

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, HON'BLE JUDICIAL MEMBER

&

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 2042/MUM/2023 (A.Y: 2012-13)

Jitendra Udaylal Jain C/o. M/s. Alankar Jewellers Shop No.1 Municipal Building R.A. Kidwai Road, Wadala Mumbai- 400037 PAN: AABPJ5480E	v.	National Faceless Assessment Centre(NFAC) Delhi
(Appellant)		(Respondent)

Assessee Represented by	:	Shri. Vimal Punmiya
Department Represented by	:	Shri. Ujjawal Kumar Chavan
Date of conclusion of Hearing	:	11.10.2023
Date of Pronouncement	:	24.11.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 04.05.2023 for the A.Y.2012-13 passed under section 250 of Income-tax Act, 1961 (in short "Act").

2. Brief facts of the case are, Assessee has filed his return of income for A.Y.2012-13 on 15.09.2012 declaring total income of ₹.20,31,298/-. Based on the information from Director of General of Income tax (Inv) Pune, on Bogus Long term capital gain manipulation in market prices of shares of certain companies listed on Bombay Stock Exchange, assessee was identified as one of the beneficiary who obtained through above said manipulation of prices of shares to the extent of ₹.1,10,80,500/-. Based on the above information the case of the assessee was reopened by issue of notice under section 148 of the Act on 29.03.2016 after proper approval. In response, Ld.AR of the assessee submitted a letter dated 06.04.2016 with the request to treat the original return filed in compliance with the notice under section 148 of the Act and asked for the copy of reasons recorded before issue of notices. The reasons were supplied to the assessee and statutory notice under section 143(2) of the Act were issued and served on the assessee.

3. Based on the information received from assessee, it was noticed that assessee bought 75000 shares of M/s. Rander Corporation Ltd.,@₹.13/- per share and sold the same @147.37/- and declared the net gain of ₹.1,00,77,724/. The Assessing Officer observed that assessee earned Long Term Capital Gain during the year and claimed it

as exempt under section 10(38) of the Act and he considered this transaction as suspicious because of huge claim of capital gains earned by the assessee.

4. By relying on the findings of the Kolkata Investigation Wing wherein they have analysed 84 penny stocks and heavily relied on their findings and found that M/s. Rander Corporation Ltd., is one among them and further, he noticed, assessee has dealt only with shares of M/s.Rander Corporation Ltd., and has analyzed the financials of the M/s.Rander Corporation Ltd., and the price fluctuations in the market. He heavily relied on the statements of Shri Amar Chand Rander, Managing Director of M/s. Rander Corporation Ltd., who has explained clearly the modus operandi and the price of these shares were artificially manipulated and controlled by Shri Natwar Lal Daga in order to provide accommodation entries to various beneficiaries. Based on the various beneficiaries statements, share brokers statements and exit providers statements and further analyzed the individual statements of Shri Raj Kumar Kedia, Shri Natwar Lal Daga and Shri Kishan Khadaria, he came to the conclusion that assessee is one of the beneficiaries who has taken the benefit of manipulation in the share prices of M/s. Rander Corporation Ltd., and issued notices to the assessee.

5. In response assessee has submitted a letter dated 26.12.2016 in which assessee has submitted that all the purchases and sales of the above said shares were through Demat Account and payments were through banking channels and filed documents of broker note. In support of the above contention, it was submitted that all the prescribed conditions laid down under section 10(38) of the Act were complied with. The sales were done through registered Stock Exchange and registered SEBI brokers. The statement of Director of the M/s. Rander Corporation Ltd., or any person before authorities has no connection with the assessee and there is no connection established by the revenue.

6. After considering the submissions of the assessee, Assessing Officer rejected the same and observed that the statement of assessee was recorded under section 131 of the Act wherein the assessee was confronted with the various statements of the operators, brokers and entry providers where all have admitted of providing accommodation entries, that statement recorded of the various operators are related to the scrips traded by the assessee which are directly linked to the assessee as they have purchased the shares from assessee on stock exchange, which establishes the direct relationship with the transactions.

He heavily relied on the various statements recorded by the various entry operators, brokers and exit operators, the Assessing Officer confirmed the addition by adding the sale proceeds of shares under section 68 of the Act to the extent of ₹.1,10,52,724/-.

7. Aggrieved assessee preferred an appeal before the Ld. CIT(A) and filed detailed submissions. After considering the submissions of the assessee, Ld. CIT(A) sustained the action of the Assessing Officer.

8. Aggrieved assessee is in appeal before us raising following grounds: -

"1. The Ld. CIT erred in confirming the long term capital gain income of Rs. 1,10,52,724/- as income u/s 68 without appreciating to the fact that individual appellant had invested in stocks as all were against deliveries as reflected in his Balance sheet as investment and where all payments were against delivery taken. Changing the character of gain as income from Other Sources is bad-in-law and facts; therefore, the surplus arising may be treated as a LTCG u/s 10(38).

2. The appellant craves leave to add, amend, alter, drop any of the grounds of appeal."

9. At the time of hearing, Ld.AR of the assessee brought to our notice relevant facts of the case and with regard to additions made by the Assessing Officer, Ld. AR submitted that Assessing Officer on the basis of reopening the case u/s 147 and by issuing notice u/s 148 dated

29.03.2016 based on some information received from DGIT(Inv.), Mumbai that the enquiry reveals, the company is a shell company and the script was used for accommodation entry of bogus LTCG, bogus STCG and bogus STCL/bogus business loss claimed through trading of shares, it was found that the assessee had also obtained such accommodation entries in the form of bogus LTCG of ₹.1,10,52,724/- and thereby converted undisclosed income into tax free income without paying taxes.

10. Ld.AR of the assessee submitted that Assessing Officer on the basis of irrelevant materials and statement recorded on oath of Mr.Amar Chand Rander Entry Operator of M/s. Rander Corporation Ltd., wherein he has admitted of being a bogus entry provider and has provided bogus entry, the Sale consideration shown by the Assessee from share transactions are treated as bogus and added as concealment of income of ₹.1,10,52,724/-. He submitted that the shares were transferred/purchased through preferential allotment mode. Assessing Officer observed that the low share price on date of acquisition on 04.10.2016 of 1,50,000 shares of face value ₹.10 and premium of ₹.3/- held in name of late Smt. Badambai U. Jain (Mother of the assessee). Thereafter, the Assessee acquired said shares through "will" dated

25.04.2011 and after death of the mother on 06.06.2011, the assessee received equal proportionate share of 75,000 shares on 29.10.2011 with high price of ₹.145/- each per share.

11. Ld.AR of the assessee objected to the addition made by the Assessing Officer and submitted that the addition made by the Assessing Officer is not sustainable. He submitted that in Assessment year i.e. A.Y.2012-13, Assessee sold shares and booked the Short Term capital gain. (Page No. 11-22 of paper book) Summary is given as under.

Date of Purchase	Date of transfer	Shares Acquired	Shares Derna A/c	Sale Amount	Shares Sold through	LTCG	STT Paid
09.10.2010 (Late Smt. Badambai U. Jain)	01.02.2012 To 22.02.2010	75,000 @Rs.13/- per share	Ambit Securities Broking Pvt. Ltd. BO. Code 29529	11052724	Ambit Securities Broking Pvt. Ltd. BO Code 29529	10077724	13850
Total		9,75,000		11052724		10077724	13850

12. Ld.AR of the assessee further submitted that the revenue relied on the findings of the DIT(Inv), Mumbai that shares of M/s Rander Corporation Ltd. are traded on BSE under Security Code is 531228, the Assessing Officer considering the same as a mere bogus company and Shri Amar Chand Rander and Natwar Lal Daga are the operator of the Company. It was noticed that these companies were engaged in issuing bogus bills for providing long term capital gain/loss, speculation loss/profit etc., It was noticed by the Assessing Officer that the Assessee

has purchased shares of M/s Rander Corporation Ltd., one of the group companies of Shri. Amar Chand Rander. On this basis the assessee's case was brought under assessment without any tangible material on record but on basis of information and statement of third party.

13. Ld.AR of the assessee brought to our notice facts and explanations in the chronological order of the transactions of long-term capital gain to establish the genuineness of the transaction, for the sake of clarity it is reproduced below: -

i. The appellant is an investor in securities for last several years and is still maintaining Demat Account with same broker M/s Ambient Securities Broking PvtLtd.

ii. The Appellant's mother expired on 06.06.2011 and Legal heir Mr. Jitendra Udaylal Jain the Appellant was brought on record. [Copy of death certificate is part of Paper Book PgNo. 11]

iii. The Appellant's mother has made investment in the Shares of M/s. Rander Corporation Ltd., a Profit making company in A.Y2010-11. During the year, after the death of Assessee's mother under consideration had transferred 75,000 preferential allotment of shares @ of Rs.10/- with premium for Rs.9,75,000/- to the Assessee under the scheme of Rights Equity Shares. (Page No. 15 of Paper Book) As also confronted by WILL in the statement taken Clause 7 the Schedule of property on 20.04.2011 in answer to Q.3,Q. 9, Q. 10, Q. 11, Q. 12, Q. 13, and Q. 14 (Copy of statements enclosed from material documents is the Part of paper book Page No. 11-22)

iv. The Appellant's Mother has paid the full consideration by account payee cheque and as such the payment was made through proper banking channel (Page No.16 to 18 of paper Book)

v. The shares got credited by offline market trading in Assessee Demat account in the month of February, 2010. (Pg. No.50 of Paper Book)

vi. *The Transferor Company was listed on the Bombay Stock Exchange and had received an "in principle" approval from BSE for listing the Rights Equity Issue. (Paper Book pg. No84)*

vii. *The Appellant then, through his same share broker, sold the Shares at the online platform (BOLT) provided by the recognized stock exchange and delivered the shares in demat form to the stock exchange clearing house and also received the sale consideration from the recognized stock exchange during the F.Y. 2011-12 relevant for A.Y2012-13.*

viii. *The shares were sold through M/s. Ambient Securities Broking PvtLtd. who were registered share brokers of Bombay Stock Exchange and Copies of sale bills issued by M/s. Ambient Securities Broking Pvt. Ltd. is part of paper book. (Pg. No. 20-22 of Paper Book)*

ix. *The said sales consideration duly came in Banking Channel and reflected in Bank Statement (Pg. No. 19 of Paper Book)*

X. *There are no evidences that Assessee given cash to entry operator Mr. Natwarlal Daga or Amar Chand Rander.*

xi. *The Assessee also submitted copy of DEMAT Account where the said share inwards and outwards clearly reflected in Transaction statement issued by Ambient Securities Broking Pvt. Ltd..*

xii. *The Ld. AO is silent on the Shares Contract Notes of Demat Account in Appendix B to Regulation-14 of SEBI and has not consider important evidences issued by Third Party.*

xiii. *The shares were sold through recognized stock exchange on which the appellant has paid Security Transaction Tax (STT) and other statutory taxes. The same were paid through proper banking channel. It is well known that when the shares are sold at online platform the stock exchange, the seller of the shares does not know as to whom the shares are being sold. The shares are transferred in DMAT form to the stock exchange clearing house and the seller only receives sales consideration from the stock exchange through the share broker. Therefore, neither the seller was knowing the purchasers, nor the purchasers were knowing the seller. In absence of any corroborative evidence that both Seller and Purchaser have indulged into some clandestine transactions, there is not even a remote possibility of hobnobbing. Therefore, the appellant cannot be said to be a part of the group indulging into rigging of share prices of the scrips as alleged by the Ld. AO.*

Xiv. *During the course of assessment proceedings the appellant submitted following documents to substantiate his claim of Long*

Term Capital Gain on which the assessee has paid taxes according to the Act:-

- *Copy of Bank statement*
- *Copy of Demat account*
- *Copy of Contract notes.*
- *Copy of WILL by Late SmtBadambai UJain*
- *Copy of Ledger/Retraction of M/s. Ambient Securities Broking Pvt. Ltd.*

Xv. However, one point to be noted that the finding of the Ld. AO is wrong and shows that the Ld. AO has received RoC of the Scrips whether evolved knowledge about the share transactions between acquisition. The Ld.AO has relied on mere information by Investigation Directorate wing and added the sale proceeds in lieu of STCG assuming it to be LTCG.

xvi. The Appellant's Mother purchased the shares directly from the Company under Private Placement and sold at Bombay Stock Exchange through its share brokers. The shares were received directly from the company and on sale, the demat shares were delivered to the clearing corporation of BSE through its share broker. (Page no. 15 of the paper book)

xvii. The Ld. AO denied the claim of Long-term Capital gain on sale of shares treating it as undisclosed income and made addition of total sale consideration under Section 68. The shares had been directly allotted by the company and the payment had been made through account payee cheque duly disclosed by Assessee. Thus, possession of the shares was not in doubt at all because same was also reflected in Demat account.

xviii. Not only that, the sale of shares was also evidenced from transaction undertaken through registered stock at a specific trade time in BSE and after the sale of shares, the net receipts had been credited to the assessee's bank account. Hence, the nature of the transaction was clearly purchase and sale of shares and the source of the credit, from the material facts on record were quite evident that it was from the sale of shares. As there was no tangible material brought on record to convert these transactions then it is very difficult to treat the sale proceeds of the shares as undisclosed income to be added under deeming provisions of Section 68. There was no evidence or any whisper that some unaccounted money had been routed and addition of sale proceeds needs to be deleted.

Case laws where shares of m/s Rander Corporation Ltd wherein tribunal has deleted the addition are on page 24 of the detailed written submission.

14. Further, Ld.AR of the assessee submitted that addition made on basis of statement of third party Shri Amar Chand Rander which was thereafter retracted cannot be made the basis for addition. In this regard, he submitted that, Assessee denies to know any person named Shri Natwar Lal Daga as mentioned in the assessment order. Further, the Assessee has no privity of contract with the buyer or so-called Shri Natwar Lal Daga as the assessee has sold shares at the online platform of the recognised stock exchange clearing house through his share broker. He submitted that when a person places his order for sale or purchase of any share on the online platform of the stock exchange, the identity of seller is not known to buyer and vice versa. The Online platform only shows the top offer rate & quantities and bidder rate & quantities of the particular scrip/shares. No other details of buyer or seller or even the brokers of buyer or seller is reflected on the screen. The seller of shares never knows who the ultimate buyer is and the buyer does not know who the ultimate seller is of scrip/shares. Further all the fund and shares delivery settlement is done through the stock exchange and its clearing corporation. As such when the Assessee

placed his order for sale of shares, he did not know who the buyer was or to whom the shares were being sold.

15. Ld.AR of the assessee submitted that assessment was made on the basis of material supplied by the Investigation Wing in respect of the survey under the Income Tax Act carried out on M/s Rander Corporation Pvt. Ltd and third person one Mr. Natwar Lal Daga and the Confirmatory statements of Other beneficiaries recorded on various occasions in which statement of promoter said to have accepted that Shri. Amar Chand Rander is an entry operator and Mr. Natwar Lal Daga is involved in providing various bogus accommodation entries to the various beneficiaries for commission. Based on the statement of so called Shri. Amar Chand Rander, the Assessing Officer has added the sale consideration of ₹.1,10,52,724/- as undisclosed income under section 68 of the Act. In the Assessment Order, Assessing Officer has stated that Shri Amar chand Rander is also director of M/s. Rander Corporation PvtLtd. Comfort Securities Ltd. which has been covered under a survey action of the Income Tax Department and M/s. Rander Corporation Pvt. Ltd. is controlled by Shri Amar Chand Rander (entry operator) and he has manipulated for providing accommodation entry of bogus LTCG/STCG. Further, he submitted that as stated and explained

hereinabove the Assessee does not know the so called Shri Amar Chand Rander and third person Mr. Natwar Lal Daga and assessee has not entered into any transactions with him or any of his concerns. The Assessee has sold the shares at the online platform of the stock exchange through his share broker and was not at all concerned as to who was buying the shares. The Assessee or his share broker has no control over the bidders/buyers of the shares at the online platform.

16. Ld.AR of the assessee submitted that the Assessee is not obliged under the law to produce any party whom he does not know and has not dealt with. In fact it is the onus on the Assessing Officer to provide to the Assessee an opportunity to cross examine the party whom he is trying link with. The Assessee has discharged its onus to prove the genuineness of the transactions by providing all the relevant direct documentary evidences as enumerated hereinabove. When a person invests in shares or securities with short-term/Long-term perspective, his objectives shall always be to sell the shares in short term and offload when he realizes the best price as per his strategy. Such transactions of deriving short-term/long-term capital gain cannot be a regular trend and it cannot be questioned just because there is substantial gain in any particular scrip or year.

17. Ld.AR of the assessee submitted that, the action of the Assessing Officer for making such addition on the basis of the statement of third person is not lawful and justified as under: -

i. The statement of so called Shri Amar Chand Rander was not provided to the Appellant during the course of assessment.

ii. Nothing has been brought on record which could establish that the Appellant was the beneficiaries of so called accommodation entries provided by the so called Shri Natwar Lal Daga (third person). whether the so called modus operandi

iii. Nothing has been brought on record employed for manipulation/rigging of the price of the shares by so called Shri Amar Chand Rander also existed in the Appellantscase.

iv. No Opportunity was provided to the Appellant to cross examine the so called Shri Amar Chand Rander and Shri. Natwar Lal Daga.

v. No tangible document provided to the Appellant.

vi. The documentary evidences submitted by the Appellant during the course of assessment proceeding was neither verified nor examined nor anything contrary and conducive evidences were brought on record.

vii. The said statement made by M/s. Rander Corporation PvtLtd. has been retracted on 04.10.2016 by way of a confirmation of allotment of preferential Shares in name of Assessee's mother Late SmtBadambai U. Jain. (Copy of retraction part of Paper Book Page No15)

viii. The Ld. AO made the addition on mere ground that Mr. Amar Chand Rander had given statement on behalf of the promoter of the M/s. Rander Corporation Pvt. Ltd. that he is providing the bogus share transaction entries. However, the Ld. AO failed to consider that addition cannot be made on mere general Statement of Mr. Natwar Lal Daga (third person) where no opportunity of cross examination was given to the appellant.

ix. The fact that remains right from assessment till date is that nowhere entry operator Mr. Amar Chand Rander has named the assessee in any of his such statements nor the Revenue has filed any such evidence to this effect

X. The Ld. AO did not consider the letter from one of the Directors of M/s Rander Corporation Pvt. Ltd. dated 04.10.2016. (Copy part of paper Book Pg. No. 15)."

18. Ld.AR of the assessee submitted that Assessing Officer cannot rely on confirmatory statement made by other beneficiaries during the course of search when he has retracted the said statement and in substance two contradictory statements made by the same person are available. In such a situation the Assessing Officer should rely on the retraction statement. As once the statement is retracted then that person has to be re-examined. In view of the aforesaid facts and circumstances of the case and in the interest of justice the Ld.AR of the assessee humbly requests to consider the above submission and delete addition of ₹.1,10,52,724/- made by the Assessing Officer.

19. On the other hand, Ld. DR relied on the order of the lower authorities. Ld. DR brought to our notice Page No. 2 of the assessment order and brought to our notice various findings of the Assessing Officer and also he brought to our notice Page No. 9 to 17 of the assessment order. Further, he also brought to our notice Page No. 11 of the Ld. CIT(A) order and brought to our notice Ld. CIT(A)'s findings. In support of the above findings of lower authorities, he relied on the decision of Coordinate Bench in the case of Naresh Manakchand Jain *v.* ACIT in ITA

No. 1945 & 1946/MUM/2023 dated 31.08.2023. Ld. DR filed its written submissions vide letter dated 11.10.2023 objecting to the submissions of the Ld. AR, for the sake of clarity it is reproduced below: -

"Kindly refer to the above.

In addition to the order of AO and CIT(A) following summary points of oral arguments during the hearing are submitted in this case.

Sequence of submission is- Facts of the case, issue in dispute, summary of argument of the Assessee and its rebuttal, case laws

1. Facts of Bogus LTCG-

i) Rs 13 share was sold at Rs 147

ii) Script of M/s Rander didn't have underlying financial or business transaction to support this rise in normal course

ii) Rigging was followed by offloading of shares. Assessee offloaded in the same way.

iv) Total scam was of 438 crores

v) MD of M/s Rander participated in the scam as he got Rs 7 crores

vi) MrDaga, Kedia, Khandaria coordinated the conspiracy. Share brokers clarified their roles in the process of rigging.

vii) Other beneficiaries confirmed the whole modus operendi.

viii) All these statements of operators, brokers and entry providers were confronted to assessee and Assessee's statement was recorded u/s 131 to give the opportunity to rebut these evidences

2. Issues in dispute

Grounds of appeal-

-Whether money received against deliveries reflected in balance sheet can be considered for section 68?

-Whether changing character LTCG to income from other sources is bad in law?

3. summary of argument of the Assessee and its rebuttal-

Assessee claims to be an investor for several years,
-consideration was paid by cheque,
-shares were credited offline in DMAT a/c,
-script was listed,
-sell was through online platform, through a broker,
-consideration came in banking channel,
-no evidence assessee giving cash to entry operator
-STT paid.

Assessee relies on documents of-

- Bank statement,
- DMAT account statement,
-contract notes and
-ledger of the broker.

Rebuttal-

Assessee was explained with the complete modus operendi by the AO where all these transactions were arranged through a conspiracy and scam. The people who arranged these transactions explain the magical results of rise of value of share from Rs 13 to Rs 147 of a script without financial base. Bank statement, DMAT a/c, contract notes, ledger are part of conspiracy and scam. These documents did not give any clue against the modus operendi of scam rather these documents are the documentary evidences of the execution of the scam.

Assessee tries to put a theory of innocent buyer Many such innocent buyer purchase the script at a time coincidentally Another level of coincidence happened that some brokers rigged the same script Further extreme coincidence happened that the all buyers waited when price was rising and all the buyers coincidentally offloaded shares at a time Assessee denies the statements of promoter regarding receipt of crores of rupees to participate in scam, statements of brokers regarding rigging, statements of entry operators regarding coordination of all scam

This theory is simply not possible. This explanation for section 68 for cash credit in the books of account cannot be accepted by the wildest imagination

4. case laws -

Following case laws are relied upon by the assessee They are either on distinguishable facts or did not consider the important issue hence per-incuriam or sub silentioe silence without any consideration to principles u/s 68 or are not the laid principle laid down ie obiter dicta and not ratio-decidendi

<i>Sr.No.</i>	<i>Name</i>	<i>Distinguish/Per Incuriam / sub silentio / obiter dicta</i>
<i>1.</i>	<i>DipeshVarshan vs DCIT ITA 7648/mum/2019</i>	<i>Did not considered whole scheme as a fraud and conspiracy, (sub silentio). Evidences of scam ie bank statement, DMAT a/c, contract note, ledger were considered as in favour of assessee when they wrere the very documents explaining modus operendi of the fraud, (per-incuriam)</i>
<i>2</i>	<i>Anraj shah HUF v ITO 4514/mum/2018</i>	<i>Did not considered whole scheme as a fraud and conspiracy. (sub silentio) Evidences of scam ie bank statement, DMAT a/c, contract note, ledger were considered as in favour of assessee when they were the very documents explaining modus operendi of the fraud. (per-incuriam).</i>
<i>3</i>	<i>Rameshchandra kothari v ACIT ITAT 649/bang/2019</i>	<i>Set aside to AO. Issue was about providing statements to the assessee. In the case of Assessee, AO gave all the statements and mentioned in the order. (Distinguish)</i>
<i>4</i>	<i>Arun Tripathi V PCIT 2560/mum/2018</i>	<i>Did not about the bogus LTCG scam but about reopening order u/s 263. Not relevant.</i>
<i>5</i>	<i>CIT v Shyam R Pawar [2015] 54taxmann.com108</i>	<i>Did not considered whole scheme as a fraud and conspiracy. (sub silentio). Documents were considered as separate pieces of evidences. (per-incuriam). Hon'ble bench observed that there is 'No substantial question of law.'</i>
<i>6</i>	<i>Aarti Mittal v ITO [2014] 41 taxmann.com118</i>	<i>Not a case of LTCG scam. (Distinguish)</i>

The facts of bogus LTCG scam are speaking for themselves. The transaction of cash credit to the books of account of the assessee is not genuine but a wrongful gain through unlawful means for which assessee is not legally entitled. Assessee carried out this transaction dishonestly and fraudulently to cause unlawful loss to the revenue. Assessee entered in the acts done by several persons

in furtherance of common intention of LTCG scam, wherein assessee claimed exemption, operators earned the commission and exit providers claim loss to be set off against the income. Assessee is Giving false evidences, fabricating false evidences and Using evidences known to be false. Assessee has made False statement in declaration which is by law receivable as evidence and using as true such declaration knowing it to be false. There was Intentional omission to give information of LTCG scam by the assessee who was bound to inform. Rather assessee is giving false information respecting LTCG scam committed Because of mischiefs in LTCG scam, revenue suffered huge losses Assessee falsify the books of accounts for tax evasion These are offences as per penal code. For example-

IPC 192Fabricating false evidence.-Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".

The test of preponderance of probability is definitely clear as envisage in case of Suman Dayal v DCIT(1995)214ITR 801 (SC) and in case of CIT v Durga Parasad 82 ITR 540 (SC). Furthermore, on similar facts of LTCG scam, tax liability was imposed in following cases.

Udit Kalra v. ITO [IT Appeal No. 220/2019(Delhi HC),

Sanjay Bimalchand Jain v. Pr. CIT [2018] 89 taxmann.com 196 (Bom.);

Sanat Kumar v. Asstt. CIT [IT Appeal No. 1881 (Delhi) of 2018, dated 6-6-2019]

Pooja Ajmani v. ITO [2019] 106 taxmann.com 65/177 ITD 127 (Delhi - Trib.)

AnipRastogi v. ITO [IT Appeal No. 3809 (Delhi) of 2018, dated 8-1-2019]

Abhimanyu Soin v. ACIT [IT Appeal No. 951 (CHD) of 2016, dated 18-4-2016]

Smt. M.K. Rajeshwari v. ITO [2018] 99 taxmann.com 339 (Bang. - Trib.)

Chandan Gupta v. CIT [2015] 54 taxmann.com 10/229 Taxman 173 (Punj. &Har.)

5. *In view of the above, appeal filed by the assessee may be dismissed."*

20. In the rejoinder Ld.AR of the assessee submitted that assessee is a regular investor and he brought to our notice Page No. 10 of the Paper Book wherein assessee has made several investments and he brought to our notice list of investments made by the assessee. With regard to reliance of Ld. DR in the case of Naresh Manakchand Jain v. ACIT (supra) Ld. AR submitted that in the above case assessee is a stock broker and not the investor. Further he submitted that the Hon'ble High Court has stayed the above said order.

21. Considered the rival submissions and material placed on record, we observe from the record that the assessee has not made the above disputed investments but his mother who bought the initial shares through preferential allotment and at the demise of his mother, he got those shares by "will". The assessee has sold those shares through his regular broker in the BSE. We observe that all the shares were purchased and sold through the proper banking channel. The Assessing

Officer has observed that the shares sold by the assessee is one of the penny stock of Rander Corporation Ltd, he reopened the assessment and summoned the assessee to explain why the above shares should not be treated as penny stock and the sales proceeds should not be treated as undisclosed income u/s 68 of the Act. Assessing Officer informed the assessee that the entry operators, brokers and exit operators of the above said shares have given statements wherein they agreed that this is penny stock and they were transacting in these shares to accommodate the beneficiaries to claim deduction u/s 10(38) of the Act. Since, the assessee has only dealt with the above transaction after receiving the shares thru "will" from his mother, he has nothing to offer any explanation. The Assessing Officer has proceeded to make the addition based on the various statements of the operators. At the same time, he has not brought on record how the assessee is involved in the above transaction except trading in the stock exchange. He has not established any relationship with any of the operators. We observe that in the similar factual matter, the coordinate bench has decided the issue in favour of the assessee in the case of Shri Abhishek Doshi (ITA No 3122/Mum/2022 dated 31/05/2023). For the sake of clarity it is reproduced below: -

"4. We have considered the submissions of both sides and perused the material available on record. The only dispute in the present appeal is against the addition made under section 68 of the Act on account of proceeds from the sale of shares by treating the scrips as penny stocks. It is undisputed that the assessee has transacted in the shares of M/s Parag Shilpa Investments Ltd and M/s Ashika Credit and Capital Ltd. The shares of M/s Parag Shilpa Investments Ltd were purchased via a preferential allotment basis, while the assessee has placed on record the contract notes for the purchase of shares of M/s Ashika Credit and Capital Ltd. From the sale of shares of M/s Parag Shilpa Investments Ltd, the assessee earned long-term capital gains, which was claimed as exempt under section 10(38) of the Act. While from the sale of shares of M/s Ashika Credit and Capital Ltd, the assessee earned short-term capital gains. On the basis that the aforesaid companies were part of the investigation by the Directorate of Income Tax (Investigation), Kolkata, Mumbai, and Ahmedabad, and certain investors as well as entry operators have earned bogus long-term capital gains from transacting in shares of the aforesaid companies, the AO treated these companies as paper entities and disallowed the claim of exemption under section 10(38) on account of longterm capital gains and a lower rate of tax on short-term capital gains earned by the assessee. The AO also referred to the value of the shares at a different point in time including the period during which the assessee was holding the shares. However, from the perusal of the assessment order, it is evident that neither in the findings of the Investigation Wing, referred by the AO from pages 4-6 of the assessment order, nor in the statements of beneficiaries and entry providers recorded during the aforesaid investigation, as mentioned from pages 12-22 and thereafter from 24-31 of the assessment order, there is any mention of the name of the assessee. Further, the aforesaid findings also do not establish any nexus of these tainted investors, exit providers, or entry operators with the assessee in any manner.

5. In the assessment order in para-7.2, the AO also referred to the order passed by the SEBI penalising and restraining the stockbroker, through whom the assessee purchased shares of M/s Parag Shilpa Investments Ltd, as it was involved in rigging the share price of certain shares. However, we find that there is no allegation that such a broker was involved in rigging the price of the shares in which the assessee has invested. Further, no finding of the SEBI has been brought on record to show that such rigging of price was for the benefit of the assessee or has any nexus with the assessee. This is also not a case wherein either the directors/promoters of the aforesaid Companies, in which the assessee had invested, has accepted that the company is merely a paper company and provides the benefit of bogus long-term capital

gains to its shareholders. Further, despite the Revenue having the information regarding the stockbrokers through whom the shares were sold, there is no evidence on record that even these shareholders were named in the investigation conducted by the Investigation Wing of the Department. It is also pertinent to note that the AO has not given any adverse comments or drawn adverse inferences on the documentary evidence submitted by the assessee. Thus, in the present case, the Revenue has failed to prove with any cogent evidence on record that the assessee was involved in converting his unaccounted money into long-term capital gains and short-term capital gains by conniving with any entry operator/exit provider, who was involved in artificial price rigging of shares. Thus, this is the case wherein the AO merely on the basis of suspicion rejected the claim of the assessee, without establishing any link between the assessee with the entry operators/exit providers, who were allegedly involved in price rigging of shares artificially of the aforesaid companies. Therefore, in view of the above, we are unable to persuade ourselves to accept the conclusion reached by the Revenue on the basis of findings recorded in the orders passed by the lower authorities. Accordingly, we direct the AO to delete the impugned addition made under section 68 of the Act and accept the plea of the assessee in respect of the long-term capital gains and short-term capital gains earned during the year. As a result, the grounds raised by the assessee are allowed."

22. Respectfully following the above case, only difference is the script is different, however, the assessee has no saying on the script traded by him and there is no relationship established with the accommodation entry providers anywhere on the record. Further the assessee himself a regular investor and not linked to any other suspected transactions. Merely because he has dealt with one of the suspected scripts, we cannot take adverse view without actually bring any material on record.

23. Further, we observe that Ld DR heavily relied on the decision of coordinate bench in the case of Naresh Manakchand Jain (ITA No 1945

and 1946/Mum/2023 dated 31/08/2023) but the above case was stayed by the Hon'ble High Court. Further he has relied on several other cases, which are distinguishable with the facts of the present case. Accordingly, the grounds raised by the assessee are allowed.

24. In the result, appeals filed by the assessee is allowed.

Order pronounced in the open court on 24th November, 2023.

Sd/-
(NARENDRA KUMAR CHOUDHRY)
JUDICIAL MEMBER

Mumbai / Dated 24.11.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum