

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.4114 & 4115/Mum/2023  
(Assessment Year: 2013-14 & 2014-15)**

Nitesh Rajhans Singh, 13/14, Indra Bhavan, Patel Wadi, Pipeline, Kurla(West), Mumbai-400070.	<b>बनाम/ Vs.</b>	ITO- 26(2)(3), Kautilya Bhavan, BKC, Bandra (East), Mumbai-400051.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BAMPS4588L</b>		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

<b>Appellant by :</b>	Shri Rajiv Khandelwal & Shri Akash Kumar.AR
<b>Respondent by :</b>	Shri Laxmi Kant.Sr.DR

सुनवाई की तारीख / <b>Date of Hearing</b>	08/05/2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	25/07/2024

आदेश / ORDER

**PER PAVAN KUMAR GADALE - JM:**

These two appeals are filed by the assessee against the separate orders of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 143(3) r.w.s147 and u/sec 250 of the Act.

2.Since the issues involved in these appeals are common and identical, hence are clubbed, heard and a consolidated order is passed. For the sake of convenience, shall take up the ITA No. 4114/Mum/2023 for A.Y 2013-14 as lead case

and the facts narrated. The assessee has raised the following grounds of appeal

1. *The Ld. CIT(A) erred in confirming reopening u/s 148 on the basis of general information without considering the written submission.*
2. *The Ld. CIT(A) erred in confirming addition u/s 68 by rejecting the claim of long term capital gain u/s 10(38) without considering the written submission.*
3. *The Ld. CIT(A) erred in confirming addition on account of penny stock.*
4. *The Ld. CIT(A) erred in confirming addition u/s 69C by way of 3% commission on sale proceeds of shares on the basis of assumption without considering the written submission.*
5. *The appellant craves to add, alter, amend any ground of appeal.*

3. The brief facts of the case are that, the assessee is engaged in the business and derives income from business, income from capital gains and income from other sources. The assessee has e-filed the return of income for the A.Y 2013-14 on 28.11.2013 disclosing a total income of Rs. 9,39,760/-. Subsequently, the Assessing Officer (AO) has received information from Kolkata Investigation Wing and after recording the reasons for reopening of assessment has issued notice u/sec 148 of the Act. In compliance to notice, the assessee has filed the letter to treat the return of income for the A.Y 2013-14 filed on 28.11.2013 as due compliance. Further reasons for reopening of reassessment

was provided to the assessee and the objections were filed on 03.10.2017 and the A.O has rejected the same vide letter dated 13.10.2017. Subsequently, notice u/sec 143(2) and 142(1) of the Act along with the questioner are issued. In compliance to notice, the Ld. AR of the assessee appeared from time to time, furnished the details and the case was discussed. On perusal of the financial statements, the Assessing Officer found that the assessee has disclosed and claimed the exemption u/sec10(38) of the Act being long term capital gains on sale of shares of Rs.2,10,29,775/- and called for the information. The AO on verification of the financial statements found that found that the assessee has earned long term capital gains on sale of shares of M/s NCL Research & Financial Services Ltd and the assessee was asked to produce the details of purchase of shares, mode of payment and relevant supporting evidences. Whereas the assessee has purchased 22000 shares of Rs.10/- paid up each of M/s NCL Research & Financial Services Ltd at Rs.175/- per share(include premium of Rs.165/- per share) on preferential allotment basis at a price fixed by Bombay Stock Exchange (BSE) by cheque no 525435 drawn on Dena Bank Kula Branch Mumbai dated 6-09-2011 for Rs.38,50,000/- as per share application form and allotment letter of the company dated 9-09-2011 with a lock in period upto 7-09-2012 and shares were credited to the demat account on 31-10-2011.During the financialyear 2012-13,the

assessee has sold 17,200 shares of M/s NCL Research & Financial Services Ltd and earned Long Term Capital Gains (LTCG) of Rs. 2,10,29,775/- and claimed exemption U/sec10(38) of the Act. The Assessing Officer has dealt on the purchase confirmation, sale contract notes, bank statement and demat account, statements in respect of shares purchase and relied on the modus operandi, report of the Kolkata Investigation Wing, statements recorded in respect of various persons by the investigation wing and further the A.O. has also recorded the statement of the assessee u/sec 131 of the Act on the sources of funds and statement recorded of key persons in the survey operations u/sec133A 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/trade value of Rs.2,41,00,000/- and estimated commission expenditure @ 3% of trade value u/sec 69C of the Act which works out to Rs.7,23,000/- and assessed the total income of Rs.2,57,62,760/- and passed the order U/sec143(3) r.w.s147 of the Act dated 20-12-2017.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of

appeal, submissions of the assessee and findings of the AO but has confirmed the action of the AO and sustained the addition u/sec68 & u/sec69C of the Act and dismissed the assessee appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the additions under section 68 & 69C of the Act overlooking the facts and submissions that the purchase & sale of shares 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 evidences in support of the claim. The Ld. AR explained the basis and reasons for purchase of shares on preferential allotment basis in F.Y.2011-12 with the lock in period and the shares were credited to the demat account and the holding is more than 12 months and the assessee has received dividend income and the shares were sold subject to STT on the BSE with the SEBI Registered broker. Further 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 price rise cannot be attributable to the performance of the company financials and the Ld.DR supported the order of the CIT(A) and relied on the submissions.

6. 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 2012-13 Ledger account, copies of bank statement, copy of contract notes for sale of impugned shares, demat account statement and the copy of allotment letter of the company dated 9-09-2011 with a lock in period upto 7-09-2012 placed at page 65 of the paper book and shares were credited to the demat account on 31-10-2011. During the financial year 2012-13, the assessee has sold 17,200 shares of M/s NCL Research & Financial Services Ltd and earned Long Term Capital Gains (LTCG) of Rs. 2,10,29,775/- and claimed exemption U/sec 10(38) of the Act. The assessee has sold the 17,200 shares from 12-02-2013 to 28-03-2013 through SEBI registered broker of BSE - M/s Joindre Capital services Limited. The Ld. AR demonstrated evidences in support of sale of shares with the sale bills cum

contract notes subjected to Securities Transaction Tax(STT) placed at page 73 to 81 the paper book and the demat statement reflecting the sale of shares in F.Y.2012-13 at page 69 & 70. The Ld.AR referred to shares purchase bill/preferential allotment document dated in the F.Y 2011-12 placed at page No.62&66 of the paper book. The 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 at page 73 to 81 of the paper book and sale proceeds credited to bank account and the primary documents filed by the assessee were not discredited by the A.O. Further the Ld.AR relied on the Bhav copy disclosing prevailing selling price of shares from the BSE Portal. The statements of others recorded by the revenue was not provided and request for cross examination was rejected. Further the Ld. AR demonstrated the Company Master Data (CMD) of the company shares traded by the assessee from the MCA portal disclosing the status as Active. We find that the assessee has purchased these shares on preferential allotment basis and supported with the sources of acquisition and the shares were credited to demat account on 31.10.2011 placed at Page 67 of the paper book.

Further the Ld.AR relied on the material information, evidences and submissions made before the CIT(A) dealt at Page 35 Para 5 of the order as under:

*“5. The Written submission of the appellant during the course of appellate proceedings is as under:*

*"In the matter of appeal in the case of NITESH RAJHANS SINGH, MUMBAI for the assessment year 2013-14.*

*1. Constitution of the assessee.*

*The assessee has an individual. The assessment year concerned is 2013-14.*

*2. Nature of income*

*The assessee is a partner in Star Associates, Star Empire, Star Enterprises and Star Corporation. The share of profit from the said firms is claimed as exempt u/s 10. However, interest received from the firm is offered for taxation under the head Income from Business and Profession. The interest is shown as income net off interest paid by the assessee. The assessee has shown long term capital gain of Rs. 7,64,310/- on sale of immovable property. Further the assessee has shown long term capital gain on sale of shares of Rs. 2,10,29,775/- and exemption u/s 10(38) is claimed. Further the assessee has also shown Income from Other Sources which includes interest from FDR and saving bank account.*

*3. Order u/s 143(3) r.w.s 147 of IT Act, 1961:*

*The assessee has. filed return of income declaring total income at Rs. 9,39,760/-. The Learned Assessing Officer in an order u/s. 143(3) assessed*

*The total income at Rs. 2,57,62,760/-. The Learned Assessing Officer has made following additions disallowances:*

*a) Undisclosed Income u/s 68. Addition of sales proceeds of share u/s 68 of I.T. Act amounting to Rs 2,41,00,000/- which is claimed as exempt u/s 10(38) against the actual sale proceeds of 2,40,39,775/-.*

*b) Unexplained Expense u/s 69C of Income Tax Act of Rs 7,23,000/-. The total addition works out to Rs 2,48,23,000/-.*

*3.1 Purchase of shares at price approved by BSE.*

*The appellant has subscribed preferential allotment of equity shares of NCL Research and Financial Services Ltd. The appellant has made application for 22,000 equity shares at Rs. 175 per share (Rs. 10 by way of Face Value and premium of Rs. 165 per share) The company which is*

*quoted in stock exchange has to get approval of issue price of preferential allotment which is given after verification of various records and past behavior of the script and net worth of the company. In view of the fact the preferential allotment is in accordance with the approval of Bombay Stock Exchange and hence the transaction including the purchase price cannot be doubted with any of the facts.*

### *3.2 Purchase through Banking channel with established source.*

*The appellant has paid Rs. 30,85,000 by way of share application money for subscription of preferential allotment of 22,000 shares, the payment was made through banking channel. The copy of bank statement was submitted during the course of assessment proceedings. The immediate source for application in preferential allotment is receipt of loan from the HUF of father Shri. Rajhans Singh HUF. In view of the fact the investment is made through banking channel and source is established by way of receipt of loan from the HUF of father of the assessee. The purchase price is Rs. 175 per share which is approved by stock exchange. Considering the price, it cannot be treated as penny stock.*

### *4. Disallowance of exemption u/s 10(38) treating undisclosed income u/s 68.*

*4.1 The Learned Assessing Officer erred in making addition of sale proceeds u/s 68 of Rs 2,41,00,000/- (actual sale proceeds is Rs. 2,40,39,775/-) on rejecting the appellants claim u/s 10(38) of long term capital gain on which STT is paid on sale of listed shares of NCL Research and Financial Services Ltd. hereinafter called as "NCL" Your appellants submit as under:*

#### *4.2 Written Submission:*

*The Learned Assessing Officer erred in not considering the written submission made during the assessment proceedings in support of genuineness of the transaction for purchase and sale of shares on which STT is paid along with supporting evidence. (Please refer the submission oil page no. 56 to 81.) The assessee has submitted the following documents and papers in support of purchase and sale of shares of the Said Company*

- a) List of long term capital gain.*
- b) Broker's statement in support of transaction of sale and issue of cheque in favor of assessee.*
- c) Sale bill cum contract note for sale of shares.*
- d) delivery of Copy of demat bank statement in support of purchase and receipt of shares and for sale issue of delivery of shares.*
- e) Share application form for preferential allotment.*

*f) Copy of cheque issued for preferential allotment.*

*g) Copy of allotment letter from NCL.*

*h) Copy of Demat statement*

*All the shares are sold on the bolt of Bombay Stock Exchange (BSE) where at the name of the broker and / or the purchaser is not known under the computer trading system.*

*4.3 Submission made in response to show cause notice The Learned Assessing Officer erred in not considering the written submission made in response to show cause notice. (Please refer to the submission from page no 42 to 55) The Learned Assessing Officer has mentioned in para 11 about the receipt of reply to show cause notice but he has not discussed the content of said response to show cause notice.*

*The Learned Assessing Officer erred in not considering the submission given in response to the show cause notice. The Learned Assessing Officer has not discussed the issues raised by appellant in his letter filed by way of response to show cause notice. The Learned Assessing Officer has rejected the response to show cause notice without assigning any reason. It is stated in the said letter that purchase of preferential shares had the price fixed by Bombay Stock Exchange cannot be treated as purchase of penny stock. Sale was made on the bolt of BSE where the identity of the buyer and his broker is not disclosed. There was a boom in NBFC companies' prices. It is stated in the showcause notice that the prices of NCL was Rs. 1.11 per share on 08/02/2011 which is a very basis of analyzing the price as a penny stock but in fact the price of NCL was ranging between Rs. 30 to Rs 60 between 08/02/2011 to 08/03/2011. The analysis was based on the incorrect price of shares. The very basis of analysis of price is based on incorrect data. The appellant has purchased the shares on the basis of tip and hence the information about the working and net worth is unwarranted and irrelevant. The statement of Mr. Poddar the MD of the company is irrelevant because the appellant has not dealt with either at the time of purchase or at the time of sale with the said party. The statement recorded at the back of the appellant without affording the opportunity of cross examination cannot be used for making addition. It is learned that the said party' has retracted the statement recorded. The statement of appellant was recorded u/s 131 and nothing is proved against the genuineness of transaction. The assessee has not transacted with Mr. Haidar as the shares were sold through Bolt. There is no intermingling or inter changing of assessee's funds with the funds of alleged tented persons. Further no incrementing document disproving the genuineness of transaction was brought on the record. The information is received by DDIT (INV Kolkata) however the shares of NCL are listed on Bombay Stock Exchange. The office of the company is situated in Mumbai and*

*hence the findings of investigating agency of Kolkata are irrelevant. For making addition u/s 68 nexus between the appellant and accommodation entry provider is to be proved. Only story telling cannot result into addition u/s 68. The Learned Assessing Officer has not discussed the merits of cases cited in the letter response to show cause notice.*

#### *4.4 Analysis based on incorrect market price of shares*

*It is stated in para 9 of the Assessment Order that the price of NCI shares was around Rs. 1.11 per share in 08/02/2011. The analysis is based on the incorrect the Learned Assessing Officer failed to provide any evidence against the assessee. In the whole assessment order the story of penny stock and operator is failed out without bringing on record any evidence or material disproving the genuineness of transaction. Any order which is based without evidence or on generalized information or human probabilities or suspicious is bad in law as well as in facts. The reliance is placed on the judgement of Smt. Shabita Gupta Vs ITO (ITAT Kolkatta). It was held that decision should be based on evidence and not on generalization, human probabilities, suspicion, conjectures and surmises. In the said order the honorable ITAT has cited the judgement of Bombay High Court, Kolkatta High Court and Punjab and Hariyana High Court. (A copy of order for your kind perusal on page no 82 to 85)*

#### *4.8 The appellant has sold part of the shares*

*Out of 22,000 shares purchased by the assessee only 17,200 shares were sold, if it is a penny stock then assessee should not have sold the part of the share. In the case of Meenu Goyal Vs ITO Ward -31(1) (ITAT New Delhi) The part of the shares has been sold and exemption u/s 10(38) is allowed which shows the intention of the appellant to remain invested in the shares of the company. The copy of order is enclosed herewith for your kind consideration on page no 86 to 107)*

#### *4.9 The additions are made u/s 68*

*The Learned Assessing Officer has made additions u/s 68 disallowing the exemption u/s 10(38) of long term capital gain on sale of shares on which STT is paid. The appellant has established the identity of the transaction by submitting various documents / papers and bank statement. Further the transaction is rooted through banking channels. The transaction of sale is rooted through bolt of BSE where the identity of prospective purchaser is not disclosed, it clearly shows the genuineness of transactions.*

*The shares are purchased at Rs 175/- and the same is sold at the average price of Rs 1,397/- i.e. 8 times do not result into penny stock transaction and hence the transaction of sale of shares through Bombay Stock Exchange in which identity of purchaser is not known clearly*

*shows the genuineness of transactions. In view of the fact identity of the transaction rooted through banking channels proves the genuineness of the transaction.*

*The reliance is placed on judgement of Jurisdictional ITAT Mumbai in the case of ITO v. Arvind Kumar Jain HUF it was held that bogus capital gain: if demat account and contract note showed details of share transactions and the assessing officer has not proved the transactions to be bogus, the capital gain earned on said transactions cannot be treated as unaccounted income (Please refer to judgement on pg no. 105 to 104)*

*It was held before the Bombay High Court in the case of CIT v. Shyam R Pawar (2015) 54 taxmann 108 (BOM), it was held that where demat account and contract note showed the details of share transactions and assessing officer had not proved said transactions as bogus, capital gain earned on said transaction could not be treated as unaccounted income u/s 68.*

#### *4.10 The operator*

*The appellant has denied the connection with the exit provider in the statement recorded u/s 131. The Learned Assessing officer has stated that statement of said operator recorded u/s 132(4) at the back of the assessee and no copies of his statement were given to the appellant. Further no incriminating document was found in respect of the appellant transactions of sale of shares of the Said Company. In view of the fact, no documentary evidence was brought on record from the raid of said operator. Methodology adopted by the said operator has not evidence by the Learned Assessing Officer against the assessee. The order is based on assumption that operator has mediated the transaction of appellant without bringing any evidence on record. No incriminating documents were found during the course of raid proceedings at the place of the operator. Further the appellant is not given opportunity of cross examination of the said operator as stated in response to show cause notice. The reliance is placed on the judgement of Shri Pramod Jain and Other Vs DCIT (ITAT Jaipur) (A copy of judgment is enclosed herewith for your kind perusal on page no to) INCOME TAX DEPARTMENT*

#### *4.11 Suspicious*

*The order of the Learned Assessing Officer is nothing but suspicious about the penny stock. Further it is based on incorrect data of market price. The appellant has submitted all the relevant document/papers / statement to prove the genuineness of the transaction. The Learned Assessing Officer has not brought any evidence it was held in the case of CIT Vs Carbo Industrial Holding Ltd by Kolkatta High Court that mere suspicious of the assessee claim the exemption should not be denied. Similarly, in another decision of Hon'ble Kolkatta High Court in the case of CIT VS Emiraid Commercials Ltd. reported in 202120 Taxman 282 dated 23/03/2001, it*

*was held that "Admittedly the details of purchase and sale of shares were furnished. The payment and receipt were by account payee cheque. The identity of seller and purchaser was not in dispute. The disallowance was basically made on the ground that the assessee failed to produce the brokers for verification of the transaction. Following the view on a similar issue in the case of CIT Vs Carbo Industrial Holding Ltd (2000) 244 ITR 422 (Cal), non-production of the shares broker by the assessee did not disentitle it for claim of loss in a genuine transaction of shares, thus, the Tribunal's finding was based on material and not perverse. The findings of the ITO and the Commissioner (Appeals) were based on presumption."*

*The reliance is also placed on the judgement Shri Dollarai Hemani Vs ITO ITAT Kolkatta it was held that when the shares transactions are supported by proper contract note delivery through demat account and bank statement then long term capital gain cannot be denied to the assessee. (A copy of order is placed on page no. 108 to 121)*

*Further reliance is placed on the judgment of Manishkumar Baid Vs ACIT ITAT Kolkatta it was held that rejecting the assessee claim of exemption u/s 10(38) of the Act is not correct. The tribunal has relied upon the judgment of various high Court.*

*Hon'ble Supreme Court in Dhankeshwari cotton Mills Pvt. Ltd Vs CIT (1954) 26 ITR 775 (SC) has held that Income Tax officer is not entitled to make pure guess work and make assessment without reference to any evidence and material at all. There must be something more than suspicious to support the assessment. It was HELD THAT SUSPICION HOWEVER STRONG MAY NOT TAKE PLACE OF PROOF,*

*In the assessment order the Learned Assessing Officer has stated the fact of the case. The finding of the Assessing Officer is heading of suspicious of revenue. In fact, the suspicious has started with a wrong analysis of share prices at Rs. 1.11 which has weakened the suspicious. The Learned Assessing Officer is unable to give any strength to suspicious. In view of the fact order is purely based on suspicion. COME*

*4.12 DEPARTMENT Statement recorded u/s 132(4) in respect of operator.*

*The statement of operator was recorded u/s 132(4) but the statement can only be relied if it is evidenced by record at the time of recording the statement. The appellant is no way connected with said operator and the statement recorded u/s 132(4) cannot be used unless the evidence was found at the time of raid. The Learned Assessing officer has not brought on record any evidence to falsify the claim of the claim of the assessee or that the share transaction is Bogus. The Learned Assessing officer has acted on the alleged statement of operator behind the back of the assessee without bringing any evidence in support of such suspicious without affording any opportunity cross examining him. Such statement cannot be held as reliable evidence for making addition or disallowance reliance is*

*placed on judgement of Hon'ble Bombay High Court in the case of Omprakash Jain reported in 24 DTR 157 and in the DCIT vs Premsons (ITAT Mumbai) it was held that statement recorded has no evidentiary until it has some corroborative material/ evidence*

*In the present case before your consideration various raid took place at operator and exit provider but not a single evidence was brought on record. The assessment made by the Learned Assessing Officer is purely a guess work.*

#### *4.13 Sale transaction through online trading of BSE known as Bolt.*

*The appellant has sold the share through online trading through computer known as Bolt to BSE, In such trading identity of purchaser of broker of purchaser is not known in such situation it cannot be presumed there could be any transfer of cash between buyer and seller to convert unaccounted money into accounted money as alleged by the Assessing Officer. It was held in the judgement of Hon'ble Bombay High Court in the case of CIT Vs Lavanya Land Pvt Ltd (2017) 83 ITR Com 161(Bom) to contend that there was no evidence whatsoever to allege that money changed hands between the assessee and broker or any other person including the alleged exit provider whatsoever to convert unaccounted money for getting benefit of LTCG as alleged. In the said case, the Hon'ble High Court held that in absence of any material to show that huge cash was transferred from one side to another, addition cannot be sustained.*

*In the present case before your Hon'ble under consideration there is no such evidence brought on record for transfer of cash from the appellant to the operator even though his placed was raided.*

#### *4.14 Conclusion drawn by Learned Assessing Officer in the order.*

*The assessee has given particulars of transaction and onus to disprove the genuineness is rebutted to the department. The assessee has not studied the credential of the company. The appellant is no way connected with MD of NCL and/or exit provider. The appellant has not provided any cash to the entry provided and no documentary proof is brought on record. The addition of cash deposit in the accounts of operator ought to have been added to their income instead of making addition in the appellant's case without any evidence on record, the appellant denies the arrangement of any transaction.*

*The reliance is also placed on the following judgements:*

*Manish kumar Baid & others Vs ACIT ITAT Kolkatta (Please refer page no. 122 to 146)*

#### *4.15 Favorable judgement in respect of NCL Research and Financial Services Ltd.(Appellant had also purchase NCL shares)*

*We are enclosing the judgement of Kolkatta ITAT in which addition on sale of NCL is deleted by the ITAT in the case of Smt. Sabita Gupta. It was held that the addition All the cases cited Ushachandra Shah Vs ITO, Arvind Kariya Vs ACIT, Ratnakar Pujari Vs ITO & recent judgment Sanjay Primalchand Jain L/H of Shantidevi is about penny stock. In fact NCL was never traded as penny stock.....*

#### *5.0 Re-opening under section 148*

*The Learned Assessing Officer has provided the copy of reason recorded for re- opening the case. The appellant has filed objection against the re-opening of the case a copy of submission is enclosed herewith for your ready reference. The appellant has submitted all the documents to prove the genuineness of the transaction. Re assessment on the basis of report from investigation wing is not valid the reliance is placed on the judgement of Delhi High Court in the case of CIT Vs. Kamdhenu Steel and Allied Ltd (2012) 248 CTR 33. The Learned Assessing Officer has not brought any material information about the transaction of the appellant and hence the re-opening is invalid. The purchase cost of NCL shares was Rs. 175 it is not a penny stock. If the details about purchases would have brought on record ITO would have been convinced without doubt that the appellant has not purchased any penny stock. The re-opening reason consist of only sale proceeding and not about the cost of shares. It is merely a change of opinion which cannot form the part for reason of opening.*

#### *6.0 Disallowance of unexplained expenses u/s 69C of Income Tax Act.*

*The Learned Assessing Officer erred in estimating 4% commission charged on addition of Rs. 7,23,000/- u/s 69C. This is a purely guess work and no documentary evidence is provided for estimating disallowance of expenses.”*

7. Further the Ld. AR submitted that the assessee has sold the shares through SEBI registered broker of BSE and supported with the sale bills cum contract notes subjected to Securities Transaction Tax(STT) and the demat account statement reflecting the sale of shares. The assessee has held shares for more than 16 months from the date of purchase on 9-9-2011. Further the statement of the assessee was recorded u/sec131 of the Act by the Assessing officer and the assessee affirmed the genuineness of share transactions with

the documentary evidences. The Ld.AR emphasized that the assessee is only a investor and was not involved in the price rigging of shares and no enquiry was conducted by the SEBI and BSE against the assessee. The Ld. AR relied on the following judicial decisions in support of the submissions as under:

1. *Pr.CIT Vs Indravadan Jain (HUF), (Bom HC), ITXA No. 454 of 2018. Dated 12-07-2023.*
2. *Pr.CIT Vs Ziauddin A Siddique, (Bom HC), ITXA No. 2012 of 2017.*
3. *CIT Vs Shyam R. Pawar, (Bom HC), 229 Taxman 256*
4. *CIT Vs Jamnadevi Agarwal, (Bom HC), 328 ITR 656*
5. *Jaymin Kirtibhai Sanghvi Vs ITO. ITA No. 6070/Mum/2016 dated 18.07.2018.*
6. *Veena Chaturvedi Vs DCIT 156 taxmann.com 457(Mumbai Tribunal)*
7. *NS Choodamani Vs CIT (Kerala HC), 35 ITR 676*
8. *Pr.CIT Vs Parasben Kasturchand Kochar, (SC), 282 taxman. 301*
9. *Pr.CIT Vs Prem Pal Gandhi, (P&H HC), 401 ITR 253*
10. *Pr.CIT Vs Krishna Devi, (Delhi HC), 431 ITR 361*
11. *Andaman Timber Industries Vs CCE (SC), Civil Appeal No. 4228 of 2006.*
12. *Chirag Tejprakash Dangi Vs ITO in ITA No. 3256/Mum/2022 dated 20-02-2024.*
13. *Surendrakumar B. Agarwal Vs CIT in ITA No. 3779/Mum/2023 dated 29-04-23.*
14. *Bhavesh K. Kubadia vs ITO in ITA No. 1490/Mum/2023 dated 19-03-24.*
15. *Neeta R. Lodha Vs CIT ITA No. 408/Mum/2023 dated 19-03-24.*
16. *Pr.CIT Vs Krishna devi (SC) [2022] 138 taxmann.com 150 (SC)*
17. *Pr.CIT Vs Kuntala Mohapatra (SC)[2024] 160 taxman.com 608 (SC)*

8. We find the Honble High Court of Bombay in the case of Pr. CIT Vs. Indravadan Jain. ITA No.454 of 2018 dated 12.07.2023 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.”*

9. 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]*

10. 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)*

11. 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."*

12. 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 assessee 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 assessee 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 assessee-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 assessee 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 assessee-Therefore, the decision of the Tribunal is based on findings of fact and no substantial question of law arises.*

*The fact that the assessee 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.*

13. 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.*

14. 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 Allahabad 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."*

15. The Ld. AR has furnished the data from the MCA Website on the status of the company, which is active compliant and the investee company i.e M/s NCL Research and Financial

services Ltd has filed the last Balance sheet dated 31-03-2023 and the Annual General Body meeting was held on 12-09-2023. Subsequent to the assessee selling the shares in F.Y.2012-13, the shares of the company are traded regularly and company has paid dividend on shares, issued bonus & rights shares and stock split of the shares as per the MCA data details filed by the assessee. The Ld. AR contentions are that the assessee is only a investor and has purchased the shares of other companies and similarly disclosed in the financial statements and were also sold and earned long-term capital gains. Further the assessee has purchased these shares at a premium on preferential allotment basis and consideration was paid through the banking channels is acceptable and not disputed. The Ld.DR placed reliance on the decision of Honble High Court Of Calcutta in the case Pr,CIT Vs Swati Bajaj (139 taxman.com352), whereas the Ld.AR relied on the ratio of decisions of the Jurisdictional Honble High Court of Bombay dealt in the above paragraphs. We find the Coordinate bench of the Honble Tribunal in the case of Shri Yogesh P Thakkar and Ors Vs. DCIT in ITA Nos. 1605 to 1611/Mum/2021 dated 3-02-2023 has considered the decisions of the Jurisdictional Honble High Court and observed at Page27 Para5.13 to 5.16 of the order read as under:

*“5.13. We find that the ld. CIT(A) relied on the decision of Nagpur Bench of Hon”ble Jurisdictional High Court in the case of Sanjay Bimalchand Jain*

*vide order dated 10/04/2017 reported in 89 taxmann.com 196 which is against assessee. In this regard, we find that in the facts of Sanjay Bimalchand Jain, that assessee had indulged in dubious share transactions and the broker through which shares were sold did not respond to the notices issued by the ld. AO. However, in the case of the assessee herein, all the materials in support of the share transactions were duly placed on record and are in order and the ld. AO had not drawn any adverse inference on the said documents to treat them as false or fictitious. Hence this crucial distinguishing fact of Sanjay Bimalchand Jain makes it inapplicable to the facts of the case before us. Moreover, we find that the Hon"ble Jurisdictional High Court in the recent case of PCIT vs Ziauddin A Siddique in Income Tax Appeal No. 2012 of 2017 dated 04/03/2022 had held as under:-*

*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 Ramakrishna 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 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.*

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

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."

5.15. ....

5.16. Considering the totality of the facts and circumstances of the instant case and respectfully following the judicial precedents relied upon hereinabove, we are not inclined to accept to the stand of the ld. CIT(A) in sustaining the impugned additions on account of denial of exemption for long term capital gains u/s 10(38) of the Act and estimated commission @ 6% against the same. Accordingly, the ground nos. 1 & 2 raised by the assessee are allowed."

16. Further the facts and circumstances of the present case is similar and identical pertains to A.Y 2013-14 in respect of sale of shares of M/s NCL Research and Financial services Ltd dealt by the Coordinate bench of this Tribunal in ITA No. 4581/Mum/2018 in the case of Smt Priya Rahul Abhani Vs. ITO and has granted relief observing at Para 2 to 10 of the order read as under:

*“2. The facts of the case are that the assessee filed his return of income declaring long term capital gains of Rs.3,63,356/- and claimed the same as exempt u/s 10(38) of the Act. The assessee had sold 1000 shares of M/s NCL Research and Financial Services Ltd for a value of Rs. 14,20,000/- in April, 2013. The assessee had purchased the above said shares in April 2012 for a consideration of Rs.1,79,648/-. The assessee had also sold shares of M/s Dhanus Technologies Ltd for a sum of Rs.5000/-. The same had been purchased for Rs.11,40,028/- and hence there was a loss of Rs. 11,35,028/- from this transaction. The assessee had received bonus shares from M/s Dhanus Technologies Ltd and the same was sold for Rs.12,000/-, The AO received information from investigation wing that the trading in above said shares falls under the category of suspicious long term capital gains on shares, since they have been put under Surveillance measure by SEBI. The AO, after discussing the modus operandi adopted for booking long term capital gain by rigging the prices, came to the conclusion that the transactions of purchase and sale made by the assessee in the above said shares are not genuine. In support of the same, the AO placed his reliance on the statement given by the director of M/s NCL Research and financial services Ltd during the course of survey operatio. Accordingly he rejected the claim of capital gains and assessed the sale consideration of Rs. 14,20,000/- + Rs.11,35,028/- and Rs.12,000/- aggregating to Rs.25,67,028/- as income of the assessee under the head income from other sources.*

3. The Ld CIT(A) gave partial relief by deleting addition of Rs. 11,35,028/-, as the said sale transaction has resulted in loss.

4. The Ld A.R submitted following points:-

(a) The Id CIT(A) was justified in deleting the addition of Rs.11,35,028/-. However, the sale value of bonus shares of Rs.12,000/- should have also been deleted by him, since he has deleted the addition relating to original shares.

(b) The brokers from whom the assessee had purchased shares and through whom the assessee sold shares have not been identified as tainted brokers

c) The purchase of shares and the source of purchases have been accepted by the assessing officer in the preceding year.

(d) The shares have been received in d-mat account of the assessee and they have been sold through the d-mat account only.

(e) The assessee is making investment in shares regularly, which is evidenced by the fact that the assessee is holding shares in number of companies.

Accordingly the Ld A.R submitted that the assessing officer has disbelieved the transactions for the reason that there is huge jump in the prices of shares and also in view of surveillance measure of SEBI. He submitted that the AO has not established any link between the assessee and the directors of the company. He has also not shown that the assessee or the brokers were part of price rigging activities. Accordingly he submitted that the assessee has purchased and sold the shares in the normal course. Accordingly he submitted that there is no reason to suspect the transactions of the assessee.

5. On the contrary, the Ld D.R submitted that the investigation wing of the department has unearthed huge racket of rigging of prices of the shares with the fraudulent motive of generating tax exempt capital gains. The revenue has identified suspicious share transactions and the shares of M/s Sunrise Asian Ltd were one of such shares. He submitted that the directors of the above said

*company has admitted the price rigging. Accordingly he submitted that the Ld CIT(A) was justified in confirming the addition.*

*6. The Ld A.R, in the rejoinder, submitted that the assessing officer has made the addition entire sale consideration as income. He submitted that the Hon'ble Rajasthan High Court has upheld the order of Tribunal in deleting an identical addition in the case of CIT vs. Smt. Pooja Agarwal (D.B. Income tax Appeal No.385/2011 dated 11.09.2017), since the shares were transacted through Stock Exchange. He submitted that the assessee, in the instant case also, has transacted the purchase and sale transactions through stock exchange only. He further submitted that the assessee has purchased and sold shares of other companies also, list of which is furnished in the paper book.*

*7. I have heard rival contentions and perused the record. I notice that the AO has received information about suspicious share transactions and on the basis of the same; he has disbelieved the claim of long term capital gains. I notice that the assessee has purchased shares through a broker named Vijay Vishal Shah and sold shares through Anand Rathi Share and stock brokers Ltd. Thus, I notice that the purchase and sale of shares have been carried out through two different brokers. It is not the case of the AO that both the share brokers referred above have been identified as tainted brokers involved in fraudulent transactions.*

*8. The source of purchase of shares have not been doubted by the AO in the immediately preceding year. Further the assessee has shown the purchase of impugned shares as investment in the Balance Sheet. Hence the purchase of shares has been accepted. Further the shares have been received in the D-mat account of the assessee and they have been sold through the D-mat account only. Hence the delivery of shares also stand proved. The AO has not brought any material on record to show that the assessee was part of fraudulent price rigging. Accordingly, in the absence of any evidence to implicate the assessee or to prove that the transactions are bogus, I am of the view that the capital gains declared by the assessee cannot be doubted with. Accordingly, I am of the view that the Ld CIT(A) was not justified in partially confirming the addition.*

17. Similarly the facts and circumstances of the present case in respect of sale of shares of M/s NCL Research and Financial services Ltd dealt by the Coordinate bench of this Tribunal in the Revenue appeal ITA No.1546/Mum/2019 in the case of DCIT Vs Atul Umakant Rege dated 20-01-2023 and has upheld the order of the CIT(A) and has dismissed the revenue appeal observing at Page 2 Para 5 to 10 of the order as under:

*“5. Pursuant to information received from the DGIT (Investigation), Kolkata, after search carried out at the premises of penny stock operators, reassessment proceedings under section 147 of the Act were initiated in the case of the assessee and notice dated 17/10/2016 under section 148 of the Act was issued. In response to the aforesaid notice, the assessee submitted that the original return of income filed for the year under consideration be considered as a return of income filed in pursuance of the notice under section 148 of the Act. The AO provided the copy of reasons recorded for reopening the assessment as well as the statement/information on the basis of which the reassessment proceedings were initiated to the assessee. During the reassessment proceedings, it was observed that the assessee has purchased shares of NCL Research for Rs.74,82,700/- and sold the shares for Rs.15,37,500/- in the year under consideration. Accordingly, the assessee booked loss of Rs.59,45,200/- from the aforesaid transaction. Similarly, the assessee has purchased shares of M/s Shreenath for Rs.2,54,03,590/- and sold the shares for Rs.94,25,954/- in the year under consideration. Accordingly, the assessee booked a loss of Rs.1,59,77,636/-. The AO on the basis of statement recorded by the Investigation Wing of certain persons, who alleged that the aforesaid companies were mere penny stock companies, treated the entire loss of Rs.2,19,22,836/- as short-term capital loss from trading in shares and added the same to*

*the total income of the assessee vide order dated 04/12/2017 passed under section 143(3) r/w section 147 of the Act.*

*6. The learned CIT(A) vide impugned order allowed the appeal filed by the assessee, by observing as under:*

*"7.3. The assessee is a share broker and trading in shares is his business. A computation of income of the assessee reflects loss in share trading profit in speculation business, long term capital gain and income from other sources.*

*There is no share capital loss shown by the assessee. The assessee has shown income from long term capital which is from the sale of residential flat and nothing from shares In support of his contention that the losses incurred are in the normal course of business the assessee has shown certain transactions wherein trading in a particular scrip has earned him both gain and loss during the year. A perusal of the Balance sheet of the appellant shows that his investment did not include any shares This itself shows that the assessee does not have any investment in shares which can lead to long term/short term capital gain/capital loss. Further the Assessing Officer has relied on the statements of Mr Nawal Kishore Jalan, promoter of M/s Shreenath and Mr Pankaj Agrawal, promoter of M/s. NCL Research. No cross examination has been provided to the assessee in spite of his request. It is also his claim that Mr. Pankaj Agrawal and Mr Nawal Kishore Jalan are not associated with these companies in any way and they have not mentioned the appellant's name. The appellant has produced the contract notes, broker notes and D-mat account to the Assessing Officer. It is seen that the assessee has done all that he can to provide the necessary documentary evidences. Moreover the loss incurred by him is not on account of capital loss but a regular trading loss The Assessing Officer has merely relied upon the information received from Kolkata Investigation Wing and did not do any investigation nor did he bring any adverse information on record to show that the assessee has contrived the losses On the contrary the assessee has furnished all records which substantiate the losses and did not raise any suspicious or malafide intentions. The Hon'ble Bombay High Court in the case*

*of CIT-13 vs Shyam R. Pawar 54 taxmann.com 108 held as under:*

*It was 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 STPL and RMPL respectively. Out of these two, only RMPL is listed in the appraisal report and it is stated to be involved in the modus operandi. It is on this material that the Assessing Officer 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 transaction 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 utilised 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 carried 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 records either [Para 6]*

*The appeals do not raise any substantial question of law. They are accordingly dismissed. [Para7]*

*7.4. The case of the assessee is much stronger in the sense that he has not traded through the Kolkata based broker but had done the trading himself as he is a share broker. All the transactions have been done through stock exchange. The assessee has not declared any capital loss. The loss incurred is on account of regular share trading Further, the Hon'ble ITAT Bombay in the case of M/s. Farrah Marker vs ITO ITA No. 3801/Mum/2011 held as under:*

*"3.4.8 From the appreciation of the facts of the case, the material evidence placed on record by the assessee and in the light of the discussion of the factual and legal matrix of the case as discussed from para 3.1 to 34.7 of this order (supra), we are of the opinion that the authorities below, e. AO/CIT(A) have made the addition under section 68 of the Act merely on presumptions, suspicions and surmises in respect of penny stocks, disregarding the direct evidences placed on record and furnished by the assessee in the form of brokers contract notes for purchases and sales of the 'said shares' of M/s. Shukun Constructions Ltd., copies of the physical share certificates and her D-MAT account statement establishing the holding of the shares in her name prior to the sale thereof; confirmation of the transactions of buying and selling of the 'said shares' by the respective stock brokers, receipt of sale proceeds through banking channels, etc. As observed earlier in this order, we are of the view that the statement recorded from Shri Niraj Sanghvi on 31 12 2007, the day the order of assessment was passed, would have no evidentiary or corroborative value to be the basis for coming to an adverse view in the case on hand, since it was recorded behind the assessee's back, from a person who was not involved in the purchase of the said shares and also since the assessee*

*was not afforded opportunity for rebuttal of the same and to cross-examine the said person. We are also of the view that the ratio and the factual matrix of the decisions in the cited case, l.e.JatinChhadwa (supra), Harkchand K. Gada (HUF) & others (supra) and Andaman Timber Industries (supra) would be applicable and support the case of the assessee since no adverse finding has been rendered in respect of the direct material evidence placed on record in respect of her transactions of purchase and sale of the 'said shares' of M/s. Shukun Constructions Ltd. which stand duly disclosed in her audited Balance Sheets filed with the return of income of assessment years 2004-05 and the current year under consideration In this factual and legal matrix of the case, as discussed above, we find that the addition of Rs 95,12,812/- under section 68 of the Act made and confirmed by the authorities below to be unsustainable and therefore direct the AO to delete the said addition and accept the LTCG income of Rs. 93,00,012/ shown as exempt under section 10(38) of the Act. Consequently, ground no 1 of the assessee's appeal is allowed"*

*Following the ratio of the above referred decisions of the jurisdictional ITAT and jurisdictional High Court, it is held that the loss incurred by the assessee is a regular trading loss incurred by the assessee in the course of business and not a manipulated share capital loss. The addition made by the Assessing Officer to the tune of Rs.2,19,22,836/- is deleted. These grounds of appeal are Allowed."*

*Being aggrieved, the Revenue is in appeal before us.*

*7. During the hearing, the learned Departmental Representative (the "learned DR") vehemently relied upon the assessment order and submitted that the assessment in the present case was reopened on the basis of the information received from the Investigation Wing, Kolkata. The learned DR further submitted that the Investigation Wing, Kolkata carried out a detailed investigation regarding the modus operandi of companies engaged in providing bogus long-term capital gain/short-term capital loss through the transaction in penny stocks. During the said investigation, statements of various persons including stock*

*brokers, operators, and promoters of such companies were recorded. During such investigation, the promoter of NCL Research and promoter of M/s Shreenath in their statements admitted that the aforesaid companies provide bogus short-term capital loss entry to its beneficiaries by way of transactions in penny stocks. The learned DR further submitted that various stock brokers have also accepted in the statement recorded during the aforesaid investigation that the scrips of aforesaid companies were used for providing accommodation entries of bogus long-term capital gains/short-term capital loss, which were taken into consideration by the AO in the assessment order.*

*8. On the contrary, the learned Authorised Representative (the "learned AR") submitted that the assessee is a trader in shares since the past two decades. It was further submitted that the transaction in shares of the aforesaid companies was made through the broker who is registered under SEBI. The learned AR further submitted that the copy of contract notes, broker notes, and Demat account was provided by the assessee in support of the aforesaid transactions before the lower authorities. The learned AR also submitted that during the year the assessee has earned a speculation gain of Rs.99,42,164/-, which has been duly recorded in his books of account and the loss arising from the transaction in shares of aforesaid companies is on account of regular share trading.*

*9. We have considered rival submissions, perused the material available on record, and the decisions relied upon by both parties. In the present case, it is evident that the assessee is engaged in the business of shares and stocks broking. The aforesaid fact is also evident from the profit and loss account, on page 2 of the paper book, wherein the assessee has duly credited the consideration from the sale of shares and speculation gain. Further, the assessee has also debited the Demat charges, Securities Transaction Tax, loss on future shares, purchase of shares, and other charges. During the year, the assessee traded in shares of NCL Research and M/s Shreenath, on which the assessee incurred a loss of Rs.2,19,22,836/-. On the basis of information received from Investigation Wing, Kolkata, the shares of the aforesaid*

*companies were treated as penny stocks by the Revenue and therefore the loss was disallowed. As per the assessee, he has been trading regularly in recognised stock exchanges through the brokers registered under the SEBI. As per the assessee, the aforesaid transaction was also done through a SEBI register broker, and in support of his claim, the assessee furnished contract notes, broker notes, and Demat account before lower authorities. It is evident from the record that the AO made the impugned addition merely on the basis of information received from the Investigation Wing, Kolkata without conducting any independent inquiry or doubting the evidence furnished by the assessee in support of its claim. It is also evident that the AO has not examined or issued summons or notice under section 133(6) of the Act to the broker through whom the assessee has traded in shares of aforesaid companies. From the perusal of statements of persons, who are alleged to be the promoter of NCL Research and M/s Shreenath, forming part of the paper book on pages no. 6-25, we find no mention of the name of the aforesaid companies or the assessee. Further, there is no evidence on record that the assessee has engaged in any manipulative activities with respect to the purchase and sale of shares of aforesaid two companies. The lack of enquiry on the part of the AO and non-appreciation of facts on record is also evident from the fact that the loss incurred by the assessee as a trader of shares has been considered to be the short-term capital loss when such shares were not even held as an investment by the assessee. Therefore, in view of the above, we find no infirmity in the impugned order deleting the addition made by the AO. As a result, both the grounds raised by the Revenue are dismissed.*

*10. In the result , the appeal by the Revenue is dismissed.”*

18. 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."*

19. 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 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 and has allowed the assessee appeal. Accordingly, considering facts, circumstances, ratio of judicial decisions, submissions, evidences, principles laid down by the jurisdictional High Court 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 and allow the grounds of appeal in favour of the assessee.

20. 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.

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

**ITA No. 4115/Mum/2023, A.Y 2014-15**

22. As the facts and circumstances in this appeal is identical to ITA No 4114/Mum/2023, for the A.Y 2013-14 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis for this appeal also. Accordingly, we allow the grounds of appeal of the assessee.

23. In the result, both the appeals filed by the assesses are allowed.

Order pronounced in the open court on 25.07.2024.

Sd/-

**(PADMAVATHY S)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated 25/07/2024

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai