

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 2410/Mum/2024
(A.Y.2014-15)**

Jayesh Manshukhlal Palan, B-12 Navin Manju, S L Road, Mulund W, Mumbai- 400080	Vs.	ACIT-29(1) Kautilya Bhavan, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AGJPP7133L		
Appellant	..	Respondent

Appellant by :	Shri Mani Jain
Respondent by :	Shri Nishant Somaiya Sr. AR

Date of Hearing	11.12.2024
Date of Pronouncement	09.01.2025

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order u/s 250 of the Act passed by the NFAC, Delhi, dated 14.03.2024 for A.Y. 2014-15.

2. Fact in brief is that return of income declaring total income of Rs.52,32,380/- was filed on 29.02.2014. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 20.09.2016. The assessment u/s 143(3) of the Act was finalized on 29.12.2016 and total income was assessed at Rs.227,06,580/-

by making addition of Rs.6,48,640/- u/s 69C of the Act as unexplained investment and Rs.1,50,00,000/- u/s 68 of the Act as unsecured loan received by the assessee. Further facts of the case are discussed while adjudicating the ground of appeal of the assessee.

Ground No.1 & 2: Disallowance of Rs.39,85,563/- on account of short term capital loss:

3. During the course of assessment the AO noticed that assessee has claimed short term capital loss of Rs.85,74,978/- on the scrips of M/s Global Infratech & Finance Ltd. From the details filed by the assessee the AO noticed that assessee purchased 163,000 shares of M/s Global Infratech & Finance Ltd. at an average purchase value of Rs.92,48 per shares to the amount of Rs.1,50,88,623/- in December, 2013 and sold these shares in March,2014 on an average sale value of Rs.40,08 amounting to Rs.65,23,167/-at a loss of Rs.85,74,978/-. On query, the assessee explained that it had purchased the above referred shares from BSE directly through share broker named M/s Motilal Oswal Securities Ltd. duly registered with stock exchange and SEBI. The assessee has also submitted copies of Demat statement showing that said share were transferred through assessee's broker M/s Motilal Oswal Securities Ltd. which was already in dematerialized form. The assessee also submitted that the purchase consideration was duly paid through proper banking channel to the assessee's share broker for the purchase of shares through stock exchange and also submitted the copy of bank statement. The assessee further explained that since the holding period of shares from the

date of purchase to the date of sale was less than one year, therefore, loss arising from sale of share was short term capital loss which was claimed against other long term capital gain earned during the year under consideration. However, the AO has not agreed with the submission of the assessee. The AO has referred the price movement of the shares of the M/s Global Infratech & Finance Ltd. from 01.01.2012 to 31.12.2014 in a graphical form in the assessment order. After referring the graphical form, the assessing officer was of the view that a long term capital gain was booked when the share price was going up and bogus losses were booked when the sale price was going down. The AO stated that net worth of the company was also negligible. The AO also referred that trading in the shares of M/s Global Infratech & Finance Ltd. had been suspended till 18th November 2011 by the BSE. The AO has concluded that business profile show that the company was not engaged into any substantial activity and the company was not having any future plan which could attract investors from all over India to invest in the company. The AO concluded that shares of M/s Global Infratech & Finance Ltd. were rigged to provide bogus capital gain/losses to beneficiaries with an express intention to defraud revenue and in turn to avoid payment of legitimate taxes. Therefore, the short term capital loss of Rs.39,85,563/- claimed by the assessee was disallowed.

4. The assessee filed an appeal before the Ld. CIT(A), however, Ld. CIT(A) has dismissed the appeal of the assessee reiterating the facts stated by the Assessing Officer.

5. During the course of appellate proceedings before us, the Ld. Counsel submitted that in the statement recorded under Section 131 of the Act by the Assessing Officer as per question no. 15 the assessee has explained that assessee was familiar with the trading of shares and he was engaged in this activity for the last 5 years. He also referred question no. 42 of the statement wherein the assessee explained that he was a regular investor and used to keep track on the purchasing of shares. The Ld. Counsel also submitted that no SEBI inquiry has been made on this scrip and same was not black listed. The Ld. Counsel also submitted that profit in this scrip was increased from AYs 2011-12 to 2013-14 and assessee has traded in the share when curb on trading was lifted. The Ld. Counsel has also submitted that similar issue on identical facts has been adjudicated by the various benches of the ITAT on the similar scrip in favour of the assessee, he referred the decision of Coordinate Benches of Mumbai vide ITA No.6249/Mum/2018 in the case of Shri Mukesh B Sharma Vs. ITO,11(3)(2) dated 29.05.2019; ITA No. 3186/Mum/2018 in the case of Shri Anurag Agarwal Vs. ITO-24(1)(3) dated 06.08.2020; ITA No. 862/Mum/2024 in the case of ACIT Vs. Keshavji Nongha Shah, dated 01.10.2024.

6. On the other hand the ld. DR supported the order of ld. CIT(A).

7. Heard both the sides and perused the material on record. During the course of assessment proceeding regarding short term capital loss of Rs.85,74,978/- on sale of share of M/s Global Infratech & Finance Ltd. the assessee filed relevant supporting

documentary evidence along with balance sheet, schedule to financial statement, copies of trading notes from the Motilal Oswal Securities Ltd. The share were purchased in open market from the platform of Bombay Stock Exchange (BSE) there was no off market transaction made by the assessee in these shares and the payment and receipt of purchase and sale of these share were made through banking channel and the delivery of shares were received and routed through demat account of the assessee. The AO merely relied upon the report of the investigation wing without making any further inquiry and verification to disprove the relevant supporting material furnished by the assessee as discussed. Looking to the above facts and circumstances, we consider that the decision of Ld. CIT(A) in sustaining the disallowance of set-off of loss to the extent of Rs.39,85,563/- against the long term capital gain was not justified. It is also undisputed fact that assessee has not filed the return of income within the due date, therefore, the remaining loss has not been claimed in the preceding assessment year. The ld. counsel has also placed reliance on the various decision of the ITAT, Mumbai benches on the similar issue on identical facts on the proposition that AO has not brought material on record to disprove the supporting evidences furnished by the assessee with regard to genuineness of the transaction in the same scrips of M/s. Global Infratech. We have perused the decision of ITAT Mumbai in the cases of Shri Anurage Agarwal vs ITO vide ITA No. 3186/M/2018 dated 06.08.2020, Mukesh B Shara vs ITO vide ITA No. 6249/M/2018 dated 29.05.2018 and other decision referred by the ld. counsel. The relevant extract of

the decision of ITAT Mumbai in the case of ACIT Vs. Keshavji Nongha Shah dated 01.10.2024 is reproduced as under:

“8. We have 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 in order to arrive at the conclusion that the long term capital gains reported by the assessee is bogus in nature. We notice that the investigation report prepared by Investigation Wing 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. It is stated by Ld A.R that the transactions carried on by the assessee were not subjected to scrutiny by SEBI at all.

9. We notice that the AO has recorded statement from the assessee u/s 131 of the Act, but he could not find any fault with the assessee. The AO has only observed that the assessee could not explain as to why he invested in the shares of company, whose fundamentals are weak. However, the assessee had stated that he has made investment on the basis of advice given by some known person. In our view, the rationale of making investment may not be relevant to arrive at the conclusion that the transactions of purchase and sale of shares are bogus. We also notice that the assessee has:

- (a) purchased these shares by paying consideration through banking channels.
- (b) dematerialized the shares and kept the same in the Demat account.
- (c) sold the shares through stock exchange platform.
- (d) 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. The assessee was not subjected to any enquiry by SEBI, meaning thereby, they were carried on by the assessee during the normal course of investment in shares. As noticed

earlier, 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.

The AO has also referred to a statement given by a person named Shri Rajkumar Kedia before the Investigation wing, but did not furnish the same to the assessee to rebut it. It was not known as to whether Shri Rajkumar Kedia has stated that the transactions entered by the assessee were bogus. In view of the above, we are of the view that there is no reason to suspect the purchase and sale of shares undertaken by the assessee.”

10. We may now refer to certain decisions rendered by the Hon“ble Bombay High Court on identical issue. 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.Sureshkumr, 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.Suresh kumar 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.”

11. We may now refer to the decision rendered by Hon“ble Jurisdictional High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022) and relevant discussions made by Hon“ble Bombay High Court are extracted below:-

“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.

In the case of CIT vs. Jamnadevi Agarwal (20 taxmann.com 529 (Bom), the Hon”ble Bombay High Court 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 Kolkatta 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 Kolkatta Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instruction slips and also received payment from Kolkatta 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."

In the instant case also, we noticed that the evidences furnished by the assessee to prove the purchase and sale of shares, payment made/received, entry/exit of shares in the demat account of the assessee etc., were not doubted with.

12. In the case of PCIT vs. Smt Krishna Devi (2021 (1) TMI 1008), the Hon"ble Delhi High Court has noticed that the reasoning given by the AO to disbelieve the capital gains declared by the assessee, viz., astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures. Accordingly, the Hon"ble Delhi High Court affirmed the decision rendered by ITAT in deleting the addition of capital gains.

13. Accordingly, in the facts and circumstances of the case, we are of the view that the decisions rendered by the jurisdictional Hon"ble Bombay High Court in the cases cited above shall apply to the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee.

14. Accordingly, we hold that the long term capital gains declared by the assessee cannot be assessed as unexplained cash credit u/s 68 of the Act. Accordingly, we confirm the order passed by Ld CIT(A)."

8. In view of the aforesaid circumstances and respectfully following the findings of the coordinate bench and considering the various judicial precedents as discussed in the decision of the ITAT as referred above, we set aside the order of the Id. CIT(A) and direct the AO to allow the claim of short term capital loss.

9. This ground 1 & 2 of appeal of the assessee are allowed.

Ground No. 3: Adhoc addition of Rs.6,48,640/ being commission @ 3% of bogus share transactions:

10. During the course of assessment on estimated basis the AO assumed that assessee has paid commission for obtaining accommodation entries of bogus short term capital loss, therefore, 3% commission on the amount of short term capital loss claimed by the assessee was added to the total income of the assessee at Rs.6,48,640/.

11. Since we have allowed the claim of short term capital loss as the AO has not established with relevant material that assessee has actually obtained bogus entries on short term capital loss, therefore, making disallowance of commission on estimated basis is not justified. Accordingly, this ground of appeal of the assessee is allowed.

Ground No.4: Addition of Rs.1,50,000/- under Section 68 of the Act:

12. During the course of assessment the Assessing Officer noticed from the balance sheet and detailed filed by the assessee that assessee had taken unsecured loan of Rs.1,50,00,000/- from M/s Grafton Merchant Pvt. Ltd. during financial year 2013-14. The assessee has filed the relevant detail called i.e. PAN, address of the lenders along with confirmation, bank statement and income tax return etc. The Assessing Officer has issued notice under Section 133(6) to the above mentioned

party. However, the said party had not made compliance to the notice issued by the Assessing Officer, therefore, the AO asked the assessee to explain why unsecured loan obtained from M/s Grafton Merchant Pvt. Ltd. should not be treated as unexplained. The assessee explained that the said party has sent the following documents through speed post:-

- “1. Covering Letter submitted by M/s. Grafton Merchant Pvt. Ltd.*
- 2. ITR of M/s. Grafton Merchant Pvt. Ltd. for the said assessment year*
- 3. Confirmation of Ledger account for loan provide to our assessee by M/s. Grafton Merchant Pvt. Ltd.*
- 4. Bank Statement reflecting the payment made to our above mentioned assessee.*
- 5. Source of their Funds for providing loan to our captioned assessee.*
- 6. Financial Statements of M/ s. Grafton Merchant Pvt. Ltd. Therefore in view of the same, we would like to state that our assessee company has duly submitted all the relevant documents and supporting and disclosed all the material facts and accordingly has proved the source of all the credits appearing in his books of accounts.*

Further, the assessee company has also duly submitted the details regarding the nature and source of the sum so credited in the books of accounts ie. the assessee had submitted Copies of ITR Acknowledgement, Balance Sheet, Statement of Profit and Loss A/c and Bank statement reflecting the loan taken by our assessee and therefore satisfactorily explained the nature and source of sum so credited in the books of the assessee company and has also been able to offer explanation about the nature and source of sum so credited in the books of the lender company. In view of the same, we request your honor to kindly consider the said funds as explained and accordingly not to add the same to the total income of the assessee company”

Further the assessee has also submitted the same documents before the assessing officer. The assessee has also submitted the details regarding the nature and source of the sum credited in the books of accounts i.e. copies of ITR acknowledgement, balance sheet, statement of profit and loss a/c and bank statement

reflecting the loan taken etc. However, the AO has not agreed with the submission of the assessee stating that no company will provide loan without interest and guarantee, therefore, the AO treated transaction carried out by the assessee with M/s. Grafton Merchant Pvt. Ltd. as bogus and added to the total income of the assessee.

13. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

14. Before us the ld. Counsel submitted that assessing office has neither conducted any inquiry nor brought any material on record to prove that the loan taken by the assessee was not genuine. He further submitted that assessee has obtained the loan from the known party and same was duly repaid by the assessee to the said party.

15. On the other hand, ld. DR supported the order of lower authorities.

16. Heard both the sides and perused the material on record. During the course of assessment proceedings to prove the genuineness of the loan obtained by the assessee, the assessee has submitted the various document i.e. covering letter submitted by the M/s Grafton Merchant Pvt. Ltd., ITR of M/s Grafton Merchant Pvt. Ltd. for the relevant assessment year; confirmation ledger account of loan provided by the M/s Grafton Merchant Pvt. Ltd. bank statement reflecting the payment made to the assessee along with source of funds for providing loans to the assessee also the financial statement of M/s Grafton Merchant Pvt. Ltd. The

assessee also explained that it was a friendly loan obtained from the closely known people but the AO has not brought any contrary material on record to disprove the relevant supporting document furnished in support of the loan transaction as discussed supra in this order. We consider that decision of Ld. CIT(A) in sustaining the addition made by the AO u/s 68 of the Act is not justified therefore grand no. 4 of appeal of the assessee is allowed.

17. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09.01.2025

Sd/-
(Sunil Kumar Singh)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 09.01.2025
Rohit: PS

आदेश की प्रतिलिपि ँ ग्रेषित/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.