

IN THE INCOME-TAX APPELLATE TRIBUNAL "E" BENCH,
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.261/MUM/2024

(A.Y. 2015-16)

ITA No.262/MUM/2024

(A.Y. 2014-15)

Hitesh Mangilal Jain 2405 Panchratna M.P. Marg, Opera House, Charni Road, Mumbai - 400004, Maharashtra	v/s. बनाम	Income Tax Officer Ward, 19(1)(5), 502, 5 th Floor, Piramal Chamber, Lalbaug, Parel, Mumbai - 400 012, Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AABPJ2835R		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

ITA No.257/MUM/2024

(A.Y. 2015-16)

Income Tax Officer, 502, 5 th Floor, Piramal Chamber, Lalbaug, Parel, Mumbai - 400 012, Maharashtra	v/s. बनाम	Hitesh Mangilal Jain 2405 Panchratna M.P. Marg, Opera House, Charni Road, Mumbai - 400004, Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AABPJ2835R		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Ms. Ridisha Jain / Shri Karan Jain
Respondent by :	Shri Himanshu Joshi (Sr. DR)

Date of Hearing	28.11.2024
Date of Pronouncement	31.12.2024

आदेश / ORDER

PER BENCH :-

The above captioned appeals have been filed by the assessee as well as the Revenue against the orders of even dates as passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order



passed u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Years [A.Y.] 2014-15 and 2015-16. Since the issues are common and interlinked, these appeals are taken up together for adjudication vide this composite order for the sake of brevity.

ITA No.261 and 262/MUM/2024(A.Y. 2015-16&2014-15)

2. The assessee in above appeals has filed as many as five grounds of appeal which are linked and interrelated.

3. In the **ground no.1**,it has contested the action taken by the Revenue u/s 147 of the Act, by claiming that the proceedings were initiated only on the basis of information from Investigation wing. However, in the course of appeal before us, the learned Counsel has not pressed the ground which accordingly is **dismissed**.

4.**Ground nos. 2 and 3** relate to addition of LTCG on sale of shares claimed exempt u/s 10(38) of the Act as unexplained credit u/s 68 of the Act.It is stated to be wrong and contrary to the provisions of the Act.

4.1 Without prejudice, it is claimed that assessee’s case is squarely covered by the judgement of the co-ordinate bench in the case of his own brother’s HUF and niece where on similar facts, the hon’ble Mumbai Bench has deleted the addition made on account of bogus LTCG u/s 68 of the Act.



5. The **ground no.4** pertains to penalty proceedings initiated u/s 271(1) (c) of the Act. It is premature ground as no penalty order was passed. Accordingly, the ground stands **dismissed**.

6. Since ground no. 2 and 3 are the only substantive grounds, they are being adjudicated here under.

7. Facts in brief are that the assessee derived income from Partnership firm, House property, Other Sources and Capital gains. In both the years under consideration, the only point of contention is the treatment of Long Term Capital Gains disclosed by the assessee in its returns by the Revenue authorities. **It had disclosed Rs 9,26,61,428/- and Rs. 4,90,70,005/- as LTCG on sale of shares and claimed as exempt u/s 10(38) of the Act respectively for AYs 2014-15 and 2015-16.** However, the department rejected the said claim by treating the LTCG as unexplained credit in terms of section 68 of the Act and added to the assessed income. While the assessee claimed the said gains as genuine transactions eligible for exemption, the ld.CIT(A) upheld that said addition. It is noticed that the assessee purchased shares of **Radford Global Ltd.(formerly known as P S Global Ltd) and Sunrise Asian Ltd** in AY 2014-15 while in AY 2015-16, it invested in shares of **Pine Animation Ltd. and PSIT Infra Ltd.** It was found that all the scrips were Penny stock companies with negligible transactions on the Exchanges



and less business volumes with negligible net worth. However, it was claimed by the assessee that all these transacted companies were BSE listed companies and were made an year back with the AO not disbelieving the purchases. The purchases were duly supported by all evidences including contract note, bank statement etc. No addition could be made only on the basis of statement of certain persons and that too without allowing any cross examination of the said persons. Addition was also made on account of commission on the said transaction u/s 69C of the Act. In the subsequent appeal, the NFAC upheld the addition.

7.1 It is noticed that the AO made the above addition based on an investigation report of Investigation Wing of Kolkata. It was found that the above LTCG has been derived in respect of certain Penny Stocks companies. The said scrips were purchased on off-market transactions or in preferential allotments or through certain individuals or companies. It is stated that the Investigation wing of Kolkata and Ahmedabad after detailed analysis of data of various such penny stock companies found certain players involved in these dubious roles. He has discussed the findings of the Investigation wing in various paras of the assessment order which discusses the modus operandi involving multiple players indulging in price rigging of penny stock by way of off market or preferential allotments with a holding period of one year and ultimately resulting in long term capital



gains or loss. Above mentioned shares were also traded in connivance with such players and the income was disclosed in pre-arranged manner. Detailed analysis of transactions of above penny stock is narrated in the assessment orders as to how these companies with no net worth got their prices rigged. Moreover, certain operators in their deposed statements admitted of having bought similar bogus long term capital gains on payment of certain percentage of commission. Similar admission was also made by some other operators also. The AO has observed that the above transactions were non genuine and prices of scrips were rigged and are raised through circular trading. The assessee failed to state any satisfactory reply to justify the logic behind genuine purchase of the above shares vis-a vis failed to justify the genuineness of sudden increase and decrease of the prices of the shares. He accordingly, held that these transactions were structured in connivance of various players only for the purposes of tax evasion and give a legitimate colour to the transaction. Various players including brokers, intermediaries, companies etc were involved. Statements of certain persons involved in the transaction were recorded which further established their bogus nature. He relied on the cases of **Mcdowell Ltd 154 ITR 148(SC) & Sumati Dyal 214 ITR 801(SC)** in support of the conclusion that these transactions were only colourable devise of tax evasion/avoidance. Preponderance of probabilities



emerging from the facts stated in the order clearly established that the impugned transactions were non genuine.

8. The Id.CIT(A) after due consideration of the facts observed that the assessee could not establish the genuineness of transaction. On the other hand the AO had could demonstrate how the price of shares of the penny stock companies were rigged and were raised through circular trading. It is observed that the appellant was unable to file any satisfactory reply to justify the logic behind genuine purchase of the above shares and failed to justify the genuineness of sudden increase and decrease of the prices of the shares. The appellant cannot escape from the burden cast upon him and unfortunately in this case the burden is heavy as the facts established that the shares which were traded by the appellant had phenomenal and fanciful rise in price in a short span of time . Despite availing adequate opportunity the appellant was unable to establish and prove that there was no manipulation in the other end and whatever gains the appellant has reaped was not tainted .The Assessing Officer had culled out proximate facts in each of the case, took into consideration the surrounding circumstances which came to light after the investigation , assessed the conduct of the appellant by recording statement issuing summon, took note of the proximity of the time between the buy and sale operations and also the sudden and steep rise of the price of the shares of



the companies when the general market trend was admittedly recessive and thereafter arrived at a conclusion . For all the above reasons, he held that the alleged transactions were obviously made for tax evasion, therefore, such transactions were not genuine but pre-conceived resulting in creation of bogus claim and, therefore, are sham transactions. Accordingly, he concluded that AO's decision of invoking provision of section 68 of the I.T Act was justified in absence of satisfactory explanation on the part of the appellant. Accordingly, he concurred with the conclusion drawn by the AO that the alleged LTCG for sale of preference shares as bogus and was not eligible to exemption u/s 10(38) of the I.T Act and the addition by invoking provision of section 68 of the I.T Act was confirmed. However, he deleted the estimated addition on account of commission as unexplained expenditure by observing that the AO was unable either to establish any basis of estimation how he estimated the said 2% commission and not 0.2% or 20% commission of unexplained expenditure for the said transaction or the AO was unable to bring any cogent materials of 2% expenditure incurred by the appellant before invoking provision of section 69C of the I.T Act. Accordingly, the estimated addition made by the AO was deleted.

9. In the course of hearing of the appeal before us, the ld.DR has relied on the order of authorities below.



10. Per contra, the ld.Counsel of the assessee has vehemently opposed the appellate order by way of written and oral submissions. It is submitted that during AY 2015-16 the assessee had sold the listed shares of Pine Animation Ltd and PSIT Infra Ltd on floor of Bombay Stock Exchange and claimed long term Capital gain as exempt u/s 10(38) of the Act;

10.1 Details of purchase and sale of shares of Pine Animation Ltd and PSIT Infra Ltd and long term capital gain earned thereon, are stated as under:-

a)	Name of the shares	Pine Animation Ltd	PSIT Infra Ltd
b)	Purchase Cost	Rs. 60,000/- [@ Rs. 2.94 per share]	Rs. 4,00,000/- [@ Rs. 10 per share]
c)	Number of Shares	20,400	40,000
d)	Date of purchase of shares	10/12/2012	07/05/2012
e)	Mode of Purchase	Off-market made from purchase Prakash Kawa and Dilip Kawa.	Off-market purchase made from Rigmadirappa Investments Pvt Ltd
f)	Mode of payment of purchase	A/c payee cheque.	A/c payee cheque.
g)	Sale Consideration	Rs. 1,82,22,256/-	Rs. 3,07,36,906/-
h)	Date of sales	25/06/2014 to 03/09/2014	21/08/2014 to 18/12/2014
i)	Mode of Sales	Online platform of Bombay Stock Exchange	Online platform of Bombay Stock Exchange
j)	Mode of receipt of sale consideration	RTGS received	RTGS received
k)	Period of Holding of shares by the assessee	18-20 months.	27-30 months.
l)	Long Term Capital Gain	Rs. 4,85,15,162/-	



10.2 Details of purchase and sale of shares of Radford Global Ltd and Sunrise Asia Ltd and long term capital gain earned thereon, are stated as under :-

a)	Name of the shares	PS Global Ltd/Radford Glob Ltd	Sunrise Asian Ltd
b)	Purchase Cost	Rs. 15,00,000/- [@ Rs. 15 per share]	Rs. 15,00,000/- [@ Rs. 15 per share]
c)	Number of Shares	1,00,000	1,00,000
d)	Date of purchase of shares	16/02/2012	21/01/2012
e)	Mode of Purchase	Preferential Allotment	Off-market purchase made from Acute Consultancy Ltd
f)	Mode of payment for purchase	A/c payee cheque.	A/c payee cheque.
g)	Sale Consideration	Rs. 4,12,33,296/-	Rs. 5,04,24,577/-
h)	Date of sales	03/04/2013 to 10/06/2013	10/07/2013 to 01/10/2013
i)	Mode of Sales	Online platform of Bombay Stock Exchange	Online platform of Bombay Stock Exchange
j)	Mode of receipt of sale consideration	RTGS received	RTGS received
k)	Period of Holding of shares by the assessee	13-17 months.	30-32 months.
l)	Long Term Capital Gain	Rs. 8,86,57,873/-	

10.3 It is submitted that the assessee, in order to justify the genuineness of purchase and sale of shares, furnished the understated document on record :-

- a) Copy of allotment of share and receipt of purchase money and share transfer forms thereof.
- b) Copy of Bank statement evidencing of having payment made;



- c) Copy of D-mat statement.
- d) Copy of contract-cum-bills in support of sale of shares made on floor of Bombay Stock Exchange;
- e) Copy of Bank statements highlighting the receipt of sale consideration from the stock broker by RTGS;

10.4 The assessee submitted that by providing all the necessary documents/evidence he has thoroughly discharged his onus, such as contract notes, bills, bank statements, D-mat statement, Share certificate, etc to prove the genuineness of purchase and sale of shares and earning of Long term gain thereon. Entire sale of shares had been made on floor of Bombay Stock Exchange on which legitimate STT had been paid. From the evidence submitted the Ld. AO could not point out any defect in such documentary evidences filed on record. Even he had not rejected the assessee's books of accounts u/s.145(3) of the Act. By not doing so the Ld. AO has not discharged the heavy onus cast upon him and had not brought on record any cogent material/evidence to disprove the transaction.

10.5 In support of its contention that before treating genuine gain as ingenuine the Ld. AO is duty bound to bring on record any evidence or material. It is further submitted that in the case of **Daulat Ram Rawatmull (87 ITR 349)**, **Hon'ble Apex Court** had decided that heavy onus is cast on the person who asserts to the allegations. Further, **Hon'ble Apex Court in the case of Uma Charan shaw (37 ITR 271)** had decided that suspicion of highest degree cannot replace the direct evidences filed on record. In impugned case, there does not exist an iota of contrary evidence to disprove the bonafide transactions of the assessee.

10.6 The assessee submitted that to treat the genuine gain as ingenuine the Ld. AO doubted the purchase transaction since the assessee



had made off-market purchase of such shares. It is pleaded that the price at which these were available and seeing the prospect he purchased these shares by way of off-market transaction. The reason for such purchase was that such shares were thinly traded in the stock exchange. The assessee had purchased these shares from various persons against payment of purchase consideration by A/c payee cheques. The assessee submits that the source of payment made for impugned purchase has not been doubted/disputed by the AO. This proves that the Ld AO has accepted that purchases made as genuine, since it is out of assessee's accounted funds. The physical share certificates have also been submitted alongwith Share Transfer Form and such shares had been dematerialised in regular D-mat account. The assessee had furnished the copies of purchase bill, payment receipt, bank statement, share certificates, D-mat statement during the course of assessment proceedings and are placed on assessment record and correctness of such documents had not been doubted by the AO. The assessee had disclosed the investment in such shares in balance sheets of earlier years and such share investments had been accepted as genuine in earlier years. In support of assessee's contention, he relies on direct judicial decisions of Hon'ble Jurisdictional High Court and Hon'ble ITAT, wherein it is decided that off-market purchase of shares is not an illegal activity and would not disprove the genuineness of transactions, as under:-

a) CIT vs. Smt Jamnadevi Agrawal-20 Taxmann.com 529 (Bom-HC)

b) Mukesh R Marolia-88 CCH 27 (SC)

c) Shri Yogesh P. Thakkar v. DCIT-ITA-1605/M/2021 dated 03/02/2023



d) Shri Bhikamchand Mutha v. ITO - ITA - 2562/M/2022 dated 30/01/2023

10.7 It is contented that the Ld. AO doubted the genuineness of sale transaction of shares by holding that the price of shares had substantially increased in short period of time and such is not in consonance to its financial results. In this **context, assessee submits that he had sold the shares on floor of recognised exchange i.e BSE at the prices prevailing at relevant point of time. The contract-cum-bills and rate publication of BSE discloses the prices at which the shares are sold by the assessee on floor of BSE.** To prove genuineness of transactions the assessee furnished copies of contract-cum-sale bills, D-mat statement, bank statements etc during the course of assessment proceedings and the correctness of such documents had not been doubted by the AO. On the transaction of sale the assessee had made the payment of Service tax, STT and other charges to the broker and in turn to exchequer. On verification/perusal of these evidences the Ld AO had not brought on record an iota of contrary evidence to prove that the assessee was involved in alleged rigging of share prices. On this context assessee relies on direct judicial decisions of Hon'ble Jurisdictional High Court and Hon'ble ITAT, wherein it is held by the Hon'ble Judges/Members that mere increase in the price of listed shares would not disprove the transactions, as under :-

a) CIT vs. Shyam R. Pawar-54 Taxmann.com 108 (Bom-HC)

b) Pr. CIT vs. Smt. Krishna Devi - 126 Taxmann.com 80 (Del-HC)

c) Pr. CIT vs. Ziauddin A. Siddique - ITA No. 2012 of 2017 (Bom-HC)

d) Pr. CIT v/s Prem Lal Gandhi - ITA No. 95 of 2017 dt. 18/01/2018 (P & H-HC)



10.8 In assessment order, Ld. AO alleged that certain accommodation entry providers, in their statements, had admitted that shares of Pine Animation Ltd and PSIT Infra Ltd had been artificially rigged to provide accommodation entries to the beneficiaries and notice issued u/s 133(6) to exit providers had remained unserved. In this context, the assessee submits that as far as he is concerned he had sold the shares through registered share broker on online platform of BSE by way of automated computerised guided system. As far as the assessee is concerned he is not related to any accommodation entry providers and also Exit providers and is unaware of any such persons and also does not have any control over their business activities. During course of assessment, the assessee had categorically denied of having entered into any financial transactions with any accommodation entry providers and exit providers. The assessee had purchased the physical shares on making the A/c payee cheque payment, which had been converted in electronic D-mat mode and sold such shares on floor of BSE at prevailing market price and thereafter had received the sale consideration from SEBI registered stock broker. **The Hon'ble Jurisdictional High Court in the case of CIT v. Lavanya Land Pvt. Ltd (83 Taxmann.com 161)** had decided that the addition cannot be made solely on the basis of 3rd parties statement.

10.9 It is further stated that in any case, neither the copies of contrary material, statements of 3rd parties nor opportunity of cross examination had been allowed to the assessee and accordingly would not hold any adverse bearing on the assessee. On this premise the assessee relies on judicial decisions of Hon'ble Apex Court and High Courts, wherein it is held that statements of 3rd parties cannot be held as admissible evidence unless copies are provided and opportunity of cross examination is provided to the suffering party, as under :-



- a) Andaman Timber Industries v. Comm. of Central Excise - Civil Appeal No.4288/2006),**
b) CIT v. Sunita Dhadda-ITA-197/2012 (SC),
c) KishandchandChellaram vs. CIT-125 ITR 713 (SC),
d) Sunil Aggarwal-64 taxmann.com 107 (Del-HC)

10.10 It is submitted that the Ld. AO alleged that undisclosed cash belonging to the assessee is received back in garb of long term capital gain. In this context, the assessee submits that **heavy onus is cast upon the person who asserts the allegations. The Ld. AO, except making bare allegations, had not discharged the heavy onus cast upon him and had not brought an iota of evidence on record to justify the allegations,** thus the addition made on the basis of assumption and surmise is unjustified. The **Hon'ble Apex Court in the case of Lalchand Bhagat Ambica Ram v. CIT (37 ITR 288) and in the case of Omar Sahay Mohamad Sait v. CIT (37 ITR 151)** had decided that it is a trite law that additions cannot be made on the basis of suspicion, surmise, conjectures and in absence of evidence. Also, **Hon'ble Apex Court in the case of Umacharan Shaw & Bros. (37 ITR 271)** had decided that suspicion, however strong, cannot take the place of an evidence;

10.11 The assessee in his support that the transaction of purchase & sale are genuine & has been carried out during normal course of investment activity relies on direct jurisdictional decisions of Hon'ble Apex Court and Hon'ble Jurisdictional and other High Courts and ITATs, stated as under :-

- a) Pr CIT v. Smt Renu Aggarwal (2023) 456 ITR 249 dated 03/07/2023).



- b) PCIT v. Parasben Kasturchand Kochar¹³⁰ Taxmann.com 177 [SC] (SLP filed by revenue against Gujarat High Court decision 130 Taxmann.com 176) is dismissed.
- c) PCIT v. Indravadan Jain HUF ITA NO. 454 OF 2018 (Bom-HC)
- d) CIT v. Shyam R. Pawar 54 Taxmann.com 108(Bom-HC)
- e) CIT v. Smt. Jamnadevi Agrawal 20 Taxmann.com 529 (BOM-HC)
- f) Yogesh P. Thakkar and others V. DCIT ITA No. 1605/Mum/2021 (Mumbai ITAT)
- g) Pr. CIT Vs. Prem Lal Gandhi 94 Taxmann.com 156(P & H-HC)

10.12 The assessee heavily relied on judicial decisions of Hon'ble ITATs, wherein similar addition on a/c of this particular scrip has been made u/s 68 viz. Pine Animation Ltd and PSIT Infra Ltd had been deleted, as under :-

- a) Gopal Nihchaldas Pariani v. ITO--ITA No. 7761 & 7762/Mum/2019
- b) Vijayrattan Balkrishan Mittal v. DCIT--ITA No. 3427 to 3429/Mum/2019
- c) ACIT v. Priyanka Ankit Miglani--ITA No. 2530 & 2531/Mum/2021
- d) Shri Brij Bhushan Singal v. ACIT--ITA No. 1414 to 1417/Del/2018
- e) Shailesh Jain HUF v. ITO-ITA No. 6068/Mum/2019

10.13 It further brought to Hon'ble Bench's notice that the assessee's case is squarely covered by the decision of Hon'ble Jurisdictional ITAT in the case of assessee's own family members case tabulated as under:



Sr. No.	Assessee Name (Relation)	A.Y.	ITA No
1	Shailesh Jain HUF (Brother's HUF)	2014-15	6068/Mum/2019
2	Krutika Rajendra Jain (Niece)	2015-16	7064/Mum/2019
3	Alpa Rajendra Jain (Brother's Wife)	2014-15	1922/MUM/2023

wherein on identical facts the Hon'ble Mumbai ITAT allowed the appeals of the assessee in toto by treating the LTCG earned in the scrip M/s Pine Animation which was purchased off market as genuine and also allowed exemption claimed u/s 10(38) of the IT Act 1961 and directed the Ld AO to delete the addition made. Since the issue is covered by the decision of Hon'ble Jurisdictional ITAT in assessee's family members case, it is requested to the AO may be directed to follow the ratio of the higher authority judgement and oblige.

10.14 Therefore, in view of the above the facts and circumstances of the case, the assessee submitted that the decisions of the jurisdictional Hon'ble High Court and co-ordinate Bench cited above and **judgements of Hon'ble Coordinate benches in case of assessee's own family members** shall apply to the assessee's case since the Ld AO could neither establish its involvement in price rigging nor found any fault with the documents furnished by the assessee. The AO has passed stereo type order which he has done in other cases without bringing on record any similarity. Thus, it is requested to direct the Ld AO to delete the addition made and oblige.

10.15 With regard to **Radford and Sunrise** shares, it is stated is submitted that the assessee, in order to justify the genuineness of purchase and sale of shares, furnished the understated document, Copy of application for preferential allotment and allotment advice from the company allotting 100000 shares of Radford Global and proof of purchase of shares of Sunrise Ltd, Copy of Bank statement evidencing of having payment made, Copy of



D-mat statement highlighting the credit of shares and thereafter splitting on account of change in face value of shares resulting in 5 lakh shares in case of Radford. Copy of contract-cum-bills in support of sale of shares made on floor of Bombay Stock Exchange; Copy of Bank statements highlighting the receipt of sale consideration from the stock broker by RTGS furnished by the assessee. The Ld AO has passed stereo type order which he has done in other cases without bringing on record any similarity. The assessee submits that the shares of Radford Global Ltd were purchase through preferential allotment i.e. directly from the company and therefore the purchase of share and source of payment made for impugned purchase has not been doubted/disputed by the AO. This proves that the Ld. CIT(A). AO has accepted that purchases made as genuine, since it is out of assessee's accounted funds. Further in the case of Sunrise Asian Ltd, assessee had made off-market purchased of such shares. Assessee submits that the price at which these were available & seeing the prospect he purchased these shares by way of off-market transaction. The reason for such purchase was that such shares were thinly traded in the stock exchange. The assessee had purchased these shares from M/s. Acute Consultancy Ltd against payment of purchase consideration by A/c payee cheque. The assessee submits that the source of payment made for impugned purchase has not been doubted/disputed by the AO. This proves that the Ld AO has accepted that purchases made as genuine, since it is out of assessee's accounted funds. The assessee had furnished the copies of allotment application, allotment advice, bank statement, D-mat statement during the course of assessment proceedings and are placed on assessment record and correctness of such documents had not been doubted by the AO. The assessee had disclosed the investment in such shares in balance sheets of earlier years and such share investments had been accepted as genuine in earlier years. In support of



assessee's contention, he relies on direct judicial decisions of Hon'ble Jurisdictional High Court and Hon'ble ITAT, wherein it is decided that off-market purchase of shares is not an illegal activity and would not disprove the genuineness of transactions.

11. We have duly considered the facts of the case, the contents of the assessment order, detailed submissions of the assessee as also various case laws. We also find that the co-ordinate benches of ITAT, Mumbai have in several cases considered similar cases of addition of LTCG arising out of Investigation wing Kolkata report in such shares. Very recently, in some of such cases, the Bench presided by the Hon'ble President, ITAT has considered such issues in a series of decisions and has given a categorical finding that such additions were not based on sound footing and were deleted. It appears on perusal of the orders that even the LTCG issue related to the same scrip as in the present case. In one such case of **ITA No.2443/MUM/2023(Departmental appeal) in the case of ITO Ward-23(2)(6)Mumbai Vs. Manisha NarpatkumarChopra.** Relevant paras are reproduced as below for ready reference:

*“11. We heard rival contentions and perused the record. We notice that the AO has primarily placed reliance on the report given by the Investigation Wing of the Income-tax Department, Kolkata in order to arrive at the conclusion that the Long Term Capital Gain reported by the assessee is bogus in nature. **We notice that the investigation report prepared by Investigation Wing, Kolkata is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains.** We notice that the AO has placed reliance on the said report, without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., **it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people, who were***



involved in the alleged rigging of prices. We notice that the **promoters and their associations of M/s. Pine Animation Ltd., were initially debarred from accessing stock market, but the same has been revoked by the SEBI, vide its order dated 19th September, 2017.** The following observations made by the SEBI in the above said order are worth noting:-

"10. Considering the fact that there are no adverse findings against the aforementioned 114 entities with respect to their role in the manipulation of the scrip of PAL, I am of the considered view that the directions issued against them vide interim order dated May 08, 2015 which were confirmed vide Orders dated June 02, 2016, July 05, 2016, August 22, 2016 and June 02, 2017 need not be continued."

11.1. We noticed earlier that the **assessee has sold the shares during the period from June 05, 2014 to September 15, 2014. Thus, the transactions of purchase and sale of shares by the assessee have happened prior to the passing of initial order by SEBI, which has been later revoked.** Hence, we are of the view that the transactions of purchase and sale of shares of M/s. Pine Animation Ltd., by the assessee would not be affected by the above said orders of the SEBI.

12. In the statement recorded from the assessee, she has stated that she was guided by her husband in making the investment, who is a Chartered Accountant by profession. The AO has also recorded statement from her husband, but did not find any adverse feature in the statements given by both the parties. We also notice that

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- a) **the assessee has purchased these shares by paying consideration through banking channels.**
- b) **the shares of M/s. Pine Animation Ltd., have been purchased from an existing share holder in the off market. The copy of physical share certificate is given, wherein the name of the assessee has been to have been endorsed.**
- c) **the shares have been later dematerialised and kept in the Demat account.**
- d) **the assessee has sold the shares through stock exchange platform**



e) the assessee has received the sale consideration through banking channels.

Further, the **shares have entered and exited the demat account of the assessee.** We notice that the **AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares.** Further, the **AO has not brought on record any material to show that the assessee was part of the group, which involved in the manipulation of prices of shares.** Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

13. Both the parties relied on various case laws before us. We may refer to the some of the decisions rendered by **Hon'ble jurisdictional Bombay High Court. In the case of Shyam Pawar (54 taxmann.com 108) (Bom)**, the Hon'ble Bombay High Court has observed as under:-

“3. Mr.Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Sureshkumar, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr.Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the



concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, **what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny.** It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt. Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus- operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. **The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies.** The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold



and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law."

14. In the case of **PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022)**, the Hon'ble Bombay High Court has observed as under:-



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

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

4. Mr. Walve placed reliance on a judgement of the Apex Court in *Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC)* but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

15. Further, in the case of **CIT vs. Jamnadevi Agarwal (20) taxmann.com 529 (Bom)**, the Hon'ble Bombay High Court has held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of **PCIT vs. Indravadan Jain (HUF) (ITA No. 454 of 2018) (Bom)**, the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were not doubted. Under these set of facts, the **Hon'ble Bombay High Court** held as under:-

"...The CIT(A) came to the conclusion that respondent bought 3000 shares of RFL, on the floor of 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 Dematinstruction slips 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."

16. **In the earlier paragraphs, we have followed the binding decision rendered by Hon'ble Bombay High Court. Hence, the Ld.DR cannot place reliance on the decision rendered by Hon'ble Kolkata High Court in the case of Swati Bajaj (supra). Accordingly, we are of the view that the decision rendered in the above said case cannot be taken support of by the Revenue.**

17. In view of the foregoing discussions, we are of the view that the Ld CIT(A) was justified in deleting the addition of value of sale consideration arising on sale of shares of M/s. Pine Animation Ltd. Since we have confirmed the decision of Ld CIT(A) in holding that the sale transactions of shares cannot be doubted with, the addition made by the AO with regard to estimated commission expenses is also liable to be deleted. Accordingly, we confirm the order passed by Ld. CIT(A).

18. In the result, the appeal of the Revenue is dismissed."

12. In another case of **Chirag Tejprakash Dangi ITA No.3256/Mum/2022**, one of the scrips in question was **Radford Global**



Ltd(earlier known as PSI Global Ltd).With regard to the finding of the AO treating the said scrips ad Penny stock in whose case prices were rigged in order to generate capital gains/loss,the tribunal has taken note of the submission of ld.AR that this company was also subjected to scrutiny by the SEBI and interim order passed by it against the company was revoked subsequently.It was also claimed that the company was not subjected to any inquiry by SEBI.**The tribunal in para 14 of the order has categorically observed that the decisions rendered by the jurisdictional Bombay High Court in the cases cited above i.e. Shyam Pawar(supra),Ziauddin Siddique and Jamnadevi Agrawal** shall apply in the present cases as well since the assessee has not established that the assessee had rigged the prices and also AO did not find any fault in the documents filed by the assessee.Moreover,purchase of shares in earlier years were accepted as genuine. Shares were traded on online platform of the Stock Exchange.Therefore, sale transactions could not be doubted.

13. In another case of **Alka Dilip Doshi in ITA No.1837/Mum/2023 dated 20.02.2024** the assessee sold shares of **Sunrise Asian Ltd.** The tribunal has taken note of various decisions of Ahmedabad Bench of ITAT in several cases as per para 14 of the order where investment in shares of Sunrise Asian Ltd was held to be without



any doubt. Accordingly, based on decisions as reproduced in other cases referred above, the LTCG was held to be genuine and the addition u/s 68 was deleted.

14. In another case of **Manju Hiralal Baina in ITA No. 1026/Mum/2020 dated 15.4.2024**, the same bench presided by the hon'ble President has considered similar issue at length and deleted similar addition u/s 68 of the Act.

15. Reference could also be made of the decision in the case of **Shailesh Jain HUF in ITA No.6068/M/2019 dated 16.02.2021** in which similar issue was involved w.r.t. shares of Four K. Animation Ltd. The co-ordinate bench of Mumbai in a detailed judgement has considered all relevant aspects of the case and deleted similar addition made u/s 68 of the Act. The bench has taken due note of the fact that the company was a listed company on Stock Exchange, subjected to various rules and regulations and compliance which have to be complied with under preferential allotment process. The assessee had filed all the relevant documents in support of the investment, transaction taking place through registered stock brokers. The investigation report of Kolkata, nowhere name of the assessee figured nor evidences were found during the search and the entire allegations were based on surmises and conjectures only. Moreover, authorities below failed to establish any money trail involved in



the transaction and has only guessed that the assessee might have paid his own money to route the same into books of accounts. Reliance is placed on Apex Court decision in the case of **Admine Construction Ltd 99 Taxman 45** wherein while dismissing the appeal of the Revenue has referred to the following observation of the Hon'ble Delhi High Court

“ What is evident that the AO went only by the report received and did not take any further enquiries such as into the bank accounts or other particulars available with him but rather received the entire findings on the report which cannot be considered as primary material. The assessee has discharged the initial onus cast on it by providing the basis details which were not suitably enquired into by the AO.”

15.1 The Bench has also taken note of the fact that the AO relied on the statement of third parties without affording any reasonable opportunity to the assessee to cross examine those parties which is in violation of principles of natural justice as has been held in the case of **Andaman Timber Industries vs CCE(CA) No,4228 of 20026** by the Hon'ble Supreme Court wherein it was held that not allowing the assessee to cross examine the witness by adjudicating authority through the statements of six witnesses were made the basis of impugned order is nullity in as much as which amounts to violation of principles of natural justice because which the assessee was adversely affected. Besides the addition made on mere suspicion, conjecture and surmises could not be sustained. The case of assessee finds support from the decision of Hon'ble



Apex Court in **Omar Salay Sait vs CIT(1959) 37 ITR 151(SC)**.The Hon'ble Apex Court in the case of **Umacharan Saw and Bros. vs CIT 37 ITR 271** has held that suspicion how so far strong could not take the character of legal evidence.Thus,it was noted that none of the parties alleged by the Revenue such as broker,operator,directors,exit providers etc whose statements were recorded by the Directorate of Investigation, Kolkata stated name of the appellant. The case of the assessee is supported by a catena of decisions as in the cases of **Kunal Dedhia in ITA No.3893/M/2019 dated 31.07.2020, Vijayarattan Balkrishhna Mitta in ITA No.3429/M/2019 dated 1.10.2019,Mukesh Sharma in ITA no.6249/M/2018 dated 29.05.2019 etc.**

16. Considering the above discussion,the facts on record and the legal position emerging out of catena of decisions of Hon'ble Supreme Court, jurisdictional High Court and direct decisions rendered by the co-ordinate benches of Mumbai ,ITAT order, we hold that the addition made by the AO u/s 68 of the Act in both the years under consideration are devoid of any merit. The claim of the assessee u/s 10(38) of the Act has been made based on facts which could not be rebutted by the AO.The documentary evidences could not be rejected without bringing on record any substantial piece of evidence and just on the



basis of certain individuals who also were not produced for cross examination of their stated stands. Moreover, the jurisdictional High Court decisions cited supra are on identical facts as also the co-ordinate benches of Mumbai tribunal have a binding precedence. None of them could be distinguished by the Id.CIT(A) anywhere in the appellate order. Apparently, the order has in a preconceived manner dittoed the assessment order rather than by way of independent application of mind. We have no hesitation in deleting the additions. The AO is therefore, directed to delete the additions made u/s 68 of the Act in both the AYs 2014-15 and 2016-17.

17. In the result, both the above appeals of the assessee are partly allowed.

ITA No.257/MUM/2024(Revenue's appeal)

18. In the above appeal, the Revenue has agitated action of the Id.CIT(A) in deleting the addition made on account of estimated commission at the rate of 2%.It is contented that the Ld. CIT(A) has erred in deleting the addition u/s 69C of the Act, , without appreciating the fact that the Assessing Officer has discussed in details in the assessment order about the modus operandi unearthed by the Investigation Wing which clearly established that such bogus transactions of penny stock were Pre-



Arranged by Operator of Exit Provider who Charge a commission for the same. He did not appreciate the fact that AO has relied upon the statement recorded on oath u/s 132(4) of the LT. Act, wherein Mr. Anil Agarwal, admitted that he has accepted commission in cash for accommodation entries of M/s. Radford Global Ltd and Sunrise Asian Ltd. for the purpose of making/providing bogus LTCG.

19. Since we have already decided the issue of LTCG in the foregoing paras and deleted the addition made u/s 68 of the Act, thus holding the share transactions as genuine, the above ground of the Revenue has no merit which is accordingly, **dismissed**.

20. **To sum up, we conclude that assessee's appeals for AY 2014-15 and 2015-16 in ITA No.261 & 262 are partly allowed while appeal of the Revenue in ITA No.257 is dismissed.**

Order pronounced in the open court on **31/12/2024**.

Sd/-

SANDEEP GOSAIN

(न्यायिकसदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकारसदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 31.12.2024

Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :



1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

