

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI  
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 770/MUM/2023

(A.Y: 2014-15)

Ketan Harilal Mehta HUF (By Its Karta KetanMehta)No.B/1101, Siddhi Vinayak Tower, Opp Phoenix Hospital, Chikuwadi, Mumbai-400092.	Vs.	ITO-42(1)(1), Kautilya Bhavan, BKC,Bandra(E), Mumbai-400051.
PAN/GIR No. : AAEHK3266N		
Appellant	..	Respondent

Appellant by :	Shri. Nishit Gandhi.AR
Respondent by :	Shri. P.D. Chougule.Sr.DR

Date of Hearing	02.04.2024
Date of Pronouncement	03.06.2024

आदेश / O R D E R

**PER PAVAN KUMAR GADALE, JM:**

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC)(CIT(A)) Delhi passed u/sec 143(3) and U/sec250 of the Income Tax Act. The assessee has raised the following grounds of appeal:

*1. ON NATURAL JUSTICE:*

*1.1. In the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) [“the Ld. CIT(A)”] erred in confirming the action of the Learned*

*Assessing Officer ["the Ld. AO"] who in turn made huge additions to the returned income and passed the Assessment order in gross violation of principles of natural justice.*

*1.2. In the facts and circumstances of the case and in law the order passed by Ld. CIT(A) affirming the order of the Ld. AO deserves to be quashed for being passed in gross violation of principles of natural justice.*

**2. ON VALIDITY OF THE PROCEEDINGS:**

*2.1. In the facts and circumstances of the case and in law, the Assessment order passed by the Ld. AO and affirmed by the Ld. CIT(A) is bad in law, void and deserves to be quashed since the same is passed in violation of the extant law and judicial precedents in this regard.*

*2.2. In the facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) affirming the assessment order is bad in law since the same is sans any independent reasoning and is a non-speaking order by merely relying on certain judgements, the applicability of which to the Appellant's case is under serious doubt.*

**3. ON MERITS:**

*3.1. In the facts and circumstances of the case, and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in making an addition of Rs.75,39,089/- under section 68 of the Act thereby denying the claim for exemption under section 10(38) as made by the Appellant in its return of Income.*

3.2. While doing so the Ld. CIT(A) failed to appreciate that:

i. The Appellant had correctly claimed the long term Capital gains on sale of equity shares through recognized stock exchange after paying the due Securities Transactions Tax (STT) thereon;

ii. The addition made by the Ld. AO as confirmed by the Ld. CIT(A) is based on assumptions, presumptions, surmises, conjectures, based on irrelevant and extraneous considerations while ignoring the relevant material, evidences and considerations;

iii. The addition is made and the exemption is denied simply on mere hearsay. without even remotely refuting the detailed evidences and documents furnished by the Assessee and without there being any evidence to even remotely support the action of the Ld. AO; and;

iv. In any case, the additions are unsustainable in as much as the same are made relying on statements of some third parties without confronting the same to the Appellant, as also without providing an opportunity to cross examine the parties despite specific requests and despite acknowledging that the said requests were made by the Appellant before both the AO as well as the CIT(A);

3.3. In the facts and circumstances of the case and in law the additions made by the Ld. AO deserves to be deleted in toto.

4.1. In the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in making an addition of Rs.75,391/- being alleged

*commission on the sale of shares and treating the same as unexplained expenditure u/s 69C of the Act.*

*4.2. While doing so, the Ld. CIT(A) failed to appreciate that the said addition at 1% of the sale value of shares being Rs.75,39,089/- is based purely on assumptions and surmises without any basis and is therefore unsustainable in law.*

*4.3. In the facts and circumstances of the case and in law, the addition of Rs.75,391/- made u/s 69C of the Act deserves to be deleted.*

*5 The Appellant craves leave to add, amend, alter, delete, modify or vary any or all above grounds of Appeal.*

2. The brief facts of the case are that, the assessee is engaged in the business and has filed the return of income for the A.Y 2014-15 on 30.07.2014 disclosing a total income of Rs.9,43,980/-. Subsequently, the case was selected for scrutiny under the CASS and notice was issued u/sec 143(2) of the Act. Further the A.O has issued notice u/sec 142(1) of the Act calling for various details and information in support of return of income filed. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and furnished the details and the case was discussed. The AO found that the assessee has disclosed income from business, income from capital gains and income from other sources. Further the assessee

has claimed exemption U/sec10(38) of the Act being long term capital gains on sale of shares of Rs. 74,20,500/- and the A.O. has called for the details and information. The AO found that the assessee has earned long term capital gains on sale of shares of M/s SRK Industries Ltd and the assessee was asked to produce the details of purchase of shares, mode of payment and relevant supporting documents/evidences in support of purchase and sale of shares. Whereas the assessee has purchased 10,000 shares of M/s Transcend commerce Ltd Ltd at Rs.10/- per share in off market transaction from M/s Maxigain Advisory Pvt Ltd for Rs. 1 lakh through cheque on 07.06.2012 and the shares were credit to Demat account on 16.06.2012. Subsequently the company M/s Transcend commerce Ltd was amalgamated with M/s SRK Industries Ltd as per the Hon'ble High Cour of Bombay order dated 21.02.2013. Since the M/s Transcend commerce Ltd Ltd was amalgamated, the new shares were allotted in the ratio of 100:222 . And the assessee was allotted 22,200 shares of M/s SRK industries Ltd in lieu of 10,000 shares of M/s Transcend commerce Ltd. During the financial year 2013-14, the assessee has sold 22,200 shares of M/S SRK Industries Ltd for aggregate value of Rs.75,39,089/ and

earned Long Term Capital Gains (LTCG) of Rs.74,20,500/- and claimed exemption U/sec10(38) of the Act. The AO has dealt on the purchase confirmation, sale contract notes, bank statement and demat account, statements in respect of shares purchase and sale, modus operandi, report of the Kolkata Investigation Wing, statements recorded U/sec131 of the Act and has doubted the earning of long term capital gains on shares. Further the AO find that there is no correlation of price rise and the financial/ fundamental statements of the company. Finally the AO was not satisfied with the explanations and material information and observed that the transactions are not genuine and made addition of sale proceeds u/sec 68 of the Act of Rs.75,39,089/- and estimated commission expenditure u/sec 69C of the Act @ 1% of the sale value which worked out to Rs.75,391/- and assessed the total income of Rs.85,58,460/- and passed the order u/sec 143(3) of the Act dated 29.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) dealt on grounds of appeal, the statement of facts, findings of the AO and submissions in respect of the transaction of sale of shares. But the CIT(A) has confirmed the action of the AO and

dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the AO in sustaining the additions under section 68 & 69C of the Act overlooking the major facts and submissions that the assessee is an investor and made purchase & sale of shares through the stock brokers and are genuine and the assessee has substantiated with various details with the both the authorities. Further, there is no scope for the AO to make the additions based on the surmises and conjectures as the assessee has filed the documentary material evidence in support of the claim. The Ld. AR has put forth the various propositions and explained the basis and reasons for purchase of shares on 07.06.2012 and the shares were credited to the demat account on 06.06.2012 as per the demat statement placed at page No. 71 of the paper book. Further the assessee was holding the shares for more than 12 months and the fact remains that subsequent to the credit of shares in demat account, due to scheme of amalgamation 10,000 shares held by the assessee in demat account of M/s Transcend Industries

Ltd on merger with M/s SRK Industries Ltd. The assessee was allotted 22,200 shares in lieu of 10,0000 shares of M/s. Transcend Industries Ltd. The Ld. AR mentioned that no independent enquiry was conducted by the revenue. The Ld.AR substantiated the submissions with the fact sheet, paper book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld.DR submitted that the share transactions are not genuine and are doubted and the Ld.DR supported the order of the CIT(A) and relied on the submissions.

5. We heard the rival submissions and perused the material on record. The Ld,AR envisaged that the CIT(A) has erred in sustaining the addition u/sec 68 & U/sec 69C of the Act overlooking the material information and evidences filed by the assessee in the proceedings. The Ld.AR submitted that the assessee has furnished the information with evidences of the purchase price, financial statements, and summary of shares sold in F.Y 2013-14, Ledger account, copies of bank statement, copy of contract notes for sale of impugned shares, demat account statement in respect of purchase and sale of shares and other equity shares held by the assessee. It was mentioned that due to scheme of amalgamation, the assessee has sold the shares of M/s SRK

Industries Ltd during the F.Y 2013-14 in the specific period from 26.06.2013 to 05.09.2013. The assessee has substantiated the submissions with copy of the broker note, global delivery report, financial statements of the assessee ledger account issued by broker Bonanza portfolio Ltd, copy of Demat statement issued by NSDL, copy of bank statement reflecting net payments received from the broker tallying with sale value of shares of the assessee referred at page 58 to 59 of the paper book.

6. The Ld.AR contentions are that the assessee has filed the documentary evidence to justify the genuineness of the purchases, sales and the long term capital gains as the assessee has sold the shares on the recognized stock exchange where the STT has been paid in respect of listed shares and the shares are held for more 12 months. The Ld.AR demonstrated the sale cum contract notes, computation of long term capital gains, ledger account of stock broker at page 58 to 64 of the paper book. The Ld.AR relied on the Global report of the share transactions and demat account statement. Further the Ld.AR relied on the material information and submissions made before the CIT(A) at Page 78 to 96 of the paper book..The Ld. AR submitted that the shares purchased were earlier listed and

subsequently due to amalgamation, the assessee has sold the shares through SEBI registered broker of BSE & NSE M/s. Bonanza portfolio Ltd and supported the sale of shares with the sale bills cum contract notes subjected to Securities Transaction Tax (STT) and the demat statement reflecting the sale of shares referred in the paper book and the assessee has held the shares for more than 12 months from the date of purchase. The assessee has explained about purchase of shares and is a regular investor in the shares/ securities in the statement recorded u/sec 131 of the Act and the genuineness of the transaction. The Ld.AR emphasized that the assessee is only an investor and was not involved in the price rigging of shares and no enquiry was conducted by the SEBI and BSE against the assessee and relied on the submissions made before the lower authorities and judicial decisions.

7. The Honble High Court of Bombay in the case of Pr. CIT Vs. Indravadan Jain HUF. ITA No.454 of 2018 dated 12.07.2023 [2023] 156 taxman.com 605 (Bom) has considered the facts of sale of shares and dismissed the revenue appeal as under:

3. Respondent had shown sale proceeds of shares in scrip Ramkrishna Fincap Ltd. (RFL) as long term capital gain and

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

4. *The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year After a period of one year the shares were sold by the said broker on various dates*

*in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT[A] found there was no reason to add the capital gains as unexplained cash credit under Section 68 of the Act. The tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal*

5. *We also find no infirmity in the order passed by the ITAT and no substantial questions of law as proposed in the appeal arised.*

8. Similarly the Jurisdictional High Court of Bombay in the case of CIT Vs. Shyam R. Pawar, 54 taxmann.com 108 has observed as under:

*Section 68 of the Income-tax Act, 1961 Cash credit (Share dealings) - Assessment years 2003-04 to 2006-07 Assessee declared capital gain on sale of shares of two companies. Assessing Officer, observing that transaction was done through brokers at Calcutta and performance of concerned companies was not such as would justify increase in share prices. held said transaction as bogus and having been done to convert unaccounted money of assessee to accounted income and, therefore, made addition under section 68 - On appeal, Tribunal deleted addition observing that DMAT account and*

*contract note showed credit/details of share transactions; and that revenue had stopped inquiry at particular point and did not carry forward it to discharge basic onus Whether on facts, transactions in shares were rightly held to be genuine and addition made by Assessing Officer was rightly deleted Held, yes [Para 7] [In favour of assessee]*

*It was revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange- words showed that the shares were purchased for code numbers S003 and R121 of STPL and RMPL pectively. Out of these two, only RMPL is listed in the appraisal report and it is stated to be involved in dus operandi It is on this material that the Assessing Offices holds that the transactions of 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 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 assessee utilized the scheme Para 5]*

*The Tribunal concluded that there was something more which was required, which would connect the 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 cared forward by the revenue. A copy of the DMAT account, placed before the*

*Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available which gave details of the transactions. The contract note is a system generated and prescribed by the stock exchange. From this material, 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 same, by 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 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 the Tribunal's order are not vitiated by any error of law apparent on the face of the record either. [Para 6]*

9. Hon'ble Supreme Court in the case of Pr. CIT Vs. Parasben Kasturchand Kochar, 130 taxmann.com 177 (SC) has observed as under:

*Section 10(38) of the Income-tax Act, 1961 Capital gains Income arising from transfer of long-term securities (Shares) Assessment year 2014-15 Assessee-individual engaged in business of trading in shares claimed long term capital gains arising out of sale of shares as exemption under section 10(38) - Assessing officer denied claim and made certain additions into assessee's income on grounds that said gains were earned through bogus penny stock transactions and companies to whom sold shares belonged were bogus in nature Tribunal observing that assessee by submitting records of purchase*

*bills, sale bills, demat statement, etc., had discharged his onus of establishing said transactions to be fair and transparent, same not being earned from bogus companies was eligible for exemption under section 10(38) High court by impugned order held that no substantial question of law. arose from Tribunal's order - Whether SLP against said impugned order was to be dismissed -Held, yes (Para 2) (In favour of assessee)*

10. Similarly Hon'ble High Court in the case of Pr. CIT Vs. Prem Pal Gandhi, (401 ITR 0253) (P & H) has observed as under:

*Capital gain-Share transaction-Addition-Deletion thereof-During course of assessment proceedings u/s 153A, it was noticed by AO that assessee had shown long term capital gain on sale of shares of company-AO treated share transaction as non-genuine transaction and amount was shown as long term capital gain on share transaction was added to income of assessee-CIT(A) deleted addition-Tribunal upheld order passed by CIT(A) and dismissed appeal of revenue-Held, assessee sold shares through MTL shares and Stock Broker limited which was SEBI registered Stock Broker-Payment for sale of shares was received through banking channels-All documentary evidence being in favour of assessee, deletion of addition made by CIT(A) was upheld by Tribunal-All these documentary evidences in favour of assessee were rejected by AO merely on basis of some casual replies given by assessee to AO-Documentary evidences were in favour of assessee and CIT(A) had passed very reasoned and speaking order-Dividend amount was received with regard to holding of shares and said amount was disclosed by assessee in his return of income and exemption was claimed accordingly-Thus, addition being without any logical basis was deleted-Revenue's appeal dismissed.*

*Held:*

*The CIT(A) examined the matter and the comments of the Assessing Officer in the remand report. It has been recorded by the CIT(A) that the purchase of shares in the financial year 2006-07 for an amount of Rs. 11 lakhs had been physically transferred in favour of the assessee in the books of the company namely GeeFCee Finance Limited. Further, the said shares were dematerialized and credited in the assessee's account maintained with depository participant i.e. HDFC on 16.10.2006. The dividend amount of Rs. 1,50,000/- had been received with regard to aforementioned holding of shares on 23.10.2007. The said amount had been disclosed by the in his return of income and exemption was claimed accordingly. Thus, the addition being without any logical basis was directed to be deleted. (Para 4)*

*Assessee had sold shares through MTL shaes and Stock Brokers Limited as is noted by Assessing Officer in reply to question No.24 which is a SEBI registered Stock Broker. Furthermore the payment for sale of shares was received through Banking channels. All these documentary evidences in favour of the assessee were rejected by Assessing Offiver merely on the basis of some casual replies given by assessee to the Assessing Officer. However, the fact remains that all the documentary evidences are in favour of assessee and learned CIT(A) has passed a very reasoned and speaking order and we do not find any infirmity in the same."*

11. The Hon'ble High Court of Bombay in the case of CIT Vs. Smt. Jamnadevi Agrawal, 328 ITR 656 (Bom) has observed as under:

*Income-Cash credit-Genuineness of share transactions-Assessee offered long-term capital gains arising from sale of shares-On the basis of material seized during the search in the case of various assesseees who belong to H group, AO did not accept the capital gains and treated the entire sale proceeds of the shares as income from undisclosed sources under s. 68-Not justified-Fact that the assesseees in the group have purchased and sold shares of the same companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence has been produced to establish the genuineness of the sale-Company has confirmed that it has handed over the shares purchased by the assesseees-Similarly, the sale of shares to the respective buyers is also established by producing documentary evidence-Purchase and sale price of the shares declared by the assesseees is in conformity with the market rates prevailing on the respective dates-Thus, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions-Tribunal has arrived at a finding of fact that the transactions were genuine-Nothing has been brought on record to show that the findings recorded by the Tribunal are contrary to the documentary evidence-Also, no fault can be found with the finding recorded by the Tribunal that the cash credits in the buyers' bank accounts cannot be attributed to the assesseees-Therefore, the decision of the Tribunal is based on findings of fact and no substantial question of law arises.*

*The fact that the assesseees in the group have purchased and sold shares of similar companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence was produced to establish the genuineness of the claim. From the documents produced, it is seen that the shares in question were in fact*

*purchased by the assesseees on the respective dates and the company has confirmed to have handed over the shares purchased by the assesseees. 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 assesseees were in conformity with the market rates prevailing on the respective dates as is seen from the documents furnished by the assesseees. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions. The statement of the broker P that the transactions with the H Group were bogus has been demonstrated to be wrong by producing documentary evidence to the effect that the shares sold by the assesseees were in consonance with the market price. On perusal of those documentary evidence, the Tribunal has arrived at a finding of fact that the transactions were genuine. Nothing is brought on record to show that the findings recorded by the Tribunal are contrary to the documentary evidence on record. 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 assesseees. Moreover, in the light of the documentary evidence adduced to show that the shares purchased and sold by the assesseees 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 assesseees. No fault can be found with the above finding recorded by the Tribunal. Therefore, the decision of the Tribunal is based on finding of facts. No substantial question of law arises from the order of the Tribunal.-Asstt. CIT vs. Kamal Kumar S. Agrawal (Indl.) & Ors. (2010) 41 DTR (Nag) (Trib) 105: (2010) 133 TT (Nag) 818 affirmed; Sumati Dayal vs. CIT (1995) 125 CTR (SC) 124: (1995) 80 Taxman 89 (SC) distinguished. (Paras 11 to 14 & 16)*

*Conclusion:*

*Assesseees having established the genuineness of purchase and sale of shares by producing documentary evidence and declaring the purchase and sale price of shares in conformity with the market rates prevailing on the respective dates, the finding of the Tribunal that the transactions were genuine is a finding of fact based on documentary evidence on record and, therefore, no substantial question of law arises from the order of the Tribunal deleting the addition under s. 68.*

12. Similarly Hon'ble High Court of Bombay in the case of Pr.CIT-3 Vs. Ziauddin A Siddique. Income Tax Appeal No 2012 of 2017 order dated 4 March 2022 has observed as under:

1. *The following question of law is proposed:*

*"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of Rs.1,03,33,925/- made by AO u/s 68 of the I.T. Act, 1961, ignoring the fact that the shares were bought/acquired from off market sources and thereafter the same was demated and registered in stock exchange and increase in share price of Ramkrishna Fincap Ltd. is not supported by the financials and, therefore, the amount of LTCG of Rs.1,03,33,925/- claimed by the assessee is nothing but unaccounted income which was rightly added u/s 68 of the IT. Act, 1961?"*

2. *We have considered the impugned order with 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.' 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, then, we do not think that question as pressed raises any substantial question of law.*

*6. The appeal is devoid of merits and it is dismissed with no order as to costs.*

13. The Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax Vs. Smt. Renu Aggarwal (2023) 456 ITR 249 (SC) dated 3-07- 2023 has observed as under

*"CASH CREDITS-TRANSACTIONS IN PENNY STOCKS-FINDING THAT THERE WAS NO ADVERSE COMMENT FROM STOCK EXCHANGE OR COMPANY WHOSE SHARES INVOLVED-*

ASSESSING OFFICER QUOTING FACTS PERTAIN- ING TO COMPLETELY UNRELATED PERSONS NAME OF ASSESSEE NEITHER QUOTED BY ANY SUCH PERSONS NOR MATERIAL RELATING TO ASSESSEE FOUND IN INVESTIGATION-TRIBUNAL AFFIRMING AND HIGH COURT DIS- MISSING DEPARTMENT'S APPEAL-SUPREME COURT-SPECIAL LEAVE PETI- TION DISMISSED-INCOME-TAX ACT, 1961, ss. 68, 260A.

*Where the High Court dismissed the Department's appeal saying that no question of law arose from the order of the Tribunal affirming the order of the Commissioner (Appeals) allowing relief to the assessee, and the findings of the Commissioner (Appeals) to the effect that there was no adverse comment from the stock exchange or the company whose shares were involved in these transactions, that the Assessing Officer quoted the facts pertaining to completely unrelated persons whose statements were recorded and on the basis of unfounded presumptions, that the name of the assessee was neither quoted by any of such persons nor was any material relating to the assessee found at any place where investigation was done by the Investigation Wing, on a petition for special leave to appeal to the Supreme Court special leave to appeal to the Supreme Court*

*The Supreme Court dismissed the petition. Decision of the Allahabad High Court (printed below) affirmed.*

*Petition for Special Leave to Appeal (C) No. 13033 of 2023.*

*Petition under article 136 of the Constitution for special leave to appeal from the judgment and order dated July 6, 2022, of the Alla habad High Court in I. T. A. No. 44 of 2022. The judgment of the High Court (coram: SURYA PRAKASH KESARWANI and JAYANT BANERJI JJ.) ran as follows:*

"JUDGMENT

*Heard Sri Krishna Agarawal, learned counsel for the appellant. This appeal under section 260A of the Income-tax Act, 1961 has been filed challenging the order dated January 17, 2022, passed by the Income- tax Appellate Tribunal, Lucknow Bench 'SMC' Lucknow in IT. A. No. 205 of 2020 (assessment year 2014-15).*

*The basic question involved in the present appeal is with regard to deletion of some amount which was added by the Assessing Officer on the allegation of penny stock.*

*The appeal of the respondent-assessee was allowed against the assessment order. The appeal filed by the assessee was allowed by the Com- missioner (Appeals). Against the appellate order the Revenue had filed the aforesaid income-tax appeal which has been dismissed by the Income-tax Appellate Tribunal.*

*After detailed discussion, the Income-tax Appellate Tribunal has recorded the following findings of fact*

*The above findings recorded by the learned Commissioner (Appeals) are quite exhaustive whereby he has discussed the basis on which the Assessing Officer had made the additions. While allowing relief to the assessee, the learned Commissioner (Appeals) has specifically held that there is no adverse comment in the form of general and specific statement by the principal officer of the stock exchange or by the*

*company whose shares were involved in these transactions and he held that the Assessing Officer only quoted the facts pertaining to various completely unrelated persons whose statements were recorded and on the basis of unfounded presumptions. He further held that the name of the appellants were neither quoted by any of such persons nor any material relating to the assessee was found at any place where investigation was done by the Investigation Wing. The learned Commissioner (Appeals) relying on various orders of the Lucknow Benches and other Benches has allowed relief to the assessee by placing reliance on the evidence filed by the assessee before the Assessing Officer. I do not find any adversity in the order of the learned Commissioner (Appeals) specifically keeping in view the fact that the Lucknow Benches in a number of cases after relying on the judgment of the hon'ble Delhi High Court in the case of Krishna Devi had allowed relief to various assessees."*

*The concurrent findings of fact have been recorded by the first appellate authority and the Income-tax Appellate Tribunal. Thus, no substantial question of law is involved in the present appeal. The matter is concluded by findings of fact.*

*For the reasons aforesaid, we do not find any good reason to entertain this appeal. Consequently, it is dismissed. Balbir Singh, Additional Solicitor General, (Raj Bahadur Yadav, Prahlad Singh, Samarvir Singh and Prashant Rawat, Advocates, with him) for the petitioner."*

14. Further we find the facts and circumstances of the present case is similar and identical and pertains to the A.Y 2014-15 in respect of sale of shares of M/s. SRK Industries Ltd dealt by the Hon'ble Tribunal in

the case of Smt. Geeta Khare & Shri Shashikant B. Mhatre (Huf) in ITA.No. 4267 & 694/Mum/2018 dated 29.05.2019(A.Y.2014-15) and granted relief observing at Page 5 Para 7.1.1 to 9 of the order as under:

*“7.1.1. From the above tabulation, it could be seen that the assessee had exited from the market by selling the shares once there was heavy selling of the shares of SRK Industries Ltd on the fear element being setting in for further reduction of prices. We find that these after Jan 2014, these shares were heavily traded in the open market. In any case, it is not for the revenue to decide as to at what time the assessee should exit from his holding of shares in the open market. It is for the assessee to decide. The revenue cannot step into the shoes of the assessee and decide the purchase and sale transactions of shares and the timing together with the pricing thereon. Reliance in this regard is placed has been rightly placed by the ld AR on the decision of Hon’ble Supreme Court in the case of CIT vs Dhanrajgiri Raja Narasingirji reported in 91 ITR 544 (SC).*

*7.2. We find that the ld AR pleaded that in an online platform, there would be no nexus between the purchasers and the seller and the delivery of shares and payments would be made through their respective stock brokers. Hence the ld AO ought to have summoned the assessee’s brokers to examine the authenticity of the sale of shares of SRK Industries Ltd and the amount received on sale of shares. We find that the ld AR also placed evidences on record to prove that the said company SRK Industries Ltd is still listed in the stock exchange and shares of this company are being traded and SEBI had not passed any adverse order against the said company either suspending the trading of the scrip or banning the scrip. Moreover, the ld AR also placed on record the letter dated 14.2.2019 addressed by SRK Industries Ltd to Bombay Stock Exchange informing the outcome of the Board Meeting held on 14.2.2019 approving the unaudited standalone financial results of SRK Industries Ltd for the quarter ended 31<sup>st</sup> December 2018 in the format*

prescribed by SEBI listing norms and the stock exchange. From the said quarterly financials, we find that SRK Industries Ltd revenue from operations for the quarter ended Dec 2018 was Rs 30.61 crores which clearly shows that it is an operational company and not merely a company having no value as alleged by the revenue before us to make it fall under the category of 'penny stock'. Moreover, the status of this company M/s SRK Industries Ltd in the website of Ministry of Corporate Affairs as on 26.2.2019 is still shown under the category of 'Active'. In the said status report of website of ministry of corporate affairs, we find that the fixed assets and current assets of SRK Industries Ltd were subjected to some charge or encumbrance with certain loan creditors and the said charge on assets were also duly cleared by SRK Industries Ltd subsequently. This is evident from the status report mentioned therein as 'closed'. These facts go to prove beyond doubt that SRK Industries Ltd is an operational company even as on 26.2.2019.

7.3. We find that the ld AO sought to identify the alleged purchasers of shares from the assessee and issued notices u/s 133(6) of the Act to all of them. All the notices sent through speed post returned unserved. Based on this, adverse inference was drawn by the ld AO on the assessee. We find that the ld AR had already submitted that in an online platform of trading of shares in the open market through a registered stock broker, it is not possible for the assessee to even know the name and address of the purchasers when the assessee sells the shares in the open market. In any case, merely because the alleged purchasers list given by the ld AO in his assessment order had not responded to notice u/s 133(6) of the Act, no adverse inference could be drawn on the assessee for the default committed by those alleged purchasers. The ld AO could have very well resorted to issuance of summons u/s 131 of the Act to those alleged purchasers and / or take necessary action on them in the manner known to law for non-compliance from their side. We hold that the assessee need not discharge her onus of bringing on record the alleged purchasers especially when the shares were sold in the open market in an online platform. Accordingly, the assessee need not prove the

*identity, creditworthiness of those alleged purchasers of shares and the genuineness of transactions within the meaning of section 68 of the Act. The assessee has received the sale proceeds of shares from her broker M/s Sharekhan Limited. The assessee had shown the credit in the name of M/s Sharekhan Limited in her books. Hence the assessee had duly discharged her onus by furnishing the entire sale details made through the registered stock broker M/s Sharekhan Limited. We find that the ld AO had not even bothered to make any enquiry with M/s Sharekhan Limited to understand these facts. Hence no fault could be attributed on the assessee in this regard. We find that none of the purchase and sale details with supporting evidences were found to be deficient in any manner whatsoever either by the ld AO or by the ld CITA.*

*7.4. We find that the assessee was duly examined on oath u/s 131 of the Act during the course of assessment proceedings on 29.11.2016 which fact is also mentioned in Page 26 of the Assessment Order. In the said statement, the assessee in reply to Question No. 9 had categorically stated that she had been making investments in capital market and equity shares through broker M/s Sharekhan Limited and through relatives and friends. The assessee had also categorically replied in response to Question No. 13 that the investment in shares of SRK Industries Ltd (Transcend Commerce Ltd prior to merger) was made based on the advice of her friend Shri Shivajirao Jondhale. The assessee in reply to Question No. 17 had also stated that she did not make any enquiry about the financial condition of the shares of SRK Industries Ltd but she was told by Shri Shivajirao Jondhale that the value of the shares would get appreciated. This was the sole basis of the assessee making the investment in shares of Transcend Commerce Ltd (Later merged with SRK Industries Ltd) which cannot be doubted at all. In our considered opinion, it cannot be said that all the investment decisions of the assessee would be prudent and would be done only after analyzing the entire fundamentals and financials of the investee company. It is in everybody's knowledge, that an investor would try to take calculated risks by investing his money on an unknown scrip based on certain information from friends, relatives, or in some*

*stock market related websites and take a chance. Since the scrip purchased by the assessee was showing considerable growth from the time of purchase, the assessee being a gullible investor continued to hold it for a period of 14 months and later sold it in open market in online platform at prevailing market prices.*

*7.5. We find that the ld AO had observed that the assessee had traded only in the shares of SRK Industries Ltd. This is factually incorrect statement of the ld AO. Moreover, the ld AO had during the course of examination of the assessee on oath u/s 131 of the Act had even posed a question vide Question No. 24 that assessee had purchased very few shares of well reputed companies during the year like Indus Ind Bank, Crompton Greaves, Larsen and Toubro etc. We find that the ld AO in para 13.4 of his order had observed that on examination of Shri Shivajirao Jondhale on oath u/s 131 of the Act, it was noticed that he had also invested in the shares of SRK Industries Ltd only based on an advice of his friend. Based on this, the ld AO had concluded that the whole basis of purchase of this share is a pre-knowledge of rigging of price and subsequently taking accommodation entry for Long term capital gains. We find from the demat statements for the period 1.4.2012 to 31.3.2013 and 1.4.2013 to 31.3.2014, the assessee had dealt in various reputed scrips and had duly dematted the same and all these transactions are duly reflected in the demat statements issued by the depository participant.*

*7.6. We find that the ld DR made general submissions with regard to the investigations carried out by Kolkata Income Tax Department after identifying 84 scrips to be penny stocks and the modus operandi adopted by those scrips with the connivance of various entry operators, brokers and stock exchange. We find that the ld DR was not specifically able to controvert the documentary evidences filed by the assessee for purchase and sale of shares and various other documents referred to in the Paper Book. The ld DR also filed written*

submissions wherein he had reiterated the findings of the ld AO

7.7. We find that the co-ordinate bench of Kolkata Tribunal in ITA No.661/Kol/ 2018 in *Shreyans Chopra vs ACIT* dated 25.7.2018 on similar set of facts and circumstances had held as -----

----20. Applying the proposition of law laid down in the above judgments to the facts of this case we are bound to consider and rely on the evidence produced by the assessee in support of its claim and base our decision on such evidence and not on suspicion or preponderance of probabilities. No material was brought on record by the AO to controvert the evidence furnished by the assessee. Under these circumstances, we accept the evidence filed by the assessee and allow the claim that the income in question is Long Term Capital Gain from sale of shares and hence exempt from income tax.”

The scrips in question were the subject matter of adjudication before this Tribunal. The Kolkata Bench of the ITAT in a number of decisions have, on similar facts and circumstances of the case, decided the issue in favour of the assessee. We list some of these decisions:-

- *Shri Gautam Kumar Pincha vs. ITO*, ITA No. 569/Kol/2017, dt. 15/11/2017
- *ITO vs. Shri Shaleen khemani*, ITA No. 1945/Kol/2014, dt. 18/10/2017
- *Mahendra Kumar Baid vs. ACIT, Circle-35*; ITA No. 1237/Kol/2017; order dt. 18/08/2017
- *Kiran Kothari HUF vs. ITO*, ITA No. 443/kol/2017, order dt. 15/11/2017

The Hon'ble Jurisdictional High Court had in the following cases, upheld the claim of the assessee:-

- *CIT vs. Shreyashi Ganguli (ITA No. 196 of 2012) (Cal HC) 2012 (9) TMI 1113*
- *CIT vs. Rungta Properties Private Limited (ITA No. 105 of 2016) (Cal HC) dt. 08/05/2017*
- *CIT vs. Bhagwati Prasad Agarwal (2009 TMI-34738 (Cal HC) in ITA No. 22 of 2009 dated 29.04.2009*

6.2. Consistent with the view taken therein, as the facts and circumstances of this case are same as the facts and circumstances of the cases of Navneet Agarwal (supra), we delete the addition made u/s 68 of the Act, on account of sale of shares in the case of both the assesseees. The consequential addition u/s 69C is also deleted. Accordingly both the appeals of the assessee are allowed.-----

7.8. It would be pertinent to address the case law relied upon by the ld DR before us on the decision of Hon'ble Bombay High Court (Nagpur Bench) in the case of Sanjay Bimalchand Jain vs Pr.CIT (Nagpur) reported in (2018) 89 taxmann.com 196 (Bombay) dated 10.4.2017 on the impugned issue. From the facts of Sanjay Bimalchand Jain supra, we find that (i) in that case, the broker company through which the shares were sold did not respond to AO's letter regarding the names and address and bank account of the person who purchased the shares sold by the assessee ; (ii) Moreover, at the time of acquisition of shares of both the companies by the assessee, the payments were made in cash ; (iii) The address of both the companies were interestingly the same ; (iv) The authorized signatory of both the companies were also the same person ; (v) The purchase of shares of both the companies was done by that assessee through broker, GSSL and the address of the said broker was incidentally the address of the two companies. Based on these crucial facts, the Hon'ble Bombay High Court rendered the decision in favour of the revenue. None of these factors were present in the facts of the assessee before us. Hence it could be safely concluded that the decision of Hon'ble Bombay High Court supra is factually distinguishable.

7.9. We find that the Hon'ble Jurisdictional High Court in the case of CIT vs Mukesh Ratilal Marolia in ITA No. 456 of 2007 dated 7.9.2011 had held as under:-

“5. On further appeal, the ITAT by the impugned order allowed the claim of the assessee by recording that the purchase of shares during the year 1999-2000 and 2000-2001 were duly recorded in the books maintained by the Assessee. The ITAT has recorded a finding that the source of funds for acquisition of the shares was the agricultural income which was duly offered and assessed to tax in those Assessment Years. The Assessee has produced certificates from the aforesaid four companies to the effect that the shares were in-fact transferred to the name of the Assessee. In these circumstances, the decision of the ITAT in holding that the Assessee had purchased shares out of the funds duly disclosed by the Assessee cannot be faulted.

6. Similarly, the sale of the said shaers for Rs 1,41,08,484/- through two Brokers namely, M/s Richmond Securities Pvt Ltd and M/s Scorpio Management Consultants Pvt Ltd cannot be disputed, because the fact that the Assessee has received the said amount is not in dispute. It is neither the case of the Revenue that the shares in question are still lying with the Assessee nor it is the case of the Revenue that the amounts received by the Assessee on sale of the shares is more than what is declared by the Assessee. Though there is some discrepancy in the statement of the Director of M/s Richmand Securities Pvt Ltd regarding the sale transaction, the Tribunal relying on the statement of the employee of M/s Richmand Securities Pvt Ltd held that the sale transaction was genuine.

7. In these circumstances, the decision of the ITAT in holding that the purchase and sale of shares are genuine and therefore, the Assessing Officer was not justified in holding that the amount of Rs 1,41,08,484/- represented unexplained investment under section 69 of the Income Tax Act, 1961 cannot be faulted.

8. In the result, we see no merit in this Appeal and the same is dismissed with no order as to costs.”

7.10. *In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the various judicial precedents relied upon hereinabove, we hold that the ld CITA was not justified in upholding the action of the ld AO in bringing the long term capital gains on sale of shares of SRK Industries Ltd in the sum of Rs 2,26,36,372/- as unexplained income of the assessee treating the same as just an accommodation entry. The ld AO is directed to grant exemption u/s 10(38) of the Act in the sum of Rs 2,26,36,372/- to the assessee. Accordingly, the ground raised by the assessee is allowed.*

8. *Both the parties before us agreed that the facts in ITA No. 694/Mum/2018 in the case of Shri Shashikant B Mhatre (HUF) are identical to that of Smt Geeta Khare supra except with variance in figures and name of the scrip that was dealt with. Both the parties before us stated that identical reasoning was given by both the lower authorities for denying the claim of exemption u/s 10(38) of the Act to the assessee. The decision rendered in the case of Smt Geeta Khare would apply with equal force for this assessee also and accordingly, the ground raised by the assessee in ITA No. 694/Mum/2018 is allowed.*

9. *In the result, both the appeals of the assessee are allowed”*

15. The Hon’ble Supreme Court in the case of Principal Commissioner of Income Tax Vs. Kuntala Mohapatra, [2024] 160 taxmann.com 608 (SC), dated 04.03.2024 has observed as under:

*“SLP dismissed against order of High Court that where shares were purchased via account payee cheques, held in a Demat account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax assessee was eligible to claim exemption u/s 10(38) for long term capital gains.”*

*“Section 10(38), read with sections 68 and 69, of the Income-tax Act, 1961 Capital gains Income arising from transfer of long long term securities (Illustrations) - Assessment year 2014-15 Assessee filed its return for relevant year - Subsequently, pursuant to a survey assessee filed revised return and claimed exemption in respect of long-term capital gains on shares under section 10(38) - Assessing Officer rejected assessee's plea and made additions under sections 68 and 69 by relying on statements from 'entry operators' On appeal, Commissioner (Appeals) accepted assessee's claim, noting that shares were purchased via Account Payee Cheques, held in a Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax Tribunal upheld Commissioner (Appeal)'s decision, emphasizing assessee's right to correct mistakes and criticized Assessing Officer's reliance on statements from 'entry operators' to support additions under sections 68 and 69 as those statements were recorded in unrelated proceedings before survey on assessee, and assessee was not afforded an opportunity to challenge or cross-examine providers of those statements - On revenue's appeal, High Court confirmed order of Tribunal - Whether there was no reason to interfere with order passed by High Court and therefore, SLP was to be dismissed Held, yes [Para 3] [In favour of Assessee.”*

16. We considering the facts, circumstances, ratio of the judicial decisions and the information, find that the assessee has furnished the financials, details of price trend of shares at BSE to substantiate the listing/quote of shares, existence of the company to prove the genuineness of share transactions. The AO has doubted the purchase and sale of shares and observed that the price rise is not commensurate with the financials of the company. The assessee has substantiated with all details and information and the revenue could not make out a case that there is unaccounted money transactions took

place in the hands of the assessee and the AO has relied on the investigation report and treated the long term capital gains on sale of shares as not genuine. Further the A.O. has not made any enquiry or independent investigation and relied on the statements. The fact remains that the assessee is a regular investor in shares and has submitted the requisite details in respect of purchase and sale of shares and were not disproved. The transaction of sale of shares is through SEBI registered broker of BSE & NSE supported with the sale bills cum contract notes subjected to Securities Transaction Tax(STT) and the demat account statement reflecting debits on the sale of shares and the sale proceeds are received through banking channel. The A.O has not established that the assessee was involved in the price rigging of the shares and also any enquiry was conducted by the SEBI and BSE. Further as discussed in the above paragraphs, the Honble Tribunal dealt on the same scrip of share and for the same assessment year and has allowed the appeal. Accordingly, considering facts, circumstances, ratio of judicial decisions, submissions, evidences and rely on the judicial precedents as discussed above and set aside the order of the CIT(A) and

direct the assessing officer to delete the additions u/sec68 &69C of the Act and we allow the grounds of appeal in favour of the assessee.

17. Since we have decided on the merits of the case, the grounds of appeal with respect to validity of assessment proceedings raised by the assessee becomes academic and is left open.

18. In the result, the appeal filed by the assessee is allowed.

Orders pronounced in the open court on 03.06.2024

Sd/-  
(BR BASKARAN)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

MUMBAI, Dated 03.06.2024  
KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार / BY ORDER,

*ITA No. 770/MUM/2023*  
*Ketan Harilal Mehta, HUF, Mumbai.*

**- 35 -**

( Asst. Registrar )  
ITAT, Mumbai