

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

**BEFORE SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**I.T.A No.4647 & 4648/Mum/2023
(Assessment Years:2014-15 & 2015-16)**

Paresh Ratanshi Nissar C/o Magsec Investment Pvt Ltd, 205, 2 nd Floor, Rashqua Shopping Centre, Station Road, Above Saraswat Bank, Santacruz (West), Mumbai PAN : AAAPN2984Q	vs	The ITO, Ward 24(3)(3), Mumbai at present jurisdiction with the ITO, Ward 24(3)(1), Mumbai, Piramal Chamber, Lalbaug, Parel, Mumbai-400 012
APPELLANT		RESPONDENT

Assessee by : Shri Nishit Gandhi
Respondent by : Shri Krishna Kumar (SRDR)

Date of hearing : 13/11/2024
Date of pronouncement : 25/11/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Both the appeals of the assessee were filed against the orders of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Years 2014-15 & 2015-16, both of orders dated 26.10.2023. The impugned orders are emanated from the order of the Learned Income-tax Officer,

Ward 24(3)(3), Mumbai (in brevity, 'the Ld.AO') passed under section 143(3) of the Act, date of order 27/12/2016 and 29/12/2017 for A.Ys. 2014-15 & 2015-16, respectively.

2. At the outset, both the appeals are of same nature of facts and have common issue. Therefore, both the appeals are heard together and are adjudicated by this common order. **ITA No.4647/Mum/2023** is taken as the lead case.

The assessee has taken the following grounds: -

ITA No.4647/Mum/2023:

"1. ON NATURAL JUSTICE:

1.1. In the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) ["the Ld. CIT(A)"] erred in confirming the action of the Learned Assessing Officer ["the Ld. AO"] who in turn made huge additions to the returned income and passed the Assessment order in gross violation of principles of natural justice.

2. In the facts and circumstances of the case and in law the order passed by the Ld. CIT(A) deserves to be quashed for being passed in gross violation of principles of natural justice and also being based on extraneous considerations while ignoring the relevant, material, considerations and submissions made by the Appellant.

2.ON VALIDITY OF THE PROCEEDINGS

2.1 In the facts and circumstances of the case and in law, the Assessment order passed by the Ld. AO and affirmed by the Ld. CIT(A) is bad in law, void and deserves to be quashed since the same is passed in violation of the extant law and judicial precedents in this regard.

3. ON MERITS:

3.1. *In the facts and circumstances of the case, and in law the Ld. CIT(A) erred in- we confirming the action of the Ld. AO in making an addition of Rs.26,78,632/- under section 68 of the Act thereby denying the claim for exemption under section 10(38) on sale of shares of PS IT Infrastructure and Services Ltd. [PSIT] as made by the Appellant in its return of Income.*

3.2. *While doing so the Ld. CIT(A) failed to appreciate that:*

i The Appellant had correctly claimed the long-term Capital gains on sale of equity shares through recognized stock exchange after paying the due Securities Transactions Tax (STT) thereon;

ii. The addition made by the Ld. AO as confirmed by the Ld. CIT(A) is based on assumptions, presumptions, surmises, conjectures, based on irrelevant and extraneous considerations while ignoring the relevant material, evidences and considerations,

iii. The addition is made, and the exemption is denied simply on mere hearsay, without even remotely refuting the detailed evidence and documents furnished by the Assessee and without there being any evidence to even remotely support the action of the Ld. AO, and;

iv. In any case, the additions are unsustainable in as much as the same are made relying on statements of some third parties without providing an opportunity to cross examine the parties (in fact blatantly refusing to grant the same) despite specific requests and despite acknowledging that the said requests in their respective orders.

3.3. *In the facts and circumstances of the case and in law the additions made by the Ld. AO deserves to be deleted in toto.*

4.1. *In the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in making an addition of Rs.80,359/- being alleged commission at 3% on the sale of shares and treating the same as unexplained expenditure u/s 69C of the Act without appreciating that the said addition is based purely on assumptions and surmises and is therefore unsustainable in law,*

4.3. In the facts and circumstances of the case and in law, the addition of Rs. 80,359/- made u/s 69C of the Act be deleted.

5. The Appellant craves leave to add, amend, alter, delete or modify any or all the above grounds of Appeal.”

3. The brief facts of the case are that the assessee is into the business of commission agent of LIC and FAO trading derivatives in share market and earning income from business, capital gains and Income from other sources. During the impugned assessment year, the assessee earned long term capital gains of trading the scrip, M/s PSIT Infra & Services Ltd and claimed exemption under section 10(38) of the Act, in the return of income filed under section 139(1) of the Act. The assessee purchased the share of Rs.50,000/- and sold the share in the value of Rs.26,78,632/- through stock exchange in both the transactions. Bu the Ld.AO has treated this transaction as bogus capital gain and added back the same under section 68 of the Act. Further, for the bogus transaction, the Ld.AO calculated the commission expenses amount of Rs.80,359/- which was added back with the total income of the assessee. The aggrieved assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld.AR argued and filed a written submission which is kept in the record. The Ld.AR confirmed that the assessee has transacted the shares of M/s PSIT Infra & Services Ltd in impugned assessment year. The assessee argued that the holding period of shares in assessee's demat was more than one year and was sold through the BSE Stock Exchange. On the basis of the investigation report of DDIT, Unit 3(3), Kolkata, the Ld.AO treated the impugned share transaction as bogus long term capital gain. All the details related to purchase and sale of shares

are duly produced before the Ld.AO, but without considering the same, the order was passed. The same evidence is duly annexed in the written submission of the assessee and the details of the documents are submitted before the bench which are as follows: -

<i>Sr.No.</i>	<i>Particulars</i>	<i>Remarks / Observations</i>	<i>Enclosed at</i>
1.	<i>Purchase of 20000 Shares of Swift IT Infrastructure & Services Ltd</i>	<i>Copy of original share certificate, Allotment Advice of the assessee Evidencing the purchase of shares [at Rs.10 per share] (Relevant pages 21,22,23,25,32).</i>	<i>Yes (pgs 6 to 34)</i>
2.	<i>Request for dematerialisation</i>	<i>Copy of dematerialisation Form,</i>	<i>Yes (pgs 22 to 34)</i>
3.	<i>Shares were dematerialised</i>	<i>Copy of Demat Transaction Statement</i>	<i>Yes (Pg 52)</i>
4.	<i>Merger with PSIT</i>	<i>Copy of Demat Statement</i>	<i>Yes (Pg 47)</i>
5.	<i>Listed on BSE</i>	<i>Copy of Demat Statement</i>	<i>Yes (Pg.46)</i>
6.	<i>Sale of Shares of PSIT Infrastructure & Services Limited</i>	<i>Copy of Broker Notes evidencing sales, Copy of Global Report,</i>	<i>Yes (Pgs 58 to 73)</i>
7.		<i>Copy of Brokers Ledger evidencing the receipt of funds, copy of bank statements, etc.</i>	<i>(Pgs.6 to 20)</i>

5. In relation to fact of the case, the Ld.AR invited our attention in impugned assessment order pages 25 to 27 and the relevant paragraphs are reproduced as below: -

"4) General Preface:

4.1) In this Para the modus operandi adopted by operators is stated as investigated in general term but, nothing direct or specific against our client. There is no specific proof or evidence to establish that unaccounted cash of our client changed hands. General modus operandi stated in Para cannot apply unless there is specific evidence.

4.2) In this Para also mentioned about rigging of price by operators and it is alleged that operators are rigging price to desire level in case of controlled company but it is stated that this is mere allegation and suspicious in general and not applicable to the company M/S PS IT Infra & Services Ltd. In the case of your assessee since there was a public share holding amounted to 60.23% of total share capital held amongst 1813 share holders as on 12/07/2013 and a public share holding amounted to 97.56 % of tool share capital

held amongst 225-4share holders as on 31/03/2014 as per record on BSE Copy is enclosed. On these facts it cannot be said that the company is controlled as a closely held co by promoters and operators. The allegation of price rigging is mere assumption, presumption, surmises and suspicious as no action is taken either by regulatory authority SEBI or TheStock Exchange for manipulation of price against the company or brokers. (3) In this Para statistical detail is given in relation to investigation for which no reply is required. However, it is mentioned in example that bank account there would be a cheque deposit of RS 50,00,000 paid by the paper company that buys the shares is not correct as much as per system seller received payment through share broker who in turn received amount from clearing house of stock exchange in aggregate for days's transactions as netted.

4.4) As reported earlier till date there is no action from Seal or BSE in case of the companyM/S FS IT Infra & Services Ltd.

5) M/S PS IT Infra and Services LTD

5.1) In this Para it is alleged that our client is not at all acquaintance with share market or in absence of any regular share trading therefore, it is assumed and presumed by your good self that the decision of Purchase of 20000 shares of M/S Swift IT infrastructure and services (Amalgamated with M/S Parag Shilpa Investment (to) is a predetermined move which ad sole aim to bring back unaccounted money. The aforesaid allegation is baseless and absolutely incorrect as clearly revealed from the following facts mentioned in the tabular form and are very much on the record of the department.

Sr.No.	Assessment Year	Investment in shares (Rupees)	Dividend	LTCG (LTCL)	STCG (STCL)	Speculation Profit /(loss)	Share Trading Profit / (Loss)
1	2000-2001(31-03-2000)	22500	1570	(36250)	0	0	
2	2001-2002 (31-03-2001)	22500	800	0	0	0	
3	2002-2003 (31-03-2002)	172500	1361	0	0	0	
4	2003-2004 (31-03-2003)	430850	0	0	0	0	
5	2004-2005 (31-03-2004)	430850	0	0	0	55806	
6	2005-2006 (31-03-2005)	430850	0	0	0	796	
7	2006-2007 (31-03-2006)	2405201	72670	0	0	0	4690202
8	2007-2008 (31-03-2007)	3065303	266500	211337	0	(55427)	(684116)
9	2008-2009 (31-03-2008)	7930488	29800	1694564	(47933)	581208	0
10	2009-2010 (31-03-2009)	2841185	45175	231803	(2274466)	0	136687

11	2010-2011 (31-03-2010)	2245561	15900	1520015	(31054)	(155899)	0
12	2011-2012 (31-03-2011)	2052526	15125	0	(57573)	0	(106363)
13	2012-2013 (31-03-2012)	1951135	17375	(34651)	0	0	(648548)
14	2013-14 (31-03-2013)	1135610	9975	(199677)	44915	0	(500153)
15	2014-2015 (31-03-2014)	1713008	450	3459307	(12201)	0	(233683)
16	2015-2016 (31-03-2015)	2623008	8550	5854218	0	0	(84410)
17	2016-2017 (31-03-2016)	1884494	20550	1627750	0	0	0

6. The Id. AR stated that the entire addition was made on the basis of surmises and conjectures. There is no specific observation of the Ld.AO. He further argued that the modus operandi adopted by operators is stated as investigated in general term but, nothing direct or specific against the assessee. There is no specific proof or evidence to establish that unaccounted cash of the assessee changed hands. General modus operandi stated in the impugned assessment order cannot apply unless there is specific evidence. It is noted that the assessee holds the shares for nearly period of two years and more therefore, the statement that beneficiary hold shares for one year as per statutory period prescribed u/s 10(38) is not applicable in this case. Though, it may create suspicious but, no shelter can be taken under general information to fasten any liability by disbelieving the transaction unless there is specific and cogent evidence to that effect.

7. He argued and mentioned about rigging of price by operators and it is alleged that operators are rigging price to desire level in case of controlled company, but it is stated that it is mere allegation and suspicious in general and not specifically

applicable to the company M/S PSIT infra & Services Ltd. In the aforesaid company there was a public shareholding amounted to

Date as on	Public holding no of entity	Total % of share capital held by public
26/06/2012	473	25
31/12/2012	530	99.98
31/03/2013	543	99.98
31/06/2013	547	99.98
31/09/2013	1822	80.23
31/12/2013	2283	91.27
31/03/2014	2254	97.86
30/06/2014	2079	98.06
30/09/2014	2034	98.06
31/12/2014	1937	98.06

The above details are as per record on BSE supplied by the Id. AR. It cannot be said even by stretch of imagination that the company is controlled and managed as a closely held company by promoters and operators. The allegation of price rigging is mere assumption, presumption, surmises and suspicious as no action is taken either by regulatory authority SEBI or the Stock Exchange for manipulation of price against the company or brokers. Even seller does not know who purchase the shares in the system. Price is quoted on the basis of supply and demand. The trading in the sharemarket depends upon nature and tendency of investors which differ from person to person Viz, risk, capacity to loss, safety of investment, to earn regular income, to earn profit, speculation so on and so forth. The assessee is holding very fraction of total shares so he not capable to influence the price in the market.

8. Following statistical detail is given in relation to investigation and effect thereof for which no reply is required because it is in general term and not specific to the company M/S PS IT Infra & Services Ltd or to assessee. It is pertinent to note that

the assessee directly or indirectly had not related or associated to any entity such as operator, promoters etc. In general, it is stated that the money trail of transactions was examined right from the cash deposit account to the beneficiary account but, there is nothing specific or direct in relation to him.

9. He further argued that as reported earlier till date there is no action from SEBI or BSE in case of the company M/S PS IT Infra & Services Ltd. It is stated that the SEBI has passed orders in relation to manipulation of shares in the market by taking into consideration inputs from the Income tax department and its own surveillance system. He stated that the recent order passed by SEBI in case of Pine animation Ltd as reported in press it was reported that during the initiation of proceedings there was 178 entities of various sort against whom action was undertaken and ultimately vide order referred above dropped the action against 114 entities as there is no adequate evidence to prove allegations and in respect of balance entities investigations is still under way. At this juncture it is pertinent to note the conclusion of SEBI in the case of Pine animation Ltd.

"Upon completion of investigation by SEBI, the following are noted as regards 114 entities who were identified as Preferential Allottees, Exit Providers and LTP Contributors vide the interim order:

SEBI's investigation did not find any adverse evidence against them to show any connection/nexus with PAL or its Promoters/Directors or Promoter related entities or any role in price manipulation volume manipulation in the scrip of PAL. Hence, violation of provisions of SEBI Act, SCRA, PFUTP Regulations, etc., were not observed in respect of the following 114 entities."

10. It is alleged that the assessee is not at all acquaintance with share market or in absence of any regular share trading therefore, it is assumed and presumed that the decision of purchase of 20000 shares of M/S Swift IT infrastructure and

services Ltd (Amalgamated with M/S ParagShilpa Investment Ltd) is a predetermined move which had sole aim to bring back unaccounted money. The aforesaid allegation is baseless and absolutely incorrect as clearly revealed from the following facts mentioned in the tabular form and are very much on the record of the department.

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The above details in relation to share market clearly shows that the assessee is acquaintance with share market since so many years. Also, the assessee is involved with the share market and stock exchange since 1993. Earlier he was a partner in firm of M/S Magnum Securities a share sub-broker and now he is a Director in M/S Magsec Investment PVT Ltd sub-Broker of M/S Magnum Equity Broking Ltd since its inception and incorporation. The assessee because of his connection with the market he knows various brokers, persons, investors and traders. As a generally known fact that the gossip, Murmur, discussions, various recommendations, tips, information are discussed/shared in brokerage house and/or amongst parties related to stock exchange in relation to scrips, company, forthcoming issues and events. The traders and investors are utilizing the same to turn his fortune by taking risk of trading and investing. Though, such stock/shares present a high risk for investor and traders who are often lured by the hope of large and quick profit. It came to the knowledge of the assessee because of his relations in the market that shares of M/S Swift IT Infrastructure and Services Limited were available off market from investors having good future and return. So, with intention to get profit he decided to invest in the said shares as an investor by taking risk of his fund to turn his fortune. Accordingly, after primary inquiry found the company was profit making having good future, he negotiated with the original share holder and member of the company M/S M/S Rigmadirappa Investments Pvt Ltd and decided to purchase 10000 shares of M/S Swift IT Infrastructure and Services Limited an unlisted company at Rs.10 per share on the basis of Valuation certificate of Chartered Accountants. In view of this submissions showing facts and figures of his involvement in the market whatever

alleged by the Id. AO is without any basis and incorrect as much as whatever mentioned in the table is available on record of the department since the assessee filed his Return of Income regularly since last so many years. The above table clearly shows that the assessee is actively involved in business of share market and more particularly revealed that he has tendency and nature to take risk in the market to turn fortune as it can be seen that he also incurred substantial loss.

The Id. AR stated that the assessee acquired shares in June 2012, and he sold such shares after somewhat gap of nearly 2 years so How can it be said to be pre-arranged or pre-determined move because no one can predict it prior to 2 years.He argued that predetermined action with specific intention is one of circumstantial evidence leading to the conclusion that LTCG earned in not genuine one this contention is absolutely incorrect and is merely based on assumption, suspicious, presumptions, conjectures and surmises.

11. The Ld.AR relied on the order of the co-ordinate bench of ITAT, Mumbai and it is placed that the assessee dealt with scrip, which is already accepted by the ITAT, Mumbai Bench and the transaction is taken as a genuine transaction. He referred to the order of **Bhadresh Mansukhlal Dudhediya vs ACIT, Circle 1, Kalyan (2021) (1) TMI 361 (ITAT MUMBAI)** where the co-ordinate bench has taken view that there is no such specific observation against the scrip. So, the entire addition related to long term capital gain is deleted. The Ld.AR further respectfully relied on the order of the Hon'ble **Apex Court** in the case of **PCIT vs Renu Agarwal (2023) 456 ITRE 249 (SC)** where the transaction of penny stock if there is no adverse comment from Stock Exchange or company, so the addition should not be accepted. A further observation of the co-ordinate bench of **ITAT,**

Mumbai in the case of **Vikran N Chandan vs ITO (2024) 165 taxmann.com 340**

where it was found that nothing on market regulator SEBI for relevant period which establish the tainted staggers of a scrip involved in sale of shares by assessee so as to hold share transaction as bogus and accommodation entry as alleged by the Id. AO. The impugned addition made under section 68 proceeds of listed shares was to be deleted.

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

13. We heard the rival submission and considered the documents available in the record. We note that the share scrip, M/s PS IT Infra & Services Ltd is stated as a tainted scrip by the Ld.AO relying on the investigation report of DDIT Inv 3(3) Kolkata but no such specific evidence was brought in the record. The Ld.AO only on the basis of the surmises and conjectures, made the addition under section 68. The assessee is a regular trader of the shares and also dealt with the market. There is no evidence that assessee is involved in the price rigging with any or about the scrip mentioned by the SEBI. The nature of company is public limited and huge amount is invested by the public. The assessee himself regular trader of share and continued the same profession since long. The evidence which are submitted by the assessee is never be discarded by any of the revenue authorities. We respectfully relied on the order of **Renu Agarwal** (supra) and **Vikram N Chandan** (supra). Related to this scrip, the ITAT Mumbai Bench has already taken the view in favour of the assessee in case of **Bhadresh Mansukhlal Dudhediya**(supra). We respectfully relied on the order of High Court of Bombay in the case of **Pr. CIT v. Ziauddin A Siddique [Income-tax Appeal No. 2012 of 2017, dated 4-3-2022]** held that 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. In our considered view the Id. AO did not able to bring any evidence related to the involvement of assessee in price rigging or any cash trail related proof of rotation of assessee's own cash. Only on general view the addition can not be sustained. We set aside the impugned appeal order. The addition amount to Rs. 27,58,991/- is quashed.

ITA No.4648/Mum/2023 (AY 2015-16)

14. The facts and circumstances in this appeal are identical to ITA No.4647/Mum/2023 which we have already decided above, shall mutatis mutandis apply to this appeal also.

15. In the result, both the appeals of the assessee bearing **ITA Nos 4647 & 4648/Mum/2023** are allowed.

Order pronounced in the open court on 25th day of November 2024.

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 25/11/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai