

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. Nos.: 1128 & 1132/KOL/2023
Assessment Years: 2013-14 & 2014-15**

***Braten Mandal.....Appellant
[PAN: AHZPM 1943 J]***

Vs.

ITO, Ward-25(1), Kolkata.....Respondent

Appearances:

Assessee represented by: Devesh Poddar, Adv.

Department represented by: P.P. Barman, Addl, CIT, Sr. DR.

Date of concluding the hearing : July 31st, 2024

Date of pronouncing the order : September 17th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

The instant two appeals filed by the assessee pertaining to the Assessment Years (in short 'AY') 2013-14 & 2014-15 are directed against separate orders passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 24.08.2023.

1.1. Since the issues raised in both these appeals are common and pertain to the same assessee, these are heard together and are disposed off by way of this common order for the sake convenience and brevity.

1.2. The brief facts of the case of the appellant are that assessee being an individual filed his return of income for the AY 2013-14 on 31.03.2014 at a total income of Rs. 38,64,475/- and for the AY 2014-15 on 23.03.2015 declaring total income of Rs. 24,71,830/-. A notice u/s 148 of the Act was issued for trading in shares of Indian Infotech & Software Ltd. during the year which has been identified as a bogus company indulging in giving long-term capital gain/short-term capital loss to its beneficiaries and the transaction was disclosed in his return of income. The Assessing Officer (hereinafter referred to as ld. 'AO') after considering the submission of the assessee passed assessment order with an addition of Rs. 57,50,000/- in the AY 2013-14 and for the AY 2014-15 added to the income at Rs. 44,47,811/-. The assessee has preferred appeal before ld. CIT(A) wherein also appeal of the assessee has been dismissed on merit.

Being aggrieved and dissatisfied with the impugned order, the present appeals have been preferred.

1.3. The ld. Counsel for the assessee challenges the impugned order of the ld. CIT(A) thereby submitting that the ld. CIT(A) as well as the ld. AO erred in making addition of Rs. 57,50,000/- and Rs. 44,47,811/- ignoring the documents and the facts of the case of the assessee, that case of the assessee is completely distinguishable from the facts of the case of *Pr. CIT vs. Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta)*. Ld. Counsel for the assessee submits that the case of the assessee is totally different from the facts of the case of *Swati Bajaj (supra)* to the extent that the scrip i.e. M/s. India Infotech and Software Ltd. has been categorically stated not to be a shell company by SEBI. The ld. Counsel for the assessee placed the order of SEBI, Mumbai passed in favour of M/s. India Infotech and Software Ltd. on 04.01.2023. The ld. Counsel for the assessee further submits that the scrip i.e. M/s. India Infotech and Software Ltd. is a listed company as on date with BSE shares. The ld. Counsel for the assessee filed the new article dated 19.11.2022 published on 'livemint.com'. Ld. Counsel for the assessee further submits that purchase and sale transaction of the shares are made through broker Kotak Securities Ltd. duly registered with the Stock Exchange of India and the

shares were received by the appellant assessee in his Demat account and also delivered through Demat account maintained with the depositor. Further submission of Id. Counsel for the assessee is that the assessee is a genuine and regular investor and he has sold the shares through the mechanism of the recognized stock exchange. The Id. Counsel for the assessee cited following decisions:

- i) *PCIT vs. Sangitaben Jagdishkumar Shah* reported in [2023] 156 *taxmann.com* 147 (Gujarat).
- ii) *Gateway Financial Services Ltd. & Others vs. ACIT* in *ITA No. 982-984/KOL/2018* order dated 14.07.2023.

1.4. The Id. D/R supports the impugned order of Id. CIT(A).

2. After hearing the rival submissions of the Counsels of the respective parties, we have perused the records and find that the appellant made purchases and sales of the shares through SEBI registered share broker being member of the recognized stock exchange. The shares are duly reflected in the transaction of the share statement of the assessee and payment & receipt of the consideration of the share value are reflected in the bank account of the appellant assessee. We have gone through the order of SEBI and find that in para 9 of the said order passed in *Appeal No. 950 of 2022*, appellant was Indian Infotech and Software Ltd. and the operative portion of the order is thus:

“6. We, thus, find that the Company had made certain lapses and failed to comply with the LODR Regulations. However, these lapses are not intentional but such lapses occurred on account of procedural and technical issues.

7. We also find that the entire enquiry was initiated with regard to the allegation that the Company was a shell Company which fact was found to be false. Further, the AO has given a clear finding that there was no violation of the PFUTP Regulations and there was no diversion of funds nor there was any manipulation in the price of the scrip and, consequently, no fraud or unfair advantage was caused to any shareholder or investor.

8. Admittedly, a clear finding has been given by AO that there is no misappropriation of funds of the Company nor there is any manipulation in the price of the scrip.

10. We find that no disproportionate gain was caused to anyone nor created any unfair advantage to the appellants nor any specific loss was caused to any investors and, therefore, in our opinion the direction for imposition of penalty appears to be harsh and excessive.”

2.1. It admits of no doubt that SEBI is the sole authority regulating the share trading and, in its order, SEBI has held that M/s. India Infotech and Software Ltd. is not a shell company that the company was not involved in any manipulation in the price of the scrip and consequently no fraud or unfair advantage was done due to any shareholder or investor. We further, find that an article published on 19.11.2022 in livemint.com and on perusal of the copy of the same attached in the paperbook by the assessee, it reveals thus:

“Multibagger penny stock rises 1163% in 3 years, Board declares rights issue

With a market valuation of ₹240.83 Cr, Indian Infotech Software Ltd. is a small-cap company that operates in the financial services industry.”

2.2. We have also gone through the copy of contract note towards sale of the shares which has been filed by the assessee in the paper book that goes to show that the average price of the share for this company in January 2022 was around Rs. 10/- per share. It is also made clear that SEBI has itself stated in its order that there is no misappropriation of funds of the company nor there is any manipulation in the price of the scrip. SEBI has further held that no disproportionate gain was caused to anyone nor created any unfair advantage to the appellants nor any specific loss was caused to any investor. Now, we have gone through the cited decision and find thus:

“That the Hon’ble Gujarat High Court in the case of PCIT Vs Sangitaben Jagdishkumar Shah [2023] 156 taxmann.com 147 (Gujarat)[28-08-2023] has held that:-

Where assessee claimed loss on sale of shares of a company which were not blacklisted and not termed as penny stock by SEBI and assessee had also produced relevant documents such as contract note of transactions from broker, copy of trading bills, details of STT paid, and further, all

transactions were through banking channels, impugned addition made on account of said loss treating same as bogus could not be sustained

That on the identical issue. SLP filed by the revenue department has been dismissed by the Hon'ble Apex Court in the case of PCIT Vs Genuine Finance Pvt Ltd 464 1TR 588 (SC) (13/05/2024).

Lastly, reliance is placed upon the decision of Coordinated Bench in the case of M/s Gateway Financial Services Ltd & Others Vs ACIT in ITA No. 982-984/Kol/2018 order dated 14/07/2023 wherein on similar facts, differentiating the issue it has been concluded as below:-

44..... Secondly, there is no direct evidence referred to by the assessing officer or in the report of the investigation Wing that the assessee(s) have made arrangements with the entry operators/company owners for carrying out the alleged transactions Thirdly, additions made by the assessing officer are merely based on a theory called preponderance of probability that in same type of cases prices are rigged up and down by the entry operators in order to provide accommodation entry to various persons in the form of Long term capital gain and though, the assessing authority can apply preponderance of probabilities in some cases on account of surrounding circumstances but so far as the cases on hand are concerned, we notice that firstly some observations were made by the SEBI regarding some fishy transactions carried out in case of few companies. Based on such primary information, the income tax department has carried out extensive enquiries and search and surveys in the case of various entry operators and alleged companies and based on such statements, a theory was established regarding such accommodation/bogus entries in the form of capital gains. However, since in the case of the assessee, SEBI at a later stage has intensively carried out the investigation on the facts of the assessee (s) along with other persons as referred in the order of the SEBI (extracted supra), and after a detailed investigation and examination of records exonerated, the assessee(s) from the charges levelled in the show cause notice issued to them. Therefore, when the assessee(s) have been exonerated and the charges against them have been waived and the transactions of purchase and sale of equity shares carried out by them have been found to be genuine, the theory of preponderance of probabilities is ruled out in the case of the present assessee(s). Thus, when the transactions giving rise to the long term capital gain have been found to be genuine, and as per rules and regulation of SEBI, the finding of the ld. CIT(A) deserves to be set aside and the impugned additions in case of assessee(s) in appeal before us are uncalled for.”

2.3. Going over the above discussion, we find that the following facts have been arisen from the arguments and the facts of the case:

a. All the transactions of purchase and sale of share of India Infotech and Software Ltd. has been executed through recognized stock broker namely, Kotak Securities Ltd. the purchase and sale of share are backed by contract notes, the holding of the share is reflected in the demat account. (We have already recorded the inaccuracy in this averment in respect of purchase of shares in para 5.1 above)

b. The transaction of the share are duly recorded in the statement of the account of the assessee.

c. The assessee does not have any occasion to collude with any of the person involved in the manipulation of the price of the share of India Infotech and Software Ltd. as the transactions has been executed through recognized stock exchange through recognized and reputed broker. (This averment is also partly incorrect as we have discussed in para 5.1 above)

d. The assessee is regular investor in shares. (Though this fact does not get corroborated by the demat accounts statement submitted by the assessee which apart from the shares of India Infotech and Software Ltd. only reflects insignificant holding of share of ITC Limited)

d. there is no direct evidence brought on record to prove that the long term capital gain claimed by him is on account of colluded transactions.

e. Statement of the persons recorded on the basis of which the report was prepared by DDIT Inv. 2 (4) was not confronted to him.”

2.4. While we have gone through the order of the Id. CIT(A), it appears to us that he dismissed the appeal of the assessee thereby saying that the assessee failed to discharge his onus regarding proving of genuineness of the transaction which has led to alleged long-term capital gain. It is apparent that the assessee has brought order of the SEBI before the AO and Id. CIT(A) regarding the genuineness of M/s. India Infotech and Software Ltd. as held by SEBI and further assessee had proved that transactions of the shares are duly recorded in the statement of account of the assessee. There was nothing before the AO to establish any collusion with any of the person involved in the manipulation of the price of share of M/s. India Infotech and Software Ltd. How the AO and Id. CIT(A) come to this conclusion that the assessee could not be able to prove the genuineness of the transaction. It is an undisputed fact that assessee has sold 2,85,000 shares of M/s. India Infotech and Software Ltd. at a price ranging from Rs. 19/- to Rs. 22/-. The shares were traded through Demat account of the assessee held with Kotak Securities

Ltd., a world-wide renowned company. Copy of the contract note towards sale of the shares has also been brought before us and the same was also brought in the notice of ld. CIT(A). It is also important to mention here that the share of this company has gone as Rs. 48.6/- and as such if the assessee was so inclined and involved in receiving bogus capital gains, then the assessee would have sold the shares at the highest pick point and not in the range between Rs. 19/- to Rs. 22/- per share.

3. Keeping in view the facts of the case, documents filed by the assessee as well as going over the cited decisions, especially the order passed by SEBI in favour of M/s. India Infotech and Software Ltd., we are of this view that addition of Rs. 57,50,000/- for the AY 2013-14 as well as addition of Rs. 44,47,811/- for the AY 2014-15 are erroneous and liable to be deleted. Accordingly, the additions so made are hereby directed to be deleted.

4. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 17th September, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Dated: 17.09.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Braten Mandal, Block-1, Flat-B4, Jaya Apartment, 2016 Boral Main Road, Kolkata, West Bengal, 700084.**
2. **ITO, Ward-25(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata