

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

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T.A. No.2594/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT-19(1) Piramal Chambers, Room No. 506, Parel, Mumbai- 400012.	<b>बनाम/</b> Vs.	Pavankumar Bachhraj Chandan Flat No. 12, 3 <sup>rd</sup> Floor, Cooper Building, 12 Cross Lane, Khetwari, Mumbai-400004.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPC7942B</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Shashank Mehta
Revenue by:	Shri H. M. Bhatt (Sr. DR)

सुनवाई की तारीख / Date of Hearing: 26/02/2024

घोषणा की तारीख /Date of Pronouncement: 22/03/2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 15.12.2022 for the assessment year 2015-16.

2. The main grievance of the revenue is against the action of the Ld. CIT(A) deleting the addition of Rs.2,30,79,975/- made by AO u/s 68 of the Income Tax Act, 1961 (hereinafter "the Act") and also directing the AO to delete the addition of Rs.4,61,600/- (commission).

3. Brief facts as noted by the AO are that the assessee had filed his return of income for AY. 2014-15 was filed on 29.11.2014 declaring total income at Rs. 29,23,137/-. And filed revised return and claimed Exempt income u/s 10(38) of the Act, at Rs 2,05,52,685/-. Later on, the case of the assessee was selected for scrutiny. The AO noted that the assessee had claimed Long Term Capital Gain (LTCG) of Rs. 2,05,52,685/- on sale of shares M/s. Shaleen Textile Ltd (hereinafter



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“M/s. Shaleen Textile”). The AO noted that the Kolkata Investigation Wing had undertaken investigation into 84 penny stocks which identified shares of M/s. Shaleen Textile as a penny stock. The AO took note of the *modus operandi* of the entry operators involved in facilitating bogus LTCG to beneficiaries like assessee, which according to AO is nothing but converting the black money of the beneficiaries to white. The AO noted that the assessee has purchased in the month of Nov, 2011 shares of M/s. Shaleen Textile and sold in the month of April, 2013 to Sep, 2013 and claimed LTCG of more than of Rs.2 cr which is unbelievable. According to the AO, the assessee on 8.11.2011 purchased 10,000 shares of M/s. Shaleen Textile at an average price of Rs.48.78/-; and on 23.04.2012 number of shares i.e. 10,000 were split into 1:19 Thus, total number of shares was 200000. Further on 07-03-2013 sub division of the shares were made from Rs 10/- to Rs 2/-; thus total number of shares was 10,00,000 shares. Thereafter, 3,72,100 shares of M/s. Shaleen Textile were sold between [the month of April, 2013 to Sep, 2013] at the Bombay Stock Exchange (BSE) at an average price of Rs 62.03 (approx.) to various entities for a total sale of Rs.2,30,79,975/-. The AO discussed financial details of the M/s. Shaleen Textile from page 4 to page 9; and according to him, price was rigged [which he states at page no. 9 to page no. 15 of assessment order] and thereafter discusses about exit providers from page no. 16 to page no. 19 of the assessment order and he concluded that the financials of M/s. Shaleen Textile was weak; and that the assessee was allotted preferential shares of M/s. Shaleen; and



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according to AO, the process of preferential allotment of shares were pre-arranged and managed to facilitate beneficiaries like assessee in the form of bogus LTCG through rigging of the BSE and with active connivance of various entry operators who have confirmed that shares of M/s. Shaleen Textile have been used for providing bogus accommodation entry in the form of LTCG/STCG. And such modus-operandi has been confirmed by various exit providers who had stated that they have purchased shares of M/s. Shaleen Textile to provide bogus accommodation entry of LTCG/STCG. Thus AO was of the opinion that no prudent businessman would trade or invest in such penny stock. And thereafter, he recorded the statement of the assessee on 16.12.2016 and noted that he is an investor in stock market since last five (5) years and according to him, he could not explain why he invested in shares of M/s. Shaleen Textile especially when the financials of the company was weak. Further, according to the AO, assessee had no idea of the financials of this company. Therefore, he was of the view that the assessee failed to discharge the burden casted upon him to prove the LTCG claim. And taking note that the SEBI has suspended the sale of scrip of M/s. Shaleen Textile vide order dated 1<sup>st</sup> Jan, 2015, he disallowed the LTCG claim and added the entire sale proceed of the shares u/s 68 of the Act to the tune of Rs.2,30,79,975/- and further made an addition of Rs.4,61,600/- as commission (*to the entry operators*) for providing the bogus claim. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same by holding as under [relevant portion only]: -



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“6.0 I have considered the order passed by the Ld AO, grounds of appeal, submissions of the appellant and perused the material on record and also the legal position on the issues at hand.

6.1 The appellant was allotted 10,000 shares of Shree Shaleen Textiles Ltd through preferential allotment on 11.01.2012. These shares were purchased at Rs. 205/- per share (Rs.10/- face value and a premium of 195/-). Subsequently, bonus shares were issued in the ratio of 1:19 on 23.04.2012. After that the shares held by the appellant stood at 2,00,000 shares (10000 lock in balance + 190000 free balance). Thereafter Rs. 10 face value shares were sub-divided into Rs. 2 per share on 13.03.2013, therefore, the number of shares held by the appellant was 10,00,000 shares. 3,72,100 shares were sold by the assessee during the period 30.04.2013 and 30.09.2013 for a consideration of Rs. 2,30,79,975/-.

6.2 In the order passed u/s 143(3) of the Act, the Ld. AO has doubted the genuineness of the transactions made by the Appellant in the scrip of Shree Shaleen textiles Limited based on the following observations:

- The financials of Shree Shaleen Textiles Limited were very poor during the period when the preferential shares were allotted.
- The business profile shows that the company was not engaged into any substantial activity.
- The business profile shows that the company was not having any future plans which could attract investors from all over India to invest in the company.



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- The funds that were raised through preferential allotment have not been used for any business expansion and have been further advanced as loans and investments.
- The whole process of preferential allotment was a prearranged and a managed process so as to allot preferential shares to beneficiaries of bogus LTCG which could later be sold by them for booking accommodation entry of bogus LTCG/STCG in the garb of sale proceeds on sale of shares.
- The shares were rigged on the stock exchange by manipulation of stock exchange.
- Various share brokers have confirmed the fact that the shares of Shree Shaleen Textiles Limited have been used for providing entry of bogus LTCG/STCG
- Various Exit Providers have confirmed that they have purchased the shares of Shree Shaleen Textiles Limited to provide entry of bogus LTCG/STCG.

6.3 Ld AO has relied on the mode of acquisition of the shares, unusual rise in the share prices, analysis of the transactions, financial analysis of penny stock companies and the enquires made on the operators of the bogus / paper entities wherein they have admitted that they are not doing any real business. In this regard, the appellant has submitted that the shares have been sold by the appellant on the floor of the stock exchange. As a result, it is not possible for the appellant to know the counter party purchasing the shares of the appellant.

6.4 In respect of Assessing Officer's reference to a list of the persons who have purchased the shares of the said Scrip sold by the appellant, the appellant has stated that the AO has never provided the appellant with the statements of the operators of



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the bogus/paper entities wherein they have stated that the appellant had taken accommodation entries. Further, the appellant was not provided with an opportunity to cross examine the alleged operators of the bogus/paper entities.

6.5 It is further submitted by the appellant that even during the search/ survey action conducted by the Directorate of Investigation, Kolkata in the case of the brokers, namely, Pravin Aggarwal (Director – Gateway Financial Services Ltd), Deepak Patwari (Controller of Destiny Securities Ltd) etc., they had never stated the name of the appellant in their statements. Further, it is stated that their statements have not been provided to the appellant.

6.6 It is also submitted that the learned Assessing Officer has merely acted upon presumption and has acted against the natural justice towards the appellant.

6.7 The AO has mentioned that funds received in the bank accounts of alleged operators have been transferred to the account of the share brokers which has been ultimately used to purchase shares. However, the AO has not been able to prove any cash trail in the case of the appellant. Merely because certain malicious transactions took place by some other persons in respect of shares held by the appellant does not lead to an automatic inference that the appellant has also sought benefit of such acts.

6.8 It is further submitted by the appellant that the price of scrips depends on many factors, Companies are operating in different segments and sectors which are not possible to be related and



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the price of the scrips cannot be correlated with one or two such factors. Weak financial should not be the only parameter to suspicious trading of a company on Stock Exchange and as per the statistics 30% of listed companies on BSE are loss-making at any time and then their trading ought to be treated with suspicion.

6.9 In order to prove the genuineness of the transactions the appellant had submitted the following:

- a. Copy of share application form.
- b. Copy of allotment letter
- c. Copy of bank statement reflecting payment made for purchase of shares along with copy of account payee cheque drawn in favour of M/s Shree Shaleen Textile Limited
- d. Copy of Report of date-wise sale of Shares of M/s Shree Shaleen Textile Limited
- e. Copies of contract notes and bills of Motilal Oswal Securities Limited for sale of shares.
- f. Copies of bank statement reflecting the receipt of the sale consideration on account of sale of shares
- g. Copy of demat account statement and ledger of broker

6.10 It is stated by the appellant that while concluding the assessment; the Ld. Assessing Officer has not disproved or pointed out any defect in the evidence submitted by the Appellant.

6.11 All the transactions are carried out through Banking Channels only and such Bank accounts are the regular Bank accounts of the Appellant. The Bank Statements highlighting the



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script-wise transaction are submitted before me in the Paperbook.

7.0 The appellant has made a detailed submission in support of its grounds of appeal which have been considered. It has been judicially held that if the appellant fails to offer an explanation of the source of particular receipt/credit appearing in the books/account or if the explanation given by the assessee is found to be not satisfactory by the A.O and if during the enquiry, he is satisfied that the entries are not genuine, then he has every right to add the said sum represented by such credit entry as income of the assessee. Therefore, prima facie onus is always on the assessee to prove the genuineness of such credit appearing in its books. In land mark cases like Kale Khan Mohammad Hanif v CIT[1963] 50 ITR 1 (SC), Hatti v CIT [1977] 107 ITR 938 (SC) it has been held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee, is on him. Where the nature and source thereof cannot be explained satisfactorily, it is open to the Assessing Officer to hold that it is the income of the appellant and no further burden is on the AO to show that the income is from any particular source.

7.1.....

8.0 I also note that the appellant has relied upon the decisions of the jurisdictional ITAT, Mumbai in the cases of Dipesh Ramesh Vardhan vs. DCIT [I.T.A. No.7648/Mum/2019; Vijayrattan Balkrishan Mittal vs. DCIT [ITA No. 3429/Mum/2019; order dated 01.10.2019], CIT vs. Jamnadevi Agrawal Ors. [2010] 328 ITR 656 (Bom), Farrah Marker Vs. ITO (ITA No.



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3801/Mum/2011 dated 27.4.2018), Gateway Leasing Pvt. Ltd vs. ACIT [WP No.: 2518 OF 2019; Smt. Kalpana Mukesh Ruia & Ors. vs. DCIT [I.T.A. No. 6519/Mum/2019, Narayan Ramchandra Rathi v. ITO (ITA No. 4811/MUM/2018), Arun S. Tripathi v. PCIT (ITA No. 2560/MUM/2018), and Anraj H. Shah (HUF) v. ITO (ITA No. 4514/MUM/2018), where the issues involved are identical and the hon'ble ITAT has held that the appellant has discharged the burden to prove genuineness of the LTCG earned during the year and accordingly capital gain on sale of shares cannot be doubted.

8.1 .....

9.0.....

10. It is seen that the decisions in the cases of DCIT vs. Shri Dilip B. Jiwrajka [ITA 2349/Mum/2021; order dated 29.11.2022] and Mrs. Pratibha S. Mhatre vs. ITPO [ITA 695/Mum/2018; order dated 11.06.2021], involve LTCG is arising out of same scrip (i.e., Shree Shaleen Textiles Ltd) as that of the appellant. On similar facts and circumstances, the Hon'ble jurisdictional ITAT has decided the issue in favour of the assessee. These decisions have a binding force on the CIT(A). Therefore, respectfully following the above-mentioned decisions of the jurisdictional ITAT and other decisions of the jurisdictional ITAT mentioned at para 8, I direct the Id AO to delete the addition made. Ground of the appellant is allowed.

11.0 Ground no. 3 is regarding addition u/s 69C of the Act in respect of unexplained commission expenditure of Rs. 4,61,600/-.



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11.1 The AO alleged that the appellant might have incurred unaccounted expenditure on account of payment of commission to the entry operators and accommodation entry providers alleging them to have assisted the appellant to claim bogus Short Term Capital Gain. As a result, the Learned Assessing Officer added an amount of Rs. 4,61,600/- being 2% of the total sale consideration to the total income of the appellant u/s 69C of the Act.

11.2 During the appellant proceedings the appellant has referred to his explanation as provided for in the earlier grounds and stated that since there no accommodation entry is involved, there comes no question of commission upon the same.

11.3 I have considered the written submission made by the appellant and the assessment order of the AO. This ground of appeal is consequential to the main ground of the appeal regarding addition u/s 68 of the Act in respect of exempt LTCG claim. As ground no.2 has been decided in favour of the appellant, this ground is also decided in favour of the appellant. Accordingly, ground no. 3 of the appeal is allowed.

12.0 In the result, the appeal of the appellant is allowed.”

4. The aforesaid action of Ld CIT(A) is assailed before us by revenue. We have heard both the parties and perused the records. We note that the assessee was allotted 10,000 shares of Shree Shaleen Textiles Ltd through preferential allotment on 11.01.2012. These shares were purchased at Rs. 205/- per share (Rs.10/- face value and a premium of 195/-). Subsequently, bonus shares were issued in the



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ratio of 1:19 on 23.04.2012. After that the shares held by the assessee stood at 2,00,000 shares (10000 lock in balance + 190000 free balance). Thereafter Rs. 10 face value shares were sub-divided into Rs. 2 per share on 13.03.2013, therefore, the number of shares held by the assessee was 10,00,000 shares. Out of which, assessee sold 3,72,100 shares through BSE during the period 30.04.2013 and 30.09.2013 for a consideration of Rs. 2,30,79,975/- and assessee claimed LTCG/exempt income u/s 10(38) of the Act to the tune of Rs.2,05,52,685/-. The AO taking note of the claim of LTCG/exemption u/s 10(38) of the Act, called upon the assessee to prove the purchase/sale of the shares, and pursuant to it, the assessee filed the following documents: -

- a. Copy of share application form.
- b. Copy of allotment letter
- c. Copy of bank statement reflecting payment made for purchase of shares along with copy of account payee cheque drawn in favour of M/s Shree Shaleen Textile Limited
- d. Copy of Report of date-wise sale of Shares of M/s Shree Shaleen Textile Limited
- e. Copies of contract notes and bills of Motilal Oswal Securities Limited for sale of shares.
- f. Copies of bank statement reflecting the receipt of the sale consideration on account of sale of shares
- g. Copy of demat account statement and ledger of broker

**5.** And it was brought to the notice of AO that the transactions were carried out through Banking Channels and such Bank accounts are the regular Bank accounts of the assessee. The Bank Statements



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highlighting the script-wise transaction were submitted before AO/Ld. CIT(A) which is found placed in the Paper book and also the aforesaid documents to prove the allotment/demat/sale of shares of M/s. Shaleen Textile Ltd. And since the assessee had filed the aforesaid primary documents before the AO to prove the transaction in question, and since the AO has not found any infirmity in the primary documents filed by the assessee to prove the allotment of shares, dematerialization of the shares, sale of shares, then the assessee has discharged the burden to prove the transaction that it fulfills the eligibility to claim LTCG/exemption u/s 10(38) of the Act of Rs.2,05,52,685/- on sale of shares of M/s. Shaleen Textile Ltd. We further note that the AO has primarily placed reliance on the report given by the Investigation wing of the Income tax department, Kolkatta in order to arrive at the conclusion that the LTCG claim made by the assessee is bogus in nature. We note that the investigation report prepared by Investigation wing, Kolkatta is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We find that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of racket manipulating share transactions in the stock exchange i.e., it was not proved that the assessee/or his broker has carried out the transactions of purchase and sale of shares in connivance with the person/entities which were involved in the alleged manipulation/rigging of prices of shares. The Ld A.R also brought to



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our notice that the regulator of stock market SEBI has not found any wrongdoing on the part of assessee or his broker.

**6.** In the statement recorded from the assessee on 16.12.2016, he has stated that he was guided by his advisors in making the investment. Further, he has also stated that he was a regular investor in shares for last 5 years and the AO noted that assessee's son is a commerce graduate. Hence it cannot be said that the assessee was completely unaware of share market transactions. We find that the assessee has

1. purchased these shares by paying consideration of Rs 20,50,000/- through banking channels.
2. Ten Lakh shares of M/s. Shaleen Textile Ltd were allotted to the assessee by the said company as on 13.03.2013.
3. dematerialized the shares and kept the same in the Demat account.
4. sold the shares through stock exchange platform
5. received the sale consideration through banking channels.

**7.** Further, the shares have entered and exited the demat account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. Further, the AO has not brought on record any material to show that the assessee was part of the group/racket which were involved in the modus-operandi/manipulation of prices of shares. Since the allotment of shares, then holding of shares were proved by demat statement, and later sale of shares after



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remitting STT through BSE, assessee has discharged the burden to prove the purchase and sale of shares of M/s. Shaleen Textile Ltd. Further it is noted that AO has given the name of 107 exit providers, which entities according to him were not doing any actual business, but were only providing accommodation entries. According to AO, these entry providers had purchase the shares from assessee at high prices, which establishes that the LTCG claim of assessee is bogus. We cannot agree, because other than giving 107 names of entities, AO has not named the purported exit provider, which purchased the shares from assessee. It is common knowledge that buying and selling in Stock Exchanges are anonymous. Therefore, AO had to prove who purchased shares from assessee and what was their connection/nexus in the whole episode. In the present case, other than making general assertions, AO has failed to bring anything on record to incriminate assessee qua exit providers, so nothing turns on it. Further, it is noted that the AO relied on statements of brokers namely, Pravin Aggarwal (Director – Gateway Financial Services Ltd), Deepak Patwari (Controller of Destiny Securities Ltd) etc. Further, it is noted that they had not named assessee or his broker to be part of the modus operandi to convert assessee's black money to white. Moreover, these statements could not have been used against the assessee because it has not been tested on the touchstone of cross-examination as held by the Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. CCE reported in (2015) 281 CTR 241 (SC) and in the case of CIT v Odeon Builders Pvt. Ltd. (2019) 418 ITR 315. Therefore, nothing



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turns on these statements of brokers. Thus, we find that no infirmity in the order passed by Ld. CIT(A) deleting the addition of Rs.2,30,79,975/- + Rs.4,61,600/- by passing the impugned order.

8. We also note that the issue of denying exemption u/s 10(38) of the Act in respect of shares of Shri Shaleen Textile Ltd came up before this Tribunal in several cases, and Tribunal allowed assessee's LTCG claim and exemption u/s 10(38) of the Act. Few cases are (i) Mrs Pratibha S. Mhatre Vs ITO (ITA. No.695/Mum/2018 order dated 11.06.2021) (ii) Smt Meera Alpesh Kanugo Vs. ITO [ITA. No. 2130/Ahd/2018; order dated 25.02.2022] (Ahmedabad Trib) (iii) Smt Rashmiben P. Kanuog Vs. ITO [ITA No. 2131/Ahd/2018; order dated 28.02.2022] and in the case of DCIT Vs. Shri Dilip B. Jiwrajka [ITA. No.2349/Mum/2021; order dated 29.11.2022] (Mum).

9. Coming to the judgements cited before us, it is clarified that we have carefully perused the cited judgements relied upon by both the parties and but only those judgements which are found to be relevant to the case in hand, have been discussed in the ensuing paragraphs.

10. The Ld. AR had rightly relied upon the judgment of the Hon'ble jurisdictional Bombay High Court in the case of **Shyam R. Pawar (229 Taxman 256)**. In the decided case also, the assessee was purchasing and selling the shares through a broker in Mumbai, for purchase of shares of (i) M/s. Bolton Properties Ltd., (ii) M/s Prime Capital and (iii) M/s. Mantra; and he has transacted through the broker at Calcutta and two operators namely Mr. Sushil Purohit and Shri



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Jagdish Purohit, and one of them was the Director of M/s. Bolton Properties Ltd. who had purportedly admitted to have manipulated the share price of M/s. Bolton Properties Ltd. Mr. Jagdish also reportedly floated several investment companies which were aggressively used in the entire deal with the broker M/s. Prakash Nahata & Co. According to AO, the shares offloaded by the beneficiaries through M/s. Prakash Nahata & Co., were ultimately purchased by the investment companies controlled by Shri Purohit. The name of the assessee figured during the course of the investigation. The AO noted that these entities/companies, whose shares were traded by the assessee, were not having sufficient business activities justifying the increase in their shares prices. Therefore, the AO concluded that certain operators and brokers devised a scheme to accommodate the unaccounted monies of the assessee in guise of capital gains. The AO accordingly added the capital gains derived by the assessee under Section 68 of the Act. On appeal, the Hon'ble jurisdictional High Court upheld the Tribunal order deleting the addition, by observing as under:

“..It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and



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performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.



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7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.”

**11.** We may also gainfully refer to the decision rendered by this Tribunal in the case of **DCIT Vs Mukesh R Marolia (6 SOT 247)** wherein on similar facts and circumstances the addition made by the AO on account of purported bogus LTCG derived on purchase/sale of shares (off-market) was deleted by observing as under:

“10. We heard both sides in detail and perused rival contentions in the light of the records of the case and the paper book filed by the assessee. In the return of income filed by the assessee for the year under appeal, the purchase of flat at Colaba for a consideration of Rs. 2,06,72,904 was reflected. The assessee’s contribution in the purchase of the flat was @ 70 per cent for which the investment amounted to Rs. 1,44,71,033. The source of investment was, among other things, the sale proceeds of shares of Rs. 1,41,08,484. This amount has been questioned by the revenue authorities.

10.1 The assessee has purchased the shares of four companies viz., Allan Industrial Gases Ltd., Mobile Telecom, Rashee Agrotech and Centil Agrotech, during the previous years relevant to the assessment years 1999-2000 and 2000-01. The books of account maintained by the assessee for both the years clearly reflected the purchase of those shares. The shares are reflected in the balance sheets filed by the assessee along with the returns of income for the assessment years 1999-2000 and 2000-01. Therefore, it is seen that as a prima facie evidence, the purchases of shares have been contemporaneously entered into the books of account of the assessee.

10.2 The assessee has been declaring agricultural income in his returns of income for the assessment years from 1990-91 to 2001-02. The total agricultural income returned by the assessee up to the assessment year 1999-2000 was at Rs. 7,57,883. The amount invested in the purchase of shares as on 31-3-1999 was Rs. 4,48,160. The cash available with the assessee by way



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of agricultural income was much higher than the investment made by the assessee in the purchase of shares as on 31-3-1999. After making the investments in the shares, the assessee had a surplus cash balance of Rs. 3,09,000 as on 1-4-1999. Thereafter, the assessee has further returned an agricultural income of Rs. 66,000 for the assessment year 2000-01. The amount invested in the purchase of shares in the year ending on 31-3-2000 was Rs. 2,57,020. Again the assessee had a cash balance thereof of Rs. 1,18,771. Therefore, it is, very clear that the investment made by the assessee in shares during the previous periods relevant to the assessment years 1999-2000 and 2000-01 was supported by cash generated out of agricultural income. The above agricultural income have been considered in the respective assessments. Therefore, the contention of the assessing authority that the assessee had no sufficient resourcefulness to make investments in the shares is unfounded.

10.3 Purchase and sale of shares outside the floor of Stock Exchange is not an unlawful activity. Off-market transactions are not illegal. It is always possible for the parties to enter into transactions even without the help of brokers. Therefore, it is not possible to hold that the transactions reported by the assessee were quite sham on the legal proposition arrived at by the CIT(A) that off-market transactions are not permissible. The assessee has stated that the transactions were made with the help of professional mediators who are experts in off-market transactions.

10.4 When the transactions were off-market transactions, there is no relevance in seeking details of share transactions from Stock Exchanges. Such attempts would be futile. Stock Exchanges cannot give details of transactions entered into between the parties outside their floor. Therefore, the reliance placed by the assessing authority on the communications received from the Stock Exchanges that the particulars of share transactions entered into by the assessee were not available in their records, is out of place. There is no evidential value for such reliance placed by the assessing authority. The assessee had made it very clear that the transactions were not concluded on the floor of the Stock Exchange. The matter being so, there is no probative value for the negative replies solicited by the assessing authority from the respective Stock Exchanges. We are of the considered view that the



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materials collected by the assessing authority from the Stock Exchanges are not valid to dispel or disbelieve the contentions of the assessee.

10.5 The next set of evidences relied on by the assessing authority are the statements obtained from various parties. When certain persons like Radha Ashok and Sandeep D. Shah made negative statements against the assessee, persons like Satish Mandovara and Mangesh Chokshi had given positive statements in support of the contention of the assessee. But, the assessing authority sought to pick and choose the statements given by various parties. While accepting and rejecting such statements given by the parties, the Assessing Officer has made a mistake of accepting irrelevant statements and rejecting relevant statements. During the relevant period in which the assessee transacted in shares, persons like Radha Ashok and Sandeep D. Shah were not carrying on their business of brokers as in the manner they carried on the business in the past. Even their Stock Exchange Memberships were cancelled. It was Shri Satish Mandovara who was carrying on the business mainly for and on behalf of Shri Mangesh Chokshi, Director of M/s. Richmond Securities Pvt. Ltd. Those two persons have categorically admitted before the assessing authority that they had dealings with the assessee in respect of the share transactions. They have confirmed the transactions stated by the assessee that he had with them. These positive statements made before the assessing authority supported the case of the assessee. There is no force in the action of the assessing authority in relying on the negative statements of the other parties whose role during the relevant period was either irrelevant or insignificant. Therefore, in the facts and circumstances of the case, it is, our considered view that certain statements relied on by the assessing authority do not dilute the probative value of the statements given by other persons in favour of the assessee confirming the share transactions entered into by the assessee.

10.6 The above circumstances have made out a clear case in support of the book entries reflecting the purchase and sale of shares and ultimately supporting the money received on sale of shares and finally investing the same in the purchase of flat. The chain of transactions entered into by the assessee have been properly accounted, documented and supported by evidences.



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10.7 Therefore, we find that the explanations of the assessee seems to have been rejected by the assessing authority more on the ground of presumption than on factual ground. The presumption is so compelling that comparatively a small amount of investment made by the assessee during the previous year period relevant to the assessment years 1999- 2000 and 2000-01 have grown into a very sizable amount ultimately yielding a fabulous sum of Rs. 1,41,08,484 which was used by the assessee for the purchase of the flat at Colaba. The sequence of the events and ultimate realization of money is quite amazing. That itself is a provocation for the Assessing Officer to jump into a conclusion that the transactions were bogus. But, whatever it may be, an assessment has to be completed on the basis of records and materials available before the assessing authority. Personal knowledge and excitement on events, should not lead the Assessing Officer to a state of affairs where salient evidences are over-looked. In the present case, howsoever unbelievable it might be, every transaction of the assessee has been accounted, documented and supported. Even the evidences collected from the concerned parties have been ultimately turned in favour of the assessee. Therefore, it is, very difficult to brush aside the contentions of the assessee that he had purchased shares and he had sold shares and ultimately he had purchased a flat utilizing the sale proceeds of those shares.

10.8 For a moment, even if all the above evidences are ignored, one cannot overlook the pressure of the evidence coming out of the survey carried out by the department in the business premises of the assessee. There was a survey carried out by the department in the business premises of the assessee. In the course of survey, contract notes for sale of shares, copies of bills thereof, photocopies of share certificates etc., were found. The purchase and sale of shares were also found recorded in the books of account. The department has no case that the survey was a staged enactment. A survey is always unexpected. So, it is not possible to presume that the assessee had collected certain fabricated documents and kept at his business premises so as to hoodwink the survey party to lead them to believe that the assessee had entered into share transactions. Atleast such an inference is not possible in law. The department has no defence against the forcible argument of the learned counsel that the survey conducted by the department has out and out upheld the contention of the assessee that he had purchased and sold shares.



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We find that this solitary evidence collected in the course of survey is sufficient to endorse the bona fides of the share transactions made by the assessee.”

**12.** On further appeal, it is noted that the Hon’ble Bombay High Court in their order in ITA No. 456 of 2007 dated 07-09-2011 has affirmed the order of this Tribunal.

**13.** The Ld. AR of the appellant has rightly relied on another judgment of the Hon’ble Bombay High Court in the case of **CIT Vs Jamna Devi Agarwal (328 ITR 656)**. In the decided case, also the Revenue had disputed the genuineness of the long-term capital gains derived by the assessee on sale of shares of listed companies for similar reasons as cited in the present case. On appeal, the Hon’ble High Court upheld the decision of this Tribunal deleting the additions by observing as under:

“12. From the documents produced before us, which were also in the possession of the Assessing Officer, it is seen that the shares in question were in fact purchased by the assessees on the respective dates and the company has confirmed to have handed over the shares purchased by the assessees. Similarly, the sale of the shares to the respective buyers is also established by producing documentary evidence. It is true that some of the transactions were **off-market** transactions. However, the purchase and sale price of the shares declared by the assessees were in conformity with the market rates prevailing on the respective dates as is seen from the documents furnished by the assessees. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions.

13. The statement of Pradeep Kumar Daga that the transactions with the Haldiram group were bogus has been demonstrated to be wrong by producing documentary evidence to the effect that the shares sold by the assessees were in consonance with the market price. On a perusal of those documentary



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evidence, the Tribunal has arrived at a finding of fact that the transactions were genuine. Nothing is brought to our notice that the findings recorded by the Tribunal are contrary to the documentary evidence on record.

14. The Tribunal has further recorded a finding of fact that the cash credits in the bank accounts of some of the buyers of shares cannot be linked to the assessee. Moreover, in the light of the documentary evidence adduced to show that the shares purchased and sold by the assessee were in conformity with the market price, the Tribunal recorded a finding of fact that the cash credits in the buyers' bank accounts cannot be attributed to the assessee. No fault can be found with the above finding recorded by the Tribunal.

15. Reliance placed by the counsel for the Revenue on the decision of the apex court in the case of Sumati Dayal [1995] 214 ITR 801 is wholly misplaced. In that case, the assessee therein had claimed income from horse races and the finding of fact recorded was that the assessee therein had not participated in races, but purchased winning tickets after the race with the unaccounted money. In the present case, the documentary evidence clearly shows that the transactions were at the rate prevailing in the stock market and there was no question of introducing unaccounted money by the assessee. Thus, the decision relied upon by the counsel for the Revenue is wholly distinguishable on the facts.

16. For all the aforesaid reasons, we hold that the decision of the Tribunal is based on findings of fact. No substantial question of law arises from the order of the Tribunal. Accordingly, all these appeals are dismissed. No order as to costs.”

**14.** The Ld. AR also brought to our notice the recent judgment rendered by the Hon'ble jurisdictional Bombay High Court in the case of **PCIT v. Ziauddin A Siddique (ITA No. 2012 of 2017) dated 04.03.2022** which is found to be relevant in the facts involved in the present case. In the decided case, the issue before the Hon'ble High Court was whether this Tribunal was right in law in deleting the addition made u/s 68 of the ACT in relation to LTCG derived on sale



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of shares, ignoring the fact that the shares were purchased from off-market sources and that the sharp rise in prices were not supported by financials. Answering the question raised by the Revenue in the negative, the Hon'ble High Court held that there was a finding of fact that the purchase & sale of shares occurred on the platform of stock exchange, upon payment of STT and were supported by documentary evidences and therefore there was no perversity in the order of this Tribunal. The Court further noted that there was no allegation against the assessee that he had participated in price rigging in the market and therefore dismissed the appeal of the Revenue. The relevant findings of the Hon'ble High Court which is binding upon us, are as follows :-

“2. We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd. (“RFL”) is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax (“STT”) has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal.

4. Mr. Walve placed reliance on a judgment of the Apex Court in Principal Commissioner of Income-tax (Central)-1 vs. NRA Iron & Steel (P.) Ltd.1 but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand,



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then, we do not think that question as pressed raises any substantial question of law.”

**15.** For the various reasons discussed in the foregoing and following the judgments cited above, more particularly of the binding jurisdictional High Court in the cases of Shyam Pawar (supra), Ziauddin A Siddique (supra), Mukesh R Marolia (supra) & Jamna Devi Agarwal (supra), we concur with the view of the Ld. CIT(A) and uphold the impugned order of the Ld. CIT(A) deleting the addition of Rs.2,30,79,975/- & Rs.4,61,600/-. And we direct the AO to allow the LTCG/exemption claimed by assessee u/s 10(38) of the Act on sale of shares of M/s Shaleen Textile Ltd.

**16.** In the result, the appeal of the revenue stands dismissed.

Order pronounced in the open court on this 22/03/2024.

Sd/-  
**(S RIFAUR RAHMAN)**  
ACCOUNTANT MEMBER

Sd/-  
**(ABY T. VARKEY)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/03/2024.  
Vijay Pal Singh, (Sr. PS)



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**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, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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