

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA No. 2443/MUM/2023**

:

**A.Y : 2015-16**

Income Tax Officer,  
Ward-23(2)(6),  
Earnest House, Nariman Point,  
Mumbai.  
(Appellant)

Vs. Manisha Narpatkumar Chopra,  
Flat No. 1701, OG II,  
Oberoi Garden, Thakur Village  
off WE Highway,  
Kandivali (E), Mumbai.  
PAN : ACTPC4078P  
(Respondent)

**Assessee by** : Ms. Ridisha Jain  
**Revenue by** : Smt. Mahita Nair, Sr.DR

**Date of Hearing** : 09/07/2024  
**Date of Pronouncement** : 20/08/2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

The Revenue has filed this appeal challenging the order dated 15-05-2023 passed by Ld.CIT(A), NFAC, Delhi and it relates to the Assessment Year (AY.) 2015-16. Though the Revenue has raised as many as 12 grounds, all of them are directed against the order of Ld.CIT(A) in deleting the additions relating to sale of shares of penny stock treating it as bogus and estimated expenses.

2. The facts relating to the above said issue are discussed in brief. The assessee filed her original return of income declaring NIL income

and the same was processed u/s. 143(1) of the Income Tax Act, 1961 (the Act). Subsequently, the AO received information from the Investigation Wing of Kolkatta that certain brokers are involved in manipulating the prices of small companies (called “penny stock”) in order to generate bogus capital gains/losses. It was also informed that the assessee has sold one of the penny stocks named “Pine Animation Ltd” for a consideration of Rs. 4,39,75,148/- and declared Long Term Capital Gain of Rs. 4,37,82,238/-. The assessee claimed the same as exempt u/s. 10(38) of the Act. Based on the information so given by the Investigation Wing, the AO took the view that the Long Term Capital Gain declared by the assessee is not genuine one and accordingly reopened the assessment by issuing notice u/s. 148 of the Act.

3. It was noticed that the assessee had purchased 50000 shares of Pine Animation Ltd., for a consideration of Rs.1.50 lakhs on 09-01-2013. Due to split of shares by the company, the assessee got five lakh shares in lieu of 50000 shares. The assessee sold all the shares during the period from 05-06-2014 to 15-09-2014 for an aggregate consideration of Rs. 4,39,75,148/-. Since the shares were held for more than one year, the assessee claimed the capital gain of Rs. 4,37,82,238/- as exempt u/s. 10(38) of the Act.

4. During the course of assessment proceedings, the AO extensively relied upon the report given by the Investigation Wing. He observed that the financial results of the company do not justify steep rise in the prices of shares of above said company. He also noticed that the above said company was declaring very low income. The AO also referred to the price movement charts prepared by the Investigation Wing, wherein it was observed that the price movements in the form of ups and downs has happened in batches, which was considered as manipulation of price movements. The AO also noticed that the shares sold in this shares have been purchased by certain entities only, who were identified as “Exit Providers” and these exit providers have also

facilitated manipulation in the prices of shares. He further noticed that the Investigation Wing has conducted enquiries with certain brokers and Exit Providers and they have confirmed about providing accommodation entries in various companies.

5. Based on the above said information, the AO sought explanations from the assessee. In response thereto, the assessee furnished all evidences in support of purchase and sale of shares of M/s. Pine Animation Ltd. The AO also issued summons u/s. 131 of the Act to the assessee and recorded a statement from her. The assessee submitted that she used to make investments as per the advice given by her husband, named, Shri Narpat Kumar Chopra, who was a Chartered Accountant by profession. Hence, the AO issued summons to the husband of the assessee and also recorded a statement from him. Even though the AO did not find any adverse thing in the statements recorded from both of them, yet he took adverse view, mainly placing reliance on the report given by the Investigation Wing. Accordingly, the AO took the view that the purchase and sale of shares undertaken by the assessee are not genuine.

6. During the course of assessment proceedings, the assessee also asked for cross examination of the persons, on whose statement the AO sought to place reliance. However, the AO denied the same by observing that the copies of statements have been given to the assessee. The AO also observed that the Indian Evidence Act is not applicable to Income-tax Proceedings. The AO further held that the Long Term Capital Gain generated by the assessee is beyond the preponderance of human probabilities and a colourable device adopted by the assessee to show artificial income. In this regard, the AO placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Sumati Dayal (214 ITR 801).

7. Accordingly, the AO held that the exemption u/s. 10(38) of the Act claimed by the assessee should be rejected. However, the AO assessed the entire sale consideration of Rs. 4,39,75,148/- as unexplained cash credit u/s. 68 of the Act. The AO also took the view that the assessee should have incurred expenses in procuring the bogus Long Term Capital Gains. The AO estimated the same at 5% of the sale consideration, which worked to Rs. 21,98,757/- and assessed the same as unexplained commission expenditure u/s. 69C of the Act.

8. In the appellate proceedings, the Ld.CIT(A) noticed that the AO has verbatim copied the report of investigation report and did not carry out any independent examination of the transactions of the assessee. He further noticed that the AO did not afford opportunity of cross examination of persons sought by the assessee, even though the AO had placed reliance on those statements. He also noticed that the AO did not show the cash trail of the transactions, i.e., the cash has been exchanged between the assessee and the operators. Accordingly, the Ld.CIT(A) deleted both the additions and hence the Revenue has filed this appeal.

9. The Ld. DR submitted that the assessee has purchased shares offline from a company, which was related to the promoters of M/s. Pine Animation Ltd. She submitted that the AO has shown that the financials of above said company do not justify the market price of shares. Ld.DR further submitted that this company has declared meagre profits. She further submitted that the assessee did not have much knowledge of share transactions as evidenced from the replies given by her in the statement taken from her. She submitted that the SEBI has conducted enquiries with promoters and their associates of M/s. Pine Animation Ltd., with regard to manipulation of prices of shares of that company and they have been debarred from accessing share market. The Ld. DR further placed reliance on the decision rendered by the Co-ordinate Bench in the case of Sri Hitendra G Ghadia

vs. DCIT (ITA No.621/Mum/2021 dated 20-03-2023), Abhinav Agarwal vs. DCIT (ITA No.3640/Del/2018 dated 04-01-2022) and the decision rendered by Hon'ble Kolkatta High Court in the case of Swati Bajaj. The Ld. DR submitted that in all these cases, the disallowance of claim of exemption for Long Term Capital Gain arising in trading in penny stocks has been upheld.

10. The Ld. AR submitted that the AO has placed reliance entirely on the generalised report given by the Investigation Wing. She submitted that the AO did not find fault with any of the documents furnished by the assessee to prove the genuineness of purchases and sale of shares. She submitted that the AO has referred to the statements recorded by the Investigation Wing with some of the brokers and alleged exit providers. However, the fact would remain that the assessee has not dealt with any of those brokers. She submitted that the assessee has sold the shares in the stock exchange platform, through a broker named M/s Shilpa Stock Broker Ltd. She further submitted that the SEBI had initially debarred the promoters and their associates from transacting in the stock exchange. Subsequently, by its order dated 19-09-2017, has revoked its earlier orders. Accordingly, the Ld.AR submitted that it cannot be a reason for treating the transactions of the assessee as 'bogus in nature'. In any case, the assessee has purchased and sold the shares much prior to the date of initial order of SEBI. Accordingly, the Ld. AR contended that there is no reason to suspect the genuineness of purchase and sale of shares merely on the basis of a generalised report given by the Investigation Wing. The Ld.AR further submitted that the assessee had sought for cross examination of the person on whose statement the AO had placed reliance. However, the AO has denied the opportunity of cross examination by placing reliance on a case law. Thus, there is violation of principles of natural justice also in making the impugned additions. The Ld.AR relied upon various decisions rendered by Mumbai Bench of the Tribunal and jurisdictional

Hon'ble Bombay High Court to support her contentions. With regard to the decisions relied on by Ld. DR, the Ld. AR submitted that they have been rendered on the basis of facts prevailing in those cases and hence they will not apply to the facts of the present case.

11. We heard rival contentions and perused the record. We notice that the AO has primarily placed reliance on the report given by the Investigation Wing of the Income-tax Department, Kolkatta in order to arrive at the conclusion that the Long Term Capital Gain reported by the assessee is bogus in nature. We notice that the investigation report prepared by Investigation Wing, Kolkatta is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report, without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people, who were involved in the alleged rigging of prices. We notice that the promoters and their associations of M/s. Pine Animation Ltd., were initially debarred from accessing stock market, but the same has been revoked by the SEBI, vide its order dated 19<sup>th</sup> September, 2017. The following observations made by the SEBI in the above said order are worth noting:-

*“10. Considering the fact that there are no adverse findings against the aforementioned 114 entities with respect to their role in the manipulation of the scrip of PAL, I am of the considered view that the directions issued against them vide interim order dated May 08, 2015 which were confirmed vide Orders dated June 02, 2016, July 05, 2016, August 22, 2016 and June 02, 2017 need not be continued.”*

11.1. We noticed earlier that the assessee has sold the shares during the period from June 05, 2014 to September 15, 2014. Thus, the transactions of purchase and sale of shares by the assessee have happened prior to the passing of initial order by SEBI, which has been later revoked. Hence, we are of the view that the transactions of purchase and sale of shares of M/s. Pine Animation Ltd., by the assessee would not be affected by the above said orders of the SEBI.

12. In the statement recorded from the assessee, she has stated that she was guided by her husband in making the investment, who is a Chartered Accountant by profession. The AO has also recorded statement from her husband, but did not find any adverse feature in the statements given by both the parties. We also notice that -

- (a) the assessee has purchased these shares by paying consideration through banking channels.
- (b) the shares of M/s. Pine Animation Ltd., have been purchased from an existing share holder in the off market. The copy of physical share certificate is given, wherein the name of the assessee has been to have been endorsed.
- (c) the shares have been later dematerialised and kept in the Demat account.
- (d) the assessee has sold the shares through stock exchange platform
- (e) the assessee has received the sale consideration through banking channels.

Further, the shares have entered and exited the demat account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. Further, the AO has not brought on record any material to show that the assessee was part of the group, which involved in the manipulation of prices of shares. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

13. Both the parties relied on various case laws before us. We may refer to the some of the decisions rendered by Hon'ble jurisdictional Bombay High Court. In the case of Shyam Pawar (54 taxmann.com 108) (Bom), the Hon'ble Bombay High Court has observed as under:-

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

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

**5.** We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, **what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale**

**of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny.** It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. *In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.*

**6.** It is in that regard that we find that Mr.Gopal's contentions are well founded. **The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies.** The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for

the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

**7.** As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

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

14. In the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4<sup>th</sup> March, 2022), the Hon’ble Bombay High Court has observed as under:-

“2. We have considered the impugned order with the assistance of learned counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd (“RFL”) is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax (“STT”) has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against the assessee that it has participated in any price rigging in the market on the shares of RFL.

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

4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

15. Further, in the case of CIT vs. Jamnadevi Agarwal (20 taxmann.com 529 (Bom), the Hon'ble Bombay High Court has held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of PCIT vs. Indravadan Jain (HUF) (ITA No. 454 of 2018)(Bom), the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were not doubted. Under these set of facts, the Hon'ble Bombay High Court held as under:-

“....The CIT(A) came to the conclusion that respondent bought 3000 shares of RFL, on the floor of Kolkatta 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 Kolkatta 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

instruction slips and also received payment from Kolkatta 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."

16. The Ld. DR has placed reliance on the decision rendered by the Co-ordinate Bench in the case of Hitendra C Ghadia(supra), wherein the Tribunal had confirmed the additions relating to long term capital gains arising on sale of penny stock. We have gone through the said order passed by the Tribunal. First of all, we notice that none of the binding decisions rendered by Hon'ble jurisdictional Bombay High Court has been referred to by the Tribunal. Secondly, it has been mentioned clearly that the decision has been rendered on the basis of facts prevailing in that case. There cannot be any dispute that the question as to whether the capital gain declared by the assessee is genuine or not has to be decided on the basis of facts prevailing in each case. In the earlier paragraphs, we have followed the binding decision rendered by Hon'ble Bombay High Court. Hence, the Ld.DR cannot place reliance on the decision rendered by Hon'ble Kolkatta High Court in the case of Swati Bajaj (supra). Accordingly, we are of the view that the decision rendered in the above said case cannot be taken support of by the Revenue.

17. In view of the foregoing discussions, we are of the view that the Ld CIT(A) was justified in deleting the addition of value of sale consideration arising on sale of shares of M/s. Pine Animation Ltd. Since we have confirmed the decision of Ld CIT(A) in holding that the sale transactions of shares cannot be doubted with, the addition made

by the AO with regard to estimated commission expenses is also liable to be deleted. Accordingly, we confirm the order passed by Ld. CIT(A).

18. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 20<sup>th</sup> August, 2024

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)  
PRESIDENT

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai,

Date : 20-08-2024

*TNMM*

Copy to :

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

By Order

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