

IN THE INCOME TAX APPELLATE TRIBUNAL, "A" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIALMEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 3158/MUM/2024
(A.Y.2015-16)

Anju Chirania, 301, Sona Chambers, 507/509, JSS Road, Chira bazar, Marine Lines, Mumbai – 400 002.	Vs.	ITO, Ward –4(1)(3), Room No. 637, Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. AFCPC9073Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Ms.Ritu Kamal Kishore & Shri.Ravi Ganatra. AR
Respondent by	Shri Manoj Kumar Sinha.Sr.DR

सुनवाई की तारीख/Date of Hearing	07.08.2024
घोषणा की तारीख/Date of Pronouncement	25.09.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 147 r.w.s 144B and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

1. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the reopening of assessment u/s 147 by issue of notice u/s 148 dated 31.03.2021 by the Assessing Officer, which is not as per provisions of law, clearly outside the sanction of law, illegal, bad-in-law, barred by limitation, unsustainable, in gross violation of the principles of natural justice or otherwise void for want of jurisdiction.

2. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the Assessing Officer's action in reopening the assessment u/s 147 ignoring the rationale provided in the judgment of Hon'ble Jurisdictional High Court Bombay in the case of Voltas Ltd Vs ACIT (2012) 349 ITR 656 (Bom), despite the facts submitted in statement of facts (SOF) before the Ld. Commissioner of Income Tax (Appeals) as well as before the Assessing Officer as follows:

a. Prior to issuance of notice u/s 147, the Assessing Officer initiated the inquiry proceedings w/s 133(6) dated 14.01.2020, which were duly responded by way of two letters dated 27.01.2020 discharging the onus cast on the appellant duly represented through an Authorised Representative during the hearing held on 27.01.2020 in respect of genuineness of the impugned transaction to the satisfaction of then Assessing Officer, with no further questions asked.

b. Then Assessing Officer expressly noted on 27.01.2020 in his order sheet that details have been verified and placed on record. Thereafter, there is absolutely no whisper in the reasons recorded u/s 147 about the said proceedings as to how the replies in said proceedings were deficient or not satisfactory. Therefore, there is legitimate record to prove that prior proceedings u/s 133(6) were closed to the satisfaction of the predecessor Assessing Officer and hence the reasons subsequently recorded after 14 months by his successor Assessing Officer without referring to proceedings concluded u/s 133(6), amount to change of opinion.

c. There is no discussion in the order of Ld. Commissioner of Income Tax on the remand report submitted by the current Assessing Officer on 01.05.2024 and Ld. Commissioner of Income Tax (Appeals) failed to confront the Assessing Officer as to why there is no discussion regarding outcome of enquiry conducted u/s 133(6) in the reasons recorded, if that was concluded enquiry before reassessment by his predecessor and if the successor Assessing Officer was not satisfied with the detailed submissions made by the appellant before the predecessor Assessing Officer during said concluded enquiry proceedings.

d. In the reasons recorded or in the assessment order, there is no whisper indicating any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Consequently, the jurisdictional condition for

reopening an assessment beyond a period of four years has not been fulfilled.

3. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the Assessing Officer's action in making addition by solely relying on the general information supplied by the investigation wing without making independent enquiries either by the Assessing Officer during the assessment proceedings or by the Ld. Commissioner of Income Tax (Appeals) himself through the Assessing Officer to establish complicity of the appellant or her broker in particular, with any price rigging that might be going on and acted upon by the SEBI to protect the interests of the bonafide investors like the appellant.

4. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the Assessing Officer's action in making addition of Rs 2,56,23,308/- u/s 69A on account of long-term capital gain on transfer of shares, which was based on generic findings of investigation wing, without there being any specific finding against the bonafide investment and sale by the appellant through online platform of recognized stock exchange through the SEBI registered stock broker.

5. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the Assessing Officer's action without appreciating that there is no order of SEBI brought on record that indicts the appellant or her broker for any wrong doing or manipulation and also ignoring the fact that the said scrip continues to be listed on the recognized stock exchange till date.

6. On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the addition made under inapplicable section 69A r.w.s. 115BBE of the Income Tax Act, 1961 on account of sale proceeds on sale of shares of Tilak Ventures Limited especially when the transaction is duly recorded in the books as maintained and all relevant material in support of genuineness of transaction had been furnished and were on record.

7. On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the addition made u/s 69A of the Income Tax

Act, 1961 despite the fact that all ingredients such as identity, creditworthiness, genuineness have been satisfactorily explained with cogent evidence thereby fully discharging the onus and especially when no adverse inferences have been drawn on the all possible evidences as provided and placed on record of the Assessing Officer by the appellant before or after the commencement of reassessment proceedings to shift the onus back on to the appellant.

8. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the Assessing Officer's action in invoking the provisions of section 69A for making an addition of Rs 2,56,23,308/- despite the fact that evidence relating to the contract notes, relating to online sales through recognized stock exchanges and SEBI registered broker and payments made through banking channel was very much submitted before the Assessing Officer and was also forming part of statement of facts (SOF) filed before the Ld. Commissioner of Income Tax (Appeals), who, while ignoring all facts already on record conveniently chose the reason for non-compliance to the hearing notice/s by Ld. Commissioner of Income Tax (Appeals) and without confronting the Assessing Officer about his silence in the reasons recorded, regarding prior detailed submissions by the appellant before Assessing Officer.

9. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) chose to provide only six (6) days in his/her last notice dated 14.05.2024 that was issued after more than six months of silence, that was in violation of principles of natural justice and without any reasonable opportunity of being heard and ignoring the material already available on

10. The appellant craves leave to add to, alter, amend, modify and/or delete all or any of the foregoing grounds of appeal.

The appellant prays before the Hon'ble Income Tax Appellate Tribunal, Mumbai to quash the assessment order passed by the Assessing Officer u/s 147 r.w.s. 144B of the Income Tax Act, 1961 and/ or to delete the alleged additions made u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961 of Rs 2,56,23,308/-.

2. The brief facts of the case that, the assessee is an individual and derives income from capital gains and dividend income on shares. The Assessing Officer (AO) has

received information from Investigation Wing that the assessee has earned long term capital gains on sale of shares of M/s Tilak Venture Ltd and after recording the reasons for reopening has issued notice u/s 148 of the Act. In compliance, the assessee has filed the return of income for A.Y 2015-16 on 30.04.2021 disclosing a total income of Rs.49,86,420/-. Subsequently the AO has issued notice u/sec143(2) and U/sec 142(1) of the Act calling for various details, information and evidences in support of the claim. In compliance to notice, the assessee has filed details and clarifications on 5-03-2022 referred at Para 3 of the order. 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 of Rs.2,39,92,894/- being long term capital gains on sale of shares of Rs.2,56,23,308/- and called for the information. The AO on verification found that the assessee has earned long term capital gains on sale of shares of M/s.Tilak Venture 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 50000 shares of Rs.10/- paid up each of M/s Tilak Finance Ltd at Rs.15/- per share which includes share premium of Rs.5/-per share and the assessee has paid the purchase consideration for allotment of shares through account payee cheque No. 352844 drawn on HDFC Bank and it was debited in the bank account on 19.07.2010 and the company has issued allotment letter dated 22.07.2020.

Subsequently 50000 shares were credited to the assessee's demat account. The assessee in the F.Y 2011-12 has sold 9000 shares and remaining 41000 shares were available in demat account. Further the shares were split in the ratio of 1:10 and accordingly 41000 equity shares held by the assessee are split into 410000 equity shares of Rs1/- paid up. The name of the company was also changed from Tilak Finance Ltd to OCTS and subsequently changed to M/s Tilak Venture Ltd. Out of 410000 shares held in the demat account, the assessee has sold 87342 shares in the F.Y 2014-15 through SEBI Registered broker on BSE and earned Long Term Capital Gains (LTCG) of Rs.2,39,92,894/- and claimed exemption U/sec10(38) of the Act. The AO 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 Investigation Wing on the share brokers 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 proceeds u/sec 69 of the Act of Rs.2,56,23,308/- and assessed the total income of Rs.3,06,09,730/ and passed the order u/sec 147 r.w.s 144B of the Act dated 30.03.2022.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has dealt on grounds of appeal, the statement of facts, findings of the AO and the remand report of the AO. But the CIT(A) has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the AO in sustaining the addition under section 69A of the Act overlooking the major facts and submissions made on various dates and that the assessee is a regular investor in shares and securities and derives income from other sources, interest income and the dividend income. The purchase of shares are genuine through banking channels and the assessee has substantiated with various details referred in the assessment order. Further there is no scope for the AO to make the additions based on the surmises and conjectures as the assessee has filed the voluminous documentary evidence in support of the claim. The Ld. AR explained the reasons for purchase of the shares and has sold the shares in the F.Y. 2011-12 and F.Y. 2014-15 and remaining shares are held by the assessee. The Ld. AR mentioned that the AO has only relied on the investigation report and no independent enquiry conducted. The Ld. AR substantiated the submissions with the synopsis, factual paper book and the judicial decisions

and prayed for allowing the appeal. Per Contra, the Ld.DR mentioned that the transactions are not genuine and relied on the order of the CIT(A).

5. 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 69A 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 2014-15, Ledger account, copies of bank statement, copy of contract notes for sale of impugned shares, demat account statement in respect of purchases and sale of shares and other equity shares held by the assessee. Whereas the assessee has purchased 50000 shares of Rs.10/- paid up each of M/s Tilak Finance Ltd at Rs.15/- per share which includes share premium of Rs.5/-per share and the assessee has paid the purchase consideration for allotment of shares through account payee cheque No. 352844 drawn on HDFC Bank and it was debited in the bank account on 19.07.2010 and the company has issued allotment letter dated 22.07.2020 placed at page 391 of the paper book. Subsequently 50000 shares were credited to the assessee demat account. The assessee in the F.Y 2011-12 has sold 9000 shares and remaining 41000 shares were available in demat account. Further the shares were split in the ratio of 1:10 and

accordingly 41000 equity shares held by the assessee are split into 410000 equity shares of Rs1/-paid up. The name of the company was also changed from M/s Tilak Finance Ltd to OCTS and subsequently changed to M/s Tilak Venture Ltd. Out of 410000 shares held in the demat account, the assessee has sold 87342 shares in the F.Y 2014-15 through SEBI Registered broker on BSE and earned Long Term Capital Gains (LTCG)of Rs.2,39,92,894/- and claimed exemption U/sec10(38) of the Act. The assessee has substantiated the genuineness of transactions of trading in shares with the supporting evidences and information in the assessment proceedings vide letters dated 27-01-2020,24.01.2022 and 5-03-2022 placed in the paper book with the ledger account copy of the assessee in the books of SEBI Registered broker for F.Y.2014-15 placed at Page 393&394 of the paper book, copy of Demat statement placed at page 355 to 365 of the paper book, copy of bank statement reflecting purchase/allotment of shares placed at Page392

6. The Ld.AR 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 24 months. The Ld.AR demonstrated the sale cum contract notes, computation of long term capital gains, details of

investments by the assessee in the F.Y.2014-15, ledger account of stock broker at page 117 to 354 of the paper book. The assessee has sold the shares through SEBI registered broker of BSE & NSE and supported the sale of shares with the sale bills cum contract notes subjected to Securities Transaction Tax (STT) and the demat statement reflecting the sale of shares referred in the paper book and the assessee has held the shares for more than 12 months from the date of purchase for claiming exemption u/sec10(38) of the Act. The assessee has explained about purchase of shares and is a regular investor in the shares/ securities and receiving dividend income and the genuineness of the transactions were not doubted. The Ld.AR emphasized that the assessee is only an 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 submissions as under:

a. Decision of Hon'ble Bombay High Court in the case of Principal Commissioner of Income- tax v. Indravadan Jain, HUF [2023] 156 taxmann.com 605 (Bombay).

b. Decision of Hon'ble Bombay High Court in the case of Principal Commissioner of Income- tax v. Ziauddin A Siddique ITXA 2012 of 2017 (Bombay).

c. Decision of Hon'ble ITAT, Mumbai in the case of Farzad Sheriar Jehani vs Income Tax Officer [2024] 159 taxmann.com 9 (Mumbai - Trib.)/[2024] 110 ITR(T) 298.

d. Decision of Hon'ble ITAT, Mumbai in the case of DCIT vs Pavankumar Bachhraj Chandan [2024] 161 taxmann.com 674.

e. Decision of Hon'ble ITAT, Mumbai in the case of Mahendra Parekh vs ACIT, Circle-20(2) in ITA No 1566/Mum/2023.

f. Decision of Hon'ble ITAT, Mumbai in the case of Uttam Jain HUF vs Addl./Joint/Deputy/ACIT/ITO/ National E-Assessment Centre in ITA No 2427/Mum/2023.

g. Decision of Hon'ble ITAT, Mumbai in the case of Shri Vijayrattan Balkrishan Mittal vs. DCIT in ITA No. 3429/M/2019.

h. Decision of Hon'ble ITAT, Mumbai in the case of Ramprasad Agarwal vs. ITO reported in 100 taxmann.com 172 (Mumbai).

i. Decision of Hon'ble Hon'ble ITAT, Mumbai in the case of M/s Aadesh Commodities P Limited vs National Faceless Assessment Centre, Delhi for AY 2015-16 on 24.04.2024 in ITA No. 4035/Mum/2023.

j. Decision of Hon'ble Hon'ble ITAT, Mumbai in the case of M/s Crosseas Capital Services P Limited vs Assistant Commissioner of Income Tax, Central Circle - 2(4), Mumbai for AY 2015-16 on 26.02.2024 in ITA No. 3417/Mum/2023 “

7. The Honble High Court of Bombay in the case of Pr. CIT Vs. Indravadan Jain HUF. ITA No.454 of 2018 dated 12.07.2023 [2023] 156 taxman.com 605 (Bom) 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.

8. 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 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 record either. [Para 6]

9. 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)

10. 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."

11. 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 assesseees 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 assesseees 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 assesseees-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 assesseees 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 assesseees-Therefore, the decision of the Tribunal is based on findings of fact and no substantial question of law arises.

The fact that the assesseees 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 assessees. Moreover, in the light of the documentary evidence adduced to show that the shares purchased and sold by the assessees 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 assessees. 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:

Assessees 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.

12. 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.

13. 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 Commissioner (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.”

14. Further 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.”

15. We find the facts and circumstances of the present case is similar and identical and pertains to the A.Y 2015-16 dealt by the Coordinate Bench of the Tribunal in ITA No.4035/Mum/2023 (A.Y. 2015-16) dated 24.04.2024 and granted relief observing at Page 3 Para 3 to 12 of the order as under:

3. Brief facts of the case is that the assessee’s case was reopened under section 148 of the Act on the ground for non-disclosure of the transaction related to shares of M/s ACI Infocom Ltd (in brevity ACI) and M/s Tilak Ventures Ltd (in short, Tilak), which are listed in BSE and Ld.AO has treated this transaction as penny stock transaction. Relying on the information received from DDIT(Inv), U-8(2), Mumbai the transaction of both these shares of the companies are treated as penny stock transaction. The assessee during the impugned assessment year had declared these scrips and transactions in the return of income and generated loss amount to Rs.4,89,840/- related to ACI and amount to Rs.1,008/- related to Tilak which had declared in the books of account of the assessee with the declared turnover. The Ld.AO had treated this income as undeclared income and proceedings under section 148 was initiated and the order was passed under section 147 with the addition of both these losses of Rs.4,89,840/- and Rs.1,008/- which works out to total amount of Rs.4,89,840/- and the receipt of Rs.15,28,508/- which is credited into the books of account of the assessee is also added in the total income of the assessee . So, the total amount of Rs.20,18,348/- was added back to the total income of the assessee. Aggrieved assessee filed appeal before the CIT(A). The assessee has challenged before Ld.CIT(A) both the legal and merit. which are finally rejected. Being aggrieved by the order of Ld.CIT(A), assessee filed appeal before us.

Further, this amount of Rs.6232560/- of transaction value of these scrip is also not reflecting in the capital gain schedule of return of income. Accordingly, it is clear that the assessee has not disclosed the transaction of Rs.6232560/- in the scrip of M/s. AC I Infocom Ltd and Tilak Ventures Limited.”

7. The Ld.AR further relied on the order of the Hon’ble **High Court of Judicature at Bombay, Nagpur Bench** in the case of **ArvindSahdeo Gupta vs IncomeTax Officer, Ward-1 & Others W.P No.4793 of 2021** judgement dated **August 8, 2023**. The observation of the Hon’ble High Court on para 11& 12are reproduced as below: -

“11] Coming to the challenge as raised to the notice issued under Section 148 of the Act of 1961, it is seen that pursuant to the notice dated 24/3/2020, reasons for re-opening the case under Section 147 of the Act of 1961 were furnished by the Assessing Officer. According to the Assessing Officer, the petitioner had made investment in the purchase of shares and had earned profit from the sale of shares. An amount of Rs.9,90,3147- was stated to be credited to the bank account of the petitioner but he had not offered the said amount during the Financial Year 2012-13 pertaining to the Assessment Year 2013-14 for taxation. In this regard, when the objection raised by the petitioner is considered, it is seen that the said amount is towards loss suffered by the petitioner in commodity trading pertaining to the Financial Year 2011-12, Assessment Year 2012-13. The said amount was stated to be paid to M/s AA + Commodities on 31/3/2012. It thus becomes clear that the said amount relates to the Assessment Year 2012-13 and not the Assessment Year 2013-14 as indicated in the notice. Further amount of Rs.9,90,314/- has been shown as amount of loss sustained by the petitioner which was debited in his account and not credited as mentioned in the notice. The said amount was also included in the return filed by the petitioner.

12] The effect of re-opening the assessment based on wrong facts or conclusions has been considered in Tata Sons Limited (supra). It has been held that if the reasons for re-opening the assessment are based on incorrect facts or conclusions, the notice issued for re-opening cannot be sustained. A similar view has been taken in Punia Capital Pvt. Ltd. (supra) as well as in Ankita A. Choksey (supra). In paragraph 6 thereof, it has been observed that the reasons to believe that income chargeable to tax has escaped must be based on correct facts and if the facts as recorded in the reasons are not correct and the assessee points out the same in his objections then the order on objections must deal with the same and prima facie establish that the facts stated in its reasons as recorded are correct. If the Assessing Officer has proceeded on fundamentally wrong facts to form reasonable belief that income chargeable to tax has escaped assessment and the Assessing Officer while disposing of the objections does not deal with the factual position asserted by the petitioner, it would be safe to conclude that the Revenue does not dispute the facts stated by the petitioner. On such facts, there could be no reason for the Assessing Officer to believe that income chargeable to tax has escaped assessment.”

8. He further relied on the order of **Abhay Kumar Daga HUF vs ITO ITA No.,176/Jodh/2022 (Jodh. Tri)**, the observation of the Hon’ble Tribunal is as under:

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“5. The next issue is regarding exemption u/s 10(38) of the Act.

5.1 During scrutiny assessment proceeding, the AO holds the sale value of shares of M/s ACI Infocom of Rs. 14,68,750/- as manipulated transactions which was claimed to be exempt u/s 10(38) after deduction of the purchase price in respect of the Assessment Year 2013-14 and treated the exempted long term capital gains of the assessee as unexplained cash credit u/s 68 of the IT. Act, 1961.

6. In appeal, the action of AO in rejection of exemption u/s 10(38) and . thereby addition so made by the AO, has been confirmed by the Ld. CIT(A) by observing that the business of ACI Infocom had been declining over the years and almost reduced to Nil which is evident from its financial statements and under such circumstances the price high recorded in the shares is extraordinary and beyond the dynamics and normal behaviors of the stock market, This is possible only when the shares prices are rigged and manipulated. Later on the shares prices has fallen down sharply and substantially. The Ld. CIT(A) has also observed that the investigation carried out by the Investigation Wing at Kolkata has already brought into light about the nefarious activities indulged in by (the brokers who work as a conduit to provide accommodation entries. It is alleged that the appellant has not been able to discharge the onus about the genuineness of the transactions. The CIT(A) also referred to the decision of CIT vs. Swati Bajaj in which it was held that the report of the Investigation department could not be thrown out on the grounds that cross examination was not allowed. Accordingly, the addition made by the AO was upheld.

7. The Ld. Counsel submitted that the appellant had purchased 10,000 Shares of M/s ACI Infocom Ltd for Rs. 2,58,739/- on 25.08.2011 through broker Nine Star Broking Private Limited and payment was made by cheque on 27.08.2011. All these shares were sold on 25.10.2012 and 08.11.2012 for Rs. 14,62,111/- with profit of Rs. 12,03,372/- on these shares and the total long-term gain derived by the assessee had been claimed to be exempt u/s 10(38) of the Income Tax Act, 1961.

7.1 The Ld. AR contended that all these trading details reflected in broker transaction statement have been submitted during the assessment proceedings. It is submitted that the aforesaid company M/s ACI Infocom Ltd is presently traded in BSE and meeting the SEBI Compliance. The appellant drew our attention to the submission furnished before the authorities below regarding the details of long term capital gain (APB, Pg.56) and the details of payment made through cheque at the time of purchase (APB, Pg.57). The appellant further referred to the copy of broker Nine Star Commodities (APB, Pgs.59 and 61) and broker note for purchase and sale of shares (APB, Pgs. 73 to 79).”

9. The Ld.DR argued and fully relied on the order of the revenue authorities.

10. We heard the rival submissions and considered the documents available on the record. The assessee had made the transactions and generated loss through the transaction of scripts ACI and Tilak. The assessee's holding was more than 2 years. There is no such direct communication reflected in the order of the Ld.AO that the entire transaction was made a sham transaction. In the observation of recorded

*reasons, the Ld. AO mentioned that the transactions are undisclosed whereas during the assessment and appellate stages before the authorities were unable to substantiate that the entire transaction was not disclosed in the return. In recorded reason the ld. AO specifically mentioned that the transacted amount is not reflected in capital gain column of return filed U/s 139 of the Act. Whereas, the assessee declared the transaction as business transaction in return, not as capital gain. Respectfully, we rely on the order of the Hon'ble **Bombay High Court** in the case of **Arvind Sahdeo Gupta**(supra) for quashing of assessment order for wrong observation of the ld. AO. The Hon'ble **Bombay High Court** in the case of **PCIT vs. Ziauddin A Siddique (ITXA 2012 of 2017)** held that where (a) the transaction of purchase and sale of shares which is alleged to be a penny stock is done through Stock Exchange or through registered broker, the payments have been made through banking channel, STT is paid and the ld. Assessing officers has not criticised the documents and (b) assessee is not involved in price rigging, the transaction is genuine.*

11. And **Abhay Kumar Daga HUF vs ITO** (supra). In this case the coordinate bench of Jodhpur accepted the transaction of ACI script and allowed the long-term capital gain. The addition is not sustainable. On the other hand, in the sale transaction, assessee gathered loss. So, it is not a gain for the assessee related to penny stock transaction. In our considered view, the entire addition made by the Ld.AO is quashed. Further, the Ld.AR placed that the CIT(A) had made the enhancement of Rs.62,03,535 under section 68 of the Act. The addition made by the AO is Rs.20,18,348/-. The Ld.AR only challenged the addition of CIT(A). Though the addition of the Ld.AO is duly quashed, so the enhancement by the CIT(A) has no leg to stand, so the amount of Rs.62,03,535/- is duly deleted. The Ld.DR was not able to produce any contrary orders against the submission of the Ld.AR. So, the appeal order is duly set aside. The addition made by the AO and enhancement by the Ld.CIT(A) are deleted.

12. In the result, appeal in **ITA No.4035/Mum/2023** is allowed.”

16. Similarly the facts and circumstances of the present case is identical and pertains to the A.Y 2015-16 in respect of sale of shares of M/s. Tilak Ventures Ltd dealt by the Hon'ble Tribunal in the case M/s Crosseas Capital Services P. Ltd Vs. ACIT Mumbai in ITA No. 3417(A.Y.2015-16) to 3420/Mum/2023 dated 26.02.2024 and granted relief observing at Page 9 Para 14 to 22 of the order as under:

“14. The fact in brief is that return of income declaring total income of Rs.6, 16,65,270/- was filed on 30.09.2015. The case was subjected to scrutiny assessment and assessment under section 143(3) of the Act was passed on 18.12.2017

determining the assessed income at Rs.6,76,11,000/-. Subsequently the case was reopened on the basis of information received from central circle-2(2), Kolkata wherein it was informed that M/s. Tilak Venture Ltd. was a penny stock listed on BSE and this company had been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or STCL in their books of accounts. Thereafter the case of the assessee was reopened by issuing a notice under section 148 of the Act on 23.12.2021. The assessment under section 147 read with section 143(3) of the Act was finalized on 31.03.2022 assessing the total income at Rs.6,85,56,801/-. Further facts of the case are discussed while adjudicating the ground of appeal filed by the assessee.

Ground No.2: Disallowance of loss of Rs.4,93,135/- being trading loss

15. During the course of assessment the AO stated that the scrip M/s. Tilak Venture Ltd. has been used to provide bogus LTCG to various beneficiaries. After perusal of the detail filed by the assessee the AO observed that the assessee has traded in the aforesaid scrip which was used to facilitate introduction of unaccounted income in the forms of capital gain or short term loss in their books of accounts. Therefore the AO has disallowed the amount of loss of Rs.4,93,135/- booked by the assessee in the aforesaid scrip M/s. Tilak Venture Ltd.

16. The assessee filed appeal before the Ld. CIT(A) and the Ld. CIT(A) has dismissed the appeal of the assessee.

17. The Ld. Counsel submitted that at the time of assessment the assessee has filed the complete information related to trade transaction carried out in BSE & NSE. In this regard the assessee has referred copy of letter dated 06.11.2017 placed in the paper book filed before the AO. He further submitted that during the course of original assessment as required by the AO complete information pertaining to trade/investment details were provided in

a CD on 10.11.2017 vide letter dated 20.11.2017 placed in the paper book.

18. Further on merits the Ld. Counsel submitted that the assessee has purchased and sold the shares on BSE and the assessee has neither claimed LTCG nor claimed STCL. He

further submitted that the assessee has shown trading loss of Rs.4,93,135/- under the head trading business income.

19. On the other hand, the Ld. D.R. supported the order passed by the lower authorities.

20. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above the case of the assessee was reopened on the basis of information received from the AO, Central Circle-2(2), Kolkata that the assessee has done trading transaction in the scrip M/s. Tilak Venture Ltd. which has been used to provide accommodation entries in the form of LTCG & STCL.

21. This is an undisputed fact that the assessee has claimed trading loss in respect of trade transaction carried out in the scrip M/s. Tilak Venture Ltd. and the assessee has not claimed any LTCG or STCL as alleged by the AO. Further we have noticed that during the original assessment the assessee has submitted the daily trade transactions in annexure 10 to the AO vide letter dated 06.11.2017 and further scripwise profit earned or loss incurred were provided in a CD on 10.11.2017 which was also acknowledged by the AO vide a letter dated 20.11.2017. Looking to the above facts and materials placed on record we find that the lower authorities could not substantiate that the assessee has obtained LTCG & STCL by trading in the scrip M/s. Tilak Venture Ltd. since the assessee has reported the same as trading loss under the head business income.

22. In view of the above facts and circumstances we do not find any justification in the findings of Ld. CIT(A). Therefore, ground No.2 of appeal of the assessee is allowed.”

17. 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 Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security

transaction tax assessee was eligible to claim exempt 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.”

18. 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. 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 & NSE 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 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/sTilak Ventures Ltd has filed the last Balance sheet dated 31-03-2023 and the Annual General Body meeting was held on 30-09-2023. 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 year and has allowed the appeal. Accordingly, considering facts, circumstances, ratio of judicial decisions, submissions, evidences 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

addition u/sec69A of the Act and we allow the grounds of appeal in favour of the assessee.

19. Since, the grounds of appeal on merits are decided in favour of the assessee, hence the grounds of appeal with respect to validity of reassessment proceedings raised by the assessee becomes academic and are left open.

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

Order pronounced in the open court on 25.09.2024

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 25/09/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai.