

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 3903/M/2023  
Assessment Year: 2015-16**

M/s. Suresh Maheshwari HUF 431, Akshay Girikunj, Bldg.- 3, Parliament Road, Andheri (West) – 400058. Andheri Railway Station S.O. <b>PAN: AABHS3934A</b>	Vs.	Dy. Commissioner of Income –Tax-25(1), Room No. 206, 2 <sup>nd</sup> Floor, Matru Mandir, Tardeo Road, Mumbai- 400007.
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Rajesh Shah, C.A.  
Revenue by : Shri Prashant Mahajan, Sr. D.R.

Date of Hearing : 07 . 05 . 2024  
Date of Pronouncement : 29 . 05 . 2024

**O R D E R**

**Per : Ratnesh Nandan Sahay, Accountant Member:**

1. These appeals have been filed by the appellant against the order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] dated 21/09/2023 for the Assessment Year 2015-16.
2. The following grounds have been raised in ITA No. 3903 of 2023 are as under:

- 1. The Ld. CIT(A) has erred in confirming the addition of ₹ 66,10,708/- u/s 68 of the Act by treating long term capital gains as bogus.*
- 2. The Ld. CIT(A) has erred in natural justice for confirming the addition as the Ld. AO has not provided any cogent materials or cross examination to the assessee.*
- 3. The Ld. CIT(A) has erred in confirming the addition made by Ld. AO for ₹ 1,98,321/- on account estimation of commission being 3 percent of ₹ 66,10,708/- as unexplained expenditure.*
- 4. The appellant reserves the right to add, alter, amend or withdraw any grounds of appeal.*

3. The facts of the case, in brief, are that the return of income for A.Y. 2015-16 was filed on 26/08/2015 declaring total income at Rs.5,16,290/-. The return was duly process u/s. 143(1) of the IT Act, 1961. Subsequently, the case was selected for scrutiny under CASS. It was noticed by the AO that as per working of long term capital gain attached with return of income, the assessee has earned Long Term Capital Gain (LTCG) of Rs. 52,83,805/- on account of sale of the scrip Rander Corporation and an amount of Rs.7,91,253/- on account of sale of the scrip Pine Animation. The assessee had purchased the shares of Rander Corporation through BSE and Pine Animation off market. Assessee had purchased 10.000 shares of Rander Corporation on 28.03.2012 for an amount of Rs.5,98,006/-. The shares were further split and the assessee ended up holding 1,00.000 shares of Rander

Corporation. The shares were transferred to demat account on 30.03.2012. 85,000 Shares of Rander Corporation were sold on various dates from 30.04.2014 to 04.07.2014 for an amount of Rs.58,06,708/-, Assessee purchased 10,000 shares of Pine Animation on 19.03.2013 for an amount of Rs.10,937/- which were sold on 04 12.2014 for an amount of Rs.8,04,000/-, thereby resulting into Long Term Capital Gains of Rs.7,91,252/-.

4. It was found by the AO that the investigation wing of the Income Tax Department, Calcutta had undertaken investigation into 84 penny stocks and found that accommodation entries were provided by the entry providers where unaccounted cash was introduced through a layer of transactions to show it as genuine. The details of the modus operandi have been given in the body of the assessment order as to how the entire process was manipulated in order to defraud the revenue. The assessing officer noted that the assessee was also one of the beneficiaries of the accommodation entries and thus, notice u/s.143(2) of the Act was issued to the assessee on 26/07/2016 after reopening of the assessment by recording reasons therein. The assessing officer, after making a detail discussion in the impugned

assessment order, made addition of Rs.66,10,708/- u/s. 68 of the Act on the ground that the claim of the assessee that it has earned long term capital gain (LTCG) on account of sale of shares of Rander Corporation and Pine Animation and claimed to be exempted u/s. 10(38) of the IT Act was found to be a bogus transaction. Further, a sum of 1,98,321/- being 3% of the sale value of Rs.66,10,708/- was also added u/s. 69C of the Income Tax Act as unexplained expenditure on account of commission paid for arranging the entire transactions of bogus LTCG.

5. The Ld. CIT Appeal upheld the order of the assessing officer on account of bogus Long Term Capital Gain (LTCG) amounting to Rs.66,10,708/- u/s.68 of the IT Act on the ground that the case was squarely covered by the decision of Hon'ble Calcutta High Court dated 14/06/2022 in the case of PCIT- 5, Kolkata vs. Swati Bajaj [(IA No. GA/2/2022) and 90 others] the details of which have been given in the order of the Ld. CIT Appeal. Ld. CIT Appeal also confirmed the addition of Rs.1,98,321/- made u/s. 69 C of the Act on the ground that the assessee must have paid a commission of 3% of the total trade value of Rs.66,10,708/- for arranging and facilitating the entire transactions as genuine.

6. Aggrieved by the order of the Ld. CIT Appeal, the appellant has filed this appeal. During the course of hearing before us, the Ld. Counsel of the appellant submitted a Paper Book containing details of the decisions held by various Courts and Tribunals on this issue. He also referred to the decision of the Hon'ble ITAT Mumbai "C" Bench in ITA No. 3256/Mum/2022 for the assessment year 2014-15 in the case of Chirag Tej Prakash Dangi vs. ITO Ward 26(1)(5) Mumbai dated 20.02.2024 wherein the Hon'ble Tribunal has held that once the sale of shares has taken place through online platform of the stock exchange and the sales consideration has been received by the stock broker through banking channels, the transactions in shares cannot be treated as bogus.
7. Further, the appellant has also referred to the decision of the coordinate Bench of ITAT Mumbai, in ITA. No. 2427/Mum/2023 dated 23.11.2023 in the case of Uttam M Jain, HUF vs. Addl./Joint/Deputy/ACIT/ITO in which one of the Members of this bench was part of that Bench, has also held following the decision of the jurisdictional High Court in the case of Pr.CIT vs. Indravadan Jain HUF (ITA No.454 of 2018 dated 12<sup>th</sup> July 2023) that the transaction in shares cannot be held

to be bogus if the assessee is a regular investor in shares and transacted the transaction of sale and purchase through stock exchange and shares were dematerialized and subsequently sold after a year on 25/05/2011 and it is also not a case of the Assessing Officer or the Revenue Department that the assessee or the brokers from whom the assessee had purchased and sold the shares, were involved in rigging /price shooting.

8. The departmental Representative, on the other hand, has placed reliance on the order of the Ld. Assessing officer and the Ld. CIT Appeal.
9. We have considered the rival submissions and found that the coordinate benches of ITAT (Mumbai) have already held that unless there is specific evidence of rigging and manipulation in the transactions of shares the same cannot be treated as bogus simply on the basis of the investigation carried out by the investigation wing of the Income Tax Department. The SEBI has also not pointed out any specific instance of rigging in shares in the case of the appellant. Thus, respectfully following the decisions of the Coordinate Bench of ITAT, Mumbai (Supra), we also hold that in the absence of any cogent evidence of manipulation, the entire

transactions in share, which have taken place through stock exchange and banking channels, cannot be treated as bogus.

Accordingly the addition made by the AO is deleted.

10. Similarly, since the entire share transactions were not found to be bogus, the estimated addition on account of commission paid for arranging and facilitating the entire transactions, cannot be held to be justified.

11. In the result, the appeal is allowed.

**Order pronounced in the open court on 29.05.2024.**

<b>Sd/-</b> <b>(NARENDER KUMAR CHOUDHRY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(RATNESH NANDAN SAHAY)</b> <b>ACCOUNTANT MEMBER</b>
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Mumbai, Dated: 29.05.2024.

*Snehal C. Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

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By Order

Dy/Asstt. Registrar, ITAT, Mumbai.