

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

**BEFORE SHRIAMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.2941/Mum/2024
(Assessment Year : 2014-15)**

Mukesh P Shah, HUF Prop of M/s Kumar Pharma 503, Ratan Galaxie, Jawaharlal Nehru Road, Mulund (West), Mumbai-400 080 PAN: AAAHM5107Q	vs	Income-tax Officer, Ward 17(2)(4) Room No.123-B/H, 1 st Floor, Aayakar Bhavan, M.K. Marg Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Shashank Mehta
Respondent by : Ms. Monika H. Pande,(SR AR)

Date of hearing : 19/02/2025
Date of pronouncement : 24/02/2025

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax (Appeal)-28, Mumbai[for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2014-15, date of order 05.03.2019. The impugned order was emanated from the order of the Ld. Income-tax Officer, Ward-17(2)(4), Mumbai (in short, 'the A.O.') passed under section 143(3) of the Act, date of order 27/12/2016.

2. The assessee has taken the following grounds of appeal:-

“1. In the facts and circumstances of the case and in Law the learned CIT(A) erred in not making a conclusive decision while directing the Assessing Officer to treat the profit from sale of shares of SRK Industries Ltd under the head income from business in case it is held that the provisions of sec.68 are not applicable.

2. In the facts and circumstances of the case and in law the learned CIT(A) erred ignoring the basic facts in the written submissions made before him and without bringing any material on record to show that the transaction of the appellant was collusive to conclude that the transaction of the appellant is collusive.

3. In the facts and circumstances of the case and in law the learned CIT(A) erred ignoring the fact that the share market does not behave rationally and the volatility in the market is caused by the fancies of the investors.

4. In the facts and circumstances of the case and in law the learned CIT(A) erred in passing the orders relying merely on presumptions, suspicions and surmises in respect of alleged penny stocks disregarding direct evidences placed on record and furnished by assessee.

5. The appellant craves leave to add to, amend, alter any of the above grounds of appeal”

3. The brief facts of the case are that the assessee filed the return of income U/s 139 of the Act. During the impugned assessment year, the assessee claimed long term capital gain (LTCG) on sale of shares of SRK Industries Ltd (in brevity, 'SRK') and claimed exemption on LTCG under section 10(38) of the Act amount to Rs.76,58,526/-. The assessee purchased the share of “The Transcend Commerce Ltd” in 10,000 number of share on-line with value amount to Rs.1 lakh on dated 06/10/2012. The said company was merged with SRK and after splitting it came to 44,400 shares. The assessee sold the shares in staggered manner after holding of 12 months and total sale value was amount to Rs.79,42,197/- after deducting the cost of purchase, LTCG came to Rs.77,19,911/-, which was claimed as exempt

under section 10(38) of the Act. The Ld.AO treated the sale consideration of the LTCG as bogus on ground that said company does not deserve such a huge hike of sale price. Accordingly, he disbelieved the market price. The entire sale was made through Bombay Stock Exchange (BSE) and the purchase and sale transaction was made through banking channel as also that the shares are delivered in the demat during the purchase and sale. The assessee has completed this transaction through the broker, M/s Religare Securities Ltd. An investigation was conducted by the Director of Investigation, Kolkata and the cash trail was duly verified and during the course of search and survey actions, the investigation Wing of Kolkata has also covered the regional office of M/s Religare Securities Ltd where the assessee is registered and that this share broker is also involved in registering bogus clients, who have not at all any existence. The Ld.AO also alleged that this share price was artificially rigged and manipulated beyond its normal pricing with connivance of share brokers with guidance of various entry operators wherein the illegal money was converted in legal money in the form of LTCG. Accordingly, the Ld.AO rejected the exemption under section 10(38) related to LTCG and entire consideration was treated as unexplained cash credit under section 68 which comes to total amount of Rs.77,89,120/-. Further, the Ld.AO calculated 3% of the sale proceeds of Rs.77,89,120/- which comes to Rs.2,32,565/- which is also added to the total income of the assessee under section 69C of the Act. The aggrieved assessee filed appeal before the Ld. CIT(A). But the Ld.CIT(A), after considering the submission of the assessee rejected the appeal of the assessee and upheld the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld.AR filed a written submission containing pages 1 – 41 which is kept in the record. The Ld.AR argued that in assessment proceedings, the assessee submitted the details of purchase & sales i.e. purchased the shares through banking channels, after the split, the assessee was allotted 44,400 share, part of the shares were duly sold through BSE and the payment was also received through banking channel. The details of transactions, contract note, demat account, bank statements were duly submitted before the revenue authorities which were also annexed in the paper book of the assessee which is reproduced as below: -

1.	<i>Capital Gain Working for the FY 2013-14</i>	1-2
2.	<i>Copy of Purchase Invoice of eq.shares of Transcend Commerce Limited</i>	3
3.	<i>Copy of Bank Statement reflecting payment of purchase price of shares</i>	4-5
4.	<i>Holding statement as on 31.03.2013 reflecting Eq.shares of Transcend Commerce Limited</i>	6-11
5.	<i>Copy of BSE announcements in case of amalgamation of Transcend Commerce Limited</i>	12
6.	<i>Holding statement as on 08.07.2013 reflecting Eq.share of S.R.K. Industries Ltd.</i>	13-14
7.	<i>Copy of letter for intimation of Sub-division of shares of S.R.K. Industries Ltd</i>	15
8.	<i>Copy of Contract Notes for Sale of Shares of S R K Industries Ltd</i>	16-19
9.	<i>Copy of Bank Statement reflecting receipts from sale proceeds</i>	20-22

5. The Ld.AR further stated that the assessee has not at all been involved in price rigging and the documents, which are duly filed by the assessee before the revenue authorities has never been rejected. On the other hand, he also stated that the entire assessment was done based on the investigation report of the Investigation Unit of Income-tax Department of Kolkata. The Ld.AO has not made any separate investigation related to the transactions of assessee. The assessee is already dealing with different shares and during alleged year, the assessee earned

loss and gain on sale of shares. The details of the sale of shares is annexed in APB page 26, which is reproduced as below: -

MUKESH P SHAH H.U.F.

Exh.A

STATEMENT OF LONG TERM CAPITALGAIN ON SALE OF SHARES FOR FY – 2013-14										
Sr.No	Date	Stock	Qty	RATE (Rs.)	TRADE VALUE (Rs.)	BROKEWRAG E,STT & Other Exps (Rs.)	NET SALES (Rs.)	PURCHASE DATE	PURCHASE COST (Rs.)	GAIN / LOSS
1	30.1013	Lasen & Toubro Ltd	120	968.90	116,268.00	467.64	115,800.36	6.6.2004	30,500.00	85,300.36
2	11.12.13	SRK Industries FV 5	8000	195.05	1,560,400.00	6,201.76	1,554,198.24	25.5.2012	18,017.60	1,536,180.64
3	11.12.13	Steel Exchange	400	46.13	18,452.00	65.95	18,386.05	12.6.2004	9,600.00	8,786.05
4	11.12.13	Ashapura Mine	200	62.60	12,520.00	44.52	12,475.48	4.5.2005	15,400.00	(2,924.52)
5	11.12.13	Dena Bank	50	55.45	2,772.50	40.23	2,732.27	7.4.2006	3,050.00	(3,174.43)
6	11.12.13	Hindustan Motor	250	7.70	1,925.00	14.43	1,910.57	10.6.2008	5,625.00	(3714.43)
7	11.12.13	J K Lakshmi Cement	12	77.20	926.40	3.21	923.19	4.12.2003	1,008.00	(84.81)
8.	11.12.13	JSW Steel	4	941.00	3764.00	13.16	3,750.84	3.10.2004	12,005.00	(8,254.16)
9.	11.12.13	Mirc Electronics	1000	5.60	5,600.00	55.60	5,544.40	17.6.2006	34,000.00	(28,455.60)
10.	11.12.13	Persistern System	20	880.80	17,616.00	61.62	17,554.38	7.4.2010	6,200.00	121,354.38
11.	11.12.13	Prism Cement	100	27.95	2,795.00	9.80	2,785	4.9.2007	2,300.00	485
12.	11.12.13	Sunflag Iron	125	15.00	1,875.00	65.98	1,809.02	9.10.2005	2,600.00	(790.98)
13	13.01.14	SRK Industries FV 5	1200	173.80	2,085,600.00	8,172.21	2,077,427.79	25.5.2012	27,026.40	2,050,401.39
14	13.01.14	SRK Industries FV 5	2440	169.80	4,143,120.00	16,220.76	4,126,899.24	25.5.2012	54,953.68	4,071,945.56

6. The Ld.AR placed that the issue is squarely covered by the order of the co-ordinate bench of ITAT, Mumbai in the case of **Dipika Jitesh Palrecha in ITA No.4895/Mum/2024**, date of order **26/11/2024**. The relevant paragraph No.5 is duly reproduced as below:-

“5. The Ld.AR submitted that the assessee initially purchased shares of M/s.Transcend Commerce Ltd., from off market in physical mode by paying purchase consideration through banking channel on 24-05-2012. Immediately, the same was dematerialized on 30-06-2012. Subsequently, the above said company got merged with M/s.SRK Industries Ltd., and consequent thereto, the assessee received 11,100 shares in the new company in lieu of 5000 shares held in the earlier company. In support of these facts, the Ld.AR invited our attention to

the allotment letter and the demat statement placed at pages 6 & 7 of the paper book. Later on, entire shares were sold in the stock exchange platform on 08-10-2013 and 09-10-2013 for an aggregate consideration of Rs.38,45,045/- and the sale consideration was also received through banking channels. He submitted that the assessee has furnished all the required documents to prove the factum of purchase and sale of shares. He submitted that the AO did not find any deficiency/defect in the documents so furnished by the assessee. He submitted that the assessee is an ordinary investor in shares and it was not shown that the assessee was a part of the group, which was involved in the alleged prices rigging of the shares. Accordingly, he submitted that the tax authorities are not justified in disbelieving the transactions of shares carried on by the assessee. In support of his submission, he placed reliance on various case laws.”

7. He respectfully relied on the order of the co-ordinate bench of ITAT in the case of **Chirag Tejprakash Dangi vs ITO, Ward 26(1)(5) in ITA No. 3256/Mum/2022**, date of order **20/02/2024** where the Bench has taken the view related to the LTCG in favour of the assessee, whether all the transactions are made through banking channel and the relevant documents are duly filed before the revenue authorities were not considered as a bogus transaction.

8. The Ld.DR argued that the price was jacked up to Rs.195 from less than Rs.1 in 18 months. She further stated that the said broker of the assessee, M/s Religare Securities Ltd was also involved in registering bogus client and price rigging. The Kolkata Investigation Directorate has undertaken investigation into 84 pennystocks and accordingly, the modus operandi was same with all the companies. It is revealed from the said list the “SRK” was also manipulated and rigged the price and sold the shares to the beneficiaries, who earned the LTCG by claiming deduction under section 10(38) of the Act. The Ld.DR relied on the order

of the revenue authorities. The relevant para 7.1 of the impugned appeal order is reproduced as below:-

“7.1. The said proposition has been upheld by the Hon' Bombay High Court in the case of Bimalchand Jain (89 taxmann.com 196) (2018) wherein under the similar facts and circumstances the Hon' Court has upheld the taxability of profit on penny stock as income from business.”

9. We heard the rival submission and considered the documents available in the record. We find that the assessee has submitted all the relevant documents related to the transactions of LTCG. The entire transaction of sale was through BSE and the payment was received through banking channel. We notice that the investigation report prepared by the Investigation Wing, Kolkata is a disclosed report with modus adopted for manipulation of prices of certain shares and generation of bogus capital gains. We note that the Ld.AO has placed reliance on the said report without bringing any material on record to show that the transactions entered into by the assessee were found to be a bogus and manipulated transaction. It was not proved that the assessee has carried out this transaction of purchase and sale of shares in connivances with the people who were in the alleged rigging of price. Finding the report of the SEBI, we do not find any such adverse report against the assessee. In relation to transaction of SRK, the co-ordinate bench of ITAT, Mumbai Bench has taken a view in favour of the assessee in case of **Dipika Jitesh Palrecha** (supra). The revenue relied on the order of Hon'ble Bombay High Court in the case of **Bimalchand Jain** (2018) 89 taxmann.com 196; but the order is duly distinguishable as the Ld.AO made the verification himself and after his verification, it is found that the transaction was bogus. But, in the instant case, the Ld.AO had not made any such verification, but

only relied on the Investigation report of the Kolkata Investigation Wing. Accordingly, in view of the facts and circumstances of the instant case, we are of the view that the decision rendered by the jurisdictional High Court in case of **PCIT vs Ziauddin A Siddiqui ITA No.2012 of 2017** date of order **04/03/2022** shall apply to the present case, since the Ld.AO has not established that the assessee was involved in price rigging and further, the Ld.AO did not find fault with any of the documents furnished by the assessee. The Ld.AO has assessed the amount as unexplained cash credit under section 68 of the Act. It is pertinent to note that the purchase of shares made in earlier year was accepted by the revenue. The sale of share has taken place in on-line platform of BSE and the consideration has been received through stock broker through banking channel. So these transactions cannot be taken as unexplained cash credit under section 68 of the Act. Related to payment of brokerage, no such evidence was established by the Ld.AO, as to whether the assessee has paid the amount to the broker or not. So the addition under section 69 is deleted. Accordingly, we set aside the impugned appeal order and consequently, the additions amount to Rs.77,89,120 and Rs.2,32,565/- are deleted.

10. In the result, the appeal of the assessee bearing **ITA No.2941/Mum/2019** is allowed.

Order pronounced in the open court on 24th day of February, 2025.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 24/02/2025

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai