

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
4668/Mum/2023	2011-12	DCIT-27(2), 4 <sup>th</sup> Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai	Narayan Tatu Rane, HUF, 9/031, A Wing, Ganga Estates, Atur Park, 5 <sup>th</sup> Road, Chembur, Mumbai PAN: AABHN4306D
4716/Mum/2023	2012-13		

For Assessee :	Shri Rashmikant C. Modi & Ms. Ketki Rajeshirke,
For Revenue :	Shri Ashok Kumar Ambastha, Sr.DR

Date of Hearing :	11-07-2024
Date of Pronouncement :	19-09-2024

**ORDER**

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

The Revenue has filed these appeals challenging the orders passed by Ld CIT(A), NFAC, Delhi and they relate to the Assessment Years (AYs.) 2011-12 and 2012-13. The Revenue is aggrieved by the decision of Ld CIT(A) in granting relief to the assessee in both the years on the following additions made by the AO:-

- (a) Sale value of shares of alleged penny stock; and
- (b) Estimated commission expenses

2. Since the issues urged in both the years are identical in nature, both the appeals were heard together and are being disposed of by this common order.

3. The facts relating to AY. 2011-12 are stated in brief. The assessee filed his original return of income on 27-07-2012 declaring a total income of Rs.1.45 crores. The same was processed u/s. 143(1) of the Income Tax Act, 1961 ('the Act'). Subsequently, the AO received information from Investigation Wing that bogus capital gains are generated by rigging prices of shares certain companies, called as penny stock companies. It was noticed that, during the year relevant to AY. 2011-12, the assessee has purchased and sold shares of M/s Nivya Infrastructure & Telecom Services Ltd (Earlier known as S.V Electricals), which was identified as one of the penny stocks. The assessee had declared short term capital gains of Rs.80,58,939/- (the AO has taken it as Rs.81,88,118/-) from those transactions. On the basis of information received from Investigation wing, AO took the view that above transactions of purchase and sale of shares of above said company as bogus in nature. Accordingly, the AO entertained belief that there was escapement of income and accordingly, reopened the assessment of the AY. 2011-12 by issuing notice u/s. 148 of the Act.

4. In the year relevant to AY. 2011-12, the assessee had purchased 1,49,800 shares of above company in the month of November, 2010 for a sum of Rs.2.10 crores in the stock exchange platform. The assessee sold 1,48,400 shares in January, 2011 for a sum of Rs.2.89 crores in the stock exchange platform. Accordingly, the assessee declared short term capital gain of Rs.80,58,939/- in AY. 2011-12. Based on the report given by the Investigation wing, the AO took the view that the purchase and sale transactions undertaken by the assessee are bogus in nature. Accordingly, the AO took the view that the entire sale consideration as unexplained income of the assessee. The AO computed the sale

consideration as Rs.2,89,83,200/- and assessed the same in the hands of the assessee. The AO also took the view that the assessee would have incurred commission expenses in generating bogus capital gains. The AO estimated the commission expenses at 3% of the sale value and accordingly added a sum of Rs.8,69,496/- to the total income of the assessee.

5. In AY.2012-13, the assessee purchased and sold shares of M/s PFL Infotech Ltd, which is also identified as one of the penny stock companies. The assessee purchased 2,90,000 shares in January, 2011. Out of the above, he sold 2,43,267 shares within 12 months of holding the shares and 46,733 shares after 12 months of holding them. Accordingly, the assessee declared short term capital gains of Rs.8,38,23,425/- and long term capital loss of Rs.35,22,933/-. The purchase and sale of shares have been executed in stock exchange platform. In this year also, the AO took the view that the above said transactions of purchase and sale of shares of M/s PFL Infotech Ltd is bogus in nature. However, in this year, the AO assessed both short term capital gains and long term capital loss as unexplained income of the assessee u/s. 68 of the Act. Accordingly, the AO assessed Rs.8,73,46,360/- as unexplained income. In this year also, the AO estimated commission expenses at Rs.26,20,390/- and added the same to the total income of the assessee.

6. In the appellate proceedings, the Ld.CIT(A) deleted both the additions in both the years and hence the Revenue has filed these appeals.

7. The Ld. DR submitted that the shares of M/s Nivya Infrastructure & Telecom Services Ltd (Earlier known as S.V Electricals) and M/s PFL Infotech have been identified as penny stocks by the Investigation Wing. It was found that the market price of the shares of the above said companies were not commensurate with the financial strength of the

company. He submitted that the share prices of the above said companies have been rigged by vested interests through a syndicate of operators and exit providers. He also submitted that the trading in shares of M/s Nivya Infrastructure & Telecom Services Ltd was suspended by SEBI subsequently. In view of the foregoing, the AO has held that the capital gains declared by the assessee from sale of above said shares is bogus in nature. Accordingly, he contended that the addition made by the AO should be sustained.

8. The Ld.AR, however, submitted that the assessee has purchased the shares of both the companies from the Stock Exchange platform and also sold them in Stock Exchange platform only. Both the purchases and sales were carried out at prevailing market prices in the stock exchange. Further, the assessee has purchased & sold the shares in the normal course of making investments. The shares have entered into and exited from Demat account of the assessee. He further submitted that the assessee has purchased and sold shares of other companies also. Accordingly, he submitted that these transactions undertaken by the assessee cannot be considered to be bogus, merely on the reason that the said share has been identified as one of the penny stocks by the Investigation Wing. The Ld.AR further submitted that the assessee has furnished all the evidences with regard to the purchase and sale of shares. The payment for purchase of shares was made through banking channels and sale consideration on sale of shares was also received through banking channels. He submitted that the AO did not find fault with any of the documents furnished by the assessee. He submitted that the AO has placed his reliance entirely on the report given by the Investigation Wing and he did not conduct any independent enquiry with regard to the transactions carried on by the assessee. The AO has also not shown that the assessee was part of the group, which was indulging in rigging of prices of shares. It is stated

that the assessee has not been subjected to any enquiry by the SEBI. He submitted that the suspension of trading of shares of one company was done subsequently, i.e., years after the transactions were carried on by the assessee. Accordingly, he submitted that the AO was not justified in not believing the transactions, without bringing any contrary material on the record. He was also not justified in estimating commission expenses without bringing any material on record. The Ld. AR submitted that the Ld.CIT(A) was justified in deleting both the additions. Accordingly, he prayed that the order passed by Ld.CIT(A) be upheld. The Ld.AR submitted that the case of the assessee is squarely covered by the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Indravadan Jain, HUF, in ITA No. 454 of 2018.

9. We heard the parties 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, in order to arrive at the conclusion that the short term capital gains reported by the assessee is bogus in nature. We notice that the AO has not conducted any independent enquiry with regard to the transactions carried on by the assessee. We notice that the investigation report prepared by Investigation Wing of Income tax Department is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. Hence, it is mandatory on the part of the AO to show that the documents furnished by the assessee in support of purchase and sale of shares are not reliable or he has to show that the assessee was part of the group, which were indulging in rigging of prices.

10. We notice that the AO has placed reliance on the investigation report only, i.e., he did not bring any material on record to show that the documents furnished by the assessee are defective and deficient in

nature. The AO has also not shown that the assessee was part of the group which were manipulating the prices of the shares of above said company. It was also not shown that the transactions entered by the assessee were found to be a part of manipulated transactions. Thus, 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. Further, the Ld. AR submitted that the transactions carried on by the assessee were not subjected to scrutiny by SEBI at all.

11. We notice that the assessee has purchased the shares from Stock exchange platform and also sold the shares in the stock exchange platform. Both the transactions have been carried out at the prevailing market rates only. The assessee has furnished evidences to prove the factum of purchase and sale of shares. The financial transactions have also been carried out through banking channels. The shares have entered into and exited from Demat account of the assessee. We notice that the AO did not find any fault with the documents so furnished by the assessee. We also notice that these transactions are not solitary transactions of purchase and sale of shares. The assessee has been investing in other shares also. Further, it is not the case that the assessee has declared long term capital gains and claimed exemption. The assessee has declared short term capital gains in both the years and paid the tax thereon. Further, the assessee has also incurred loss on sale of shares of M/s PFL Infotech Ltd. Under these set of facts, we are of the view that there is no reason to suspect the transactions carried on by the assessee, merely on the reason that both the companies were identified as penny stock companies.

12. We may also 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.”

13. 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.”*

14. We notice that the decision rendered by Hon’ble Bombay High Court in the case of Indravadan Jain (HUF) (supra) will squarely apply to the facts of the present case. In the above said case, 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.”*

Accordingly, we are of the view that there is no reason to suspect the transactions of purchase and sale of shares of above said company declared by the assessee during the year under consideration. Accordingly, the short term capital gains in both the years and long term capital loss declared in AY. 2012-13 by the assessee, in our view,

should be accepted as genuine. Accordingly, we confirm the orders passed by the Ld.CIT(A) on this issue in both the years. For the very same reasons, we are of the view that there is no reason to presume that the assessee would have incurred commission expenses. Accordingly, we are of the view that the Ld.CIT(A) was justified in deleting the additions of commission expenses in both the years.

15. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 19-09-2024

Sd/-  
[RAJ KUMAR CHAUHAN]  
JUDICIAL MEMBER

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 19-09-2024

TNMM

Copy to :

1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "B" Bench, Mumbai.
5.	Guard File.

//By Order//

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Dy./Asst. Registrar,  
ITAT, Mumbai