

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1030/Mum/2023
(A.Y. 2014-15)**

Vipul M Shah (HUF) 404, Commerce House, 140, N.M. Road, Fort, Maharashtra - 400001	Vs.	The ITO 17(3)(5) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AABHV3153Q		
Appellant	..	Respondent

Appellant by :	Vimal Punamiya
Respondent by :	Gotimukul Santosh Kumar

Date of Hearing	20.07.2023
Date of Pronouncement	16.10.2023

आदेश / ORDER

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the ld. CIT(A) NFAC, dated 29.12.2016 for A.Y. 2014-15. The assessee has raised the following grounds before us:

- “1. The ld. CIT(A) erred in confirming the addition of Rs.1,99,34,702/- being the sale proceeds of the sale of shares of Sunrise Asian Limited thereby disallowing the claim of the Long Term Capital Gain of Rs.1,90,81,637/- earned on the sale of the same.
2. The ld. CIT(A) erred in confirming the addition of Rs.5,74,041/- treating the same as commission paid for procuring the LTCG entry and thereby treating the same as unexplained expenditure u/s 68 of the Act.
3. The appellant craves leave to add, amend, alter, drop any of the grounds of appeal.”

2. Fact in brief is that return of income declaring total income of Rs.9,41,580/- was filed on 30.07.2014. The case was subject to

scrutiny assessment and notice u/s 143(2) of the Act was issued on 18.09.2015. During the course of assessment the assessing officer noticed that assessee has earned long term capital gain of Rs.191,34,702/- which was claimed as exempt u/s 10(38) of the Act. On query, the assessee explained that they were allotted shares on September, 2011 of Santhoshima Lease Finance & Investment (I) LTD. and subsequently this company was amalgamated with Sunrise Asian Ltd. vide order dated 08.10.2012 and the assessee has been allotted 40,000 shares of Sunrise Asian Limited in 1:1 in demat account. During the course of assessment the assessing officer has taken into consideration the investigation made by the Directorate of Investigation Kolkata indicating bogus LTCG/STCL entries claimed by a large number of beneficiaries from the number of companies including Sunrise Asian Limited. During the course of assessment the AO has also mentioned the statement of Shri Vipul V. Bhatt one of the operators and intermediaries recorded by the Mumbai Investigation Wing in which he accepted that Sunrise Asian Limited has provided accommodation entries. In response to the show cause notice the assessee submitted that all the shares were transferred only through (i) Stock Holding Corporation of India; (ii) Santoshima Trade Link Ltd. was amalgamated to Sunrise Asian Ltd. by the order of Hon'ble Bombay High Court and received shares in demat account only; (iii) sold shares through listed shares broker only and contract notes & bills were produced; (iv) the broker Hornic Investment Pvt. Ltd. had charged STT, (v) payment on sale proceeds received through bank. However, the AO has not agreed with the submission of the assessee and referred the statement of Shri Vipul Bhatt and fact of unusual rise in the price of shares, therefore, made an addition of Rs.199,34,702/- u/s 68 as unexplained credit comprising amount of capital gain and unexplained expenditure.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the ld. counsel contended that assessee was a regular investor in the shares and securities and in this regard he referred copy of balance sheet and statement showing that assessee has made investment in various script totalling to Rs.9,19,43,80.04/-. Therefore, the ld. Counsel submitted that it cannot be presumed that assessee has only invested in one script. The ld. counsel further submitted that AO has merely relied on the statement of Shri Vipul V. Bhatt which has been retracted on 02.09.2016 by way of affidavit therefore, same cannot be the sole basis for making addition. The ld. Counsel further submitted that all documents pertaining to sale and purchase of shares like demat account statement, copy of share application form, allotment letter, copy of share certificate, copy of order of hon'ble Bombay High Court dated 22.03.2013 regarding approval of scheme of amalgamation, copy of bank statement reflecting payment receipt etc. were given. However, AO has not considered these documentary evidences and made addition without disproving such documents. The ld. Counsel further submitted that information obtained from investigation and copy of statement etc. were not provided to the assessee. The ld. Counsel further submitted that assessee has sold the shares after holding for 28 month at the platform provided by the recognised stock exchange and delivered the shares in demat thorough the stock exchange clearing house and also received the sale consideration from recognised stock exchange. The ld. Counsel further submitted that neither seller was knowing the purchase nor the purchaser were knowing the seller. The ld. Counsel also submitted that shares of the sold company had continuously been in the range of Rs. 360 – 600 per share from 2/2013 to July 2015 for a period of more than 2 years. The ld. Counsel has placed reliance on the

various decision of ITAT, Mumbai wherein the addition made on the similar script was decided in favour of the assessee.

- “1. *In the case of Mr. Arun S. Tripathi V. PCIT, ITA No. 2560/Mum/2018 dated 28.11.2018*
2. *In the case of Anjana Sandeep Rathi Vs. ACIT, ITA No. 4369/Mum/2018 dated 20.07.2020*
3. *In the case of Dipesh Ramesh Vardhan V. DCIT, ITA No. 7648/Mum/2019 dated 11.08.2020*
4. *In case of Mr. Anraj Hiralal Shah HUF V. ITO 19(1)(1) ITA No. 4514/Mum/2018 dated 16.07.2019*
5. *In the case of M/s Adhemshree Financial Vs. Pr.CIT-19 ITA No. 326/Mum/2021 dated 30.11.2021*
6. *In the case of Narayan Ramchandra Rathi Vs. ITO-3(1), ITA No. 4811/Mum/2018 dated 08.08.2019.”*

Reliance is also placed on the following case laws:

- “1. *High Court of Bombay CIT Vs. Shyam R. Pawar dated 10.12.20214 (2015) 54 taxmann.com 108 (Bombay)*
2. *In the ITAT Hyderabad Bench ‘A’ Income Tax Officer, Ward 2, Nizamabad Vs. Smt. Aarti Mittal dated 06.11.2013 (2014) 41 taxmann.com 118 (Hyderabad – Trib)*
3. *In the ITAT Ahmedabad Bench ‘B’ Pratik Suryakant Shah Vs. Income Tax Officer, Ward 10(3), Ahmedabad dated 21.10.2016 (2017) 77 taxmann.com 260 (Ahmedabad – Trib)*
4. *ACIT Vs. Vineet Sureshchandra Agarwal (ITAT Ahmedabad (ITA No. 1442/Ahd/2013 & Co. No.209/Ahd/2013) AY. 2005-06*
5. *Surya Prakash Toshniwal HUF vs. ITO (ITAT Kolkata) ITA No.1213/Kol/2016 Assessment Year :2005-06*
6. *CIT vs. Mukesh Ratilal Marolia (Bombay High Court) INCOME TAX APPEAL NO. 456 OF 200 7 7th September 2011*
7. *Smt. Sunita Jain, V/s. Income Tax Officer, Ward10 (3), Ahmedabad ITA. Nos: 501 & 502/AHD/2016 Assessment Year: 2008-09*
8. *ITO-24(3)(1) V/s M/s Arvind Kumar Jain HUF ITA No. 4862/MUM/2014 Assessment Year: 2005-06*
9. *Kamla Devi S. Doshi V/s. The Income Tax Officer Ward 16(3)(1), I.T.A. No.1957/Mum/2015 Assessment Year: 2006-07*
10. *Shri Sunil Prakash V/s. ACIT -15(2) I.T.A./6494/Mum/2014, Assessment Year: 2005-06*
11. *Pramod Kumar Lodha Vs. ITO (ITAT Jaipur)*
12. *Navneet Agarwal Vs. ITO (ITAT Kolkata)*
13. *ACIT Vs. Vineet Sureshchandra Agarwal (ITAT Ahmedabad)*
14. *Meenu Goel vs. ITO (ITAT Delhi).”*

Reliance is also placed on the following case law:

1. Hon’ble Supreme Court in the case of M/s Mehta Parikh & Co., 30 ITR 181

Reliance is also placed on the following case law:

1. M/s Andaman Timber Industries Vs. CCE Civil Appeal No. 4228 of 200
2. Lalchand Bhagat Ambica Dav Vs. CIT (37 ITR 28) (SC)

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. The assessing officer on the basis of findings of the investigation Directorate of Kolkata indicating bogus Long Term Capital Gain/Short Term Capital Loss claimed by a large number of beneficiaries found that during the year under consideration the assessee had obtained bogus long term capital gain of Rs.191,34,702/- and also the assessee had paid cash commission of Rs.5,74,041/- to obtain such long term capital gain. During the course of assessment the assessee explained with relevant supporting evidences that they have made investment in the equity shares in Santoshima Trade link Ltd, in F.Y. 2011-12. Subsequently, with the approval of the Hon'ble Bombay High Court this company was amalgamated with another company M/s Sunrise Asian Ltd. in pursuance to the scheme of amalgamation vide order dated 22.03.2013. As per the scheme of amalgamation the assessee has received shares of the transferor company M/s Sunrise Asian Ltd. in the ratio 1:1 and the shares were credited in the demat account of the assessee company. The said company was listed on the Bombay stock exchange and was classified in group A category. The assessee had sold the shares during the month of September, 2013 to February, 2014 from a price range of Rs.490/- to Rs.506/- per shares and the price of the shares were in the same range for next 15 Month even after the shares were sold by the assessee. Even the price of the shares had gone to Rs.615/- during the year 2015 one year later. The assessee had submitted the relevant documents like demat account statement, copy of share application form, allotment letters, copy of share certificate, copy of orders of Hon'ble Bombay High Court dated 22.03.2013 for approval of scheme of amalgamation etc. The assessing officer had added the sale

consideration merely on the general statement of Shri Vipul V. Bhatt without contrary disproving these documents. Mr. Vipul V. Bhatt had retracted his statement on 02.09.2016 by way of affidavit. The assessee also submitted that they were not provided any copy of information and the statement relied upon by the assessing officer. We have also perused the balance sheet of the assessee showing that assessee was a regular investor in the shares. As per balance sheet as on 31.03.2014 the assessee has made investment of Rs. 9,19,43,80.04/- in 26 different scrips as per statement of investment placed at page no. 5 of the paper book which demonstrate that assessee had not made investment in only one scrip but assessee was regular investor. Apart from the fact that assessee was a regular investor in many scrips, even for this particular scrip also it seems that this scrip was listed in stock exchange at the time of purchase as well as at the time of sale and also it continues to be listed in the stock exchange till date. Nothing has been brought on record that SEBI or any other agency has banned the trading or any adverse finding has been given against the scrip. AO has not even conducted any enquiry from either the broker of the assessee Hornic Investment Pvt. Ltd. or from the exit provider. Simply relying upon the information from the Investigation Wing of some of the brokers who have provided accommodation entry in this scrip cannot be the sole reason of adverse inference unless AO himself carries out any enquiry or there is some other information or material on record that this scrip was banned or debarred in trading of the shares. During the course of appellate proceedings before us the ld. Counsel has placed reliance on plethora of judicial pronouncements and some of them are referred supra in this order. We have also perused the judicial pronouncements relied upon by the ld. Counsel and observe that on similar facts and identical issue in respect of shares of Sunrise Asian Ltd. the coordinate benches of the ITAT, Mumbai have decided the issue in favour of the

assesse. The relevant extract of the decision of ITAT, Mumbai in Mr. Arun S. Tripathi V. PCIT Vide ITA No. 2560/Mum/2018 dated 28.11.2018 is reproduced as under:

“14. Undoubtedly, the AO raised the specific query which was replied specifically alongwith relevant documents by the assessee. The AO being satisfied with the query so raised and the documents so filed in support of various contentions did not make any adverse observation in the assessment order. Merely non discussion of the issue in the order nowhere make the assessment order as erroneous and prejudicial to the interest of the revenue. In response to the enquiry during asst. proceedings, the assessee vide letter dt. 21.11.2016 submitted the details of working of long term capital gains alongwith relevant supporting documents and explained that the sale of equity shares was through recognized stock exchange and STT was also paid on the said sale. The AO thereafter raised a query with regards to difference in sale consideration, as reported in ITS statement and as per the brokers ledger account submitted by the assessee. The assessee submitted explanation for the same vide letter dt. 29.1.1.2016 and reconciled the apparent difference of Rs. 1,80,480/- to be on account of STT, Service Tax and other charges. The assessee vide the said letter also explained the transaction of long term capital gain as well as submitted further evidences about change of name of company as sought by the AO. The AO examined the exhaustive record with regards to the transaction of purchase of sale of shares and finding the same to be in order, accepted the claim of the assessee that the long term capital gains arising on sale of 125000 equity shares of M/s. Sunrise Asian Ltd. was not liable to tax as per the provisions of section 10(38) of the I.T. Act 1961. Once it is found that the AO had made proper inquiry of issue under consideration. Moreover, on appraisal of the notice, we noticed that the commissioner has taken cognizance on account of this fact that the Sunrise Asian Ltd. has been marked in the list of penny stock company but nowhere has proved or discussed that the transaction with the penny stock company is against law and facts. The law relied upon the Ld. representative of the DR speaks about the submissions of evidence which were not sufficient to meet out the query raise by AO but in the instant case sufficient evidences have been submitted by the assessee before the AO. There is nothing on record in which circumstances, the order dated 29.11.2016 can be branded as erroneous and prejudicial to the interest of the revenue. It is mandatory on the part of the commissioner to arrive at this conclusion that the order dated 29.11.2016 as passed by AO is erroneous, which he did not hold. In this regard, we also find support of law in CIT Vs. Nirav Modi (supra) which has been confirmed by Hon'ble Supreme Court and reported at 77 Taxmann.com 15(SC) 2017. Further, it is apparent on record that the AO has asked the query which was properly replied by assessee along with necessary documents, therefore, after his satisfaction, the AO nowhere made an adverse remark in the order but a legally tenable view has been taken so the commissioner has no power to invoke the provision u/s 263 of the Act in view of the law settled in Malabar Industrial Co. Ltd. Vs. CIT, 243 ITR 83 (SC), (ii) CIT Vs. Max India Ltd., 295 ITR 282 (SC), CIT Vs. Gabriel India Ltd, 203 ITR 108 (Bom) (1993). At the time of argument, the Ld. Representative of the assessee has also invited our attention to the audited account for the A.Ys. 2012-13 & 2013-14 placed on record in which the transaction has duly been disclosed and accepted by the revenue authorities. Taking into account, all the

facts and circumstances, we are of the view that the order passed by the CIT in question dated 16.03.2018 is wrong against law and facts and is not liable to be sustainable in the eyes of law. Accordingly, we set aside the same and allowed the appeal of the assessee.”

The relevant extract in the case of Anjana Sandeep Rathi Vs. ACIT, ITA No. 4369/Mum/2018 dated 20.07.2020 is reproduced as under:

“5. We have heard the submissions made by rival sides and have perused the orders of authorities below. The assessee in appeal has assailed the findings of CIT (A) in disallowing benefit of section 10(38) of the Act on long term capital gain arising from sale of shares. The assessee during the relevant period had sold shares of M/s. Sunrise Asian Ltd. for a consideration of Rs.14,99,917/-. The authorities below held the sale transaction in aforementioned scripts as bogus and thus, made addition under section 68 of the Act. We find that similar disallowance was made in the case of Narayan R. Rathi (father-in-law of the present assessee/appellant) for the assessment year 2014-15. Narayan R. Rathi had also sold the shares of same company i.e. M/s. Sunrise Asian Ltd. The issue travelled to the Tribunal. The Co-ordinate Bench of the Tribunal in ITA No. 4811/Mum/2018 (supra) deleted the addition. The Tribunal while allowing the appeal of Narayan R. Rathi held that the principles of natural justice were violated, the benefit of cross examination was not afforded to the assessee, hence, the addition is unsustainable. The relevant extract of the finding of Tribunal are reproduced herein below:-

“11. The authorities below have not doubted the documentary evidence produced by the assessee to prove the genuineness of the transaction of sale and purchase of the shares in question. Further, the authorities below have not pointed out any evidence on record to hold that the assessee has obtained bogus entries in connivance with entry operators and brokers etc., in order to claim bogus LTCG. As pointed out by the Ld. counsel, the assessee was not given an opportunity to cross examine the witnesses whose statements were relied upon and on the basis of their statements it was concluded that the transaction in question was a part of penny stock scam. So, in view of the cases discussed in the foregoing paras, particularly the ratio laid down by the Hon'ble Supreme Court in the case of M/s Andaman Timber Industries (supra), we are of the considered view that the Ld. CIT (A) has wrongly confirmed the assessment order passed by the AO in violation of the principles of natural justice. Hence, the impugned order passed by the Ld CIT (A) suffers from legal infirmity. We, therefore, allow the sole ground of appeal of the assessee and set aside the impugned order passed by the Ld. CIT (A). Accordingly, we direct the AO to allow the claim of the assessee.”

6. The ld. Departmental Representative has failed to controvert the findings of Tribunal in the case of Shri Narayan R. Rathi whose case is on the same pedestal with identical set of facts. In fact a perusal of the assessment order in the case of assessee reveal that the Assessing Officer in para 8.3 has observed that 3000 shares were jointly held by the assessee and Narayan Ramachandra Rathi. The facts of present case are similar to the facts of case in the case of Narayan R. Rathi decided by the Co-ordinate Bench. No distinction in facts has been brought to our knowledge by the Department. Thus, for the parity of

reasons, addition made under section 68 of the Act deserves to be deleted. Further, the Assessing Officer is directed to allow the benefit of section 10(38) of the Act to the assessee.

The relevant extract in the case of Dipesh Ramesh Vardhan Vs. DCIT, ITA No. 7648/Mum/2019 dated 11.08.2020 is reproduced as under:

“6. We have carefully heard the rival submissions and perused relevant material on record. So far as the factual matrix is concerned, there is no substantial dispute regarding the same. The perusal of record would reveal that the assessee purchased certain shares of an entity namely M/s STL as early as September, 2011. The shares were converted into demat form in assessee’s account during the month of March, 2012. The transactions took place through banking channels. The investments were duly reflected by the assessee in financial statements of respective years. The copies of financial statements of M/s STL for FYs 2009-10 & 2010-11 which led to investment by the assessee in that entity was also furnished during the course of assessment proceedings. Subsequently, M/s STL got merged with another entity viz. M/s SAL pursuant to scheme of amalgamation u/s 391 to 394 of The Companies Act, 1956. The Scheme was duly approved by Hon’ble Bombay High Court vide order dated 22/03/2013, a copy of which is on record. Consequently, the shares of M/s STL held by the assessee got swapped with the shares of M/s SAL and new shares were allotted to the assessee during June, 2013 pursuant to the approved scheme of amalgamation. M/s SAL is stated to be listed public company Group ‘A’ shares signifying high trades with high liquidity. The assessee has sold these shares through its stock broker namely M/s Unique Stockbro Private Limited in online platform of the recognised stock exchange during the month of March, 2014. The selling price was in the range of Rs.489/- to Rs.491/- per share. The transactions took place through online mechanism after complying with all the formalities and procedure including payment of STT. The delivery of the shares was through clearing mechanism of the stock exchange and sale consideration was received through banking channels. The transactions are duly evidenced by contract notes, demat statements, bank statements and other documentary evidences. The key person of assessee group, in his statement, maintained the position that trading transactions were genuine transactions carried out through stock exchange following all process and legal procedures. The assessee also filed trading volume data and price range of the scrip for a period of more than 2 years i.e. from Jan, 2013 to July, 2015. The shares reflected healthy trading volume and the price range reflected therein was in the range of Rs.360/- to Rs.600/- per share. The price range was stated to be in the same range for 15 months after the period of sale of shares by the assessee, which has not been disputed by the revenue. On the basis of all these facts, it could be gathered that the assessee had duly discharged the onus casted upon him to prove the genuineness of the stated transactions and the onus had shifted on revenue to rebut the same.

7. As against the assessee’s position, the primary material to make additions in the hands of assessee is the statement of Shri Vipul Bhat and the outcome of search proceedings on his associated entities including M/s SAL. However, there is nothing on record to establish vital link between the assessee group and Shri Vipul Bhat or any of his group entities. The assessee, all along, denied having known Shri Vipul Bhat or any of his group entities. However,

nothing has been brought on record to controvert the same and establish the link between Shri Vipul Bhat and the assessee. The opportunity to cross-examine Shri Vipul Bhat was never provided to the assessee which is contrary to the decision of Hon'ble Supreme Court in M/s Andaman Timber Industries V/s CCE (CA No.4228 of 2006) wherein it was held that not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statement of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounts to violation of principal of natural justice because of which the assessee was adversely affected. The whole basis of making the addition is third party statement without there being any tangible material. It is trite law that additions merely on the basis of suspicious, conjectures or surmises could not be sustained in the eyes of law as held by Hon'ble Supreme Court in Omar Salay Mohamed Sait V/s CIT (1959 37 ITR 151). The suspicion however strong could not partake the character of legal evidence as held by Hon'ble Supreme Court in Umacharan Shaw & Bros. V/s CIT (1959 37 ITR 271). Therefore, we find that onus as casted upon revenue to corroborate the impugned additions by controverting the documentary evidences furnished by the assessee and by bringing on record, any cogent material to sustain those additions, could not be discharged by the revenue. The allegation of price rigging / manipulation has been levied without establishing the vital link between the assessee and various entities of Shri Vipul Bhat. We find that the whole basis of making additions is third party statement and no opportunity of cross-examination has been provided to the assessee to confront the said party. As against this, the assessee's position that that the transactions were genuine and duly supported by various documentary evidences, could not be disturbed by the revenue.

8. The allegations of Ld.AO that the assessee was part of the group which indulged in rigging or manipulation of prices of shares in connivance with Shri Vipul Bhat is not backed by any independent material. Firstly, there is nothing on record which establishes the fact that the assessee was acquainted with Shri Vipul Bhat or any of his entities and secondly, the onus casted upon assessee to prove the genuineness of the transactions was already discharged by the assessee. Shri Vipul Bhat, in his statement, stated that one Shri Sandeep Maroo acted as intermediary who introduced Vardhan family to him. However, no further investigations have been carried out to establish this vital link between the assessee and Shri Vipul Bhat. We do not find any independent investigations by Ld. AO to bring on record any tangible material to corroborate the same. There are no evident or even allegation of any cash exchange between the assessee and group entities of Shri Vipul Bhat. This is further evidenced by the fact that no substantial incriminating material / wealth of that magnitude has been found during the course of search operations on assessee which would corroborate such presumption and prove that the transactions were sham transactions, in any manner.

9. The fact that the assessee could not produce the concerned person of M/s SAL was rightly controverted by submitting that the aforesaid entity was not under the control of the assessee and the assessee was under no obligation to do so. The existence of M/s SAL is beyond doubt since it was a listed corporate entity and secondly, it was subject matter of scheme of amalgamation u/s 391 to 394. The scheme of amalgamation was duly been approved by Hon'ble Bombay High Court. Therefore, the existence of the said entity could not be doubted, in any manner.

10. *The above conclusion is further fortified by the fact that in share sale transactions through online mode, the identity of the buyer of the shares would not be known to the assessee. Therefore, the adverse conclusion drawn by Ld. AO merely on the basis of the fact that the buyer of the shares were group entities of Shri Vipul Bhat, could not be sustained. The fact that there were independent buyers also would rebut the same and weaken the conclusion drawn by Ld. AO.*

11. *The Ld. AR has relied on plethora of judicial pronouncements in support of various submissions, which we have duly considered. These decisions would only support the conclusions drawn by us that once the assessee has discharged the onus of proving the genuineness of the transactions, the onus would shift on the revenue to dislodge assessee's claim and bring on record contrary evidences to rebut the same. Until and unless this exercise is carried out, the additions could not be sustained in the eyes of law.*

12. *To enumerate the few, the Hon'ble Bombay High Court in CIT V/s Shyam S.Pawar (54 Taxmann.com 108 10/12/2014) declined to admit revenue's appeal since the revenue failed to carry forward the inquiry to discharge this basic onus. The co-ordinate bench of this Tribunal in Mukesh R.Marolia V/s Addl. CIT (6 SOT 247 15/12/2005) held that personal knowledge and excitement on events should not lead the Assessing Officer to a state of affairs where salient evidences are over-looked. When every transaction has been accounted, documented and supported, it would be very difficult to brush aside the contentions of the assessee that he had purchased shares and had sold shares and ultimately purchased a flat utilizing the sale proceeds of those shares and therefore, the co-ordinate bench chose to delete the impugned additions. We find that this decision was firstly been approved by Hon'ble Bombay High Court vide ITA No. 456 of 2007 on 07/09/2011 and thereafter, special leave petition against the said decision has been dismissed by Hon'ble Supreme Court vide SLP No. 20146 of 2012 dated 27/01/2014 which is reported as 88 CCH 0027 SCC. The SMC Bench of Tribunal in Anraj Hiralal Shah (HUF) V/s ITO (ITA No. 4514/Mum/2018 dated 16/07/2019) held that in the absence of any evidence to implicate the assessee or to prove that the transactions were bogus, the Long-Term Capital Gains declared by the assessee could not be doubted with. This case was dealing with gains earned by the assessee on sale of same scrip i.e. M/s Sunrise Asian Ltd.*

13. *Therefore, considering the entirety of facts and circumstances, we are not inclined to accept the stand of Ld. CIT(A) in sustaining the impugned additions in the hands of the assessee. Resultantly, the addition on account of alleged Long-Term Capital Gains as well as estimated commission against the same, stands deleted. The grounds of appeal, to that extent, stand allowed.*

14. *The grounds relating to levy of interest as well as initiation of penalty, being consequential in nature, would not require any specific adjudication on our part. Finally, the appeal stands partly allowed in terms of our above order.*

The facts and circumstances in the case of the assessee are also similar to the facts and issues as discussed in the findings of the ITAT benches on the similar scrip in the other cases referred by the ld. Counsel and the same were not disputed before us during the course of appellate

proceedings. Therefore, following the principle of consistency we find merit in the submission of the ld. Counsel and allow both the grounds of appeal of the assessee.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16.10.2023

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 16.10.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.