

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.224/M/2024
Assessment Year: 2010-11
&
ITA No.965/M/2024
Assessment Year: 2010-11**

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| Shri Mahaveer Kanwarlal Ranka, B-601, Plot No.77 & 77a President Park Co-op. Hsg. Society Ltd., Opp Rajiv Gandhi Garden, Sector No.29, Vashi, Navi Mumbai, Maharashtra-400 077 PAN: ABFPR5879N | Vs. | Assistant Commissioner of Income Tax -28(2), IT-Office, Vashi Railway Station Building, Navi Mumbai Maharashtra-400 703 |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Mr. Prakash Jhunjunwala, Ld. A.R.
Revenue by : Mr. R R Makwana, Ld. Sr. D.R

Date of Hearing : 30.09.2024
Date of Pronouncement : 29.11.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These appeals have been preferred by the Assessee against the orders dated 28.12.2023 & 16.02.2024, 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. 2010-11.

2. Both the cases are having identical issue and scrips/shares and therefore for the sake of brevity, we are inclined to adjudicate both the appeals under consideration by this composite order and by taking **ITA No.224/M/2024** as a lead case.

3. Coming to **ITA No.224/M/2024**, in the instant case, the Assessee on 05.01.2009 had purchased the shares of scrip M/s. JMD Tele Films Industry Ltd. @ Rs. 18% each and on a total consideration of Rs.2,74,973/- through RTGS and online platform i.e. Bombay Stock Exchange (BSE). Subsequently the shares were splitted into 1,50,000 shares. The Assessee subsequently sold the aforesaid shares @ Rs.123/- each and on a total consideration of **Rs.1,84,38,566/-** from 08.01.2010 to 14.01.2010 on the same platform i.e. BSE and consequently earned LTCG to the tune of **Rs. 1,81,63,593/-** received through RTGS/online mechanism of BSE.

3.1 The Assessee by filing its return of income on 28.07.2010 which was subsequently revised on 03.08.2010 declaring total income of Rs.2,61,961/-, had claimed the Long-Term Capital Gain (LTCG) of **Rs.1,81,63,593/-** on account of sale of shares of M/s. JMD Tele Films Industry Ltd. u/s 10(38) of the Act.

3.2 Subsequently, the AO on the basis of the investigation carried out by the Kolkata Investigation Directorate into 84 penny stocks including M/s. JMD Tele Films Industry Ltd. being one of it, reopened the case of and show caused the Assessee to justify its transactions carried out qua LTCG. The Assessee in order to establish the genuineness of the purchase of shares, provided the following documents:

- (i) *Contract notes cum purchase bills,*
- (ii) *Global report,*
- (iii) *Confirmation of stock broker M/s. IIFL securities,*
- (iv) *Bank statements,*
- (v) *Dmat statement dated 07.01.2009,*
- (vi) *Stocks split advice, bhav-copy (rate publication),*

- (vii) *Balance sheet of the earlier year ended 31.03.2009 and ITR acknowledgment receipt, computation of balance sheet of impugned year*

3.3 The Assessee further in order to establish genuineness of sale transactions, produced following documents:

- (i) *Contract note cum sale bill dated 08.01.2010 to 14.01.2010, (ii) confirmation of stock broker M/s. IIFL securities,*
(iii) *Bank statement,*
(iv) *Dmat statement dated 09.01.2010 to 15.01.2010,*
(v) *Bhav copy (rate publication) and*
(vi) *CIN master data of listed company*

3.4 Though the Assessing Officer (AO) considered the aforesaid documents of the Assessee and has not raised any doubt and/or not contradicted the documents filed by the Assessee, however, by considering *“the findings of the investigation wing, unusual rise in the price of the shares, analysis of the transactions and ignorance of the Assessee about shares of the penny stock companies, cash trail in the account of the entry provider”*, held that the Assessee has failed to discharge its onus and ultimately disallowed the claim of the Assessee u/s 10(38) of the Act and added the entire amount of **Rs.1,84,38,566/-** (sale proceeds) in the income of the Assessee u/s 68 of the Act. The AO also on the pretext of alleged commission charged, made the addition of **Rs.10,89,815/-** @ 6% of the capital gain of Rs.1,84,38,566/- and added the same in the income of the Assessee.

4. The Assessee, being aggrieved, challenged the aforesaid additions before the Ld. Commissioner, who by relying mainly on the judgment passed by the Hon'ble Kolkata High Court in the case of PCIT vs. Swati Bajaj (2022) (139 taxmann.com 352) (Cal) and without considering the judgment passed by the Hon'ble Jurisdictional High Court in the case of Ziauddin Siddique vs. ACIT, Mumbai ITA No.5182 & 5183/M/2011 dated 09.09.2016 though referred in the impugned order, affirmed the aforesaid additions by dismissing the appeal of the Assessee.

5. The Assessee, being aggrieved, is in appeal before us.

6. We have heard the parties and perused the material available on record. The Ld. D.R. at the outset has placed on record one order dated 28.06.2019 passed by the adjudicating authority of SEBI, wherein the M/s. JMD Tele Films Industry Ltd. is also a party against whom the monetary penalty of Rs.5,00,000/- has been levied by considering the allegations of price rigging of shares by some other persons for the period from 15.06.2009 to 02.07.2009. Admittedly there are no allegations have been leveled and even no investigation has been carried out and no penalty or restriction has been imposed against the Assessee herein. The Assessee by filing the relevant documents duly supported the transactions of purchase and sales as stated above by us. It is also a fact that purchase and sale of the transactions have been transacted through banking channel and shares were purchased and sold through Bombay Stock Exchange and the Assessee also kept the share for a period more than one year. On the aforesaid facts and circumstances, it goes to show the Assessee has been able to discharge its onus cast upon u/s 68 of the Act and therefore no addition u/s 68 of the Act is warranted.

Further, the Assessee by producing the relevant documents such as books of accounts, bank statement, contract notes of shares, broker ledger account and Dmat statement etc. has prima-facie discharged its onus to establish the genuineness of the purchase and sale of the shares under consideration. Further, no role of the Assessee qua rigging of the shares, has not been assigned or established by any person including SEBI. Further, no allegations have been leveled by any persons, on whose statement the AO has relied on. Further, even otherwise, no investigation/action has been carried out or taken against the Assessee. Even otherwise the authorities below have not doubted the documents produced by the Assessee. And therefore, on the aforesaid analyzations and in our considered view, the Assessee cannot be fastened with the liability, simply on the findings of the investigation wing, allegations qua

rigging of the share prices, unusual rise in the prices of the share, financial analysis of the penny stock company and mode of acquisition etc. as alleged.

5.2 The Jurisdictional High Court in various cases including 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 in any price rigging of 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, 19617"

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.”*

5.3 We further observe that the Hon'ble Apex Court in the case of Pr. CIT vs. Renu Agarwal (2023) 456 ITR 249(SC) has dismissed the SLP against the judgment passed in ITA No.44 of 2022 on 06.07.2022 by the Hon'ble Allahabad High Court, wherein the Hon'ble High Court has also dealt with the identical issue as involved in the instant case and ultimately affirmed the deletion of identical addition allegedly made on penny stock, by holding as under:

“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 I. T. 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 assess- ment 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."

5.4 We further observe that the Hon'ble Co-ordinate Bench of the Tribunal at Mumbai in the case of Kamlesh Gupta vs. DCIT 1462/M/2020 has also dealt with the identical scrip as involved in the instant case and ultimately in the similar facts and circumstances as involved in the instant case deleted the identical addition by holding as under:

"13. We, thus, in the backdrop of our aforesaid deliberations are of the considered view that de hors any cogent material made available on record by the department which would prove to the hilt that the assessee had not carried out any genuine transaction of purchase/sale of shares of JMD Telefilms Industries Ltd. and, in the garb of bogus entry of a tax exempt LTCG u/s 10(38) of the Act, laundered his unaccounted money, the assessee's duly substantiated claim of having carried out genuine transaction of purchase/sale of shares of JMD Telefilms Industries Ltd. which is duly supported by him on the basis of documentary evidence, could not have been dislodged. Accordingly, for the reasons discussed at length by hereinabove, not finding favour with the

view taken by the lower authorities, we herein set-aside the orders of the lower authorities qua treating the transaction of purchase/sale of shares of JMD Telefilms Industries Ltd. by the assessee as a bogus transaction and, consequently vacate the addition made by the A.O under Sec. 68 of Rs. 6,06,49,780/-. The Grounds of appeal Nos. 2 & 3 are allowed in terms of our aforesaid observations.

14. As we have held the transaction of purchase/sale of shares of JMD Telefilms Industries Ltd by the assessee as a genuine transaction, therefore, the addition made by the A.O u/s 69C of Rs. 36,38,987/- towards alleged commission which the assessee as per him would have paid for facilitating the bogus transaction of purchase/sale of shares has to meet the same fate and, is resultantly vacated. The Ground of appeal No. 4 is allowed in terms of our aforesaid observations

15. The assessee has further assailed the levy of interest u/s 234B of the Act. As the levy of interest as per the judgment of the Hon"ble Supreme Court in the case of CIT vs. Anjum M.H Ghaswala (2002) 252 ITR 1 (SC) is mandatory, therefore, the A.O is directed to rework out the same while giving appellate effect to our order. The Ground of appeal No. 5 is allowed for statistical purposes in terms of our aforesaid observations".

5.5 Coming to the instant case, we reiterate that the Assessee by producing the relevant documents referred to above before the authorities below as well as before us has duly discharged the onus cast upon him u/s 68 of the Act and admittedly there is no adverse order/penalty order against the Assessee. Even otherwise, no role has been attributed and/or established qua rigging of the shares upon the Assessee. Hence, considering the peculiar facts and circumstances in totality, we are inclined to allow the claim of the Assessee u/s 10(38) of the Act, by deleting the additions under consideration. Hence, the additions under consideration are deleted. Thus, the instant appeal i.e. ITA No.224/M/2024 is allowed.

6. Coming to ITA no. **965/M/2024**, we observe that in this case identical addition have been made and affirmed by the AO and Ld. Commissioner respectively, hence in view of our judgment in ITA **No.224/M/2024**, this appeal is also allowed on and additions stands deleted.

7. In the result, both the appeals filed by the Assessee are allowed.

Order pronounced in the open court on 29.11.2024.

**Sd/-
(GAGAN GOYAL)
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.