

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI RAJ KUMAR CHAUHAN, JM**

**I.T.A. No. 255/Mum/2024
(Assessment Year: 2014-15)**

Smt. Sneha Ankit Selecha, 1303,, Vastu Shilp, Gamadia Colony, Grant Road, S.O. 400007. PAN : AMEPJ4070D	Vs.	ITO, Ward-19(3)(4) Piramal Chambers, Mumbai-400012.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Jalaj Prakash, Advocate
Revenue/Respondent by : Shri Mahesh Parwani, Sr. DR

Date of Hearing : 13.06.2024
Date of Pronouncement : 27.06.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of assessment passed by the Commissioner of Income Tax/ National Faceless Appeal Centre, Delhi [for short 'CIT(A)] dated 16.12.2023 for the AY 2014-15. The assessee raised the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the learned AO had erred in disallowing LTCG claim of Rs. 1,11,69,765/- u/s 10(38) on sale of shares and treating the same as unexplained cash credit u/s 68 merely on the basis of input of Investigation wing and without properly appreciating the documentary evidences provided by the Appellant. The addition was further confirmed by CIT (A) that profit arising from purchase and sale of penny stock

fall within the ambit of adventure in the nature of trade and the same is taxed under the head business income.

2. On the facts and circumstances of the case and in law, the learned CIT (A) has confirmed addition of Rs 1,11,69,765/- as unexplained cash credit u/s 68 on the basis of suspicion, conjectures and surmises as he has failed to find any fault with the ample documentary evidences produced in support of purchase and sale of shares.

3. On the facts and circumstances of the case and in law, the learned AO has erred in making addition of Rs. 1,11,69,765/- as unexplained cash credit u/s 68 by overlooking the decisions of Bombay High Court and Mumbai ITAT on similar issue which are in favour of assesseees faced with similar situation as that of the present appellant

4. On the facts and circumstances of the case and in law, the learned AO has erred in making addition of Rs. 1,11,69,765/- as unexplained income u/s 68 by not providing the specific statements/information (pertaining to alleged activities) supplied by Investigation wing to the Appellant and thereby denying the opportunity of cross examination of those parties who might have made statements before Investigation wing about the scrip sold by the Appellant though specifically demanded by the Appellant and hence the addition deserves to be struck down on the ground of violation of natural justice.

5. On the facts and circumstances of the case and in law, the learned CIT has erred in making addition of Rs.2.23,395 u/s 69C by alleging that the Appellant has paid commission for arranging the transaction of shares on which LTCG is reported.”

2. The assessee is an individual deriving income from salary, house property, business and profession and income from other sources. The assessee filed the return of income for AY 2014-15 on 04.05.2015 declaring a total income of Rs.10,25,460/-. The case is selected for scrutiny under CASS and the statutory notices were duly served on the assessee. The Assessing Officer (AO) during the course of assessment noticed that the assessee has earned income from Long Term

Capital Gains (LTCG) to the tune of Rs. 1,09,52,983/- out of the sale transaction of 20,000 shares of the scrip M/s Matra Kaushal Enterprises Ltd and claimed the same as exemption under section 10(38) of the Income Tax Act, 1961 (the Act). The AO called on the assessee to furnish the details pertaining to purchase and sale of such shares and recorded a statement from the assessee under section 131 of the Act. The AO relied on the report of investigation wing of Kolkata according to which the scrip of M/s Matra Kaushal Enterprises Ltd. was a penny stock and accommodation entry were provided to various beneficiaries as Long Term/Short Term Capital Loss/Gain. The AO noticed that the assessee has bought 20,000 shares at Rs. 10/- per share on 28.11.2012 and within a period of 1-2 years the shares have been sold for a consideration of Rs. 1,11,69,765/- which is 55.84 time higher than the purchase price. The AO examined the financial statements of M/s Matra Kaushal Enterprises Ltd. to come to the conclusion that the financial statement does not support the high price at which the shares have been sold by the assessee. The AO put across various questions with regard to the impugned transactions to the assessee during the statement recorded under section 131 of the Act. Based on the investigation report and the statement recorded the AO concluded that the entire transaction of LTCG as bogus and according treated the entire consideration of Rs. 1,11,69,765/- as unexplained investment. The AO also added 2% of the transaction value under section 69C towards commission. Aggrieved, the assessee filed further appeal before the CIT(A) who confirmed the addition made by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. The Id. Authorized Representative (AR) submitted that the assessee has purchased 20,000 shares of Kaushalya Global Ltd. (KGL) which subsequently got merged with M/s Matra Kaushal Enterprises Ltd. The Id. AR further submitted that

the payment for purchase of shares of KGL was made by the assessee to Pranjal Trading Co. Pvt. Ltd. through A/c payee cheque on 26.11.2012 and in this regard our attention was drawn to the invoice raised by the broker and the bank statement (page 31 to 33 of the Paper Book). The ld. AR also submitted that the said shares were credited to the demat account on 13.12.2012 (page 34 of Paper Book) and that these shares were subsequently sold in various tranches during the year under consideration through registered broker in the Bombay Stock Exchange after paying the STT. The broker's statements and the credit in the bank account of the assessee were submitted by the ld. AR to substantiate the claim (page 35 to 43 of Paper Book). It is submitted that assessee is a regular investor which would evident from the financial statement of the assessee where the various investments made by the assessee have been listed. The ld. AR submitted that the AO has made the addition merely based on the investigation report and has not made any independent enquiry in assessee's case. The ld. AR further argued that the assessee has submitted entire set of documents to substantiate the purchases and sale of the impugned transaction and the AO did not record any adverse finding with regard to the documents submitted by the assessee. The ld. AR drew our attention to the statement recorded under section 131 to submit that the assessee has merely stated that she is not aware of the details pertaining to the financial position of the company and that the AO has made the addition stating that the assessee does not have any knowledge of stock market and therefore could not have made the investment as a regular investor. The ld. AR submitted that the assessee has discharged the onus of proving the genuineness of the transaction by submitting the relevant documents including the bank statements and therefore, the AO is not correct in making the addition merely based on investigation report without recording any independent adverse finding pertaining to the assessee. The ld. AR in this regard relied on the decision of the Co-ordinate Bench in the case of Shri

Manoj Kunverji Gala Vs. ITO (ITA No. 222/Mum/2019 dated 08.02.2021, DCIT Vs. Shri Pankaj Kantilal Shah (ITA No. 574 & 576/Mum/2022 dated 16.06.2023 and DCIT Vs. Smt. Disha Pankaj Shah (ITA No. 905/Mum/2022 dated 16.06.2023.

4. The ld. DR furnished the written submission in support of his arguments and the extract of which is given below:

➤ *The name of the broker/entry provider through whom the Shares were purchased has not been provided and also it pertinent to mention that no brokerage has been paid for the purchase of said shares.*

➤ *It is pertinent to mention that the AO has referred to the report of investigation wing Kolkata wherein it stated that the scrip of M/s. Matra Kaushal Enterprises Ltd was a penny stock scrip and in connivance with the Promoter, Broker, Entry Operator and Exit provider accommodation entry has been provided to various beneficiary as Long term Capital Gain/Short term Capital Loss.*

➤ *The AO has passed speaking assessment order after thoroughly examining the financials of M/s. Matra Kaushal Enterprises Ltd 5 years and the price movement of the shares of the scrip. There is an unusual rise in the share price of the Scrip to Rs.558/- per each share (The price at which the assessee has sold shares) in a short period without any corresponding increase in the fundamentals and profitability of the said Company.*

➤ *From the BSE website, it is seen that the trading in this particular scrip has been suspended due to Penal Reasons and the price of the Scrip is meagre Rs.2.16 only. It was Rs.7.25 on 1.03.2015 and has consistently fallen thereafter.*

➤ *The Ld. CIT(A) in his Appellate order in Para-5 has mentioned that the Directorate of Investigation, Kolkata report clearly indicated that M/s. Matra Kaushal Enterprises Ltd was one of the penny stock company engaged in providing accommodation entries for generating bogus long-term capital gains.*

➤ *The Directorate of Investigation, Kolkata is a detailed 500 page report on Bogus LTCG/STCL through BSE Listed Penny Stocks and mentions modus-operandi in detail.*

➤ *The decision of Hon'ble ITAT, SMC Bench Mumbai in the case of Pravin B Jain HUF I.T.A. No.4778/Mum/2018 dated 21.11.2019 for A.Y.2014-15 is*

squarely applicable in this case as it pertains to the same Penny stock Scrip M/s. Matra Kaushal Enterprises Ltd.

- *The decision of Hon'ble High Court of Bombay [2018] 89 taxmann.com 196 dated 10.04.2017 in the case of Sanjay Bimalchand Jain vs.PCIT-1, Nagpur is also applicable in this case.*
- *The decision of Hon'ble High Court of Kolkatta [2022] 143 taxmann.com 402 dated 7.07.2022 in the case of PCIT vs. Nand Kishore Agarwala is also relied upon.*
- *The decision of Hon'ble High Court of Gujarat [2021] 128 taxmann.com 376 dated 24.06.2021 in the case of PCIT (Central). Ahmedabad vs. Anand Natwarlal Sharda is also relied upon.*
- *The decision of Hon'ble ITAT, G Bench Delhi in the case of Sanjay Kaul [2020] 114 taxmann.com 186 dated 7.01.2020 for A.Y.2015-16 is relied upon.*
- *The department relies on the decision of the A.O and Ld. CIT(A) who have passed speaking orders and arrived at the conclusion that the assessee has claimed bogus LTCG as exempt u/s.10(38) of the Act and Addition has rightly been made.*

5. The ld. AR vehemently opposed the contentions of the ld. DR to submit that the assessee has purchased the unlisted the shares of the company off market, and therefore the brokerage was not paid. However the supporting documents with regard to same has already submitted by the assessee and that the AO did not find anything adverse in the documents submitted. It is submitted that the AO has simply relied on the report of the investigation wing to treat the impugned transaction as bogus without doing any independent enquiry. The ld. AR further argued that the AO in the assessment order has not given any finding in support of the allegation that the assessee was in any way involved in price rigging and that assessee's name is not mentioned in the investigation report relied on by the AO. Regarding the allegation that there is an unusual share price increase of the scrip not supported by the financial statements of the company the ld. AR argued that

the price movement of the shares of the company are not only driven by the financial performance but there are many other factors for the movement of price in the stock market. The Id AR further argued that in the month in which the assessee sold her shares the high price of the shares was Rs. 587/- per share whereas the assessee sold the shares at Rs.558 which proves that the assessee was not part of alleged group which were manipulating the prices, hence otherwise the assessee would have sold the shares at the highest price mentioned above. Therefore the Id AR submitted that the assessee has acted as investor only and hence the allegations made by the Ld. DR are liable to be rejected.

6. With regard to the SEBI report relied on by the Id DR, it was submitted that the SEBI conducted investigation to enquire whether there are any disclosure violations in the SEBI regulations regarding the changes in Promoter/Shareholding patten under SEBI only and penalty was levied on the promoter /shareholder for such violations. However, it was pointed out that neither any investigation nor any inquiry has been conducted by SEBI in case of trading in the scrip of M/s MatraKaushal Enterprises Limited. The Id. AR further submitted that the SEBI report relied on by the Id. DR does not contain any adverse comment about the assessee but only names the company as a penny stock company and that the Ld. DR failed to prove or justify how this report is connected to the assessee. With regard to the submission that the trading in the scrip was suspended by SEBI since the company is a penny stock the Id. AR submitted that the suspension happened much later and that without connecting the assessee to any of these findings of SEBI or investigation report the AO could not have made the additions. The Id. AR also submitted that the facts in case laws relied on by the Id. AR are distinguishable from assessee's case. The Id AR also submitted a table distinguishing the facts of the case laws relied on by the Id DR with that of the

assessee to submit that the findings in these judgments are not applicable to the assessee. Accordingly, the ld. AR prayed that the addition made by the AO is not sustainable and liable to be deleted.

7. We have heard the parties and perused the material available on record. The assessee purchased 20,000 shares of M/s Kaushalya Global Limited on 26.11.2012 from M/s Pranjal Trading Company Private Limited which as per the statement recorded was based on the advice of her father. The assessee the consideration for purchase was paid through banking channels. M/s Kaushalya Global later got amalgamated with M/s Matra Kaushal Enterprises Limited a listed company and the shares of M/s Matra Kaushal Enterprises Limited were credited into the Demat account of the assessee. We notice that the assessee in order to substantiate the genuineness of the impugned transactions submitted following documents during the assessment proceedings -

- Copy of Purchase Invoice from M/s Pranjal Trading Company Pvt. Ltd. (Page No. 31 of Paper book)
- Copy of Bank Statement reflecting the payment consideration (Page No. 32 & 33 of the Paper book)
- Copy of Demat Statement (Page No. 34 of the Paper book)

8. We further notice that the assessee has submitted before the lower authorities the documents pertaining to the sale of the shares (page 35 to 41 of paper book) such as the contract note, Demat statement reflecting the sale of shares, copy of ledger account of the share broker, bank statement containing the credit of the consideration received on sale of shares. We also notice from the perusal of the financial statement of the assessee (page 44 of paper book) that the assessee is holding shares other than the impugned shares. The ld AR during the course of hearing also drew our attention to the table containing the details of all the investments in shares of the assessee to submit that the impugned shares forms

part only 4% of the entire investments in shares held by the assessee (page 153 & 154 of paper book).

9. We notice that the coordinate bench in the case of Pankaj Kantilal Shah (supra) while considering the issue of sale of shares of M/s Matra Kaushal Enterprises Limited under similar facts has held that –

21. We heard rival contentions and perused the record. We noticed that the assessee has furnished all the details in support of purchase and sale of shares of M/s Matra Kaushal Enterprises Ltd and the said fact has also been noticed by the AO in the assessment order. We noticed that the assessee has purchased the shares by paying Rs.10.00 lakhs through banking channels. Subsequently, the assessee became owner of 10,00,000 shares in the above said company after merger, split etc. During the year under consideration, the assessee has sold 4,14,500 shares through stock exchange. We notice that the assessing officer did not find any fault with any of the documents furnished by the assessee in support of purchase and sale of shares. The Ld D.R, however, submitted that the assessee has not furnished the copies of share certificates, share transfer forms etc. But the fact that the shares were dematerialized and credited to the account of the assessee would prove the fact of purchase of shares. In any case, it is not the case of AO also. Hence the transactions of purchase and sale cannot be doubted with as held by Hon'ble jurisdictional Bombay High Court in the case of CIT vs. Jamnadevi Agarwal (328 ITR 656)(Bom).

22. The case of the AO is that the assessee has agreed to withdraw the exemption claimed u/s 10(38) of the Act before the search officials. In this regard, it is submitted by the assessee before tax authorities as well as before us that he could not explain the details of purchase and sale during the course of search proceedings, since all these transactions were carried out by his father, who had since expired. It was further submitted that the assessee had agreed to withdraw exemption u/s 68 of the Act before the search officials, since he was given impression by the search officials that some wrong was committed by his father and further, he was under the impression that all the relevant documents may not be available. It is submitted that the assessee verified the records subsequently and noticed that all the supporting evidences are available. After consulting the tax consultants, the assessee came to know that there was nothing wrong in the transactions of purchase and sale of shares carried out by his father. Accordingly, it is stated that the assessee adhered to the claim for exemption u/s 10(38) of the Act. From the explanations so given, we notice that the assessee has agreed to withdraw

the exemption claimed u/s 10(38) of the Act under misconception. Accordingly, we agree with the contentions that the declaration given by him under wrong impression should be ignored. In any case, as submitted by Ld A.R, the exemption given under the Act is a statutory right available to the assessee. Hence the same cannot be denied only on the reasoning that the assessee has waived his right, i.e., it is the duty of the assessing officer to allow the concession and benefits available to the assessee while computing total income as per the circulars issued by the CBDT. The case laws relied upon by the Ld D.R with regard to the addition made on the basis of sworn statements, in our opinion, are not applicable to the facts of the present case, in view of the discussions made supra.

23. Before us, the Ld D.R placed reliance on various case laws in support of the addition made by the AO. In our view, those decisions have been rendered on the basis of facts prevailing in those cases and hence they cannot be considered as a straight jacket formula to decide the issue under consideration, i.e., the decision has to be taken on the basis of facts available in each of the cases. In any case, we are dealing with some case laws later. In the instant case, we noticed that the assessing officer has mainly relied upon the report given by the investigation wing of the Income tax department, which included the statements given by the alleged entry operators and exit providers. We noticed that the AO did not carry out any independent enquiry in order to find out whether the assessee was part of ring which indulged in the alleged price rigging. The AO, in particular did not examine the brokers/persons from whom/through whom the assessee has purchased and sold the shares. Based on the reports of investigation wing, the AO has arrived at the conclusion that the assessee has availed accommodation entries by way of long term capital gains. In this process, the AO has ignored the fact that the assessee is a regular investor in shares. He also could not disprove the fact that the purchase and sale of shares of the above said company was carried out by the father of the assessee, who has since expired.

24. We notice that an identical case of allegations that the assessee has availed accommodation entries for bogus capital gains was examined by the Hon'ble jurisdictional Bombay High Court in the case of Shyam Power (supra). The decision rendered by Hon'ble Bombay High Court in the above said case is extracted below:-

“3. Mr. Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the

Department was discharged, according to Mr.Sureshkumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr. Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr. Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny. 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 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.

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.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same

reasons, even this additional question cannot be termed as substantial question of law.”

25. *We may also refer to another decision rendered by Hon’ble Jurisdictional Bombay High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022) and relevant discussions made by Hon’ble Bombay High Court are extracted below:-*

“2. We have considered the impugned order with the assistance of 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 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 the 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 judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) 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.

The Hon’ble jurisdictional High Court has held in the above said cases that the AO cannot make the addition simply relying upon the report given by the investigation wing. We may also refer to the decision rendered by the coordinate bench in the case of Mukesh Ratilal Marolia (6 SOT 247)(Mum), wherein it was held that the personal knowledge and excitement on events should not lead the AO to a state of affairs where salient evidences are overlooked. We notice that the above said decision of the Tribunal has been approved by Hon’ble Bombay High Court, vide its order dated 07-09-2011 passed in ITA No.456 of 2007. It is also noticed that the special leave petition filed by the revenue before Hon’ble Supreme Court has been dismissed vide SLP No.20146 of 2012 dated 27-01-2014. Since the assessee has furnished all the documents in support of purchase and sale of shares of M/s Matra Kaushalya Enterprises Ltd and since the said documents have not been doubted

with, it was necessary for the AO to carry out deeper scrutiny of the transactions, if he felt that there was something wrong. Admittedly, the AO did not carry out any further investigation in the matter. As held by Hon'ble Bombay High Court, it was necessary for the AO to show that the assessee herein had participated in the price rigging in the market. No such finding has been reached by the AO.

26. In the case of Shri Yogesh P Thakkar vs. DCIT (ITA No.1065/Mum/2021 & others dated 03-02-2023, the co-ordinate bench has held that the addition made merely by placing reliance on the Kolkata Investigation Wing report, which are more general in nature, cannot be the basis for making addition u/s 68 of the Act, when the investigation wing has not implicated the assessee. Before us, the Ld D.R placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of Suman Poddar (supra). In the case of Shri Yogesh P Thakkar (supra), the Tribunal has considered the above said decision and noticed that the same has been distinguished by Hon'ble Delhi High Court itself in the case of PCIT vs. Krishnadevi (ITA 125/2020 dated 15.01.2021). The relevant observations made by the co-ordinate bench are extracted below:-

“5.12. We find that the ld. CIT(A) relied on the decision of Hon'ble Delhi High Court in the case of Suman Poddar vs ITO reported in 112 taxmann.com 329 dated 17/09/2019 where the decision was rendered in favour of the revenue. The Special Leave Petition filed by the assessee before the Hon'ble Supreme Court in this case was dismissed by the Hon'ble Apex Court vide its order dated 22/11/2019. But we find that there is yet another decision of Hon'ble Delhi High Court in the case of PCIT vs Krishna Devi and others in ITA 125/2020 ; 130 & 131/2020 dated 15/01/2021 reported in 126 taxmann.com 80 (Delhi HC) wherein similar issue of penny stock vis a vis long term capital gain exemption u/s 10(38) of the Act was subject matter of adjudication, in favour of the assessee. This decision rendered in the case of Smt Krishna Devi considers all the propositions laid out hereinabove and are squarely applicable to the facts before us. In fact the Hon'ble High Court duly endorses the elaborate findings given by the Delhi Tribunal on various facets of the issue. Moreover, in this decision, the Hon'ble Delhi High Court duly considered the decision of Suman Poddar referred to supra and also the decision of Hon'ble Supreme Court in the case of Sumati Dayal which was heavily relied upon by the ld. DR before us also herein. The relevant operative portion of the decision of Hon'ble Delhi High Court in the case of Smt Krishna Devi is reproduced hereunder:-

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 preplanned 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 preplanned 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 LTCEG, as alleged.

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 case (supra) and Sumati Dayal case (supra) is of no assistance. Upon examining the judgment of Suman Poddar case (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 (supra) too turns on its own specific facts. The abovestated 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.
(emphasis supplied by us)"*

In the case of Smt Krishna Devi (supra), the Hon'ble Delhi High Court has held that the theory of human behaviour and preponderance of

probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the respondent.

27. *With regard to the reliance placed by the Ld D.R on the decision rendered by Hon'ble Calcutta High Court in the case of Swati Bajaj (supra), the co-ordinate bench has held as under in the above said case of Yogesh Thakkar (supra):-*

“5.14. We find that the ld. DR had relied on the decision of Hon'ble Calcutta High Court in the case of PCIT vs Swati Bajaj reported in 139 taxmann.com 352 which is an elaborate decision rendered after considering various decisions of various High Courts on the subject. In the said decision, it was held that assessee had to establish the genuineness of rise of price of shares within a short period of time that too when general market trend was recessive. But we find that when there are several decisions of Hon'ble Jurisdictional High Court as stated supra are already in favour of the assessee, the same would prevail over this tribunal and this tribunal need not take cognizance of the Hon'ble Non-Jurisdictional High Court. The law is very well settled by the Hon'ble Supreme Court in the case of Union of India vs Kamalakshi Finance Corporation Ltd reported in 55 ELT 43 (1991) that the decision of Hon'ble Jurisdictional High Court would have higher precedence value than the decision of Hon'ble Non-Jurisdictional High Court on the Tribunal. The Hon'ble Supreme Court emphasised therein that the orders of the Tribunal should be followed by the authorities falling within its jurisdiction so that judicial discipline would be maintained in order to give effect to orders of the higher appellate authorities. The Hon'ble Apex Court has observed that utmost regard must be had by the adjudicating authorities and the appellate authorities to the requirement of judicial discipline. Hence we deem it fit and appropriate to follow the decisions of Hon'ble Jurisdictional High Court referred supra wherein the impugned issue is decided in favour of the assessee. Moreover, when there are two conflicting decisions of various High Courts, the Hon'ble Supreme Court in the case of Vegetable Products reported in 88 ITR 192 (SC) had held that Construction that is favourable to the assessee should be adopted. Hence by following this principle, the decision of Hon'ble Calcutta High Court and other decisions that are rendered against the assessee, need not be followed by this Court in the peculiar facts and circumstances of the instant case.”

Hence the decision rendered by the jurisdictional High Court is required to be preferred in the instant case also

28. *In the instant case, even though the AO has initially stated that he is rejecting the exemption claimed u/s 10(38) of the Act, yet the AO has assessed entire sale proceeds received on sale of shares ad income of the assessee, meaning thereby he*

has made addition u/s 68 of the Income tax Act. The responsibility placed upon the assessee u/s 68 of the Act is different, i.e., the initial burden to prove the cash credits is placed upon the shoulders of the assessee. In order to discharge the said burden, the assessee has to prove three main ingredients, viz., the identity of the creditor, credit worthiness of the creditor and genuineness of transactions. If the assessee proves all the three main ingredients, then the burden to disprove them would shift to the shoulders of the assessing officer. If the AO fails to disprove the three main ingredients proved by the assessee, then the assessing officer is not entitled to make addition u/s 68 of the Act. The decision rendered by Hon'ble Bombay High Court in the cases of Shyam Power (supra) and Ziauddin A Siddique (supra) are in the context of sec. 68 of the Act.

29. As noticed earlier, the assessee herein has discharged the initial onus placed upon him u/s 68 of the Act. We noticed that the assessee has furnished all documents relating to purchase and sale of securities. The shares have entered and exited his demat account. The purchase and sale transactions have been routed through the bank accounts of the assessee. All these documentary evidences produced by the assessee have not been disproved. However, the AO has simply relied upon the report of the investigation department including the statements taken from certain parties and held that the long term capital gains declared by the assessee are not genuine. It is also not the case of the AO that those parties have implicated the assessee nor he could show that the assessee was part of the team which was involved in the triggering of prices. No other material was brought on record by the AO to prove that the assessee has indeed availed only accommodation entries. With regard to questions as to why the shares of the above said company was purchased, the assessee has explained that the said decisions were taken by his late father and hence he could not explain the reasons. It was not shown that the said explanation was incorrect and hence, in our view, the same cannot be rejected.

30. Another important point that was placed before us is the chart of price movement of above said shares. The share price movement was taken out by the assessee from the website of Stock exchange. A perusal of the same would show that the assessee did not sell the shares, when the prices were at peak. The assessee has sold the shares when the prices have started falling, which is the usual tendency of the investors. Had he been part of the wing, which triggered the prices, he would know the peak price and would have sold the shares at that price only. It was the case here and hence, this fact shows that the assessee was not part of that group. We further notice that the assessee is a regular investor in the shares and held shares in many companies.

31. In view of the foregoing discussions and on a conspectus of the matter, we are of the view that the decision rendered by the jurisdictional Hon'ble Bombay High Court in the cases of Shyam R Pawar (supra) and Ziauddin A Siddique (supra) are

squarely applicable to the facts of the present case. Accordingly, we uphold order passed by Ld CIT(A) and accordingly hold that the Ld CIT(A) was justified in directing the AO to delete the assessment of sale consideration of shares as income of the assessee.

10. We notice that the coordinate bench in the above case has deleted the addition for the reason that –

- AO has simply relied on the report of the investigation wing and did not carry out any independent enquiry to find out anything incriminating the assessee with regard to the impugned transactions
- AO failed to show that the assessee had participated in the price rigging in the market
- AO has made the addition merely for the reason that in the statement recorded u/s 131 of the Act, the assessee has admitted for the addition towards impugned transaction and the same is not tenable.
- AO has not considered the fact that the assessee is a regular investor
- AO has not doubted the documentation involving the sale and purchase of shares submitted by the assessee
- The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a preplanned manner, is not supported by any material on record.
- 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

11. In the light of the above findings of the coordinate, when we peruse the materials on record and the findings of the lower authorities following facts emerge –

- The assessee has submitted all the relevant documents before the AO / CIT(A) pertaining to the purchase as well as the sale of the impugned shares

- The impugned shares entered and exited his demat account of the assessee
- The purchase and sale transactions have been routed through the bank accounts of the assessee
- The AO / CIT(A) have not recorded any adverse findings with regard to the documents submitted nor rejected the same
- The assessee is a regular investor in shares and the impugned shares constitute only 4% of the total investments in shares
- In the statement recorded under section 131 of the Act the assessee has stated that she invested in the shares of M/s Matra Kaushal Enterprises under advise from her father and that she has no knowledge of the financial position of the company
- The AO has relied on the report of the investigation wing stating that M/s Matra Kaushal Enterprises Limited is a penny stock company providing accommodation entry and that the AO has not recorded any specific adverse finding with regard to the assessee
- The AO has done a detailed analysis of the financial statement of M/s Matra Kaushal Enterprises to conclude that the same does not support the price at which the shares of the company are traded
- The SEBI report relied on by the assessee does not contain the name of the assessee and nothing has been brought on record to show that the assessee in any way is involved in either the price rigging or in the trading strategy of the shares of M/s Matra Kaushal Enterprises Limited.

12. From the above listed facts in assessee's case it is clear that the facts are similar to the facts basis which the coordinate bench in the case of Pankaj Kantilal Shah (supra) has deleted the addition made by the AO treating the LTCG on sale of

shares of M/s Matra Kaushal Enterprises as bogus. We also notice that the coordinate bench under similar facts in various judgments has deleted the addition made with respect to LTCG. We also notice from the perusal of the submissions of the Id AR with regard to the case laws relied on by the Id DR, that there is merit in the contention that the facts in those cases are distinguishable from that of the assessee and that each case has to be decided based on facts specific to that case. Accordingly considering the facts and circumstances of the present case and the judicial pronouncements rendered under similar of facts, we are of the view that the addition made by the AO towards the sale of shares of M/s Matra Kaushal Enterprises Limited amounting to Rs. 1,11,69,765/- is not sustainable and therefore be deleted.

13. Since we have deleted the addition made towards sale consideration of shares, the consequential addition made by the AO by way of commission expenses as unexplained under section 69C is also liable to be deleted. Accordingly, we direct the AO to delete the addition relating to commission expenses amounting to Rs.2,23,395/-.

14. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 27-06-2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

Sd/-
(PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai

4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai