

2. The facts relating to the case are stated in brief. The assessee is a HUF and it is engaged in the business of manufacture and sale of luggage belts, fabrics and other textile items under the name and style of M/s. N.C. Enterprises and M/s. Sankalp Safety Solution. In the return of income filed for the year under consideration, the assessee had declared long term capital gains of Rs.49,24,339/- on sale of shares of M/s. PS IT Infrastructure & Services Ltd and claimed the same as exempt under Section 10(38) of the Act. The Assessing Officer noticed that the above said shares have been identified as one of the penny stocks by Investigation Wing, Income Tax Department, Kolkata. It is the case of the Investigation Wing that the share prices of the above said company have been rigged by certain interested persons in order to generate bogus capital gains/capital loss. Based on the investigation report of the Investigation Wing, the Assessing Officer entertained the view that the long term capital gains declared by the assessee is also bogus in nature. Accordingly, the AO recorded a statement from the assessee under Section 131 of the Act. The Karta of the HUF appeared before the Assessing Officer and he gave replies to the questions posed by the Assessing Officer. However, the Assessing Officer noticed that the price of the shares of the above said company was jacked up to Rs. 910/- per share from Rs.5.70 per share within a period of 22 months. Further, Assessing Officer also noticed that the Investigation Wing has identified certain brokers, who were involved in jacking up the prices and also purchasing shares as exit providers. In this regard, the Assessing Officer also referred to the statements recorded from some of the brokers by the Investigation wing. Based on the Investigation Report, the Assessing Officer took the view that the capital gain declared by the assessee is bogus in nature. Accordingly, he assessed the entire sale proceeds amounting to Rs. 50,01,200/- as un-explained

cash credit under Section 68 of the Act. The Assessing Officer also took the view that the assessee would have incurred commission expenses in procuring bogus long term capital gain. He estimated the commission expenses at Rs. 1,50,036/- and added a sum as un-explained expenditure under Section 69C of the Act. The assessee could not succeed the appeal filed before the Ld.CIT(A) and hence, the assessee has filed this appeal before the Tribunal.

3. The Ld.AR submitted that the assessee had initially purchased 20,000 shares of M/s. Swift IT Infrastructure & Services Pvt. Ltd., at a price of Rs.10/- per share in off market from a shareholder, named, M/s. Octopus Infotel Pvt. Ltd. The consideration for above said purchase was paid by way of cheque. The said shares were duly transferred to the name of the assessee and there after it was also de-materialized. Thereafter, the above said company got merged with M/s. Parag Shilpa Investment Ltd., vide order dt. 03-05-2013 passed by the Hon'ble High Court of Bombay. Thereafter, the name of the company was changed from M/s. Parag Shilpa Investment Ltd., to M/s. PS IT Infrastructure & Services Ltd. Thereafter, the face value of share was split from Rs. 10/- to Re. 1/-. Accordingly, Two lakhs shares were credited to the D Mat A/c of the assessee upon split of the shares as against 20000 shares initially purchased by the assessee.

4. During the year under consideration, the assessee has sold 55,000 shares for an aggregate consideration of Rs. 50.01 lakhs in the stock exchange platform and declared long term capital gain of Rs. 49.24 lakhs. Since the shares were held for more than one year, the assessee claimed the long term capital gain as exempt u/s 10(38) of the Act. He submitted that the assessee has sold part of

shares only during the year under consideration and the remaining shares were available with the assessee as at the end of the year. He submitted that the assessee has

- (a) furnished all the documents evidencing purchase of shares and sale of shares.
- (b) furnished demat account evidencing holding of shares.
- (c) made the payments for purchase of shares and received amounts on sale of shares through banking channels only.

He submitted that the AO did not find fault with any of the above said documents. The Ld.AR further submitted that the assessee is not subject to any enquiry by SEBI and it was not shown that the assessee be the part of group, which rigged the prices of the shares of the above said company. He submitted that the AO has simply placed reliance on the report given by the investigation wing. Accordingly, the Ld.AR submitted that the assessee has purchased the shares in the normal course and hence, the tax authorities are not justified in dis-believing the transactions of purchase and sale of shares. Accordingly, he submitted that the tax authorities have made this addition on mere surmises and conjunctures. Accordingly, he prayed that the impugned addition be deleted.

5. The Ld.DR, on the contrary, supported the orders passed by the Ld.CIT(A). He further submitted that the assessee could not answer many questions posed by the Assessing Officer. In the rejoinder, the Ld.AR submitted that the assessee has answered questions, which are related to purchase and sale of shares. He could not answer certain specific question relating to the company like name of directors etc. He further submitted that the statement recorded

from the assessee did not bring out any adverse information against the long term capital gains declared by the assessee. He further submitted that the Co-ordinates Bench of the Tribunal have delivered its decision in favour of the assessee in the case of capital gains earned from the sale of shares of very same company, M/s. PS IT Infrastructure & Services Ltd., in the following cases:

- a. Shri Abhishek Doshi vs. ACIT, in ITA No. 3122/Mum/2022, dt. 31-05-2023;
- b. Shri Bhadresh Mansukhlal Dodhia vs. ACIT, in ITA No. 5544/Mum/2018, dt. 06-01-2021;

6. We heard the rival contentions and perused the record. We notice that the assessing officer has primarily placed reliance on the report given by the Investigation wing of the Income tax department, Kolkatta to arrive at the conclusion that the long term capital gains reported by the assessee is bogus in nature. We notice that the investigation report prepared by Investigation wing, Kolkatta is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of prices. It is stated by Ld A.R that the transactions carried on by the assessee were not subjected to scrutiny by SEBI at all. We notice from the statement recorded by the AO from the assessee u/s 131 of the Act that the assessee was able to answer all the technical details relating to stock market.

7. We notice that the assessee has furnished all documents evidencing the purchase and sale of shares, i.e., the assessee has

- (a) purchased these shares by paying consideration through banking channels
- (b) dematerialized the shares and kept the same in the Demat account.
- (c) sold part of the shares through stock exchange platform
- (d) received the sale consideration through banking channels.

Further, the shares have entered and exited the demat account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. The assessee and its broker were not subjected to any enquiry by SEBI, meaning thereby, the transactions were carried on by the assessee during the normal course of investment in shares. As noticed earlier, the AO has not brought on record any material to show that the assessee was part of the group which involved in the manipulation of prices of shares. Hence, we are of the view that there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

8. We may now refer to certain decisions rendered by Hon'ble Bombay High Court on identical issue. In the case of Shyam Pawar (supra), the Hon'ble Bombay High Court has observed as under:-

“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.Suresh kumar 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.”

9. We may now refer to the decision rendered by Hon’ble Jurisdictional 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.

10. In the case of CIT vs. Jamnadevi Agarwal (328 ITR 656), the Hon'ble Bombay High Court held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the instant case also, we noticed that the evidences furnished by the assessee to prove the purchase and sale of shares, payment made/received, entry/exit of shares in the demat account of the assessee etc., were not doubted with.

11. We noticed earlier that the AO has assessed the Sale consideration of shares as unexplained cash credit u/s 68 of the Act. It is pertinent to note that

the purchase of shares made in an earlier year has been accepted by the revenue. The sale of shares has taken place in the online platform of the Stock exchange and the sale consideration has been received through the stock broker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms of sec. 68 of the Act. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition of sale consideration of shares made u/s 68 of the Act and allow the exemption claimed u/s 10(38) of the Act.

12. Since we have held that the sale transactions of shares cannot be doubted with, the addition made by the AO with regard to estimated commission expenses is also liable to be deleted.

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

Order pronounced in the open court on 24th July, 2024

Sd/-

(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date : 24th July, 2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai