen Textiles Ltd. were not allotted to the appellant through preferential allotment but she purchased on the exchange through a registered broker. It is also seen that the contract notes have been filed and the shares were received in the Demat account of the assessee immediately after purchase. It appears from the above facts that the assessee purchased the shares of Shree Shaleen Textiles Ltd. like any normal investor on the exchange when the rates were on the rise. Unfortunately the shares started falling and the assessee sold the shares within a month to contain the losses.

The AO disallowed the STCL holding that the appellant had obtained bogus STCL For making disallowance of loss, the AO heavily relied on the report of DIT (Inv.), Kolkata just because the scrip VAS Infrastructure Ltd. was named as Penny Stock. It is only mentioned that large number of beneficiaries has claimed bogus LTCG/STCL There is no specific mention of the name of the appellant in the information. This shows that the enquiry carried out by the investigation wing of Kolkata did not reflect the name of the appellant as the beneficiary Further, the statements recorded do not directly link the appellant with any of the said companies or persons. None of the persons whose statement was recorded stated that the appellant was involved in price

rigging of the shares, or that she received or paid cash for getting the bogus STCL. Thus, the inference drawn by the AO on the basis of the said report and statements recorded by the Wing cannot be considered as any base for treating the STCL claimed by the appellant as bogus. Further, no adverse inference can be drawn with respect to the genuineness of the transaction entered by the appellant in the normal course of her share purchase and sale transactions, merely because some brokers were involved in arranging accommodation entries for LTCG/STCL to various others.

4.3. AO has not established that appellant was in collusion with any one in rigging of the shares of VAS Infrastructure Ltd. From the gamut of facts brought out above, it appears that the AO was predominantly influenced by the penny stock related issue for treating the said transactions as sham. It is however, seen that there is no adverse comments on the documentation involving these share transactions nor is there any allegation against the appellant individually as involved in price rigging or taking the benefit of accommodation entries to book loss. Thus, the purchase of shares of VAS Infrastructure Ltd by the appellant is backed by evidences which have not been doubted by the AO and the reasons provided by him for making the addition can at the most be termed as presumptions, but in view of the evidences submitted by the appellant to substantiate the transaction, in absence of any adverse finding by the AO on any of the documents filed by the appellant, the STCL claimed by the appellant cannot be treated as bogus.

3.5 AO also argued that any prudent investor will not make investment in a company whose net worth is not good. Theoretically they may be right in saying so, but in practice all investors won't study and analyze the financials of the company. In most of the cases the investors make investment based on the brokers' advice or tips received from the friends and relatives. In this case also the son of the lady assessee, invested the money received by his mother on sale of flat based on a tip that the shares will grow, but the share price started falling, so he sold the shares to stop losses. This normal behavior of an average investor cannot be interpreted as anything different from other just because that there is some information in respect of that share that some people used the share prices to book bogus long term capital gains. Therefore, the investment by the assessee in the shares of the company Shree Shaleen Textiles Ltd. on the stock exchange, to my mind appears to be an investment in the normal course, expecting a rise of share price over the period. It appears that the assessee sold the shares after she saw a considerable fall within a month and half. Therefore purchase and sale of shares of Shree Shaleen Textiles Ltd. can be considered as an investment decision in the normal course of investment activity of the assessee. Having concluded so based on the surrounding circumstances, the statements recorded by the wing, does not affect the assessee, as she was not there in the loop from the beginning in any form like purchasing shares at a lower rate in physical form etc. It is also seen that there was no private placement of share by the company Shree Shaleen Textiles Ltd, which the assessee acquired. It is seen that the appellant purchased shares through stock exchange. There is no order by the SEBI or BSE/NSE in the shares of Shree Shaleen Textiles Ltd in any manner, which is brought on record. There is no merger or splitting of shares by the company to increase the number of shareholding by the investors. It is also seen from the statement extracted by the AO in the assessment order that none of the brokers named the appellant as exit provider. Therefore, the loss on sale of shares of Shree Shaleen Textiles Ltd, are not liable to be considered as unexplained credits because these receipts were received on sale of investments made in the regular course.

3.6 Further, the appellant purchased the shares utilizing the money received on sale of her property, therefore there is no question regarding the source of the funds utilized for purchase of shares. The sale receipts of same shares were received in the bank account, and the AO did not doubt the source of the funds. The AO added the difference between the accounted funds as unexplained cash credit u/s 68 of the Act. The AO failed to understand as to how the section dealing with cash credits is applicable to the loss shown in the books. Section 68 reads.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

Here in this case as can be seen from the facts narrated above, the issue does not relate to the credit found in the books of the appellant. Credits found in the bank account relating to the sale of shares and the sale of shares is accepted by the AO without raising any doubt for the source. The AO added the loss incurred on sale of shares shown in the IT return as cash credit under section 68 of the Act, which is incorrect. Therefore the addition cannot stand the test of appeal both on merits and on legal ground also. Courts have held that even the long term capital gains earned on sale of shares in similar cases are not covered u/s 68 of the Act, therefore there is no question of treating a loss as cash credit u/s 68 of the Act.

3.7 Reliance is placed on the decision of the Hon'ble Mumbai Tribunal in the case of *ITO v. Indravadan Jain (HUF)* [ITA No. 4861/Mum/2014] dated 27.05.2016 wherein an identical issue was involved. In the said case, the long term capital gains claimed by the assessee was denied by the AO and treated as unexplained cash credit u/s 68 of the Act. The Hon'ble Tribunal after taking into consideration the facts involved deleting the addition made by the AO. The relevant extract of the order is reproduced as under:

"8. We have considered rival contentions and carefully gone through the orders of authorities below and found from the record that the AO has treated the share transaction as bogus on the plea that SEBI has initiated investigation in respect of RamkrishnaFincap Pvt. Ltd. The AO further stated that investigation revealed that transaction through M/s BasantPeriwal and Co. on the floor of stock exchange was more than 83%. We found that as far as initiation of investigation of broker is concerned, the assessee is in no way concerned with the activity of the broker. Detailed finding has been recorded by CIT(A) to the effect that assessee has made investment in shares which was purchased on the floor of stock exchange and not from M/s BasantPeriwal and Co. Against purchases payment has been made by account payee cheque, delivery of shares were taken, contract of sale was also complete as per the Contract Act, therefore, the assessee is not concerned with any way of the broker. Nowhere the AO has alleged that the transaction by the assessee with these particular broker or share was bogus, merely because the investigation was done by SEBI against broker or his activity, assessee cannot be said to have entered into ingenuine transaction, insofar as assessee is not concerned with the activity of the broker and has no control over the same. We found that M/s Basant Periwal and Co never stated any of the authority that transaction in M/s RamkrishnaFincap Pvt. Ltd on the floor of the stock exchange are ingenuine or more accommodation entries. The CIT(A) after relying on the various decision of the coordinate bench wherein on similar facts and circumstances issue was decided in favour of the assessee came to

the conclusion that transaction entered by the assessee was genuine Detailed finding recorded by CIT (A) at para 3 to 5 has not been controverted by the department by bringing any positive material on record Accordingly, we do not find any reason to interfere in the findings of CIT(A) Moreover, issue is also covered by the decision of jurisdictional High Court in the case of Shyam R Pawar (supra), wherein under similar facts and circumstances, transactions in shares were held to be genuine and addition made by AO was deleted. Respectfully following the same vis-à-vis findings recorded by CIT(A) which are as per material on record, we do not find any reason to interfere in the order of CIT(A)."

3.7 In CIT v Orchid Industries Ltd (ITA 1433 of 2014) dated 5th July 2017, dealing with the documents filed. Hon'ble Bombay High Court observed that the transaction was genuine as the assessee produced voluminous documentary evidence. I find that the facts of this case are identical to that of the appellant's case insofar as production of evidence is concerned. I find that in the case at hand before me, substantial evidence was produced to suggest that the purchase and sale transactions were undertaken through banking channel and through registered broker of Stock Exchange. Recently, the Mumbai ITAT F Branch in its decision in ITA no. 3801/Mumbai/2011 in case of M/s Farah Marker v/s ITO dated 27-04-2018 held as under:

"3.4.8 From the appreciation of the facts of the case, the material evidence placed on record by the assessee and in the light of the discussion of the factual and legal matrix of the case as discussed from para 31 to 3.47 of this order (supra), we are of the considered opinion that the authorities below. ie AO/CIT(A) have made the addition under section 68 of the Act merely on presumptions, suspicions and surmises in respect of penny stocks, disregarding the direct evidences placed on record and furnished by the assessee in the form of brokers contract notes for purchases and sales of the 'said shares of M/s. Shukun Constructions Ltd, copies of the physical share certificates and her D-MAT account statement establishing the holding of the shares in her name prior to the sale thereof; confirmation of the transactions of buying and selling of the 'said shares by the respective stock brokers, receipt of sale proceeds through banking channels, etc. As observed earlier in this order, we are of the view that the statement recorded from Shri NirajSanghvi on 31 12 2007, the day the order of assessment was passed, would have no evidentiary or corroborative value to be the basis for coming to an adverse view in the case on hand, since was recorded behind the assessee's back, from a person who was not involved in the purchase of the said shares and also since the assessen was not afforded opportunity for rebuttal of the same and to cross-examine the said person We are also of the view that the ratio and the factual matrix of the decisions in the cited case, ie JatinChhadwa (supra), Harkhchand K Gada (HUF) & others (supra) and Andaman Timber Indusiries (supra) would be applicable and support the case of the assessee since no adverse finding has been rendered in respect of the direct material evidence placed on record in respect of her transactions of purchase and sale of the 'said shares of M/s. Shukun Constructions Ltd which stand duly disclosed in her audited Balance Sheets filed with the return of income of assessment years 2004-05 and the current year under consideration. In this factual and legal matrix of the case as discussed above, we find that the addition of Rs.95,12,812- under section 68 of the Act made and confirmed by the authorities below to be unsustainable and therefore direct the AO to delete the said addition and accept the LTCG income of

Rs.93,00,012/- shown as exempt under section 10(38) of the Act. Consequently, ground No. 1 of the assessee's appeal is allowed."

3.8 Hon'ble ITAT Mumbai D' Bench in the case of Shri Mukesh B Sharma vs ITO 11(3)(2), Mumbai in ITA No.6249/Mum/2018 dated 29.05.2019 distinguished the case of Sanjay Bimalchand Jain v Pr CIT holding as under:

"It would be pertinent to address the case law relied upon by the Id. DR before us on the decision of Hon'ble Bombay High Court(Nagpur Bench) in the case of Sanjay Bimalchand Jain v Pr CIT(Nagpur) reported at (2018) taxmann.com 196 (Bombay) dated 10.04.2017 on the impugned issue From the facts of Sanjay Bimalchand Jain (supra), we find that (i) in the case, the broker company through which the shares were sold did not respond to the AO's letter regarding the names and address and bank account of the person who purchased the shares sold by the assessee. (ii) Moreover, at the time of acquisition of shares of both the companies by the assessee, the payments were made in cash, (iii) The address of both the companies were interestingly the same; (iv) The authorized signatory of both the companies were also the same person. (v) The purchase of shares of both the companies was done by that assessee through broker, GSSL and the address of the said broker was the address of the two companies. Based on these crucial facts, the Hon'ble Bombay High Court rendered the decision in favour of the revenue. None of these factors were present in the facts of the assessee before us. Hence it could be safely concluded that the decision of Hon'ble Bombay High Court supra is factually distinguishable."

*3.9 As mentioned above, the shares of the company Shree Shaleen Textiles Ltd. were purchased and sold online through stock exchange through registered broker and through banking channels and STT was paid on purchases and sales. Therefore, purchase and sale of shares of Shree Shaleen Textiles Ltd. can be considered as an investment decision in the normal course. Further, in view of the binding decisions of the jurisdictional High Court and other decisions of ITAT Mumbai, in this factual and legal matrix, of the case, I find that the addition of Rs.21,86,311 under section 68 of the Act made by the AO is unsustainable and therefore the AO is directed to delete the addition and accept the STCL shown. Appellant gets relief. **Ground of appeal is allowed.***

8. At the outset, we find that the documentary evidences submitted by the assessee were found to be genuine and no adverse inferences were drawn by the revenue on the same. Both purchase and sale transactions were carried out by the assessee in the secondary market through a registered share broker at the prevailing market prices. Payments were made and received by the assessee by account payee cheques to and from the stock exchange through the registered broker. Amounts received on sale of shares were duly subjected to levy of Securities Transaction Tax (STT) at the applicable rates.

8.1. We find that no enquiries were carried out by the revenue either on the broker or with the stock exchange with regard to transactions carried out by the assessee. The revenue had merely relied on the Kolkata investigation report without linking the assessee with the various allegations leveled in the said investigation report.

8.2. We find that the revenue had not proved with any cogent evidence on record that assessee was involved in converting his unaccounted income into booking short term capital loss by conniving with the so called entry operators, promoters of Shree Shaleen Textiles Ltd and brokers who were involved in artificial price rigging of shares. No evidence is brought on record to prove that assessee was directly involved in price manipulation of the shares dealt by him in connivance with the brokers and entry operators.

8.3. It is not in dispute that the assessee had made purchase of shares in the secondary market. In the instant case, the assessee had discharged his onus of proving the fact that shares purchased by him were dematerialized in the Demat account and held by the assessee till the same were sold from the Demat account of the assessee. The transaction of holding the shares are reflected in Demat account and sale of shares are through Demat account. The purchase price and sale price of shares could not be disputed at all in the instant case as they were done at prevailing market prices in the secondary market.

8.4. Hence the entire addition has been made merely by placing reliance on the Kolkata Investigation Wing report which are more general in nature and does not implicate the assessee herein in any manner whatsoever. We are unable to persuade ourselves to accept to the contentions of the Id. DR that Kolkata Investigation Wing had conducted a detailed enquiry with regard to the scrip dealt by the assessee herein and hence whomsoever had dealt in this scrip, would only result in bogus claim of long term capital gain

exemption or bogus claim of short term capital loss. Merely because a particular scrip is identified as a penny stock by the income tax department, it does not mean all the transactions carried out in that scrip would be bogus. So many investors enter the capital market just to make it a chance by investing their surplus monies. They also end up with making investment in certain scrips (read penny stocks) based on market information and try to exit at an appropriate time the moment they make their profits. In this process, they also burn their fingers by incurring huge losses without knowing the fact that the particular scrip invested is operated by certain interested parties with an ulterior motive and once their motives are achieved, the price falls like pack of cards and eventually make the gullible investors incur huge losses. In the instant case before us, the assessee had entered the market at the market price ranging from Rs 31 to 34 per share and since the said shares were constantly falling, he resorted to sell the shares within a period of one month and book the loss. No prudent investor would lose Rs 100 (ie the capital amount) in order to get a tax benefit of Rs 30 (30% of capital) by booking bogus short term capital loss. The Id. AO in the instant case had recorded a statement from the assessee during the course of assessment proceedings who had stated that the entire share transactions were carried out by her son. Accordingly, a statement was recorded by the Id. AO from the son of the assessee and in response to specific questions raised by the Id. AO, the son of the assessee had replied that the investment in shares were made based on market tip received from a person in Kandivili and since the prices were falling considerably from the time of investment, the shares were sold by him on behalf of his mother. The son had also categorically denied that the said scrip is categorized as a penny stock and is being operated by manipulators. The son had also categorically denied having known any of the entry operators, stock market operators, manipulators etc and also denied having any link with them in any manner whatsoever. In this factual matrix of

the case, the only logical recourse to conclude is that the assessee in the instant case had behaved like a normal investor wherein he had entered the market when the rates were on the rise and since the prices started falling, he had to exit immediately within a period of one month to mitigate the losses. We hold that the assessee is only a gullible investor in the entire transactions in the capital market by duly burning her fingers due to price manipulations carried out by certain interested parties. As stated earlier, the assessee or her son had no linkage in any manner whatsoever with so called price manipulators, entry operators etc. No evidence also has been brought on record by the revenue in the instant case to prove such involvement of the assessee.

8.5. We hold that the entire addition has been made based on mere surmise, suspicion and conjecture and by making baseless allegations against the assessee herein. Now another issue that arises is as to whether the Id. AO merely on the basis of Kolkata investigation wing report could come to a conclusion that the transactions carried out by the assessee as bogus. In our considered opinion, the Id. AO is expected to conduct independent verification of the matter before reaching to the conclusion that the transactions of the assessee are bogus. More importantly, it is bounden duty of the Id. AO to prove that the evidences furnished by the assessee to support the purchase and sale of shares as bogus. This view of ours is further fortified by the decision of *Hon'ble Delhi High Court in the case of PCIT vs Laxman Industrial Resources Ltd in ITA No. 169/2017 dated 14/03/2017*. It is well settled that the suspicion however strong could not partake the character of legal evidence. Hence the greater onus is casted on the revenue to corroborate the impugned addition by controverting the documentary evidences furnished by the assessee and by bringing on record cogent material to sustain the addition. No evidence has been brought on record to establish any link between the assessee herein and the directors of Shree

Shaleen Textiles Ltd or any other person named in the assessment order being involved in any price rigging and also the exit provider. This onus is admittedly not discharged by the revenue in the instant case.

8.6. We find that the *Co-ordinate Bench of this Tribunal in the case of Mukesh Ratilal Marolia vs Additional CIT reported in 6 SOT 247 (Mum ITAT) dated 15/12/2005* had held that *personal knowledge and excitement on events should not lead the Id. AO to a state of affairs where salient evidences are overlooked. When every transaction has been accounted, documented and supported, it would be very difficult to brush aside the contentions of the assessee that he had purchased shares and had sold shares and ultimately purchased a flat utilizing the sale proceeds of those shares and therefore, the co-ordinate bench chose to delete the impugned additions.* We find that this tribunal decision was approved by the *Hon'ble Jurisdictional High Court in ITA No. 456 of 2007 dated 07/09/2011.* It is pertinent to note that the *Special Leave Petition preferred by the Revenue against this decision before the Hon'ble Supreme Court has been dismissed vide SLP No. 20146 of 2012 dated 27/01/2014.*

8.7. Further we find that the *Hon'ble Jurisdictional High Court in the case of CIT vs Shyam S Pawar reported in 54 taxmann.com 108 (Bom),* it was held that where Demat account and contract note showed details of share transaction and the Id.AO had not proved the said transaction as bogus, the long term capital gain earned on said transaction could not be treated as unaccounted income u/s 68 of the Act. The relevant operative portion of the said judgement is reproduced below:-

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are

termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny. It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in 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 present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present 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. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 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 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 and 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 para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law.

We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.

8.8. Considering the totality of the facts and circumstances of the instant case and respectfully following the judicial precedents relied upon hereinabove, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee by deleting the disallowance of short term capital loss and estimated commission @ 3% against the same. Accordingly, the grounds raised by the revenue are dismissed.

9. In the result , the appeal of the revenue is dismissed.

Order pronounced on 13/12/2022 by way of proper mentioning in the notice board.

Sd/-

(M.BALAGANESH)

ACCOUNTANT MEMBER

Mumbai; Dated 13/12/2022

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file

BY ORDER,

//True Copy//

(Asstt.
Registrar)
ITAT, Mumbai