

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.2286/Kol/2019
Assessment year: 2014-15

Raigarh Jute & Textile Mills Ltd.....Appellant
36, Chowringhee Road,
Kolkata-700071.
[PAN: AABCR2034B]

vs.

ACIT, Circle-8(2), Kolkata.....Respondent

Appearances by:

Shri Akkal Dudhewala, Advocate, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 16, 2023

Date of pronouncing the order : June 27, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा/ Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 13.03.2019 of the Commissioner of Income Tax (Appeals)-15, Kolkata (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1 That on the facts and in the circumstances of the Case, the Ld. CIT(A)-15 erred in holding that the Assessing Officer was justified in disallowing and adding back the Appellant's claim for deduction of loss suffered of Rs.4,02,00,360/- suffered by the Appellant in its Share Trading Business.

2 That on the facts and in the circumstances of the Case, the Ld. CIT(A)-15 erred in confirming the action of the Assessing Officer of invoking the

provisions of Section 14A of the Act and in confirming the addition of Rs.87,194/- made by the Assessing Officer thereunder.

3. That on the facts and in the circumstances of the Case, the Order passed by the Ld. CIT(Appeals)-15, is bad in law.

4 That the Appellant craves leave to submit further grounds and to amend, alter or otherwise modify the grounds already taken, if necessary, before or at the time of hearing of the Appeal.”

3. **Ground No.1** – The assessee vide Ground no.1 has agitated the action of the lower authorities in disallowing and adding back the long-term capital loss suffered by the assessee in trading of shares.

4. The Assessing Officer during the assessment proceedings noted that the assessee had booked loss of Rs.4.02 crores in trading of shares. He noted that the assessee had traded in following scrips:

- 1. Rutrint International Limited*
- 2. Comfort fincap Limited*
- 3. Luminaire technologies Limited*
- 4. Unno Industries Limited*
- 5. Global Infratech & Finance Ltd.*

The Assessing Officer noted that the facts of this case were part of larger scheme, whereby, the price of shares of the certain penny stock companies were rigged and there were bogus long-term capital loss were provided to certain parties acted as exit provider and booked corresponding losses which were set off against other business income of companies/persons. The Assessing Officer noted that some peculiar facts of these penny stock companies were that i) all of such companies were listed on Bombay Stock Exchange (BSE); ii) do not have any business, fixed assets, income and worth; iii) and in cases of quite a few scrips, trading has been suspended by BSE as a result of surveillance measure detecting manipulative price movement. The Assessing Officer further noted that the trading in shares of First Financial Services Ltd. and Rutron International Ltd. are two of those scrips where trading has

been suspended by BSE as a result of surveillance measure detecting manipulative price movement. The Assessing Officer further noted that investigation was carried out by the Directorate of Investigation, Kolkata which proved that a scheme was hatched by various players whereby accommodation entry of bogus long-term capital gain/short-term capital loss was booked. These accommodation entries were taken by various beneficiaries. The Assessing Officer having discussed the modus operandi of booking of long-term capital gain/short-term capital loss by way of price rigging of shares of these penny stock companies, further discussed about the report of the Special Investigation Team of the Hon'ble Supreme Court on black money, wherein, the modus operandi of investigation on black money has been discussed. The Assessing Officer thereafter switched to the facts of the present case and observed that the assessee in this case was not a regular investor/trader of shares. He had not claimed such huge profit/loss in shares in past. It was unusual on his part to claim such a huge loss in trading of the scrip as mentioned above. The Assessing Officer accordingly show-caused the assessee as to why the aforesaid loss booked by the assessee be not treated as bogus loss. However, the assessee replied that the loss booked by the assessee was genuine and that the same cannot be disallowed on mere suspicion. That the transactions carried out by the assessee were duly supported by documentary evidence and were conducted on the recognized stock exchange. The Assessing Officer however did not accept the aforesaid explanation of the assessee and further referred to the investigation wing report of the income tax department and observed that income tax department had searched/surveyed 32 share broking entities and more than 20 entry operators and unearthed and identified some 84 odd companies which were being used for bogus accommodation entry of gain/loss. That the aforesaid mentioned five companies in which the

assessee had traded were also identified as penny stock companies from their financials, trading patterns, statement of share brokers, statement of entry operators, statement of promoters of the companies and the post search/survey enquiries. That they all have very common financial and trading patterns. That the market price of shares of these companies firstly rise to very high level and then fall within a short span of time without any genuine reason. The Assessing Officer further observed that the transaction pattern relating to shares of these companies would show that the trading in these shares were made only with the parties to whom accommodation entries were given to them to give benefit of long-term capital gain. Referring to the transactions in the shares of Rutron International Ltd., the Assessing Officer observed that the trading volume of shares during the period when the assessee purchased shares was thin and he further noted that the price of shares of this company was on an average of Rs.26/- from April 2013 to October/November 2013. Suddenly the prices fell down to 7.20 on 31.03.2014. That the share brokers, operators and exit providers have stated under oath and identified Comfort Fincap Ltd. as penny stock company who share prices have been manipulated. That the financials of the company M/s Comfort Fincap Ltd. did not justify the abnormal trading pattern of this scrip. The Assessing Officer thereafter referred to the graph to show the abnormal price rise and fall regarding the share of Rutron International Ltd. The Assessing Officer thereafter also referred to the share price pattern of Comfort Fincap Ltd. and observed that the share price of this company fell down from Rs.401/- on 22.05.2013 to Rs.144/- on 31.03.2014 in just 313 days. Similarly, he referred to the graph of share price rise/fall, financials of the company. He also referred to the shares of Luminare Technologies Ltd. and observed that the average price of the share of this company was Rs.53/- from March 2013 to November 2013 and gradually

its price started to fall down to Rs.20/- on 05.03.2014 and remains on an average of Rs.20 to 25 in the month of March 2014. Further, the Assessing Officer discussed the financials of some another company namely Strauss Industries and Exports to observe that the same was penny stock company. The Assessing Officer further referred to the share price pattern of Unno Industries Ltd. and observed that the assessee had purchased shares of this company on 22.01.2014 and sold on 20.03.2014. That the share price of this company was on an average of Rs.30 to 40 from March 2013 to January 2014 and its prices started to fall down to Rs.13 to Rs.14 and remains on an average of Rs.20 to Rs.25 in the month of March 2014. In the case of Global Infratech& finance Ltd. (GBL Infra), the Assessing Officer observed that the assessee had purchased shares of this company on 04th and 5th February 2014 and sold the same on 21st to 24th March 2014 and further observed that the average share price of this company rose from Rs.0.76 on 03.07.2012 to Rs.81.90 on 12.08.2013 and again fell down to Rs.10.18 on 29.08.2014. The Assessing Officer thereafter discussed the modus operandi of penny stock companies as to how their prices are rigged by manipulation by the promoters/handlers of these companies. He denied the allegations of booking of bogus short term capital loss. Thereafter, he issued summons u/s 131 to the director of the assessee company ShriHemant Kumar Jalan and his statement under oath was recorded during the course of statement, he was confronted with the statement of various share brokers, entry operators and exit providers who have admitted about the rigging of price of shares of the aforesaid companies in which the assessee had traded. However, the director of the assessee company denied any involvement of the assessee company in share price rigging or booking of bogus capital loss and reiterated that the assessee company had bought and sold shares of aforesaid companies online on

the platform of Bombay Stock Exchange through registered share broker and that there was no accommodation entries of LTCG and STCL as alleged by the Assessing Officer. However, the Assessing Officer observed as under:

“12. The above submission made by the assessee is not acceptable on the reasons that in this case there is Special Investigation Report, detailed investigation by Income tax department as stated above which clearly proves that these are accommodation entries with the help of Share Brokers, Entry operator and exit provider. Further the director of the company, on going through the statement of the share broker, entry operator and exit provider simply evaded what they have said,. He simply stated that they have bought and sold shares of aforesaid companies on line on the platform of the Bombay Stock Exchange through registered share broker. In our transactions, I can confirm that there are no accommodation entries of LTCG and STCL stated by you.

Here, the witnesses personally appeared before the IT Authorities and their sworn statements were recorded under oath. Subsequently they even did not retract their sworn statements before any other judicial authority. This means that their statements have not lost their legal sanctity. Hence, the authenticity of the evidences once authorized by one IT Authority need not be cross examined by the same IT Authority. In view of the facts of the case onus was on the assessee to prove the bona fide of the transactions which he has failed to do and the assessee now cannot claim to shift his burden on the department by asking for the opportunity to cross examine the 52 witnesses who have confirmed that the transactions are not genuine and these connected parties have grossly misused the stock exchange system to generate STCL to aid and help beneficiaries to adjust their business profit from share trading loss with no payment of taxes on business income.

13. So such trading of penny shares of the assessee can be treated as colourable transactions, which are seemingly valid, but a feigned or counterfeit transaction entered into for some ulterior purposes. Motive alone cannot make unlawful what the law allows but at the same time if it is found that there is a presence of bad faith or fraud or non-bona fide in the transactions, then legal effect of the transactions are not to be considered. If the assessee's acts are not bona fide but are ambiguous, sham or make-believe it is open to question and doubt the transaction. The make-believe transactions, though seemingly legal, are not free from judicial scrutiny.

It is true that every person is entitled to arrange his affairs as to avoid taxation but the arrangement must be real, genuine or bona fide. A sham

transaction or make believe transaction or colourable device cannot be part of tax planning. It is wrong to encourage or entertain the belief that it is honourable to avoid the payment to tax or to obtain any advantage or benefit for tax purpose by dubious method. The principle on the matter of tax evasion and tax avoidance as laid down by Hon'ble Supreme Court in a landmark judgment in the case of McDowell and Co. Ltd. v. CTO (1985) 154 ITR 148 (SC). The judgment is applicable where devices though seemingly legal are adopted in collusion or whether devices adopted are not genuine or bona fide but are sham, make believe or camouflaged to escape the liability for the tax or to obtain certain benefit for tax purpose.”

The Assessing Officer thereafter referred to certain case laws and held that considering the totality of the facts and circumstances of the case, the trading loss on shares booked by the assessee did not look genuine from a commercial point of view but were sham and bogus to book capital loss which may be set off against the business income of the assessee. He therefore denied the claim of the assessee of short-term capital gains booked by the assessee in trading of shares.

5. Being aggrieved by the aforesaid order of the Assessing Officer, the assessee preferred appeal before the CIT(A). It was submitted before the CIT(A) that the trading/transaction carried out by the assessee in the aforesaid five scrips were genuine and were duly supported with the evidences of sale and purchase together with copies of contract notes issued by the broker as well as copy of the demat account. Payments for purchase of shares were made through banking channel and the sale proceeds were also credited through bank account. The transactions were carried out at prevailing market prices and generated through bank channels. That all the evidences were duly furnished before the Assessing Officer and were scrutinised and the Assessing Officer could not point out any defect in the same. That the Assessing Officer has simply relied upon the observation of the Investigation Wing and held that the shares of these companies were being stock. However, the assessee had obtained a write up of the above companies including their

audited accounts and contractors' report from the Bombay Stock Exchange. The same were furnished before the CIT(A) and it was submitted that all these companies were existing, functioning and carrying on business in normal manner. Thereafter, the assessee relied upon various case laws and that the Assessing Officer was not justified by way of disallowing the claim of capital loss on general observation, whereas, the specific data proving the genuineness of the transaction was furnished before the Assessing Officer. However, the ld. CIT(A) dismissed the appeal of the assessee by way of a cryptic order observing that the Assessing Officer has passed a detailed order and has established beyond doubt that the entire transaction was sham. That he fully agreed with the Assessing Officer that the entire process has been adopted to get the accommodation entry. The ld. CIT(A) referred to certain case laws and decided this issue against the assessee. Being aggrieved by the said order of the CIT(A), the assessee has come in appeal before us.

6. The ld. counsel for the assessee has submitted that all the allegations levelled by the Assessing Officer were general allegations. That the name of the assessee did not feature in the statement of the share brokers as referred to the assessment order. That the assessee was not beneficiaries of any long-term capital gains, rather, it was loss. That the payments for purchase of shares were made out of own funds of the assessee. That the facts of the case of the assessee were different and distinguished from the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs. Swati Bajaj &Ors reported in [2022] 139 taxmann.com 352 (Calcutta), wherein, the Hon'ble Calcutta High Court has confirmed the additions of bogus long-term capital gains. The ld. counsel has submitted that even the statement of director of the

assessee company was also recorded but the Assessing Officer could extract any incriminating fact from those statements. That even none of the statements referred to by the Assessing Officer in his assessment order pertained to the broker of the assessee company and that the Assessing Officer could not prove even from Investigation Wing report that the broker of the assessee company had ever indulged in manipulating share price or for booking bogus long-term capital gain/loss. That these companies were still existent companies and their shares were being traded upon the stock exchange. That even the financials of these companies did not suggest that these were penny stock companies. That though certain investigations were carried on by Security Exchange Board of India and during investigation, the trading by 14 noticees, who were suspected to be involved in price rigging in scrip of Ruotron were restrained. However, there was no restraint against any other person from trading in the said scrip. That neither the assessee nor his broker were named in the list of said 14 noticees. That, even, no inquiry was conducted in case of next three companies. That even in respect of 5th company namely Global Infratech, only the promoters of the said company were found to have indulged in price rigging of shares, however, no action was initiated or recommended against the purchasers of the shares. That the assessee company being an unrelated party was not involved in any manner in price manipulation of shares of the said company. The assessee, at the most, can be said to be victim of the price fluctuation undertaken by unscrupulous persons. That the assessee, along with other four scrips, has traded in shares of this scrip also in normal course, without being any idea of any price manipulation. That the assessee was not even provided any opportunity to cross-examine the persons whose statements have been referred to by the Assessing Officer in the

assessment order; nevertheless none of the persons as listed by the Assessing Officer ever made any statement either against the assessee or his broker. The ld. counsel has further submitted that though some persons may be involved in price rigging but there were also other persons who have carried bona fide transactions without any knowledge of any price rigging. That the assessee cannot be punished on the basis of generalized observations of the investigation wing. The ld. counsel has further furnished the written submissions, which, for the sake of ready reference, are reproduced as under:

A. “Study of the scrips

A.i. *In the following paragraphs, it shall be demonstrably clear that the loss which the Company incurred were bonafide and genuine and all its transactions were both duly supported by documentary evidences and were conducted on the Bombay Stock Exchange (“BSE”), a recognized stock exchange, in conformity with the applicable regulatory norms, and at the prices which prevailed on the BSE on the relevant transaction dates.*

A.ii. *The trades were properly recorded and duly disclosed by the company in its books of accounts for the relevant period. Your attention is invited to peruse the company’s auditor’s note in its report dated 22.08.2014, which is shared on **Page 6 of Paper Book – I**. The relevant extract is given below:*

“the company is dealing and trading in shares and other investments and proper record(s) have been maintained of the transactions and contracts and timely entries have been made therein.”

A.iii. *During the relevant year, the company actively traded in shares. To understand the company’s motive, timing and rationale for entering into these trades, it is important to first step into the shoes of the company and think like a trader. When certain trades do not turn out as envisaged, it is exceedingly easy to assume that the trade seemed frivolous, devoid of merit, and callous from the get-go. Such presumptions are only possible in hindsight. However, a trading entity does not have the luxury of such hindsight and rather has to develop a keen sense of foresight to predict reasonable future outcomes and take positions accordingly. Trading in the securities markets is a game of luck predominantly but the effort and preparation undertaken by a*

market participant to pick and choose the securities and the timing to enter or exit therefrom usually lead to more favourable odds.

A.iv. Accordingly, a quick but nuanced study is carried out by the trading entity to profit from the securities markets. Notably, it is not possible to take trades based solely on perfect information. Not only is perfect information ephemeral and not available all the times, it is also prohibitively expensive and cannot make economic sense in the long run. This forces traders to develop a keen sense of market movements, known colloquially as a trader's hunch. Catching hold of the 'pulse' of the market is a known skill of many successful traders. Such premonitions of future outcomes are not unheard of and even traders with a moderate risk appetite regularly take calls based on their understanding of the fresh information available in the markets, which by their very nature are dynamic. It is pertinent to state that unlike investors, who are prone to an analysis paralysis, a trader moves fast and seldom acts upon stale information. A trader's mindset is typically oriented towards short-term profits and a typical trader is very quick to exit both from its positions of profits and losses. A successful trading entity is always ready to cut apparent losses and does not wait patiently for the awry position in an instrument to turn around. This makes fundamental and technical analysis all the more relevant to understand the trades – which comprises particulars of trends, price movement, trade volumes, position sizes, timing of trades and trade outlook, and to make sense of the same. The insights developed based on this analysis of information related to the stock, its industry, its sector and its segment of the market forms the bedrock of the decision-making process regarding the quantum, pricing and timing chosen to undertake the trade.

A.v. A brief summary of the losses incurred in the trades of scrips/shares which has been viewed adversely by the lower authorities are as follows:

Sl No.	Stock	Purchase		Sale		Loss on Sale
		Quantity	Amount (INR)	Quantity	Amount (INR)	
1	Rutron International Limited	7,69,000	1,30,68,812/-	7,69,000	54,55,698/-	76,13,114/-
2	Comfort Fincap Limited	91,800	2,84,27,925/-	91,800	1,31,77,888/-	1,52,50,037/-
3	Luminaire Technologies Limited	2,61,161	1,00,39,653/-	2,61,161	55,92,176/-	44,47,476/-
4	Unno Industries Limited	2,00,000	60,25,664/-	2,00,000	25,68,418/-	34,57,246/-
5	Global Infratech & Finance Ltd	2,10,000	1,78,55,093/-	2,10,000	84,23,197/-	34,57,246/-
Total			7,54,17,748/-		3,52,17,379/-	4,02,00,360/-

A.vi. In the following paragraphs, the company has explained the rationale for undertaking trades in these scrips, the timing of entry and exit from the scrip, the genuineness of the transaction, etc.:

1.0. Rutron International Ltd. (RUTRINT 504335)

1.1. The trades taken by the company in the stock of Rutron International Ltd. ('Rutron'), having ISIN INE040N01029, were based on the company's own reading of the financials of Rutron. Rutron was a listed public company at the relevant time. The company drew valuable insights from the audited financial statements of Rutron, now known as Pazel International Ltd., pertaining to the immediately preceding period which were readily available in the public domain and widely researched by other market participants.

1.2. The company submits that the trade was undertaken based on the following parameters which clearly sets out both the logic and rationale behind the trade and also puts the trading activity in Rutron in the proper perspective. The annual reports of Rutron for the Financial Years 2012-13 to 2013-14 are submitted in **Paper Book – II Pages 100 to 169**. The relevant portion of the Director's Report setting out the financial performance of Rutron for FY2013-14, is set out below:

FINANCIAL RESULTS:

PARTICULARS	(Amount in Rupees)	
	31.03.2014	31.03.2013
Revenue from Operations	22,80,000	40,619,704
Other Income	1,23,70,570	1,09,90,978
Profit For The Year Before Taxation	(94,33,755)	72,81,365
Tax Expenses		
(a) Current Tax	-	22,48,063
(b) Deferred Tax	-	(3,843)
(c) Tax of Earlier Year	-	-
Profit after tax	(94,33,755)	50,37,145

FINANCIAL HIGHLIGHTS:

- Revenue from operations stood at Rs. 22,80,000/- for fiscal 2014
- Other income stood at Rs. 1,23,70,570/- for fiscal 2014
- Loss for fiscal 2014 is Rs. 94,33,755/-

DIVIDEND:

Due to loss, your directors do not propose any dividend for the accounting year ended 31.03.2014.

1.3. It is notable that Rutron had reported **Total Assets** of Rs.17.88 Crores for the financial year ending ("FYE") Mar'13 and its turnover and profit had improved substantially from its previous reporting period (**Turnover** of Rs.4.06 Crores in FYE Mar'13 as against Rs.2.99 Crores in FYE Mar'12; **Other Income** of Rs.1.10 Crores in FYE Mar'13 as against Rs.0.05 Crores in FYE Mar'12; **Total Income** of Rs.5.16 Crores in FYE Mar'13 as against Rs.3.04 Crores in FYE Mar'12 implying an **increment of 69.73%**; **Reported Net Profit** of Rs.0.50 Crores in FYE Mar'13 as against Rs.0.11 Crores in FYE Mar'12 implying an

increment of 354.54%) and the stock even started declaring dividends (Equity Dividend of Rs.0.18 Crores in FYE Mar'13 as against NIL in FYE Mar'12, Mar'11 and Mar'10 implying a **trend reversal and a dividend payout of 36%**). Having regard to these fundamentals of Rutron (now PazeInternationalLtd 504335), the company had purchased shares in a staggered manner in January 2014 in anticipation of trading profits. The purchase of the stock was motivated not only by the dividend but the anticipated price action that usually follows in such stocks showing a reversal in dividend payout trend. The dividend of 0.18 was a welcome aberration in the barren recent history of dividend payout on the stock. The stock of Rutron was in a sustained fall and therefore like any prudent trader, the company purchased the stock only when its price fell substantially. Copies of the contract notes have already been submitted in **Paper Book – I Page 32-54**.

- 1.4. However, the financials which showed promise were not met with an equivalent displacement in the momentum of the stock. The company, being a prudent trader switched gears and immediately cut short its losses by exiting its position in Rutron when it became apparently clear that the financials of FYE Mar'13 were not indicative of future financial performance of the stock. This view was confirmed with the stark and steep deterioration in the financial parameters of the stock (**Turnover** of Rs.0.23 Crores in FYE Mar'14 as against Rs.4.03 Crores in FYE Mar'13; **Total Income** of Rs.2.72 Crores in FYE Mar'14 as against Rs.5.16 Crores in FYE Mar'13 implying an **reduction of 47.28%**; **Reported Net Profit/(Loss)** of (Rs.0.94) Crores in FYE Mar'14 as against Rs.0.50 Crores in FYE Mar'13 implying an **reduction of 288%**). Accordingly the shares were sold in March 2014 when the expectations for making these trades did not pan out as planned.
- 1.5. As visible from the graph of the stock shared below, had the company not exited the stock when it did, the losses would be much larger and to the twin detriment of both the company and Revenue since the stock has not recovered its prices anytime thereafter. The company clearly averted a much larger loss by acting quickly on the information available before it. The promise shown by the rise in Earnings per share in FYE Mar'13 was quickly washed away by the mean reversion in FYE Mar'14 ((Rs.0.05) in Mar'14 v/s. Rs.0.29 in Mar'13 v/s. Rs.0.06 in Mar'12) thereby dashing all hopes of a recovery in prices. It is notable that the company did not enter/exit at the highest/lowest price and the trades in Rutron were entered into basis the trend visible in the then latest financials of the stock available publicly.



The dot in blue represents the approximate point of time at which the stock of Rutron was bought and the dot in red represents the point of time at which the stock of Rutron was sold. The company had no control over the market prices as incorrectly implied in the assessment order.

- 1.6. The company has downloaded the relevant order/s of SEBI pertaining to Rutron and has found the following list of order/ records which is shared on **Pages 566-568 of Paperbook -III**. The 22 records on the enclosed list primarily relate to the recovery proceedings initiated in relation to the stock of Rutron International Limited. The list also contains records of adjudication orders in relation to penalties imposed u/s 15-I of the SEBI Act in relation to infringement of rules and regulations framed by the regulator in relation to price manipulation undertaken by specified entities. The relevant extracts of some of the records on the list are shared below:

Unserved Show Cause Notices in the matter of Rutron International Limited



May 04, 2018 | Unserved Summons / Notices

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Notice under Rule 4(1) of Securities And Exchange Board of India (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of the Securities and Exchange Board of India Act, 1992

Unserved Show Cause Notices in the matter of Rutron International Limited (Now Known As Pazel International Limited)



Oct 30, 2019 | Unserved Summons / Notices

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Sub: Show Cause Notice under Sections 11(1), 11(4) and 11 (B) of the Securities and Exchange Board of India Act, 1992 in the matter of M/s Rutron International Ltd. (currently known as Pazel International Ltd.)

Adjudication Order in respect of Ramdut Infraprojects Private Ltd. in the matter of Rutron International Ltd.



Jul 30, 2021 | Orders : Orders of AO

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**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/PM/SM/2021-22/12803)**

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of
Ramdut Infraprojects Private Ltd.
(CIN: U45400WB2010PTC143052)

In the matter of Rutron International Ltd.

Adjudication Order in respect of Ranisati Dealer Private Ltd. in the matter of Rutron International Ltd



Aug 06, 2021 | Orders : Orders of AO

1 of 17

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/PM/SM/2021-22/12926)**

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of
Ranisati Dealer Private Ltd.
(CIN: U51109WB2007PTC118463)

In the matter of Rutron International Ltd.

Adjudication Order in respect of Astabhuja Construction Private Ltd. in the matter of Rutron International Ltd.



Aug 09, 2021 | Orders: Orders of AO

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**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/PM/SM/2021-22/12938)**

UNDER SECTION 15-1 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of
Astabhuja Construction Private Ltd.
(CIN: U70200WB2012PTC177706)
In the matter of Rutron International Ltd.

Adjudication Order in respect of various entities in the matter of Rutron International Limited [SAT Appeal No.: [78/2022](#) & Misc. App. No. 68/2022][SAT Appeal No.: [67/2022](#) & Misc. App. No. 69/2022][SAT Appeal No.: [66/2022](#) & Misc. App. No. 55/2022][SAT Appeal No.: [124/2022](#) & Misc. App. No. 194/2022][SAT Appeal No.: [123/2022](#) & Misc. App. No. 193/2022][SAT Appeal No.: [125/2022](#) & Misc. App. No. 195/2022]



Dec 24, 2021 | Orders: Orders of AO

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**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/PM/GD/2021-22/14560-14569)**

UNDER SECTION 15-1 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

Unserved Adjudication order dated December 24, in the matter of Rutron International Limited



Dec 28, 2021 | Unserved Summons / Notices

1 of 64 Page Width

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/PM/GD/2021-22/14560-14569)**

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

Your attention is now invited to the Order of Securities Exchange Board of India (“SEBI”) dated 15.02.2021 which was passed u/s 11 and 11B of the SEBI Act, 1992. The Order dated 15.02.2021 was in the matters of 14 noticees who were named in the Order itself. A brief background of the case was expounded upon and relevant details including the volume and price movements in the scrip of Rutron was discussed and the conduct of the investigation in 3 patches was elucidated in the Order. Basis the investigation, only the 14 noticees were ultimately show caused and their response thereto was considered. The SEBI then deliberated on the 4 issues identified by it and gave its verdict on the issue of price manipulation during a specified period in the scrip of Rutron International Limited based on its findings. The verdict inter alia restrained only the 14 noticees named in the Order from accessing the securities market for a period of 6 months. Thus, it is evident that the Order was detailed and comprehensively covered the wrongdoings of the specific entities named therein. However, nowhere has the name of the company been averred therein to imply that it was implicated in the Order nor has any reference been made to it in the operative parts of the Order where multiple entities were implicated who were found to have indulged in the price manipulation of the stock. Accordingly, when the company was never implicated of any wrong-doing, it would be wholly unjustified to treat the company at par with the persons who were found guilty of wrong-doing by SEBI and/or any other statutory authorities. The loss incurred on making the trade is simply circumstantial and not deliberate as has been attempted to be made out in the notice. This stands fortified by the above rationale behind the trades taken in Rutron. Further, in the backdrop of the thorough investigation conducted by SEBI in the price manipulation of the stock of Rutron by specific entities, in the stark absence of any proof or evidence of price manipulation done by the company, it follows that the company cannot be held guilty of price manipulation in respect of the

trades conducted in shares of Rutron and in that view of the matter the loss incurred therein by the company was genuine. This coupled with the rationale of the trades taken in Rutron clearly shows that the company had genuinely suffered losses in the trades of the stock of Rutron and therefore the same deserves to be allowed in full.

2.0. Comfort Fincap Ltd. (COM FINCAP 535267)

- 2.1. *Trades in Comfort Fincap Ltd. ('Comfort') shares, having ISIN INE274M01026, were based on the company's own reading of the financial statements of Comfort. Comfort continues to be a listed public company and its shares are regularly traded on the BSE. The company drew valuable insights from the audited financial statements of Comfort pertaining to the immediately preceding period of FY 2012-13 which were readily available in the public domain and widely researched by other market participants.*
- 2.2. *The company submits that the trade was undertaken based on the following parameters which clearly sets out both the logic and rationale behind the trade and also puts the trading activity in Comfort in the proper perspective. The annual reports of Comfort for the Financial Years 2012-13 to 2013-14 are submitted in **Paper Book – II Pages 170 to 265**. The relevant portion of the Director's Report setting out the financial performance of Comfort for FY2013-14, is set out below:*

FINANCIAL RESULTS:

(₹ In Lacs)

PARTICULARS	YEAR ENDED 31 ST MARCH 2014	YEAR ENDED 31 ST MARCH 2013
Income from Operations	279.68	998.41
Profit Before Depreciation and Taxes	87.75	148.48
Less: Depreciation	(1.76)	(2.38)
Less : Provision for		
(a) Income tax	(24.20)	(47.73)
(b) Deferred tax	--	-
Income Tax paid of Earlier years	0.08	0.73
Provisions for Loans & Advances	-	-
Profit for the Year	61.70	99.09
Add: Brought forward from last year	201.09	185.29
Distributable Profits	262.79	284.39
Appropriated as under :		
Transfer to Special Reserve	(12.34)	(19.82)
Proposed Equity Dividend	(21.70)	(54.25)
Tax on Distributed Profits	(3.69)	(9.22)
Balance Carried Forward to Balance sheet	225.06	201.09

DIVIDEND:

Your directors are pleased to recommend the dividend for the financial year 2013-14 on Equity Shares of Rs.10/- each at 0.20 paise per share equivalent to 2% aggregating to Rs. 21,70,260/- (Rupees Twenty One Lakhs Seventy thousand Two Hundred and Sixty Only)

FINANCIAL HIGHLIGHTS:

- Income from operations stood at Rs. 279.68 lacs for fiscal 2014
- Profit before taxes for fiscal 2014 is Rs. 85.99 lacs
- Profit after taxes for fiscal 2014 is Rs. 61.70 lacs
- Basic earning per share for fiscal 2014 was Rs. 0.57 per share

2.3. *The shares of Comfort (stillComfortFincap Ltd535267) were purchased in a staggered manner in January 2014 in anticipation of trading profits and the same were sold, again in a staggered manner, in March 2014 when the trade went awry. The stock of Comfort was also in a steep fall when the company purchased it. However, the company purchased the stocks only when the price fall was sustained over a period of time. It is notable that the company did not enter/exit at the highest/lowest price and the trades in shares of Comfort were entered into basis the trend visible in the then latest financials of the stock available publicly. It is notable that the stock parameters had improved from its previous reporting period (**Total Assets** of Rs.25.23 Crores in FYE Mar'13 as against Rs.21.49 Crores in FYE Mar'12; **Operating Profit** of Rs.1.83 Crores in FYE Mar'13 as against Rs..86 Crore in FYE Mar'12; **Reported Net Profit** of Rs.0.99 Crore in FYE Mar'13 as against Rs.0.59 Crore in FYE Mar'12 implying an **increment of 67.79%**) and the stock even started declaring dividends whose trend showed a marked upward trajectory (Equity Dividend of Rs.0.54 Crores in FYE Mar'13 as against Rs.0.22 Crore in FYE Mar'12 and NIL in FYE Mar'11 and Mar'10 implying a **trend reversal and a dividend payout of 59.60%**). The purchase of the stock was timed in anticipation of the expected price action that usually follows in such stocks showing a reversal in dividend payout trend. Copies of the contract notes have already been submitted in **Paper Book – I Page 32-54**.*

- 2.4. However, the financials of the next reporting period indicating performance during the material time, viz., FY13-14, were contrary to the upward trend predicted by the financials of FY12-13. The company, being a prudent trader, did not waste any further time and cut short its losses in the face of uncertainty regarding the falling prices of the stock of Comfort. The company exited its position in Comfort when it became clear that the financials of FYE Mar'13 were not indicative of future financial performance of the stock. This view was confirmed with the sharp and steep deterioration in the financial parameters of the stock (**Turnover** of Rs.2.79 Crores in FYE Mar'14 as against Rs.9.93 Crores in FYE Mar'13; **Total Income** of Rs.2.41 Crores in FYE Mar'14 as against Rs.8.96 Crores in FYE Mar'13 implying **areduction of 73.10%**; **Reported Net Profit/(Loss)** of Rs.0.62 Crore in FYE Mar'14 as against Rs.0.99 Crores in FYE Mar'13 implying **areduction of 37.37%**).
- 2.5. As visible from the graph of the stock shared below, had the company not exited the stock timely in March 2014, the losses would be much larger and would have adversely affected the interests of Revenue even further. Notably, the stock has not attained its erstwhile price level even to this day. The company clearly averted a much larger loss by acting quickly on the information available before it.



The dot in blue represents the tentative price/s at which the stock of Comfort was bought and the dot in red represents the tentative price/s at which the stock of Comfort was sold. The company had no control over the market prices as incorrectly implied in the assessment order.

- 2.6. The company has downloaded the relevant order/s of SEBI pertaining to Comfort and has found the following list of order/ records which is

shared on **Pages 569-570 of Paperbook -III**. As can be surmised from the information shared therein, it is submitted that there were no adverse Orders of SEBI in relation to Comfort regarding price manipulation. The 9 records on the list referred to above are related to the takeover and adjudication orders in relation to penalty proposed u/s 15-I of the SEBI Act in relation to infringement of rules and regulations framed by the regulator in relation to takeovers and not any price manipulation. These orders are therefore wholly irrelevant in the present case. The relevant extracts of some of the records on the list are shared below:

Comfort Fincap Limited



Mar 11, 2013 | Takeovers : Letter of Offer

Date	Details
15-Jul-2013	Post Offer Public Announcement
24-Jun-2013	Letter of Offer
14-Jun-2013	Corrigendum to PA
14-Mar-2013	Draft Letter of Offer
11-Mar-2013	Public Announcement

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/RGA/AO/52/2014]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

WTM/RKA/ISD/60/2016

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992- IN THE MATTER OF FIRST FINANCIAL SERVICES LIMITED.

In respect of:

Sl. No.	Entities	PAN	Authorised Representative
1	Comfort Fincap Ltd. (CFL)	AABCP4792J	Mr. Joby Mathew, Advocate Mr. Ranjit Bhonsale, Advocate
2	Comfort Securities Ltd. (CSL)	AABCC9625R	
3	Comfort Intech Ltd. (CIL)	AAACC5567H	
The above entities are hereinafter collectively referred to as "the noticees" or individually by their respective names.			

In the absence of any price manipulation investigation by SEBI, it follows that the company cannot be held guilty of price manipulation in respect of the trades conducted in shares of Comfort and in that view of the matter the loss incurred therein by the company was genuine. This coupled with the rationale of the trades taken in Comfort clearly shows that the company had genuinely suffered losses in the trades of the stock of Comfort and therefore the same deserves to be allowed in full.

3.0. Luminaire Technologies Limited (LUMITECH 526045)

- 3.1. *The company traded in the stock of Luminaire Technologies Ltd. ('Luminaire'), having ISIN INE682C01021. Luminaire was later also known as Straus Industries and Exports Limited. Its stock was last traded on the BSE on 29th August, 2016. Based on the company's own reading of the financials and technical charts of Luminaire, which was a listed public company at the relevant time, the company decided to trade in its stock. The company drew valuable insights from its reading of the technical charts of Luminaire which were readily available in the public domain and widely used by other market participants also.*
- 3.2. *The company submits that the trade was undertaken based solely on the pattern of trend reversal visible on the technical charts of Luminaire and the company anticipated a quick profit on the stock in the short term. However, the company was forced to recede its holding in Luminaire when the stock performance did not follow the company's ambitious expectations. This clearly sets out both the logic and rationale behind the trade and also puts the trading activity in the stock*

of Luminaire in the proper perspective. The annual reports of Luminaire for the Financial Years 2012-13 to 2013-14 are submitted in **Paper Book – III Pages 266 to 333**. The relevant portion of the Director's Report setting out the financial performance of Luminaire for FY2013-14, is set out below:

Financial results:

	Current Year 2013-2014 (Rs in Lacs)	Previous Year 2012-2013 (Rs in Lacs)
Total Income	Nil	0.16
Profit/(Loss) before Interest & Depreciation	(72.96)	(20.85)
Interest		
Depreciation		
Profit/(Loss) before Tax	(72.96)	(20.85)
Provision for Current Tax	NIL	NIL
Provision for Deferred Tax	NIL	NIL
Provision for Fringe Benefit Tax Income Tax paid for the earlier year	NIL	NIL
Profit After Tax	(72.96)	(20.85)
Add/(Less):		
Prior year Adjustments	NIL	NIL
Reserves Adjusted	NIL	NIL
Balance brought forward	(235.38)	(214.53)
Appropriations:		
Dividend	NIL	NIL
Dividend Tax	NIL	NIL
Transfer to General Reserve	NIL	NIL
Balance carried to Balance Sheet	(308.34)	(235.38)

PERFORMANCE

During the year under review, there was no operating income. The Company has incurred a Loss of Rs. 72,95,769/-. Looking to the past losses your Directors do not recommend any dividend for current year.

3.3. *The shares of Luminaire (which traded on BSE as Luminaire Tech 526045) were purchased in a staggered manner in January and February 2014 in anticipation of trading profits and the same were sold on the 5th of March 2014. The stock of Luminaire was also in a steep fall when the company purchased it. However, the company purchased the stocks only when the price fall was arrested and a trend reversal was visible. It is notable that the company did not enter/exit at the highest/lowest price and the trades in shares of Luminaire were entered into basis the trend visible in technical charts available at the time. Copies of the contract notes have already been submitted in **Paper Book – I Page 32-54**.*

3.4. *However, the favourable technical analysis of the stock, which prompted the company to purchase the stock, did not lead to the anticipated price rise owing to the weak market outlook regarding the stock. Even the fundamentals of the stock were not supportive and the same is evident from the financial parameters of Luminaire in the next reporting period. The company, having entered the trade to profit in the*

immediate short term, immediately chose to cut short its losses as the stock price deteriorated further. The company exited its position when it became clear to it that the stock would not recover and the losses would only widen from there. This view was mirrored in the continued deterioration in the financial parameters of the stock (**Profit/(Loss) before Tax** of (Rs.0.73) Crore in FYE Mar'14 as against (Rs.0.21) Crore in FYE Mar'13; **Book Value** of Rs.0.88/share in FYE Mar'14 as against Rs.0.91/share in FYE Mar'13; **Return on Assets (%)** of -2.62% for FYE Mar'14 as against -0.74% for FYE Mar'13; **Return on Equity (%)** of -2.77% for FYE Mar'14 as against -1.55% for FYE Mar'13).

- 3.5. As visible from the graph of the stock shared below, had the company not exited the stock timely in early March 2014, the losses would have been considerably larger. Notably, the stock is no longer traded on the bourses. The company clearly averted a much larger loss by acting quickly on the information available before it.



The dot in blue represents the tentative price/s at which the stock of Luminaire was bought and the dot in red represents the tentative price/s at which the stock of Luminaire was sold. The company was never in control of the market price of the stock as has been incorrectly implied in the assessment order.

- 3.6. The company has downloaded the relevant order/s of SEBI pertaining to Luminaire and has found the following list of order/ records which is shared on **Page 571 of Paperbook-III**. As can be surmised from the information shared therein, it is submitted that there were no adverse Orders of SEBI in relation to Luminaire regarding price manipulation. The 6 records on the list referred to above are related to the takeover and rights issues of Luminaire and as such are wholly irrelevant to the

present discussion. The relevant extracts of some of the records on the list are shared below:

Luminaire Technologies Limited



Jul 13, 2007 | Takeovers : Letter of Offer

Luminaire Technologies Limited

Date	Details
03-Jan-2008	Post Offer PA -PDF
21-Nov-2007	Letter of Offer -PDF
21-Nov-2007	Corrigendum to Public Announcement -PDF
13-July-2007	Public Announcement -PDF

Luminaire Technologies Limited



Jul 03, 2008 | Rights Issues : Draft Letters of Offer filed with SEBI

DRAFT LETTER OF OFFER Private and Confidential

Luminaire Technologies Limited

Dec 18, 2008 | Rights Issues : Draft Letters of Offer filed with SEBI

DRAFT LETTER OF OFFER Private and Confidential

LUMINAIRE

LUMINAIRE TECHNOLOGIES LIMITED
BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CONSENT ORDER
ON THE APPLICATION SUBMITTED BY

Jagbhusan Dixit for himself & for Other Co-Acquirers & Pesons Acting in
Concert (PACs)

IN THE MATTER OF

M/S LUMINAIRE TECHNOLOGIES LIMITED

CO/CFD-DCR/1040/AO/SD/19/2009

Acquirers

Date	Details
04-Jul-2011	Post offer PA -PDF
25-May-2011	Letter of Offer -PDF
23-May-2011	Corrigendum to Public Announcement -PDF
20-Jan-2011	Public Announcement -PDF

CO/CFD-DCR/2011/2012

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CONSENT ORDER

ON THE APPLICATION SUBMITTED BY

M/s Luminaire Technologies Limited
(PAN No. AAEC5081Q)

(CONSENT APPLICATION NO. 2290/2011)

In the absence of any price manipulation investigation by SEBI, it follows that the company cannot be held guilty of price manipulation in respect of the trades conducted in the shares of Luminaire and in that view of the matter the loss incurred therein by the company was genuine. This coupled with the rationale of the trades taken in Luminaire clearly shows that the company had genuinely suffered losses in the trades of the stock of Luminaire and therefore the same deserves to be allowed in full.

4.0. Unno Industries Limited (UNOINDL 519273)

4.1. The company traded in the stock of Unno Industries Ltd. ('Unno') based on the company's own reading of the financials of Unno, which was a listed public company at the relevant time. Unno, having ISIN INE142N01023, was last traded on the BSE on 29th March, 2016. The company drew valuable insights from the audited financial statements of Unno pertaining to the immediately preceding period, viz., FY12-13, which were readily available in the public domain and were widely researched by other market participants.

*4.2. The company submits that the trade was undertaken based on the not only the fundamentals but also the technical aspects of the stock. The parameters are discussed below which clearly set out both the logic and rationale behind the trade and also puts the trading activity in Unno in the proper perspective. The annual reports of Unno for the Financial Years 2012-13 to 2013-14 are submitted in **Paper Book – III***

Pages 334 to 450.The relevant portion of the Director's Report setting out the financial performance of Unno for FY2013-14, is set out below:

FINANCIAL PERFORMANCE

Particulars	(Rs. in Lacs)	
	Year Ended 31.03.2014	Year Ended 31.03.2013
Income	138.55	64.92
Profit before Taxation	12.97	10.89
Provision for Taxation	4.02	3.36
Profit/Loss for the year	8.95	7.51
Provision for Deferred Tax	0.00	0.01
Profit/Loss for the Year	8.95	7.51
Earnings Per Share (EPS)	0.0021	0.01

FINANCIAL HIGHLIGHTS AND OPERATIONS

The Total Income of the company for the year ended 138.55 Lacs. The Profit before tax stood at 12.97 Lacs and Profit after tax for the year ended under review stood at 8.95 Lacs. On consolidated basis the total income of your company and its subsidiaries stand at 435.95 Lacs. The consolidated profit before tax (PBT) stands at 14.90 Lacs. The consolidated profit after tax (PAT) stood at 10.28 Lacs. The earning per Shares (EPS), on the equity shares having face value of Rs 1/- stands at 0.0024 considering the total equity capital of 4264.2875.

DIVIDEND

Your directors regret their inability to recommend any dividend for the year considering in adequate profits during the year.

- 4.3. The shares of Unno were purchased on 22nd January 2014 in anticipation of trading profits and the same were sold on 20th March 2014 when a clear and pronounced head and shoulders pattern emerged on the technical chart of the stock, which usually means and is widely interpreted by chartists and experts alike as a leading indicator for a further decline in the prices of a stock. The stock of Unno was in a steep fall and the company had purchased the stock only when its price fell substantially. It is notable that the company did not enter/exit at the highest/lowest price and the trades in Unno were entered into only after carefully considering both the technical and fundamental aspects of the stock. The trend visible in the then latest financials of the stock available publicly was upbeat. Unno had reported **Total Assets** of Rs.42.55 Crores for FYE Mar'13 and its turnover and profit had remained stable over the years despite the falling prices in the market. Unno had a **Turnover** of Rs.0.65 Crore both in FYE Mar'13 and FYE Mar'12; **Total Income** of Rs.0.65 Crore in FYE Mar'13 as against Rs.0.67 Crore in FYE Mar'12; **Reported Net Profit** of Rs.0.07 Crore in both FYE Mar'13 and FYE Mar'12 implying a marked stability in financial performance in the recent years. Copies of the contract notes have already been submitted in **Paper Book – I Page 32-54.**

- 4.4. However, the stable financials did nothing to assuage the concerns of the company. The head and shoulders pattern on the stock charts implied an oncoming decline in the stock prices. In hindsight it seems that the company was falsely alarmed by the chart pattern since the stock rose in price for a brief period before again nosediving due to poor financial strength. The company as a trader is geared to respond to all stimuli in the markets to make gains from trading. The choice to respond to the market factors is not a simple one and the company did not have the luxury of time on its hands to delay its decisions in a dynamic market.
- 4.5. As visible from the graph of the stock shared below, the company exited the stock in March 2014.



The dot in blue represents the tentative price at which the stock of Unno was bought and the dot in red represents the price at which the stock of Unno was sold. As can be surmised from the above, the company had no control over the market prices contrary to what has been implied in the assessment order.

- 4.6. The company has downloaded the relevant order/s of SEBI pertaining to Rutron and has found the following list of order/ records which is shared on **Page 572 of Paperbook-III**. As can be surmised from the information shared therein, it is submitted that there were no adverse Orders of SEBI in relation to Unno regarding price manipulation. The two records on the list referred to above are related to the takeover and illiquid stock options and as such are wholly irrelevant to the present discussion. The relevant extracts of the 2 records on the list are shared below:

Aug 14, 2012 | Takeovers : Letter of Offer

Date	Details
20-Nov-2013	45 Days Report
11-Nov-2013	Post Offer Public Announcement
13-Jun-2013	Corrigendum to PA
28-Aug-2012	Draft Letter of Offer
14-Aug-2012	Public Announcement - PDF

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/DD/2023-24/26032

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING
INQUIRY AND IMPOSING PENALTIES) RULES, 1995.**

In respect of

UNNO INDUSTRIES LIMITED
(PAN: AAACU4777B)

In the matter of Illiquid Stock Options at BSE

In the absence of any price manipulation investigation by SEBI, it follows that the company cannot be held guilty of price manipulation in respect of the trades conducted in shares of Unno and in that view of the matter the loss incurred therein by the company was genuine. This coupled with the rationale of the trades taken in Unno clearly shows that the company had genuinely suffered losses in the trades of the stock of Unno and therefore the same deserves to be allowed in full.

5.0. Global Infratech& Finance Ltd. (GBL INFRA 531463)

5.1. *Global Infratech& Finance Ltd. ('Global') shares, having ISIN INE377M01035, were traded in by the company on the basis of its reading of the financials of Global. The shares of Global were last traded on the BSE on 29th October, 2019. The company drew valuable insights from the audited financial statements of Global pertaining to the immediately preceding period of FY 2012-13 which were readily available in the public domain and were also widely researched by other market participants.*

- 5.2. The company submits that the trade was undertaken based on the following parameters which clearly set out both the logic and rationale behind the trades and also puts the company's trading activity in Global in the proper perspective. The annual reports of Global for the Financial Years 2012-13 to 2013-14 are submitted in **Paper Book – III Pages 451 to 570**. The relevant portion of the Director's Report setting out the financial performance of Global for FY2013-14, is set out below:

Financial Results	(₹ in Lac)	
	Year Ended 31.03.2014	Year Ended 31.03.2013
Sales & Other Income	2487.09	1515.58
Profit before Tax & Extraordinary Items	233.26	155.63
Less : Provision for Taxation	72.08	50.49
Profit after Tax	161.19	105.13
Add: Profit/(Loss) brought forward from Previous Year	93.91	(11.12)
Balance of Profit / (Loss) carried forward to Next Year	255.10	93.91

OVERVIEW OF ECONOMY

India's economic growth remained below 5 percent mark second year in a row at 4.7 percent in 2013-14, but the industry is hopeful of a rebound with a new stable government who is expected to be considered pro-business.

India's fourth quarter growth stood at 4.6 percent. Decline in manufacturing and mining output eclipsed the overall growth during the entire fiscal. The country's economy, or gross domestic product (GDP), had expanded at 4.5 percent in 2012-13, the slowest pace in the previous decade.

Subdued prices of vegetables, cereals and dairy products pushed down retail inflation to a three-month low of 8.28 percent in May. Retail inflation, measured on consumer price index (CPI), was 8.59 percent in April.

In February 2014, retail inflation was at 8.03 percent, followed by consecutive rise in March (8.31 percent) and in April, it was 9.66 percent as per the data released by government.

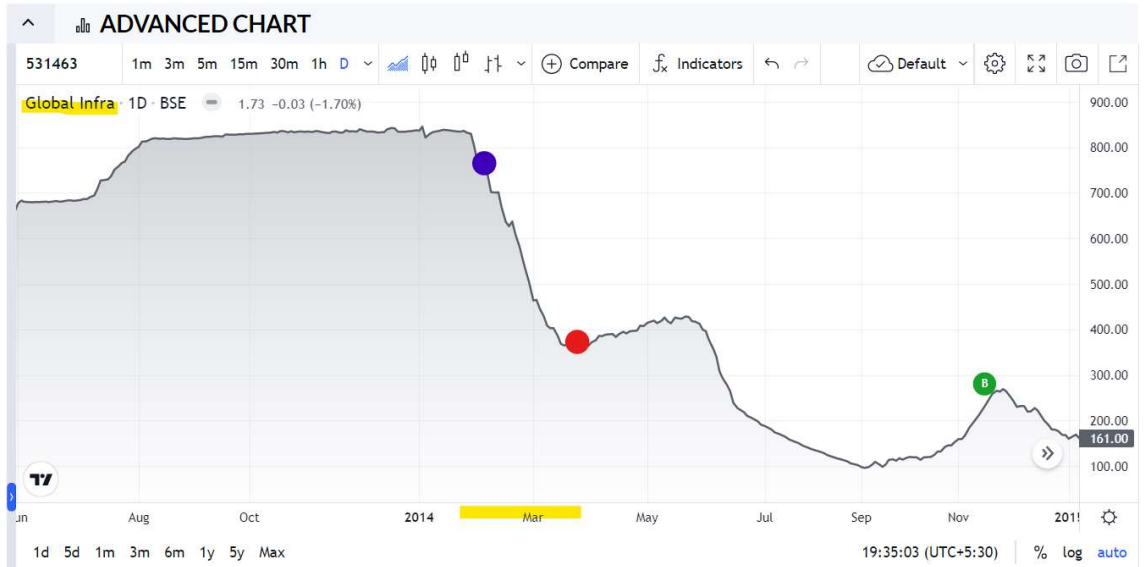
OVERALL PERFORMANCE & OUTLOOK

Directors are pleased to inform that in spite of difficult times, your Company, based on its intrinsic strength, has performed well during the year. Gross income from operations increased from ₹ 1515.58 Lac to ₹ 2487.09 Lac i.e. jump of around 64% in comparison to the revenue of previous year whereas Net Profit stood at ₹ 161.19 Lac in comparison to last years' amount of ₹ 105.13 Lac, the increase of above 50% in term of Net Profit for the year.

The Company is into the Business of providing financial assistance, part of treasury operations business, to Corporate Houses and HNIs as well as investing its surplus fund in Equity Market. The Company is also into the business of Infra-project which has done well during the financial year under review.

The Outlook for Financial Year 2014-2015 looks good and the Company is planning to enter into Infra Projects in a big way. The Company has to make Infra Projects as Core Business of the Company

- 5.3. The shares of Global were purchased in a staggered manner in February 2014 in anticipation of trading profits and the same were sold, again in a staggered manner, in March 2014. The stock of Global was also in a steep fall when the company purchased it. However, the company purchased the stock only when the price fall was sustained over a period of time. It is notable that the company did not enter/exit at the highest/lowest price and the trades in shares of Global were entered into basis the trend visible in the then latest financials of the stock available publicly. It is notable that the stock parameters had improved from its previous reporting period (**Total Assets** of Rs.56.62 Crores in FYE Mar'13 as against Rs.20.90 Crores in FYE Mar'12; **Operating Profit** of Rs.1.49 Crores in FYE Mar'13 as against Rs.0.01 Crore in FYE Mar'12; **Reported Net Profit** of Rs.1.05 Crore in FYE Mar'13 as against Rs.0.08 Crore in FYE Mar'12 implying an **increment of 1,212.50% and trend reversal**). The company, being a prudent trader, did not only rely on the financials of Global to make its decisions in the market. It was also prone to keep tabs on the technical aspects of the stock to pre-empt market movements in it. Copies of the contract notes have already been submitted in **Paper Book – I Page 32-54**.
- 5.4. Envisaging a further fall in the stock prices owing to its interpretation of the deteriorating technical parameters of Global even in the face of robust fundamentals, the company sought to exit its position in the stock completely for the time being. However, the stock eventually fell further despite the robust financials for the period of FY 13-14 in which the **gross income from operations** increased from Rs.15.16 Crores in FYE Mar'13 to Rs. 24.87 Crores in FYE Mar'14, viz., a year on year ("YOY") increment of **64%**. Even the **Net Profit** increased to Rs.1.61 Crores for FYE Mar'14 in comparison to Rs.1.05 Crores for FYE Mar'13 implying a YOY increase of more than **50%**. This implies that the company's stance, that the stock price performance was not in consonance with its financials, was valid.
- 5.5. As visible from the graph of the stock shared below, had the company not exited the stock in March 2014, the losses would be much larger and would have also affected the interests of Revenue adversely. Notably, the stock has not attained its erstwhile price level even to this day. The company clearly averted a much larger loss by acting quickly on the information available before it.



The dot in blue represents the tentative price/s at which the stock of Global was bought and the dot in red represents the tentative price/s at which the stock of Global was sold. The company had no control over the market prices as incorrectly implied in the assessment order.

- 5.6. *The company has downloaded the relevant order/s of SEBI pertaining to Rutron and has found the following list of order/ records which is shared on **Pages 573-574 of Paperbook-III**. As can be surmised from the information shared therein, it is submitted that the only relevant Order of SEBI in relation to Global regarding price manipulation was the SEBI Order dated 16.07.2021. The company has also gone through the Order which was issued u/s 11 and 11B of the SEBI Act, 1992. It shall be noted that SEBI had found 46 specific persons/entities to be guilty of price manipulation in the shares of Global after detailed investigation. It shall be observed that 21 entities had availed the opportunity of hearing wherein they had inter alia questioned the act of SEBI in not holding all persons/entities who had traded in the shares of Global Infratech and Finance Limited to be artificial or suspicious. The SEBI in their Order at Paras 96.1 and onwards had specifically observed that only the promoters and/or their connected entities were found to be guilty of price manipulation and that the unrelated entities were not to be made party to these proceedings. The relevant extracts of the order is as follows:*

96. **Findings on submission of Notices that no action against buyer:**

- 96.1. Notices have submitted that SEBI has not taken any action against the buyers who placed the buy order above LTP and contributed to positive LTP. Further, SEBI has also not taken action against other preferential allottees.
- 96.2. In this regards, it is noted that in quasi-judicial proceedings, the decision / findings of the quasi-judicial authority are limited to the extent of deciding the allegations charged against the Notices mentioned in the SCN. Therefore, quasi-judicial authority is confined to the facts / allegation / Notices mentioned in the SCN. Based on evidences presented in the SCN and the materials submitted by the Notices, the quasi-judicial authority has to adjudge the allegations levelled against the respective Noticee as sustainable or not.
- 96.3. Thus, Notices are required to present their case by rebutting the allegations made qua them in the SCN with supporting evidences.
- 96.4. In the the present matter, role of preferential allottees and seller vis-à-vis other preferential allottees and buyer is different i.e. the charge against preferential allottees (Noticee No. 42 to 26) is that they are connected to GIFL through fund transaction. Similarly the charge against sellers is that they unilaterally by virtue of fraudulent selling alone, manipulating the price of a security. Therefore, it is not open to the Notices to contest their case vis-à-vis the case of buyers, other preferential allottees etc. With regard to the submission that no action as been taken against the buyers and preferential allottees who have not been subjected to the present proceedings, reliance is placed on Hon'ble SAT order in matter of *Systematix Shares & Stocks India Limited v. SEBI* dated April 23, 2012 in which, the Hon'ble SAT, in some what similar context, observed that "*It is true that the Board has taken action selectively against a few entities involved in the alleged wrong doing. According to the appellant the Board should have proceeded against all wrong doers and the action against the appellant and a few entities alone is also discriminatory. We cannot subscribe to this view since the Board has set its own*

benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful.”

- 96.5. Even though it is not the case here, if hypothetically, there were a case similarly placed being treated differently, I find it relevant to quote the following observations of the Hon’ble Supreme Court in the context of argument of discrimination to claim negative equality in *Union of India and anr. vs. International Trading Co. and anr.* (AIR 2003 SC 3983) dated May 07, 2003, that would be squarely applicable to the facts of this case. “.....two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case directions should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India, 1950 (in short ‘the Constitution’) cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance, repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other case by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish the strength of their case on some other basis and not by claiming negative equality.....”
- 96.6. Thus, I am of the view that, the objective of the present proceedings is to examine as to whether in the facts and circumstances as mentioned in the SCN and submissions and evidence available on record, the allegations against the Noticees would sustain or not. Hence, the proceedings would not be vitiated merely by their claim that some of the other people have not been named in the proceedings.
- 96.7. Therefore, in view of above, I do not find merit in the said contention of the Noticees.

From the above it shall therefore be observed that the SEBI had tacitly admitted that only the promoters of Global Infratech and Finance Limited and/or their connected entities were guilty of price manipulation and that the unrelated entities were not involved in any wrongdoing. Accordingly, the company cannot be held guilty of price manipulation in respect of the trades conducted in shares of Global and in that view of the matter the loss incurred therein by the company was genuine. This coupled with the rationale of the trades taken in Global clearly shows that the company had genuinely suffered losses in the trades of the stock of Global and therefore the same deserves to be allowed in full.

- A.vii. *The company thus submits that, in fact it was a victim of price fluctuation /manipulation undertaken by unscrupulous persons and not the perpetrator thereof, contrary to what has been insinuated. The company had unwittingly been caught in this imbroglio without any role in it and for no fault on its part. The data available from BSE clearly shows that in each month, thousands of transactions involving several lakhs of shares of each of the 5 abovementioned entities were regularly conducted. The information also shows that on each working day of the Stock Exchange during the material time, regular trading took place in the shares of the 5 entities. These facts cumulatively prove that fair and transparent trades took place in the shares of each of the 5 entities.*
- A.viii. *Even the SEBI had remarked, in its order dated 16th July, 2021, that the noticees had submitted that SEBI had not taken any action against other preferential allottees and the buyers who had placed buy orders above LTP and had contributed to positive LTP. As can thus be surmised, the SEBI did not find any evidence against the company for its share trading activities in the 5 entities above-named, since the company was not a noticee in either of the Orders of the SEBI in the case of the 5 entities in whose shares the company had traded during the relevant period.*
- A.ix. *From the documents & information furnished, your goodself will thus find that in each case where the company purchased & sold the shares, each transaction was carried out in conformity with the rules framed by Stock Exchange & SEBI. On purchase & sale of shares, whatever fees, charges & taxes were due, the same were paid in full on time. Each transaction of purchase & sale was followed by physical delivery of the shares through Demat accounts. Entries in Demat Statements prove that the deliveries were received from and given to the Demat Account of the Broker. Each purchase was followed by a corresponding payment to the broker through regular banking channels and each sale was followed by a proper receipt of sale and the consideration was received through banking channel.*
- A.x. *Furthermore the lower authorities were unable to bring on record any adverse order/finding against the broker through whom these transactions were undertaken. It is also not the case that there was any adverse statement of the broker. Moreover, the Director of the company was specifically examined under oath u/s 131 of the Act who had also confirmed the genuineness of the transactions. On these specific facts and direct evidences, therefore, it is wholly unjustified to allege that the above share transactions were not genuine. The company has produced before you all the contemporaneous transactional documents such as contract notes, demat statements,*

bank statements which not only prove that the purchase & sale was conducted as per stock exchange regulations, but it also proves that pursuant to purchase/sale transactions, the deliveries were taken and given through demat A/c. and payments were made and received through proper banking channels. Besides paying or receiving the price of shares, the company had paid various charges & statutory levies such as brokerage, service tax, STT, turnover charges, etc. and these were duly acknowledged by the authorities. No falsity or infirmity in these documents has been established. In the circumstances, when the company's transactions were conducted on the BSE at the prices prevailing on the said Exchange on the respective dates, then merely on surmise & conjecture, the lower authorities have erred in treating the loss as not genuine or bogus and for that reason alone the loss cannot be disallowed. It is therefore prayed that the impugned disallowance be deleted.

B. Distinction between facts of the present case and PCIT v/s Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta)

B.i. The Bench had also required the undersigned to explain as to how the decision of the Hon'ble Calcutta High Court in the case of **PCIT v/s Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta)** was factually distinguishable for the following reasons :-

- The order operates on facts peculiar to its own as the sale/purchase was not from the Demat accounts. In most of the cases before the Hon'ble High Court, the purchases off the Stock Exchange private placements. This is however not the factual scenario in the facts of the present case. The trades were made on the Stock Exchange.
- In the case before the Hon'ble High Court, it was noted that there were orders of SEBI suspending the scrip and/or wherein the concerned trader were found guilty of price manipulation. However as demonstrated above, in three (3) out of the five (5) scrips, there were no adverse orders of SEBI regarding any kind of price manipulation. Further in the remaining two scrips, the SEBI upon completion of investigation found specific entities/persons guilty of manipulation and that too for artificially increasing prices to earn unscrupulous gains. The assessee has not been found guilty of any wrong-doing in as much as the aforesaid order further absolves the assessee of the same.
- In the case before the Hon'ble High Court, it was noted that there were statements recorded from the brokers of the assessee, who had agreed to price manipulation and therefore adverse view was taken. In the present case, it has been shown that there was no adverse statement of assessee's broker. Moreover the Director of the

assessee was examined and confronted with the allegations u/s 131 of the Act and he had specifically denied the same.

- *The Hon'ble High Court had observed that the onus was on the assessee to establish that the price rise was genuine in light of the fundamentals of the scrip. On the specific facts before them, it was noted that the price of the scrip showed increase during recessive trends and therefore the movement in prices was held to be ingenuine. In the present case, however, the assessee has sufficiently demonstrated in the above paragraphs that the financial results and the fundamentals of the scrips was mirrored in their price movements and therefore it was not a case that the movement in prices was not explained."*

7. The ld. Counsel for the assessee has also placed reliance on the following decisions of the Coordinate bench of the Tribunal:

- i) ACIT vs Munish Financial (ITA No. 2637 & 2638/Mum/2022) [ITAT Mumbai]
- ii) ACIT vs M/s Maverick Commodity Broker Pvt Ltd (ITA No. 27/JP/2020) [ITAT Jaipur]
- iii) ITO vs Smt. Bimala Devi Singhania (146 taxmann.com 449) [ITAT Cuttack]
- iv) Trivikram Singh Toor vs PCIT (142 taxmann.com 493) [ITAT Chandigarh]
- v) Nishith Rameshchandra Shah vs ITO (ITA No. 1116/Mum/2022) [ITAT Mumbai]

8. The ld. DR however has submitted that the facts of this case are squarely covered by the decision of the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj & Ors (supra). He has submitted that though the issue before the Hon'ble Calcutta High Court was relating to bogus long-term capital gains on account of investments in penny stock

companies. The assessee in those cases had claimed the aforesaid bogus long-term capital gains as exempt from taxation u/s 10(38) of the Act. However, in this case, the issue is relating to the bogus short-term capital loss. That the assessee in this case has acted as exit provider to the beneficiaries of bogus long-term capital gains and thereby purchased the share at loss and set off the said short-term capital loss against business income of the assessee and thereby reduced its tax liability. He, therefore, has submitted that the ratio laid down by the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj &Ors (supra) should be accordingly applied in the case of the assessee. That the Assessing Officer as per the information/report of the investigation wing has rightly held that the aforesaid five companies in which the assessee has traded were penny stock companies and has rightly disallowed the short-term capital loss claimed by the assessee. He has further submitted that so far as the contention of the ld. DR that the assessee was not given opportunity to cross-examine the concerned persons/share brokers/promoters whose statement was recorded by the investigation wing is concerned, the similar issue was also raised by the concerned assessee before the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj &Ors (supra). However, the Hon'ble Calcutta High Court has rejected the aforesaid contention while confirming the additions made by the Assessing Officer in those cases on account of bogus long-term capital gains.

9. We have considered the rival contentions and gone through the record. The Hon'ble Supreme Court in the case of NRA Steelin the case of "PCIT v/s NRA Iron & Steel (P) Ltd." reported in [2019] 103 taxmann.com 48(SC) has taken note of the observations made by the Supreme Court in the the land mark case of "*Kale Khan Mohammed*

Hanif v. CIT [1963] 50 ITR 1 (SC) and *Roshan Di Hatti v. CIT* [1977] 107 ITR 938 (SC) laying down the proposition that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source. Thereafter the hon'ble Supreme court summed up the principles, which emerged after deliberating upon various case laws, as under:

“11. The principles which emerge where sums of money are credited as Share Capital/Premium are :

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
- ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
- iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

9.1 The Hon'ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the

transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. Once the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifts upon the Assessing Officer to examine the evidences furnished and even make independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee.

9.2 The Hon'ble Calcutta High Court, however, in the case of PCIT vs. Swati Bajaj &Ors (supra) has observed that to prove the allegations a logical process of reasoning from the totality of the attending facts and circumstances surrounding is to be adopted. That it is the duty of the Court to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded so as to reach a reasonable conclusion and the test would be what inferential process that a reasonable/prudent man would apply to arrive at a conclusion. Further proximity and time and prior meeting of minds is also a very important factor. A holistic approach is required to be made and the test of preponderance of probabilities has to be applied. The Hon'ble High Court observed that the assessee therein had failed to justify the rationale behind investment in the companies not having financial worth. They had failed to establish genuineness of steep rise in price of shares within a short period of time that too when general market trend was recessive. That the ld. Assessing Officer has pointed out that the assessee could not explain, why it invested in such script without knowing the financial performance of the company. That such cannot be case of intelligent investment or simple and straight case of

tax planning to gain benefit of long term capital gains earnings @ 491% over period of 5 months which is beyond human probability and defies business logic of any business enterprises dealing with share transactions. Even brokers who coordinated transactions were also unknown to assessee. All these facts give credence to unreliability of entire transaction of shares giving rise to such capital gains ratio. That the Assessing officer was justified in making the additions on the basis of the material available on record, the surrounding circumstances, the human conduct and preponderance of probabilities.

10. Now, we have to examine the contentions of the assessee in the light of the ratio of law laid down by the hon'ble Supreme Court in the case of "NRA steels" (Supra) and by the Calcutta High Court in the case of "Swati Bajaj"(supra).

10.1 The plea of the assessee in this case is that the assessee was bona fide purchaser of the shares in question. That the assessee had duly taken note of the financials and share price movement of the companies before purchasing the shares. The ld. counsel in this respect has referred to the financials of the said companies, the market trend and the reasons to exit as mentioned in the written submissions as reproduced above. firstly referred to the financial details and share price movement of Rutron International Ltd. It has been submitted that Rutron International Ltd. was a listed public company. The assessee company took note of the annual reports. The said company had reported total assets of 17.88 for F.Y 2012-13 and its turnover and proceeds had improved substantially from its previous years. Its income has also increased substantially. It reported net profit of Rs.0.50 Crores in FY 2012-13 as against Rs.0.11 Crores in FY 2011-12 implying an increment of 354.54%. The stock even started declaring dividends (Equity Dividend

of Rs.0.18 Crores in FYE Mar'13 as against NIL in FYE Mar'12, Mar'11 and Mar'10 implying a trend reversal and a dividend payout of 36%). That having regard to these fundamentals of Rutron, the assessee company had purchased shares in a staggered manner in January 2014 in anticipation of trading profits. The purchase of the stock was motivated not only by the dividend but the anticipated price rise. However, since the stock of Rutron was in a sustained fall and therefore like any prudent trader, the company purchased the stock only when its price fell substantially. However, when it became apparently clear that the financials of Rutron were not indicative of future financial performance of the stock, the assessee company, being a prudent trader switched gears and immediately cut short its losses by exiting its position in Rutron. The ld. AR, therefore, has demonstrated that the investments in these shares were governed on commercial prudence.

10.2 The Ld. Counsel has further demonstrated that the Trades in Comfort Fincap Ltd. ('Comfort') shares, were also based on the company's own reading of the financial statements of the said company. That its stock parameters had improved from its previous reporting period. (Total Assets of Rs.25.23 Crores in FYE Mar'13 as against Rs.21.49 Crores in FYE Mar'12; Operating Profit of Rs.1.83 Crores in FYE Mar'13 as against Rs..86 Crore in FYE Mar'12; Reported Net Profit of Rs.0.99 Crore in FYE Mar'13 as against Rs.0.59 Crore in FYE Mar'12 implying an increment of 67.79%) and the stock even started declaring dividends whose trend showed a marked upward trajectory (Equity Dividend of Rs.0.54 Crores in FYE Mar'13 as against Rs.0.22 Crore in FYE Mar'12 and NIL in FYE Mar'11 and Mar'10 implying a trend reversal and a dividend payout of 59.60%). The purchase of the stock was timed in anticipation of the expected price action that usually follows in such

stocks showing a reversal in dividend payout trend. That the shares of Comfort (still Comfort Fincap Ltd 535267) were purchased in a staggered manner in January 2014 in anticipation of trading profits and the same were sold, again in a staggered manner, in March 2014 when the trade went awry. The stock of Comfort was also in a steep fall when the company purchased it. However, the company purchased the stocks only when the price fall was sustained over a period of time. It is notable that the company did not enter/exit at the highest/lowest price and the trades in shares of Comfort were entered into on the basis of the trend visible in the then latest financials of the stock available publicly.

10.3 Regarding the third company, it has been demonstrated that Luminaire Technologies Ltd. ('Luminaire'), was a listed public company at the relevant time. That the shares of Luminaire were purchased in a staggered manner in January and February 2014 in anticipation of trading profits and the same were sold on the 5th of March 2014. The stock of Luminaire was also in a steep fall when the company purchased it. However, the company purchased the stocks only when the price fall was arrested and a trend reversal was visible. However, the favourable technical analysis of the stock, which prompted the company to purchase the stock, did not lead to the anticipated price rise owing to the weak market outlook regarding the stock. The company, having entered the trade to profit in the immediate short term, immediately chose to cut short its losses as the stock price deteriorated further.

10.4 Regarding the decision to trade in the stock of Unno Industries Ltd., the ld. Counsel has explained that the same was based on the company's own reading of the financials of Unno, which was a listed public company at the relevant time. That the trade was undertaken based on the not only the fundamentals but also the technical aspects of

the stock. The shares of Unno were purchased on 22nd January 2014 in anticipation of trading profits and the same were sold on 20th March 2014 when there was an indicator for a further decline in the prices of a stock. That the stock of Unno was in a steep fall and the company had purchased the stock only when its price fell substantially. That the company did not enter/exit at the highest/lowest price and the trades in Unno were entered into only after carefully considering both the technical and fundamental aspects of the stock. The trend visible in the then latest financials of the stock available publicly was upbeat. That Unno had reported Total Assets of Rs.42.55 Crores for FYE Mar'13 and its turnover and profit had remained stable over the years despite the falling prices in the market. Unno had a Turnover of Rs.0.65 Crore both in FYE Mar'13 and FYE Mar'12; Total Income of Rs.0.65 Crore in FYE Mar'13 as against Rs.0.67 Crore in FYE Mar'12; Reported Net Profit of Rs.0.07 Crore in both FYE Mar'13 and FYE Mar'12 implying a marked stability in financial performance in the recent years. However, the head and shoulders pattern on the stock charts implied an oncoming decline in the stock prices, therefore, the assessee company immediately sold the stock to avoid further loss.

10.5 In case of Global Infratech& Finance Ltd. ('Global') shares, it has been explained that the trade was undertaken based on the parameters which clearly set out both the logic and rationale behind the trades. The stock of Global was also in a steep fall when the company purchased it. The shares of Global were purchased in a staggered manner in February 2014 in anticipation of trading profits and the same were sold, again in a staggered manner, in March 2014. However, the company purchased the stock only when the price fall was sustained over a period of time. That the stock parameters had improved from its previous

reporting period (Total Assets of Rs.56.62 Crores in FYE Mar'13 as against Rs.20.90 Crores in FYE Mar'12; Operating Profit of Rs.1.49 Crores in FYE Mar'13 as against Rs.0.01 Crore in FYE Mar'12; Reported Net Profit of Rs.1.05 Crore in FYE Mar'13 as against Rs.0.08 Crore in FYE Mar'12 implying an increment of 1,212.50% and trend reversal). The company, being a prudent trader, did not only rely on the financials of Global to make its decisions in the market. It was also prone to keep tabs on the technical aspects of the stock to pre-empt market movements in it. Envisaging a further fall in the stock prices owing to its interpretation of the deteriorating technical parameters of Global even in the face of robust fundamentals, the company sought to exit its position in the stock completely for the time being.

10.6 It has been further explained that the SEBI has also investigated regarding the allegation of share trading in respect of two companies out of the above mentioned 5 companies. In the case of Rutron, only 14 persons were suspected to be involved in price rigging who were restrained from accessing the security market for a period of 6 months. Neither the assessee nor his share brokers were ever named for restraint from trading in the said scrip. Even, the company itself was not implicated of any wrong doing. Any other person, except the aforesaid 14 persons, was not restrained for trading in the shares in the said company. The second company investigated was Global Infratech&Finance Ltd, in respect of which, only 46 specific persons/entities were found guilty of price manipulation in shares of the said company after detailed investigation. That some of the entities had inter alia questioned the act of SEBI in not holding all persons/entities who had traded in the shares of Global Infratech and Finance Limited to be artificial or suspicious. However, the SEBI in their Order had

specifically observed that only the promoters and/or their connected entities were found to be guilty of price manipulation and that the unrelated entities were not to be made party to these proceedings. It has been further submitted that in respect of other three companies, the SEBI did not choose to make any investigation and there is no action taken by the SEBI against the other three companies namely Comfort Fincap Ltd, Luminaire Technologies Ltd and Unno Industries Ltd. It has been submitted that no adverse orders ever have been passed by the SEBI regarding price manipulation in respect of aforesaid three companies. The Ld. Counsel, therefore has submitted that the facts of the case of the assessee, when considered in the light of the proposition of law laid down by the Hon'ble supreme Court in the case of NRA Steel (supra) and of the hon'ble Calcutta High Court in the case of Swati Bajaj (supra), the evidence furnished by the assessee, the surrounding circumstances would show that the assessee's decision to invest in those companies was based on business prudence and that there was no evidence, even circumstantial, that the assessee was involved in price rigging or otherwise instrumental to book bogus short term capital loss.

11. The Ld. Counsel has further submitted that the facts of the case of the assessee were quiet distinguishable from that of the cases of "Swati Bajaj & others"(supra). He has submitted that in most of the cases before the Hon'ble High Court, the purchases were off the Stock Exchange/private placements. That there were orders of SEBI suspending the scrip and/or wherein the concerned trader were found guilty of price manipulation. Further, that there were statements recorded from the brokers of the assessee, who had admitted to have indulged in price manipulation and therefore adverse view was taken. That in the specific facts before the hon'ble High Court, it was noted that

the price of the scrips showed steep increase during recessive trends and therefore the movement in prices was held to be ingenuine. That the Hon'ble High Court had observed that the onus was on the assessee to establish that the price rise was genuine in light of the fundamentals of the scrip. However, in case of the assessee, the trades were made on the Stock Exchange. There was no adverse statement of assessee's broker. Moreover the Director of the assessee was examined and confronted with the allegations u/s 131 of the Act and he had specifically denied the same. That the assessee has sufficiently demonstrated that the financial results and the fundamentals of the scrips was mirrored in their price movements and therefore it was not a case that the movement in prices was not explained. Even as demonstrated above, in three (3) out of the five (5) scrips, there were no adverse orders of SEBI regarding any kind of price manipulation. Further in the remaining two scrips, the SEBI upon completion of investigation found specific entities/persons guilty of manipulation. The Ld. Counsel has further submitted that in the similar facts and circumstances, the coordinate benches of the Tribunal have opined in favour of the assessees therein.

12. We find force in the contentions raised by the ld. counsel for the assessee. Firstly, in this case, the assessee has not claimed long-term capital gains on account of unrealistic steep rise in the share prices of these scrips traded in as was in the case of PCIT vs. Swati Bajaj & Ors (supra). The Hon'ble High Court had held, under the circumstances, that the burden was upon the assessee to explain the business prudence of investment in these scrips of the companies having negligible financial worth and thereafter of steep rise in their share price resulting into huge capital gains within a short span of time. The case before us is of business loss in share trading. The assessee, as observed above, has

duly explained the factors and considerations which prevailed for making decision by the assessee company of purchasing in the aforesaid five scrips, which included their financial worth, the market position, their income, dividends etc. Further, it was not a case that the shares shown to have been purchased off market/privately and thereafter they were put into demat account after sufficient lapse of time from the alleged date of physical purchase and then sale of the same within a short span of time after they were accounted in the demat account, gaining high monetary capital gains. In the case of the assessee, the shares were traded on the stock exchange, the same were kept in the demat account of the assessee. There is no allegation of involvement of the assessee or even his share broker in any type of price rigging. There even does not seem any probability of meeting minds of the assessee and/or his share broker and the promoters of the companies. A very peculiar fact which is noted from the assessment order/investigation wing report is that in the list of the persons whose statement was allegedly recorded and who in their statement have admitted of price rigging, **the names of share brokers, entry operators and exit providers** have been mentioned. The facts on the file itself show that there was meeting of minds of the entry operators and the share brokers and exit providers. The price rigging was done by giving benefit to various subscribers with connivance of share brokers and the motive was to convert their unaccounted money into tax exempt long-term capital gains and for that purpose, there were certain persons chosen as exit providers who would buy shares when the share prices would be at its peak and those exit providers thereafter would suffer losses on account of fall in the price of the shares. This specific fact on the file shows that the exit providers were already chosen to execute the plan. The motive was to give the benefit of bogus long-term capital gains to various beneficiaries and to make that plan foolproof, the

exit providers were already chosen with a pre-determined planning as to at what stage the beneficiaries of bogus long-term capital gains would be given exit. That perhaps was not dependent upon chance exit providers willing to book bogus short-term capital loss. Neither the name of the assessee nor of his share broker is mentioned in the list of exit providers. The circumstances of this case do not suggest of unnatural and unrealistic human conduct. The Assessing Officer in this case has not pointed out any adverse evidence against the assessee. He has simply relied upon the investigation report which is a general investigation report. The Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj &Ors (supra) has considered the said report and analysed the same vis-a-vis circumstantial evidences like the negligible financial worth of the companies whose shares were traded in, the unrealistic steep hike in the share prices as against the recessive market trend and the failure of the assessee to explain the commercial prudence for making such huge investments. The additions thus have been made on the basis of circumstantial evidences and considering the preponderance of probabilities. Hon'ble Supreme Court in PadmasundraRao v. State of T.N. 255 ITR 147 (SC) has held that circumstantial flexibility, e.g. one additional or different fact, may make a world of difference between conclusions in two cases:

“Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

The Hon'ble Karnataka High Court in the case of "Flipkart India (P.) Ltd. v/s Assistant Commissioner of Income-tax", [2017] 79 taxmann.com 159 (Karnataka) has observed that considering the fact that this blind appreciation of a precedent is a frequent occurrence, in catena of cases, the Hon'ble Supreme Court has clearly opined that a judgment should not be read as a provision of law. A judgment is confined to the facts and circumstances of its own case. It is only when the facts and circumstances in two cases are similar that the ratio of the former case becomes applicable to the latter case.

As discussed above, in the absence of any direct incriminating evidence against the assessee, the distinguishable and weak circumstantial evidence, in our view, do not suggest the preponderance of probability of the assessee being involved in price rigging of the scrips or being the predetermined and pre planned beneficiary of the devised scheme, therefore, the impugned additions are not warranted in this case, and the same are accordingly ordered to be deleted.

13. In the result, the appeal of the assessee stands allowed.

Kolkata, the 27th June, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr.Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग/Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 27.06.2023.

RS

Copy of the order forwarded to:

1. Raigarh Jute & Textile Mills Ltd
2. ACIT, Circle-8(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches