

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.667/M/2024
Assessment Year: 2011-12**

Shri Dinesh Prabhudas Hingoo, CTS No.500, Lovely Home, Vaishali Nagar, Jogeshwari (W), Mumbai - 400 102 PAN: AAWPH6472K	Vs.	ACIT Circle-31(1), Kautilya Bhavan, Mumbai-400051
(Appellant)		(Respondent)

**ITA No.1348/M/2024
Assessment Year: 2011-12**

DCIT 41(4)(1), Room No.425, Kautilya Bhawan, G Block BKC, Bandra Kurla Complex, Bandra East, Mumbai-400051 Maharashtra	Vs.	Shri Dinesh Prabhudas Hingoo, CTS No.500, Lovely Home, Vaishali Nagar, Jogeshwari (W), Mumbai - 400 102 Maharashtra PAN: AAWPH6472K
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ravindra Poojari, A.R.
Revenue by : Shri H.M. Bhatt, Sr. D.R.

Date of Hearing : 26 . 07 . 2024
Date of Pronouncement : 11 . 10 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These cross appeals have been preferred by the Assessee and the Revenue against the order dated 26.12.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner)

under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

2. In the instant case, the Assessee on 24.11.2009 had acquired 5 lakh shares of M/s. S.V. Electricals Ltd. on preferential allotment at the cost of Rs.10 each, totaling to Rs.50,00,000/- (5,00,000 shares x Rs.10 per share). The said shares were subsequently dematerialized in the Assessee's Demat account held with M/s. Monarch Network Capital Ltd.. The Assessee during the AY under consideration from Dec. 2010 to March in various lots sold 315875 shares out of 5 lakh shares through online trading account/recognized stock exchange on an average price of Rs. 173 and total consideration of Rs.5,49,37,847/- and paid the Security Transaction Tax (STT) and earned Long Term Capital Gains (LTCG) of Rs.5,17,79,097/- and claimed the said claimed LTCG as exempt u/s 10(38) of the Act, by filling his return of income on 30.09.2011 declaring total income at Rs.21,07,410/-. The return filed by the Assessee was processed u/s 143(1) of the Act.

3.1 Subsequently, the AO received that information vide letter dated 23.03.2018 from the Dy. Director of Income Tax (Investigation Wing-8(3)], Mumbai, that M/s. Nivyah Infrastructure and Telecom Services Ltd. (in short "M/s. Nivyah") is a penny stock listed on BSE with scrip code (531588) and has been used to facilitate introduction of unaccounted income of beneficiaries in the form of exempt LTCG or Short-Term Capital Loss (STCL) in their books of account. The prices of M/s. Nivyah rose from Rs.39 on 21.07.2009 to Rs.205 on 05.01.2011 and dipped to Rs.47.20/- on 18.07.2012.

3.2 The AO by considering the above information and observing that the Assessee has also dealt in shares of M/s. Nivyah and claimed LTCG as exempt u/s 10(38) of the Act, formed a reason to believe that income earned by the Assessee in the form of LTCG exempt u/s 10(38) of the Act has escaped assessment and therefore recorded the reasons for reopening the assessment and issued the notice dated 28.03.2018 u/s 148 of the Act accordingly.

3.3 In response to the notice u/s 148 of the Act, the Assessee e-filed his return of income on 21.10.2018. Thereafter, various statutory notices were issued to the Assessee, whereby the AO called for certain details from NSE & BSE qua dealing of Assessee in the said scrip. The Assessee during the assessment proceedings filed the requisite submissions and documents.

3.4 Thereafter the AO by issuing summons u/s 131 of the Act, recorded the statement of the Assessee on 10.12.2018 and examined the case and observed that the Assessee is engaged in construction business and is a partner in partnership firms M/s. DJS Enterprise and M/s. Unity Group, who were also engaged in construction business and during the assessment year under consideration, the Assessee had declared his income from business or profession, capital gain and income from other sources and also earned income from LTCG from the sale of listed securities "M/s. Nivyah", which was claimed as exempt u/s 10(38) of the Act.

3.5 The AO though not contradicted the documents submitted such as purchase bills of shares, broker's note, DP statement, Demat account and bank account statement etc. submitted by the Assessee in order to substantiate his claim u/s 10(38) of the Act, however doubted the share transactions by considering the financials of the M/s. Nivyah and rigging of the shares and the

information received from DDIT (Investigation), Mumbai, wherein the M/s. Nivyah has allegedly been posed as penny stock listed on BSE and used to facilitate introduction of unaccounted income in the form of exempt LTCG or STCL in their books of account.

3.6 The Assessee vide his reply dated 20.12.2018 demonstrated the purchase and sale of the shares and further claimed that in order to substantiate his claim, he has already filed the relevant documents and therefore primarily discharged his onus cast upon him. Consequently the onus to disapprove the claim of the Assessee shifts to the other side without, which no adverse view could be taken. The Assessee further claimed that no cash trail was found, which could substantiate that the cash has been flown back to the Assessee or otherwise. The payments and receipts have been made through banking channel, the transactions are supported by documents appear to be genuine. The shares were also sold through online stock exchange and further there is no specific information against the Assessee to implicate him showing any particular documents or otherwise and therefore it is clear that proceedings in the Assessee's case have been conducted on mechanical ground without any specific information available thereto. The Assessee would also like your good attention to provide the requisite details to show that it was assessee's money which has come back to him. In the absence of any such documents, action merely on the third-party statement is not only bad in law but also untenable. The Assessee further claimed and requested to provide all the requisite details including statement of third parties on whose statement the AO had relied upon, so that the Assessee would be able to cross examine the parties and any or all the documents which directly or indirectly implicated the Assessee. The Assessee in support of his claim also relied on

various judgments vis-à-vis u/s 68 of the Act as well as identical issue pertaining to the share transactions.

3.7 Though the AO considered the reply/claim of the Assessee, however, by taking into consideration the information received from DDIT (Inv.), Mumbai and the financials of the M/s. Nivyah and the rising of the shares and the statement recorded of the Assessee and the order of suspension of M/s. Nivyah dated 04.07.2018 passed by the BSE and the fact that Managing Director of M/s. Nivyah is on run and statement of promoters/entry providers/exit providers/share brokers recorded by the DDIT and also considering the human probability, human conduct, litmus test for "lifting the veil" "from a sham" and at the last the judgment of the Hon'ble Apex Court in the case of Sumati Dayal Vs. Commissioner of Income Tax (1995) AIR 2009, ultimately held the Assessee's income from the sales of shares of M/s. Nivyah as bogus and accommodation entry taken for the purposes of converting his own money into white and treated the same as unexplained cash credit u/s 68 of the Act and accordingly added the same to the total income of the Assessee u/s 68 of the Act.

Further, the AO also by observing the famous saying *that there is no such a thing as a "free lunch", similarly no Assessee's beneficiary gets the advantage of bogus LTCG without any consideration in return*, also added the amount of Rs.15,53,373/- being 3% of Rs. 5,17,79,097/- the amount of LTCG and disallowed the same u/s 69C of the Act, as unexplained expenditure.

4. The Assessee, being aggrieved, not only challenged the aforesaid additions but also the reopening of the case u/s 147 of the Act by filing first appeal before the Ld. Commissioner, who not **only affirmed the reopening of the case but also the addition of**

Rs.5,17,79,097/- on the same footing of the AO, **however deleted the addition of Rs.15,53,373/-**. Therefore, the Assessee and the Revenue Department being aggrieved have challenged the impugned order by filling their respective appeals.

5. First, we will adjudicate the appeal filed by the Assessee i.e. **ITA No.667/M/2024** as this is pertains to substantive challenge of the impugned order. In this case, the Assessee has raised various propositions inter-alia that the reasons recorded for selection of the case under section 147/148 of the Act are undated and unsigned and therefore in view of the judgments passed by the Co-ordinate Bench of the Tribunal in the cases Shri Prahalad Singh vs ITO-3(2) [ITA No.3375/DEL/2017 & SA No.436/DEL/2017, Date. 11.05.2018] (Del-Tribunal); Sri Pinnamaraju Venkatapathi Raju vs JCIT-3(1) [ITA No. I.T.A. No.132/Vizag/2016, Date 28.02.2018] (Visakhapatnam-Tribunal) & Charanjiv Lal Aggarwal v. Income-tax Officer [2017] 88 taxmann.com 845 (Amritsar - Trib.) the assessment based on the unsigned and undated reasons is liable to be quashed being void ab-initio.

5.1 Further, the AO for reopening the case by recording reasons u/s 147 of the Act has relied on the information received from the Dy. Director of Income Tax (Inv.), Mumbai with regard to the share of a company namely M/s. Nivyah in which the Assessee allegedly traded during the F.Y. 2010-11 relevant to A.Y. 2012-13, whereas infact the Assessee has traded in the shares of **"M/s. S.V. Electricals Ltd."** and not with **"M/s. Nivyah"** as alleged in the reasons recorded, which goes to show the AO has neither examined the information received in the context of the Assessee's case nor applied his mind to the facts of the case in context to the information received and therefore in view of the judgment of the

Jurisdictional High Court in the case of **South Yara Holdings vs. Income Tax Officer 16(1)(1)(4), Mumbai (2019) 104 Taxman.com 216 (Mumbai)** wherein the Hon'ble High Court has dealt with the identical scrip and issue qua reopening of the case, the assessment order is liable to be quashed.

6. On the contrary, the Ld. D.R. refuted the claim of the Assessee and submitted that may be in the information received from investigation wing the name of the scrip has been mentioned as "M/s. Nivyah" but it is a fact that erstwhile name of M/s. Nivyah was "M/s. S.V. Electricals Ltd." and therefore there is no discrepancy in the reasons recorded and/or the information received from the Investigation Wing, which resulted into recording the reasons for reopening of the Assessee's case u/s 147/148 of the Act.

7. Heard the parties and perused the material available on record and given thoughtful considerations to the rival contentions of the parties on this legal issue qua reopening of the case. For clarity and ready reference, the reasons recorded for initiation of reopening proceedings and issue of notice u/s 148 of the Act, reads as under:

"As per information available on record, during the year under consideration the assessee, an individual has filed return of income for A.Y. 2011-12 on 30.09.2011 declaring income of Rs.21,07,350/-. The return of income was processed u/s. 143(1) of the Income-tax Act, 1961 on 08.01.2013.

*2. Information has been received from Dy. Director of Income Tax (Inv.), Unit-8(3), Mumbai vide letter No. ADIT (Inv.)-8(3)/Diss./Action/2017-18 dated 23.03.2018 that **M/S. Nivyah Infrastructure & Telecom Ltd.** is a penny stock listed on BSE with script code (531568) and this company has been used to facilitate introduction of unaccounted income of member of beneficiaries in the form of exempt capital gain or Short Term Capital Loss in their books of accounts. It was noticed that share*

prices of M/s. Nivyah Infrastructure & Telecom Ltd rose from Rs.39/ on 21st July 2009 to Rs.2050 on 5th Jan 2011 and dipped to Rs.47.20 on 18th July 2012.

3. However, the financials of the company for the relevant period does not show any substantial change so as to support such a huge share price movement. The company does not have business worthwhile to justify the sharp rise in market price of shares. The sharp rise in the market price of this entity is not supported by financial fundamentals of the company. Both purchase and sale of shares are concentrated within few persons/entities. The exit providers do not have creditworthiness. They are either non-filers or have filed nominal return of income. Subsequently, trade data of **M/s. Nivyah Infrastructure & Telecom Ltd** was called for from BSE and analysed. As per information, the assessee has traded in penny stock scrip namely M/s. Nivyah Infrastructure & Telecom Ltd during the year under consideration. The total trade value of the scrip by the assessee during F.Y. 2010-11 by the assessee was of Rs. 5,51,67,088/-.

4. I have perused the information received from Dy. Director of Income Tax (Inv.), Unit-8(3), Mumbai and on perusal of information, it is clear that the assessee has traded for total value of Rs. 5,51,67,088 / during the F.Y. 2011- 12 relevant to A.Y. 2012-13.

5. As per information available, the assessee has traded penny stock of **M/s. Nivyah Infrastructure & Telecom Ltd** for total value of Rs. 5,51,67,088/- . - The investigations carried out clearly reflect the sham nature of transactions in penny stock, which have been used as a tool for Tax Evasion in the case of assessee. The assessee has routed unaccounted money/ cash to its books of account in the guise of accommodation entries of long term capital gains on penny stock. Therefore, it is evident that by entering into such penny stock transaction the assessee has not disclosed the true and accurate statement of its affairs for A.Y. 2011-12.

6. I have examined the information received along with the other details. Penny stocks are the scrips which are listed in stock exchanges but have very low value and thin volume as most of the times there are very few buyers/sellers for such scrips. These are highly volatile and easy to manipulate on account of low value. In other words, penny stock refers to shares of small public companies that generally trade at low prices per share and the prices are easy to manipulate through a number of entry/ exit providers. Hence, the earnings made from these are manipulated and shown as long term capital gains or short term capital loss in order to evade full or partial tax on income made through this

means. On the other hand, long term capital gains or short term capital loss on share transactions carry tax exemption/ deduction benefits owing to which tax evaders find this way as lucrative one. The prices of penny stocks are artificially raised on stock exchanges to “book bogus claims of long-term capital gains or short-term capital loss by various beneficiaries”. The names of individual assesseees were sorted out through extensive investigation.

7. In this case, no assessment was made and on the basis of enquiry on the information provided it is found that the assessee has not disclosed the true and correct income for the year under consideration as discussed above and the assessee was assessable under the Act. Accordingly, the provisions of clause (b) of Explanation 2 to section 147 are applicable to the facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

8. On the basis of the information made available and further enquiry done, I have reasons to believe that income chargeable to tax of more than Rs. one lakh has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for that assessment year, i.e. for A.Y. 2011-12, within the meaning of section 147 of the Income-tax Act, 1961. Therefore, I have reason to believe that this is a fit case for issue of notice u/s. 148 of the I. T. Act 1961.

9. In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s. 148 has been sought from Principal Commissioner of Income Tax-31, Mumbai as per the provisions of section 151 of the Act.”

7.1 In the reasons recorded, the AO has mentioned the shares of scrip namely **M/s. Nivyah** and alleged that the Assessee during the year under consideration has traded in the said scrip, whereas it is a fact that the Assessee traded in the scrip of **M/s. S.V. Electricals Ltd..** The AO nowhere mentioned the scrip name as **M/s. S.V. Electricals Ltd.** which goes to show that before forming the reasons of belief and recording the reasons for reopening and/or reopening of the case and/or issuing the notice u/s 148 of the Act the AO, did not examine the relevant facts and material of the Assessee’s case in the context of the information received from the

Investigation Wing and therefore the action of the AO apparently seems to be non-application of mind. It is a settled position in law as also reiterated by the Hon'ble Jurisdictional High Court in the case of **South Yara Holdings (supra)** that reopening of an assessment has to be done by an AO on his own satisfaction and it is not open to an AO to issue a re-opening notice at the dictate and/or satisfaction of some other authority. Therefore, on receipt of any information, which suggests escapement of income, the AO must examine the information in the context of the facts of the case and only on own satisfaction leading to a reasonable belief that income chargeable to tax has escaped assessment, that reopening notices to be issued. Admittedly, there was no company by name **M/s. Nivyah** in existence during the year under consideration and the Assessee never transacted in the shares/scrips namely **M/s. Nivyah** during the assessment year under consideration. Therefore, as the impugned notice issued u/s 148 of the Act has not been issued by the AO on his own satisfaction that reason to believe that income chargeable to tax has escaped assessment, and thus the same is bad in law and consequently the impugned assessment made on the basis of the reasons recorded and the aforesaid notice issued u/s 148 of the Act, is liable to be quashed, as per dictum laid down in South Yara Holdings (supra) as reproduced below for completeness and ready reference"

"7. It is a settled position in law that re-opening of an assessment has to be done by an Assessing Officer on his own satisfaction. It is not open to an Assessing Officer issue a reopening notice at the dictate and/or satisfaction of some other authority. Therefore, on receipt of any information which suggests escapement of income, the Assessing Officer must examine the information in the context of the facts of the case and only on satisfaction leading to a reasonable belief that income chargeable to tax has escaped assessment, that re-opening notice is to be issued.

8. *From the reasons, it is evident that the impugned notice has been issued on the basis of information received from the Deputy Collector RNG 6/7 5-wp3398.18 Income Tax (Investigation) alleging that **M/s Nivyah Infrastructure & Telecom Services Ltd** is a penny stock listed on the Bombay Stock Exchange and that the petitioner had dealt with the same leading to escapement of income. On receipt of information, the least that is expected of the Assessing Officer is to examine the same in the context of the facts of this case and satisfy himself whether the information received does prima facie lead to a reasonable belief that income chargeable to tax has escaped assessment. In this case, the reasons indicate that the Assessing Officer has not carried out such exercise and accepted the report of the Deputy Collector of Income Tax (Investigation) Mumbai to conclude that the petitioner had dealt with **Nivyah Infrastructure and Telecom Services Ltd** during the previous year relevant to the assessment year 2011-12. Admittedly, there was no company by name "**M/s Nivyah Infrastructure & Telecom Services Ltd**" in existence during that year for consideration. This clearly shows that the Assessing Officer acted on the satisfaction of the Deputy Collector of Income Tax (Investigation) that income chargeable to tax has escaped assessment. It must also be borne in mind that the impugned notice is issued beyond the period of four years from the end of the relevant assessment year in a case, where the assessment was completed under section 143 (3) of the Act. Therefore, the Assessing Officer would have to examine the information received in the context of the facts on record. **If such an exercise were to be done, it is likely that the Assessing Officer would have come to the conclusion that there was no failure to disclose truly and fully all material facts necessary for assessment. Thus, hit by the proviso to section 147 of the Act.** However, the Assessing Officer has not applied his mind to the information received in the context of the facts on record. **The impugned notice is bad-in-law**, as it has not been issued by the Assessing Officer on his satisfaction that there is reason to believe, that income chargeable to tax has escaped assessment.*

9. *In the above circumstances, the impugned notice is un-sustainable in law and therefore, is quashed and set aside”.*

(highlighted by us for better appreciation)

7.2 We are conscious of the fact that in the South Yara Holdings (supra) case the original assessment was completed u/s 143(3) of the Act, however, in the instant case, the return filed by the Assessee was processed u/s 143(1) of the Act. However, it is a fact that the Hon'ble Jurisdictional High Court has dealt with the identical scrip, identical information of the investigation department, identical reasons recorded except variation in amounts and identical issue as raised in this case, hence, the dictum of the Hon'ble Jurisdictional High Court would be squarely applicable to the instant case.

8. Coming to the merits of the case, we observe that the AO doubted the transaction carried out by the Assessee qua scrip of M/s. S.V. Electricals Ltd. mainly on the investigation report, financials of scrips and statement of various persons such as promoters, entry operators, exit providers/share brokers as recorded by the investigation wing, as well as the fact that there was sharp increase in the scrip and the Managing Director of scrip is on the run and the SEBI has passed certain orders against the scrip as well as the broker M/s. Monarch Network Capital Ltd. and the Ld. D.R. therefore has submitted that the AO elaborately explained how the Assessee obtained the shares, how the market was rigged, how the share prices were manipulated to increase and the Assessee was unable to explain the sharp increase and fall in the prices of shares without new achievements or projects of company and with poor financials. Therefore, the AO correctly made the addition, which has rightly been upheld by the Ld. Commissioner.

9. On the contrary, the Assessee by drawing our attention to the documents, demonstrated the purchase of shares, broker ledger,

contract notes, statement bills cum transactions, Demat statement and bank statement etc. to substantiate the genuineness of the sale and purchase of the shares/scrip under consideration. The Assessee before us also submitted that may be the SEBI has passed certain orders qua irregularities against the scrip under consideration and the broker but it a fact that name of the Assessee was/is nowhere involved and/or no role of has been attributed to the Assessee qua irregularities, manipulating the documents and/or share prices except bald allegations. The Assessee in support of his case, also relied on various judgments passed by various courts including by the Hon'ble Jurisdictional High Court in the case of Pr. CIT-3 vs. Ziauddin A Siddique in Income Tax Appeal No.2012 of 2017 decided on 04.03.2022.

10. We have given thoughtful considerations to the rival submissions of the parties on merits and the facts and circumstances of the case and material available on record and observe that the Assessee on 24.11.2009 purchased 5 lakh preferential shares at Rs.10 each, on a total consideration of Rs.50,00,000/- by paying the amount of Rs.50,00,000/- through banking channel vide **cheque No.903646** of State Bank of India, which was duly debited from the account of the Assessee and credited in the account of M/s. S.V. Electricals Ltd. on dated 24.11.2009, as it clearly appears from the bank statement filed by the Assessee. The said shares also appearing in the broker ledger and contract notes as filed by the Assessee before us. The said shares further got dematerialized. The Assessee during the year under consideration from Dec. 2010 to March 2011, sold 315875 shares out of 5 lakh shares through online trading account/recognized stock exchange for a consideration of Rs.5,49,37,847/- and consequently paid the Security Transaction

Tax (STT) and earned the LTCG of Rs.5,17,79,097/- and claimed the same as exempt u/s 10(38) of the Act.

10.1 It is a fact that during the assessment proceedings, the AO by issuing the notice u/s 142(1) of the Act, show caused the Assessee to justify the transaction of LTCG. In response to which the Assessee vide letter dated 05.12.2018 submitted the relevant documents referred to above and tried to justify the LTCG transaction. It is also a fact that the AO neither controverted nor doubted the documents produced by the Assessee, which goes to show that the Assessee by submitting the relevant documents discharged his prima-facie onus cast upon him. However, the AO still doubted the transaction, on exterior facts vis-à-vis information received from the Investigation Wing and the statement of various persons recorded by investigation wing, the financial status of the scrip company and preponderance of probability and the fact that the Managing Director of the scrip company is on run, mode of acquisition of shares and the action taken by the SEBI against the scrip company as well as broker M/s. Monarch Projects and Fin. Markets Ltd. qua irregularities. However, it is a fact that there were/is no allegations against the Assessee qua irregularities committed. Perusing the orders dated 30.12.2021 and 23.09.2020 passed by the SEBI as produced by the Ld. D.R., we observe that the order dated 23.09.2020 passed against the broker, in fact pertains to the transactions carried out by the broker during December 17, 2018 to December 21, 2018 but not the dates on which the Assessee had transacted. Even the SEBI's order dated 30.12.2021 in fact pertains to irregularities committed by broker but not the Assessee herein and by the said order, no penalty has been levied but the notice/Broker has been warned to be careful in future in dealing with securities' market.

10.1 We also observe that Hon'ble Allahabad High Court in the case of Commissioner of Income Tax vs. Smt. Renu Agarwal ITA No.44 of 2022 decided on 06.07.2022 has also dealt with the identical issue, wherein the AO relied on the statement of the principal officer of stock exchange and other persons, however, the Hon'ble Allahabad High Court affirmed the findings arrived at for deleting the similar addition by the Ld. CIT (Appeals) and the Tribunal, by holding as under:

“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 Com- missioner (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."

10.2 We further observe that the Hon'ble Apex Court in the case of Pr. Commissioner of Income Tax vs. Smt. Renu Agarwal (2023) 456 ITR 249 (SC) dated 03.07.2023 has considered the aforesaid judgment passed by the Hon'ble Allahabad High Court in the case referred to above, and affirmed the same by dismissing the SLP.

10.3 For completeness, we further observe that the Hon'ble Jurisdictional High Court in the case of Pr. CIT-3 vs. Ziauddin A Siddique in Income Tax Appeal No.2012 of 2017 decided on 04.03.2022 has also dealt with the identical issue as involved in the instant case where the AO though considered the documents submitted by the Assessee in support of its claim qua sale and purchase of shares however, not criticized the same and there was no allegation against the Assessee that he has participated any price rigging on the scrips involved. For ready reference the decision of the Hon'ble High Court is reproduced herein below:

“JUDGEMENT

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 I. T. Act, 1961"

2. We have considered the impugned order with the assistance of the learned Counsels and we have

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

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

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

10.4 Thus, summing up the case, as the Assessee has demonstrated the genuineness of its claim by producing the payment voucher of purchase of shares, contract notes, shares in physical mode, Demat statement, broker ledger, statement bill cum transaction and bank statement etc. and none of the persons whose statements have been relied on by the AO, have made any allegations against the Assessee. Even otherwise the AO has not granted any opportunity to cross-examine the witnesses whose statements were recorded by the investigation wing as relied on by the AO. Further, there were/are no orders by the SEBI against the Assessee qua any irregularities or penalty. Whereas the Assessee has been able to discharge its prima-facie onus cast upon him u/s 68 of the Act, therefore the addition u/s 68 of the Act is at all unsustainable.

10.5 As we have observed above that the Hon'ble Jurisdictional High Court in the case of South Yara Holdings (supra) has quashed the reopening of proceedings in the identical facts and circumstances, as involved in this case and therefore on that aspect as well, the impugned assessment made on the basis of the reasons recorded and the notice issued u/s 148 of the Act, is liable to be quashed.

10.6 In cumulative effects, **the addition on legal as well as on merits, is liable to be deleted, hence the same is deleted.** In the result, the appeal filed by the Assessee stands allowed.

10.7. As we have deleted the addition under consideration, hence not delving into other issues raised by assessee inter-alia that reasons record for reopening of the case are undated and unsigned by the AO as adjudication of the same would prove futile exercise.

11. Coming to the appeal filed by the Revenue Department i.e. **ITA No.1348/M/2024**, this pertains to the deletion of the addition of Rs.15,53,373/- which was made by the AO being commission expenses incurred for allegedly taking entry of bogus LTCG. As we have deleted the substantive addition itself, which was made on account of bogus LTCG, hence this addition is also un-sustainable. Consequently, the decision of the Ld. Commissioner in deleting the addition is confirmed and appeal of the Revenue is dismissed.

12. In the result, the appeal filed by the Assessee stands allowed, whereas the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 11.10.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.