

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**  
**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3264/MUM/2023**  
**Assessment Year: 2015-16**

Manoj Kumar Agarwal 4, Kingston, Lokhandwala Complex, Shastri Nagar, Andheri (West), Mumbai – 400 053  (PAN : AABPA4070D)	Vs.	Income Tax Officer, Ward- 10(1)(1), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No. 4250/MUM/2023**  
**Assessment Year: 2014-15**

Manoj Kumar Agarwal HUF 4, Kingston, Lokhandwala Complex, Shastri Nagar, Andheri (West), Mumbai – 400 053  (PAN : AALHM5311H)	Vs.	Income Tax Officer, Ward- 24(2)(4), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Prakash Jhunjunwala, CA  
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 05.06.2024  
Date of Pronouncement : 06.08.2024

**ORDER**

**PER BENCH:**

These two appeals filed by the two assesseees are against the orders of Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order

nos. ITBA/NFAC/S/250/2023-24/1055466602(1), dated 28.08.2023 and ITBA/NFAC/S/250/2023-24/1057770824(1), dated 07.11.2023 passed against the assessment order by the Income Tax Officer, Ward – 10(1)(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 26.12.2017 for Assessment Year 2015-16 and by Income Tax Officer, Ward-24(2)(4), Mumbai, u/s. 143(3) of the Income-tax Act, dated 31.12.2016 for Assessment Year 2014-15, respectively.

2. Grounds taken are common in both the appeals except for change in the scrip in respect of addition made under section 68 by denying exemption claimed under section 10(38) of the Act for the sale proceeds of listed equity shares alleged as penny stock amounting to Rs. 50,62,141/- for Assessment Year 2015-16 on the scrip M/s. PSIT Infra & Services Ltd. (Earlier known as Parag Shilpa Investments Ltd.) and Rs.2,43,98,262/- for Assessment Year 2014-15 on the scrip M/s. KDJ Holidayscapes & Resorts Ltd. (Earlier known as Gomti Finlease India Ltd.).

2.1 Since common issues are involved, both the appeals are being disposed of by this consolidated order. First, we take up ITA No.3264/Mum/2023 for Assessment Year 2015-16.

3. Brief facts of the case are that, assessee filed his return of income on 26.12.2017 reporting total income at Rs.96,20,610/-. Case of the assessee was taken up for scrutiny assessment by issuing notice under section 143(2), dated 29.07.2016 based on information from the Investigation Wing of the Department that the assessee had transacted in certain shares characterised by the Department as penny scrip. After necessary investigation and examination, said assessment proceeding was completed by passing order under section 143(3) dated 26.12.2017.

In this assessment, ld. Assessing Officer enquired about the capital gain on sale of shares of PS IT Infrastructure and Services Limited (PS IT), claimed as exempt under section 10(38) of the Act. Assessee furnished necessary details in this respect.

3.1. Assessee had purchased 6000 shares of PS IT on 01.10.2013 from Brijdham Dealcom Pvt. Ltd. in off-line mode. Subsequently, the shares were sent for dematerialisation (DMAT) and were dematerialised on 31.10.2013. Subsequently, shares were split of face value of Rs.10/- each into 10 shares of face value Re.1/- each that is, in the ratio of 1:10. Thus, assessee received 60,000 shares of face value of Re.1/- each on 30.11.2013. Assessee sold these shares during the year on the platform of Bombay Stock Exchange (BSE) through SEBI registered broker. This entire factual matrix is presented by the chart reproduced below:

Particulars	Purchase			Sale			LTCG
	Date	Qty	Amt.	Date	Qty	Amt.	
PSIT Infra & Services P Ltd	01.10.2013	6,000	2,52,000				
Subdivision of shares	30.11.2013	60,000	-				
				01.12.2014	28,000	24,66,486	
				02.12.2014	12,000	10,55,866	
				03.12.2014	20,000	17,91,738	
<b>Total</b>		<b>60,000</b>	<b>2,52,000</b>		<b>60,000</b>	<b>53,14,090</b>	<b>50,62,090</b>

3.2. Case of the assessee was taken up for assessment on the basis of investigation by the DDIT (Inv.), Kolkata. In the course of assessment, Ld. Assessing Officer called for details and explanations in respect of the transaction of sale of shares on which exemption has been claimed under section 10(38) on account of long-term capital gain earned by the assessee. To corroborate the facts, assessee furnished the relevant

documentary evidences which are placed on record in the paper book before us, containing 38 pages. These include:

A. Sales Related Documents

- i. Sales Bills-cum-Contract Notes dated 03/12/2014 to 05/12/2
- ii. Confirmation of stock broker-M/s. Shilpa Stock Broker Pvt L
- iii. Bank Statement disclosing the receipt on 03/12/2014 to 05/12
- iv. D-mat Statement (Sales) dated 21/11/2014
- v. Bhav Copy
- vi. CIN Master Data

B. Purchase Related Documents

- i. Purchase Bill dated 01/10/2013
- ii. Bank Statement disclosing the payment made on 02/08/2013
- iii. D-mat Statement dated 31/10/2013
- iv. Dematerialisation request form dated 29/10/2013
- v. Share Certificates dated 15/10/2013
- vi. Sub-division of shares

3.3. Assessee relied upon the above stated documentary evidences to justify the genuineness of the sale and purchase transaction undertaken by him, for which he explained the same as under:

"A. In respect of sale transaction

- a) Assessee sold 60,000 shares of PS IT between 03/12/2014 to 05/12/2014 @ Rs.88.57 per share at Rs. 53,14,090/-. The period of holding is more than 12 months. The sale bills-cum-contract notes of the stock broker Shilpa Stock Broker Pvt Ltd are enclosed wherein the trade number, order number, trade date, trade time, Service Tax and STT paid are reflected. The entire sale transactions had been made on the floor of Bombay Stock Exchange through reputed SEBI registered stock broker M/s. Shilpa Stock Broker Pvt Ltd;
- b) Confirmation of account of stock broker M/s. Shilpa Stock Broker Pvt Ltd;

- c) *D-mat statements wherein the listed shares delivered by the assessee to the stock broker is reflected;*
- d) *The entire payments are received by A/c payee cheques and in support, copies of assessee's bank statements are enclosed. The assessee had not withdrawn the cash against the sale consideration. The name of stock broker is reflected in the bank statements;*
- e) *The sales of shares had been made at fair market value and in support, Bhav copy (Rate publication) displayed in Bombay Stock Exchange is enclosed;*

B. In respect of purchase transaction

- a) *Purchase bill dated 01/10/2013 evidencing the purchase of shares of M/s. PS IT Infrastructure & Services Ltd (Formerly known as M/s Parag Shilpa Investments Ltd);*
- b) *The entire payment for purchase of shares of Rs.2,52,000/- had been made through A/c payee cheque and copy of bank statement is enclosed;*
- c) *The delivery of shares has been received in physical mode and copies of share certificates and transfer forms reflecting the name of the assessee are enclosed.*
- d) *The physical shares had been de-materialised in D-mat Account (copy enclosed) and even the period of holding of the shares in D-mat account exceeds 12 months;*
- e) *Evidence of splitting of shares in enclosed;”*

3.4. Thus, the main points of contentions raised by the assessee includes:

- a) Exhaustive documentary evidences, being Contract-cum-bills, bills, purchase bill, D-mat statements, bank statements, confirmation of stock broker, share certificate, rate publications and other documents are on record.
- b) Period of holding of listed shares in assessee's D-mat account exceeds 12 months.
- c) Listed shares sold on floor of BSE at prevailing market price on making the payment of STT and Service Tax and mere substantial increase in price of shares cannot be a sole reason to treat the bonafide transactions as non-genuine.
- d) Genuineness of capital asset acquired in earlier years cannot be disputed during impugned year.
- e) Assessee is not related to any directors/promoters and exit providers and relying upon general statements of 3rd persons

recorded at back of the assessee without allowing an opportunity of cross examination is incorrect.

f) SEBI had not framed any allegations against the assessee.

4. Ld. Assessing Officer, after considering the submissions made by the assessee, arrived at the adverse conclusion by observing that there is unusual rise in the price of the shares sold by the assessee which has been investigated by the Investigation Wing of the Department to establish that cash has been routed from various accounts to provide accommodation to the assessee and that assessee had failed to discharge his bonus to prove the unusual rise and fall of share prices. Ld. Assessing Officer placed heavy reliance on the doctrine of preponderance of human probability to hold that the assessee is indulged in bogus and dubious share transactions since he had not been able to adduce cogent evidences in this regard.

4.1. It is worth noting that before drawing adverse conclusion, ld. Assessing Officer deliberated on the general modus operandi of such transactions as well as background of the investigation carried out by the wing, without pinpointing anything specific towards assessee, in this regard.

4.2. Ld. Assessing Officer, thus completed the assessment by making an addition u/s 68 of the Act towards profit on sale transaction of Rs. 50,62,090/- received by the assessee on the transaction of sale of shares in the aforesaid scrip. Aggrieved, assessee went in appeal before the ld. CIT(A), who upheld the same. While doing, he noted in para 8.2 about the crash of price of the scrip from Rs.551.70 to Rs.55.65 in just 12 months, which according to him cannot be accepted as normal. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee has reiterated the submissions made before the authorities below. He has also placed on record all the relevant documents and evidences in the form of paper book, details of which are already noted above, backed by judicial precedents of the Hon'ble jurisdictional High Court of Bombay. The submissions so made are not reiterated to avoid duplicity.

5.1. In the course of hearing, ld. Sr.DR had referred to adjudication order passed by SEBI and asserted that the share transactions undertaken by the assessee are of tainted scrips which were investigated and subjected to penalties. Ld. Counsel for the assessee has placed on record his rebuttal and clarifications on the order of SEBI. According to the ld. Counsel, SEBI had not issued any notice to the assessee and had not framed any charges against him. He also pointed out that period of default by the stock broker Brijdhan Dealcom Pvt. Ltd. pertained to period from 31.12.2017 to 30.06.2018 and does not relate to the period under consideration. The relevant extracts of the submissions made by the assessee, in this respect are extracted below:

*“3. During course of hearing, Ld. DR relied on the Final order of SEBI dated 05/06/2020, wherein 22 shareholders were restrained/suspended to trade in securities markets for a period of 6 months for non-genuine transaction entered by them with Kothari group. Such SEBI order would not hold adverse bearing on the appellant, since appellant is not a party to such SEBI order and it had not made any purchase/sale of shares from Kothari group. The SEBI had not issued any notice to appellant and had not framed any contrary order/charges against the appellant and therefore, the bonafide transactions entered by appellant cannot be held as non-genuine. Further, the subsequent SEBI Adjudication order dated 18/10/2022 had acquitted several shareholders from the charges on holding the transactions entered by shareholders as not in violation to the SEBI Act.*

*The Ld. DR relied on Adjudication order of SEBI dated 18/10/2022, wherein the SEBI had imposed a token penalty of Rs.2,00,000/- u/s 15A(b) of SEBI Act on stock broker named M/s Brijdham Dealcom Pvt Ltd. Such SEBI order would not hold adverse bearing on the appellant, since SEBI had not disputed the genuineness of transactions entered by such broker, however levied a nominal penalty of Rs.2,00,000/- u/s 15A(b) for delay in furnishing the disclosures/return under SEBI Act. The para no.71 to 74 of SEBI order discloses*

*the fact that penalty had been levied on the broker for delayed furnishing of the disclosures under SEBI Act. Further, the period of default of such stock broker pertain to the period from 31/12/2017 to 30/06/2018 (para-11 & 12 of SEBI order) and does not relate to the impugned year.”*

6. We note that transactions for purchase was undertaken in an off-line mode which is an acceptable mode and that of the sale of the aforesaid shares were undertaken on the stock exchange platform through the SEBI registered broker on which STT was levied and the consideration was routed through normal banking channel. The entire flow of these transactions is corroborated by relevant documentary evidences placed on record. While making the addition, there are no discrepancies pointed out by the Assessing Officer in the documents and the details furnished by the assessee. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the assessee. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. At any stage of the present case, Revenue has not brought on record any material about participation of the assessee with any such dubious transactions relating to accommodation entry, price rigging or exit providers. To our mind, Ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details furnished in his office. Once the assessee has produced documentary evidence to establish the veracity of his claim, the burden would shift on the Revenue to establish its case.

7. On the perusal of records, it is discernible that ld. Assessing Officer had proceeded on the basis of analysis of the financials of the company. According to him, sharp movement in the share prices of the aforesaid scrip is not justified. He has relied upon the search and survey operations conducted by the investigation wing of the Department at

various locations in respect of alleged penny stock which sets out the modus operandi adopted in the business of providing entries for bogus capital gains. The conclusion drawn by the ld. Assessing Officer of implicating the assessee is un-supported by any cogent material on record. The finding arrived at by the ld. Assessing Officer is thus purely an assumption based on conjectures and surmises. In our thoughtful considerations to the facts and circumstances of the case, it is not in controversy that assessee has discharged his burden by submitting the relevant documents, details of which are already extracted above, forming part of the paper book. It is worth noting a fact that the sharp decline in the price of the scrip as noted by the ld. CIT(A) from Rs.551.70 to Rs.55.65 occurred owing to splitting of the shares of the scrip in the ratio of 1:10 on 05.09.2014, evidently demonstrated by the assessee, from the letter of sub division of equity shares issued by the company, PS IT, dated 05.09.2014 placed at para 24 of the paper book.

7.1. For our observations and findings, we place reliance on the decision in the case of CIT vs. Jamnadevi Agrawal [2012] 20 taxmann.com 529 (Bom), wherein it was held that 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. We also draw our force from the decision of Hon'ble High Court of Delhi in the case of PCIT v. Krishna Devi [2021] 126 taxmann.com 80 (Del) wherein the Hon'ble Court noticed that the reasoning given by the Assessing Officer to disbelieve the capital gain declared by the assessee, viz. astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures.

7.2. Reliance placed by the ld. Assessing Officer on the report of investigation wing without further corroboration based on cogent material does not justify the conclusion that the impugned transaction is bogus, sham and part of racket of accommodation entries. It does not prove that the assessee has carried out the impugned transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of share prices. In absence of any such material, enquiry and examination, the addition made pertaining to receipt of sale consideration of the impugned transaction cannot be sustained. In our considered view, ld. Assessing Officer has not established that the assessee was involved in price rigging.

8. It is worth noting that impugned share sale transactions undertaken by the assessee are on the online digital trading platform of stock exchange of BSE which is a regulated market under the aegis of a regulator viz. SEBI. There is nothing on record from the market regulator SEBI for the relevant period which establishes the 'tainted' status of the scrip involved in the present case, so as to hold the share sale transactions as bogus/accommodation entry as alleged by the ld. AO. It is also important to note that the operations and *modus operandi* of this regulated market does not in any way provide for any mechanism by which assessee can bring forth the identity of the buyers of his shares and their creditworthiness. Further, sale proceeds are received through the stock market process into the pre-identified bank account of the seller i.e., the assessee which cannot be tainted as 'unexplained or unaccounted or undisclosed' money for the addition made u/s. 68 by the ld. Assessing Officer.

8.1. Section 68 of the Act essentially requires the assessee to explain the nature and source of the sum credited in his books of account to

the satisfaction of the Id. Assessing Officer. Time and again, Hon'ble Courts have held the requirement of establishing the identity and creditworthiness of the party and genuineness of the transaction to meet the said requirements of section 68. In the present set of facts, as already stated above, operations and *modus operandi* of the regulated stock markets (BSE) does not in any way provide for any mechanism by which assessee can bring forth the identity of the buyers of his shares and their creditworthiness. Meeting this requirement is an act of impossibility of performance expected from the assessee for the transaction executed on SEBI regulated, digitally operated stock exchange. For the third limb of genuineness of the transaction, sale proceeds are received through the stock exchange process into the pre-identified bank account of the seller i.e., the assessee. Further, it is not a case of mere book entry where a possibility of tainting it as bogus or sham exists but it is a case where actual movement of dematerialised shares has taken place from the DMAT account of the assessee. In our considered view, assessee cannot be put to the rigors of section 68 in respect of sale proceeds received for sale of shares on the stock exchange (BSE) and gain arising thereon.

9. Further, assessee is a regular investor with investment in shares of other companies duly reflected in his DMAT account. Shares of other companies include ALPS BPO Services Ltd., Druva Capital Services Ltd., Goodyear India Ltd., Gujarat Gas Company Ltd., JaiPrakash Associates Ltd., Motorola Enterprises, Nahar Industrial Enterprises ltd., Ojas Asset Re-construction Company ltd., Pavanputra metal ltd., Reliance Power ltd. and Saint Gobain Sekurit India Ltd.

10. We note that Id. Assessing Officer has not brought on record any material to show that assessee was part of any group which was

involved in the manipulation of share prices. Suspicion by the Id. Assessing Officer on the purchase and sale of shares is baseless.

11. As already noted above, Id. Assessing Officer has referred to the theory of preponderance of probability which according to us is applied to weigh the evidence of either side and draw a conclusion in favour of a party which has more favourable factor in his side. The conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of fact that might go against the assessee. Once nothing has been proved against the assessee with the aid of any direct material, nothing can be implicated against the assessee on the presumption or suspicion, howsoever, strong it might appear to be true.

12. For our observations and to arrive at the findings, we find force of binding nature from the decisions of Hon'ble High Court of Bombay being a jurisdictional High Court:

i) Pr. CIT v. Ziauddin A Siddique [Income-tax Appeal No. 2012 of 2017, dated 4-3-2022] held as under:-

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

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

*2. We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd. ("RFL") is done through stock*

*exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.*

*3. Therefore we find nothing perverse in the order of the Tribunal."*

*4. Mr. Walve placed reliance on a judgment of the Apex Court in Principal Commissioner of Income-tax (Central)-1 v. 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."*

ii) PCIT vs. Indravadan Jain HUF [2023] 156 taxmann.com 605 (Bom) wherein it was held:

*"Where shares were purchased by assessee on floor of stock exchange and not from broker, payment was made through banking channel, deliveries were taken in DMAT account where shares remained for more than one year, contract notes were issued and shares were also sold on stock exchange, there was no reason to add capital gains as unexplained cash credit under section 68"*

iii) CIT vs. Shyam R. Pawar [2015] 54 taxmann.com 108 (Bom) wherein it was held:

*"Where DMAT account and contract note showed details of share transaction, and Assessing Officer had not proved said transaction as bogus, capital gain earned on said transaction could not be treated as unaccounted income under section 68"*

13. Considering the totality of facts and circumstances of the case, factual matrix and submissions of parties narrated as well as discussion and observations made herein above, we delete the addition made u/s 68 towards proceeds of sale of listed shares of PS IT which gave rise to Long Term Capital Gain on the said sale, claimed exempt

by the assessee u/s 10(38). Accordingly, grounds taken by the assessee in this respect are allowed.

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

15. Now, we take up the appeal in ITA No.4250/Mum/2023, wherein similar issue is involved except for change in the scrip in which the assessee dealt with, i.e., Gomti Finlease India Ltd., having exempt long term capital gain of Rs.2,43,98,262/- on a sale consideration of Rs.2,46,02,262/-.

16. Brief facts in respect of this transaction are that assessee had made off-market purchase of 50,000 shares of Gomti Finlease India Ltd (named changed to KDJ Holidayscapes & Resorts Ltd) from M/s Suman Securities Service Ltd on 08/04/2011 at purchase consideration of Rs.2,04,000/- on making the payment on 10/04/2011. The purchase of such shares were disclosed in balance sheet of earlier years as investments. The said shares were transferred in name of the assessee on 06/09/2011 and converted in D-mat mode on 19/07/2012. The assessee held the shares in its D-mat account for over 17 months and sold such shares from 13/12/2013 to 02/01/2014. The sale of shares were made on floor of Bombay Stock Exchange through stock broker M/s Shilpa Stock Broker Pvt Ltd on making the payment of Security Transaction tax, service tax, etc. The assessee delivered the shares through D-mat account and received the sale consideration through banking channel. Assessee earned Long Term Capital Gain of Rs.2,43,98,262/- on sale consideration of Rs.2,46,02,262/-.

17. Submissions made by both the parties in this appeal are on similar lines as dealt with in the appeal in ITA No.3264/Mum/2024, hence the same are not re-iterated. All the relevant documentary

evidences in this respect are placed on record in the paper book. Since we have elaborately discussed the submission made by both the parties as well as observations and findings of the authorities below, the same are not repeated to avoid duplicity. In this case, we note that ld. Assessing Officer has observed about the so called purchasers of shares sold by the assessee, who have not been identified, even though notices were issued u/s. 133(6) of the Act. In this respect, we have already discussed and given our findings on the functioning of SEBI regulated stock market which applies in the present case *mutatis mutandis*. Thus, by following the above detailed observations and findings arrived at by us in ITA No.3264/Mum/2024, we delete the addition made u/s.68 towards proceed of listed shares of Gomti Finlease India Ltd. on the said sale claimed exempt by the assessee u/s.10(38). Accordingly, grounds taken by the assessee in this respect are allowed. In the result, appeal of the assessee is allowed.

18. In the result, appeals of both the assesseees are allowed.

Order is pronounced in the open court on 06 August, 2024

Sd/-  
(Narender Choudhry)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 06 August, 2024***

*MP, Sr.P.S.*

**Copy to :**

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai