

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.555/Del/2024  
(ASSESSMENT YEAR 2013-14)**

Shri Piyush Kumar G-1, Vivek Apartments, Shrestha Vihar New Delhi-110092  PAN:ADCPK2119D <b>(Appellant)</b>	Vs.	Income Tax Officer Ward, 3(1)(2) Muzaffarnagar  <b>(Respondent)</b>
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Assessee by	Sh. Gaurav Kalra, CA
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of Hearing	22/05/2024
Date of Pronouncement	12/06/2024

**ORDER**

**PER S.RIFAUH RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 12/12/2023 for Assessment Year 2013-14.

**2.** The brief facts of the case are, the assessee filed its return of income on 09/09/2013 declaring total income of Rs.2,97,130/-. Subsequently, a revised return of income was filed on 20/12/2013 declaring total income of Rs.3,13,220/-. In both the returns of income, the assessee has disclosed exempt income of Rs. 89,84,750/- on account of long term capital gain from transaction on which Securities Transaction Tax was paid.

**3.** Subsequently, the Assessing Officer received information from Disseminated Information Risk Assessment Committee (DIRAC) constituted by the Board with relating to High Risk case pertaining to the Assessment Year 2013-14 and the PAN of the assessee appeared in the referred list which shows manipulated sale of shares during F.Y 2012-13 in the script of Tuni Textiles. After verifying the information contained in the ITR profile of the assessee available in the return of income and the Assessing Officer found an information to initiate reassessment proceedings and proceeded to obtain the approval from competent authority. Accordingly, after obtaining approval, issued notice u/s 148 of the Act (in short 'the Act') and served on the assessee. Accordingly,

notices u/s 142 & 143(2) were issued and served on the assessee calling for information relating to the details of share purchased and sold during the year under consideration. In response to above notice, assessee has filed return of income declaring income of Rs.3,13,220/- and assessee also raised objection for initiation of re-assessment proceedings, the same was disposed off by the Assessing Officer on the details of which are discussed in his order at page 2. The Assessing Officer discussed the details of the scrip of Tunip Textiles and concept of Penny Stock in his order from page 3 to page 6 and the reasons were recorded in the show cause notice and issued and served on the assessee. After considering the details furnished by the assessee, the Assessing Officer observed that assessee had gained an amount of Rs.89,84,700/- (sale consideration of Rs.1,10,04,500/- – Purchase of price Rs.20,19,800/-) and he observed that the above said scrip is one of the 82 scrips designated as “Penny Stock” where operative modus as stated above has been observed. He observed that it is to be made very clear that apparently everything is genuine but what is genuine is not apparent. There is no reason to believe that

the transaction is genuine in this case. Further, he observed that further analysis of contract notes reveal that first sell was made by assessee on 21/11/2012 when the scrip traded at Rs.208/- per share, thereafter the price rose to Rs.219/- per share in the month of November, 2012 and merely started falling during the month of December, 2012 and fell further in the month of January, 2013 as per the lost sell contract notes dated 07/01/2013 shows sale price of Rs.96 per share. He further observed that the assessee has failed to produce contract notes related to purchase of scrip if cannot be verified whether it is long term capital gain or short term capital gain. However, as the exemption was claimed u/s.10(38) and it has been established beyond doubt that the transaction is sham as it evolves out of Penny Stock. After considering the written submission uploaded on 26/03/2022, he rejected the same with the observations in para 18 of his order and finally he came to the conclusion that the assessee had utilized his unaccounted money through his broker/operator/promoter/exit provider who had facilitated the transaction by price rigging in order to earn Long Term Capital

Gain. Accordingly, he disallowed the exemption claimed u/s 10(38) of the Act and proceeded to make the addition u/s 68 of the act to the extent of Rs.89,84,700/-.

**4.** Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A) and filed the detailed submissions before the Ld. CIT(A). After considering the statement of facts, grounds of appeal, assessment order and detailed submissions of the assessee, the Ld. CIT(A) dismissed the grounds raised by the assessee and sustained the findings of the Ld. AO.

**5.** Aggrieved with the above order, the assessee is in appeal before us raising following grounds of appeal:-

*“1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in reopening the case u/s.147 of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*

*2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in making an addition of Rs.89,84,700/- u/s 68 of the Income Tax Act, 1961 alleged income from undisclosed source as by treating the exempt Long term Capital Gain earned on account of sale of shares of Tuni Textiles Ltd. as alleged bogus transaction, without considering the facts & circumstances of the case.*

*3. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in invoking the provision of section 115BBE of the Income Tax Act, 1961, without considering the facts & circumstances of the case.”*

6. At the time of hearing, the Ld. AR not pressed the ground No.1 and proceeded to make the submission on merits of the case. In this regard, the Ld. AR submitted that assessee has purchased the share from stock market and by paying through banking channels, in this regard, he filed the details of purchase of shares through stock exchange and details are submitted as under:

Piyush Kumar  
AY 2013-14  
Details of Purchases of shares of Tunitex

S.No	Date	Broker Name	Company Name	Quantity	Rate	Total Amount	Brokerage, STT etc.	Net Amount	Receipt Date	Amount
1	11/11/2011	ICICI Securities Ltd	TUNITEX	25,000	32	8,00,000	7,726	8,07,726	14/11/2011	8,09,718
2	15/11/2011	Share India Securities Limited	TUNITEX	15,000	31	4,67,250	1,682	4,68,932	14/11/2011	3,562
3	15/12/2011	Share India Securities Limited	TUNITEX	20,000	36	7,28,000	2,621	7,30,621	16/11/2011	4,68,932
									15/12/2011	7,00,000
									17/12/2011	30,621
				<b>Total</b>		<b>60,000</b>				

7. He also submitted bank statement in support of making payment towards the above purchases. Further, he submitted that assessee had sold all the shares on various dates through stock exchange, he has submitted the statement of sale of shares the same is reproduced below:-

Piyush Kumar  
AY 2013-14  
Details of Sale of shares of Tunitex

S.No	Date	Broker Name	Company	Quantity	Rate	Total Amount	Brokerage, STT etc.	Net Amount	Receipt Date	Amount
1	19/11/2012	Share India Securities	TUNITEX	6,500	221	14,36,500	3,260	14,33,240	27/11/2012	
2	21/11/2012	Share India Securities	TUNITEX	9,000	208	18,72,000	4,248	18,67,752	27/11/2012	
3	23/11/2012	Share India Securities	TUNITEX	9,000	210	18,90,000	4,288	18,85,712	27/11/2012	49,48,837
4	27/11/2012	Share India Securities	TUNITEX	9,000	219	19,71,000	4,472	19,66,528	30/11/2012	19,66,517
5	04/12/2012	Share India Securities	TUNITEX	4,000	207	8,28,000	1,879	8,26,121	06/12/2012	8,26,110
6	17/12/2012	Share India Securities	TUNITEX	250	201	50,250	115	50,135	06/12/2012	
7	18/12/2012	Share India Securities	TUNITEX	2,250	199	4,47,750	1,016	4,46,734	26/12/2012	4,95,000
8	24/12/2012	Share India Securities	TUNITEX	2,000	180	3,60,000	817	3,59,183	03/01/2013	
9	01/01/2013	Share India Securities	TUNITEX	8,000	122	9,72,000	2,206	9,69,794	03/01/2013	10,00,000
10	03/01/2013	Share India Securities	TUNITEX	7,000	127	8,89,000	2,017	8,86,983	15/01/2013	
11	07/01/2013	Share India Securities	TUNITEX	9,000	96	2,88,000	654	2,87,346	15/01/2013	15,00,000
				<b>Total</b>		<b>60,000</b>				

**8.** The Ld. AR also submitted bank statement for receipt of the above sale consideration on respective dates, he submitted that the assessee is a regular investor, purchased the shares through stock exchange and sold the same through stock exchange, therefore, merely because the scrip involved is Tuni Textiles, the Assessing Officer has proceeded to treat the whole transaction as Penny Stock without going into the merits of the transaction. He prayed that the transaction are genuine being a regular investor, assessee has invested in the above Scrip and earned the profit which is eligible to claim exemption u/s 10(38) of the Act.

**9.** On the other hand, the Ld. DR relied on the orders of the lower authorities.

**10.** Considered the rival submissions and material placed on record. The Assessing Officer observed that assessee had made huge profit out of this investment because of this, it makes the

script as suspicious and penny stock. We cannot agree to the above observation, merely because of huge profit, it does not make the script a penny stock. Further, it is fact on record that the financials of the company are not commensurate with the purchase and sale price in the market. The assessee has purchased the shares directly from the Stock Exchange, subsequently, sold the same in the stock exchange. However, there is no discrepancies in the documents filed by the assessee claiming the deductions u/s 10(38) of the Act. At the same time, even though all the characteristics of the penny stock exists in the present case, still the revenue has not brought on record any materials linking the assessee in any of the dubious transactions relating to entry, price rigging or exit providers. Even in the SEBI report, there is no mention or reference to the involvement of the assessee. We can only presume that the assessee is one of the beneficiary in this transactions merely as an investor who has entered in investment fray to make quick profit. Even the assessing officer has applied the presumptions and concept of human probabilities to make the additions without their being any

material against the assessee. We observe that the Hon'ble Bombay High Court in the case of Pr. CIT *v.* Ziauddin A Siddique in Income Tax Appeal No. 2012 of 2017 dated 04/03/2022 held 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 I. T. Act, 1961?"*

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.* 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.*”

**11.** Further, the Hon’ble Delhi High Court in the case of Pr. CIT *v.* Smt Krishna Devi in ITA 125/2020 dated 15.01.2021 held as under: -

“8. *Mr. Hossain argues that in cases relating to LTCG in penny stocks, there may not be any direct evidence in the hands of the Revenue to establish that the investment made in such companies was an accommodation entry. Thus the Court should take the aspect of human probabilities into consideration that no prudent investor would invest in penny scrips. Considering the fact that the financials of these companies do not support the gains made by these companies in the stock exchange, as well as the fact that despite the notices issued by the AO, there was no evidence forthcoming to sustain the credibility of these companies, he argues that it can be safely concluded that the investments made by the present Respondents were not genuine. He submits that the AO made sufficient independent enquiry and analysis to test the veracity of the claims of the Respondent and after objective examination of the facts and documents, the conclusion arrived at by the AO in respect of the transaction in question, ought not to have been interfered with. In support of his submission, Mr. Hossain relies upon the judgment of this Court in Suman Poddar *v.* ITO, [2020] 423 ITR 480 (Delhi), and of the Supreme Court in Sumati Dayal *v.* CIT, (1995) Supp. (2) SCC 453.*

9. Mr. Hossain further argues that the learned ITAT has erred in holding that the AO did not consider examining the brokers of the Respondent. He asserts that this holding is contrary to the findings of the AO. As a matter of fact, the demat account statement of the Respondent was called for from the broker M/s SMC Global Securities Ltd under Section 133(6) of the Act, on perusal whereof it was found that the Respondent was not a regular investor in penny scrips.

10. We have heard Mr. Hossain at length and given our thoughtful consideration to his contentions, but are not convinced with the same for the reasons stated hereinafter.

11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under Section 10(38), in a pre-planned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income Tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is

*bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under Sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support*

*the case put forth by the Appellant, the additions cannot be sustained.*

12. *Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on Suman Poddar v. ITO (supra) and Sumati Dayal v. CIT (supra) is of no assistance. Upon examining the judgment of Suman Poddar (supra) at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of Sumati Dayal v. CIT (supra) too turns ITA 125/2020 and connected matters Page 10 of 10 on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.*

13. *The learned ITAT, being the last fact-finding authority, on the basis of the evidence brought on record, has rightly come to the conclusion that the lower tax authorities are not able to sustain the addition without any cogent material on record. We thus find no perversity in the Impugned Order.*

14. *In this view of the matter, no question of law, much less a substantial question of law arises for our consideration.*

15. *Accordingly, the present appeals are dismissed.”*

**12.** Therefore, we respectfully follow the ratio of the above decisions. In this case also, the Assessing Officer and Ld. CIT(A) has applied the concept of Human probabilities and held the above said scrip to be a penny stock without bring on record how the assessee is involved in any of the scrupulous activities or directly linked to one of the person who has involved in manipulation/rigging of share prices, entry operator or exit provider as observed by the Hon'ble Bombay High Court in the case of Ziauddin A Siddique (supra). Therefore, there is no material with the tax authorities to substantiate their findings that the impugned transaction is non-genuine. Therefore, we are inclined to allow the ground raised by the assessee. Accordingly the Ground No.2 & 3 raised by the assessee are allowed.

**13.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced on 12<sup>th</sup> June, 2024

Sd/-

**(SUDHIR PAREEK)  
JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Dated: 12/06/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI