

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.01/Ind/2022**  
**Assessment Year: 2012-13**

Shivkripa Devcon Pvt.Ltd., C-4/5, Shivkripa Colony, Indore.	<b><u>बनाम/</u></b> <b><u>Vs.</u></b>	ITO, Ward-5(1), Indore.
(Assessee / Appellant)		(Revenue / Respondent)
<b>PAN: AAPCS3382K</b>		
Assessee by	Shri S.S.Deshpande, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	25.07.2023	
Date of Pronouncement	28.08.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 29.11.2021 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"], which in turn arise out of assessment-order dated 06.12.2019 passed by learned ITO-5(1), Indore ["AO"] u/s 147 read with section 143(3) of Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2012-13, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides at length and case records perused.

3. The facts leading to this appeal are such that the AO received an information from DDIT(Inv.)-Unit 8(2), Mumbai which showed that the

assessee had done transactions in the shares of M/s Banas Finance Ltd. ["Banas"]. The AO further observed from report that the shares of 'Banas' had been used to facilitate arrangement of bogus capital gain or loss to beneficiaries. Based thereon, the AO made up his mind that the assessee has also taken advantage resulting into escapement of income from assessment. Accordingly, the AO issued notice u/s 148 on 29.03.2019 for proceeding u/s 147. In response, the assessee filed return of income declaring a total income of Rs. 38,630/-. Then, the AO issued statutory notices u/s 143(2)/142(1). Finally, the AO made an addition of Rs. 3,28,153/- treating the loss declared by assessee from shares of 'Banas' as bogus and thereby assessed total income at Rs. 3,66,783/-. Aggrieved by action of AO, the assessee carried matter in first-appeal but could not succeed. Now, the assessee has come in next appeal before us.

4. Ld. AR for assessee carried us to assessment-order and submitted that the AO has observed that the assessee was engaged in the business of shares as well investment in shares. The AO further observed that the assessee sold 25,000 shares for a sum of Rs. 4,18,866/- which were purchased for Rs. 7,47,019/-; thereby declared a short-term loss of Rs. 3,28,153/-. The shares were purchased through broker M/s Exclusive Securities Ltd. The shares were credited at the time of purchase and debited at the time of sale in Demat A/c. These facts are clearly admitted by AO in Para No. 5 of assessment-order and there is no dispute. But the AO, in Para No. 7 to 9 of assessment-order, made analysis and observed that during the financial year 2011-12 relevant to AY 2012-13 under consideration, there was unusual hike in the price of 'Banas' not backed by fundamentals. Then, in Para No. 10 to 17 of assessment-order, the AO noted the *modus operandi* adopted by operators/brokers who manipulate market prices of shares like 'Banas' in this case and arrange to provide bogus gain or loss to beneficiaries. He also noted that taking note of such incidents, the Income-tax department has conducted searches/surveys/enquiries on various brokers/companies and found that they were arranging bogus gain or loss. Ultimately, in Para No. 18, the AO doubted the purchase and sale of shares by assessee and thereby did not

accept the short-term loss suffered by assessee as genuine and made addition. Ld. AO also relied upon following judicial rulings:

- (a) CIT Vs. Durga Prasad More 214 ITR 801 (SC)
- (b) Hersh Win Chadha Vs. DCIT, ITA No. 3088 to 3098 & 3107/Del/2005
- (c) Sumati Dayal Vs. CIT 1995 AIR 2009 (SC)
- (d) McDowell & Co. Ltd. Vs. CTO 1986 AIR 649 (SC)
- (e) Sanjay Bimal Chand Jain Vs. PCIT, Nagpur (Bombay HC)
- (f) M.K. Rajeshwari Vs. ITO, Ward-3, Raichur (ITAT, Bangalore)

Then, the Ld. AR carried us to the order of first-appeal and showed that the CIT(A) has approved the findings and observations of AO and relying thereupon including some judicial rulings, upheld the addition.

5. With this background, Ld. AR firstly carried us to a very recent decision of **Hon'ble Mumbai High Court in the case of PCIT, Mumbai Vs. Indravandan Jain HUF, Income-tax Appeal No. 454 of 2018, order dated 12.07.2023**, copy of the order is filed before us. Ld. AR read over Para No. 3 to 5 of the order line by line in the open court. These paras are re-produced below for an immediate reference:

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

4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it

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

6. Ld. AR submitted that the present case of assessee is fully covered by this decision on facts and in law. To demonstrate this, Ld. AR pointed out following facts relating to the case of assessee from the documents placed in the Paper-Book filed by assessee:

(a)	The shares were purchased through broker M/s Exclusive Securities Ltd. on the floor of Bombay Stock Exchange on 06.03.2012 (Copy of Contract-Note at Page No. 15 of Paper-Book). The assessee has paid Service-tax, Stamp duty and STT on purchase.
(b)	The shares were sold through broker M/s Exclusive Securities Ltd. on the floor of Bombay Stock Exchange on 23.03.2012 (Copy of Contract-Note at Page No. 16 of Paper-Book). The assessee has paid Service-tax, Stamp duty and STT on sale.
(c)	A complete ledger A/c of assessee in the books of broker M/s Exclusive Securities Ltd. is obtained and filed at Page No. 17 of Paper-

	Book. This Ledger A/c shows various transactions including the impugned transactions of purchase and sale as well as the payment received from/made to assessee by broker.
(d)	The assessee paid purchase price from bank a/c and also received sale consideration in bank a/c (Copy of bank statement at Page No. 18 of Paper-Book). Neither the purchase consideration has been paid in cash nor the sale consideration has been received in cash.
(e)	Immediately after purchase, the shares were credited to De-mat A/c on 09.03.2012 and immediately after sale the share were debited to De-mat A/c on 23.03.2012 within a reasonable time as per rules of stock-exchange (Copy of de-mat A/c at Page No. 13 of Paper-Book).

7. Ld. AR submitted that the documents clearly establish that the shares were purchased on the floor of stock-exchange (not from broker); the contract note of purchase was issued; shares were sold on the floor of stock exchange; contract note of sale was issued; the deliveries were taken into and given from De-mat A/c within normal time; the payment and receipt of considerations were made through bank a/c (not in cash). Therefore, the transactions are well-explained with the support of all documentary evidences and there is no infirmity or fallacy at any stage of transactions. Ld. AR submitted that these facts and features of transactions are very much identical to the case before Hon'ble High Court of Mumbai in **Indravandan Jain HUF (supra)**. Therefore, the said decision is squarely applicable and must be applied.

8. Ld. DR for the revenue supported the orders of lower-authorities.

9. We have considered rival contentions of both sides and perused the documents filed in the paper-book, the orders of lower-authorities and the decision of **Indravandan Jain HUF** cited above. After a careful consideration, we find that the facts of present case before us are fully covered by the decision and we do not find any deviation in facts. Ld. DR for the revenue though dutifully supported the orders of lower-authorities but could not spell out any reason for non-applicability of the said decision. Therefore, following

the said decision, we hold that the AO is not justified to disallow the short-term loss declared by assessee. Consequently, the addition made by AO is deleted. The assessee succeeds in this appeal.

10. Before parting we make it clear that this appeal is decided on the basis of particular set of facts surrounding the issue before us. No binding proposition has been laid down. Therefore, this decision should not be treated as a binding precedence for cases of bogus capital gain/loss without going into facts of those cases.

**11. Resultantly, this appeal of assessee is allowed.**

Order pronounced in open court on 28.08.2023.

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28.08.2023.

CPU/Sr. PS

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal Indore Bench, Indore*