

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 3981/Mum/2023  
Assessment Year : 2015-16

Atul B. Chauhan (HUF), C-403, Satguru Darshan, Liberty Garden Cross Road, Malad West, Mumbai PAN : AAHHA5914L	vs.	Income Tax Officer-30(1)(1), 5 <sup>th</sup> Floor, Kautilya Bhawan, C-41 to C-43, G Block, BKC, Bandra (East), Mumbai
(Appellant)		(Respondent)

For Assessee :	Shri Nishit Gandhi
For Revenue :	Shri Ram Krishn Kedia, Sr.DR

Date of Hearing :	12-02-2025
Date of Pronouncement :	24-02-2025

**ORDER**

**PER B.R. BASKARAN, A.M :**

The assessee has filed this appeal challenging the order dt.11-09-2023 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2015-16. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the addition of Long Term Capital Gain of Rs.66,69,936/- as ‘un-explained money’ u/s. 68 of the Income Tax Act, 1961 (‘the Act’).

2. The facts relating to the case are stated in brief. The assessee purchased 12,000 shares of HPC Bio Sciences from Bombay Stock Exchange on 02-04-2013 through an authorized broker. The shares

were received by the assessee in his DMAT account. Subsequently, the assessee sold all the shares through Stock Exchange in April, 2014 and declared Long Term Capital Gain of Rs.66,69,936/-. The assessee claimed the same as exempt u/s.10(38) of the Act. The AO noticed that the Investigation Directorate of Kolkata had conducted investigation into 84 shares, which were identified as 'penny stock' and the above said company was identified as one of the 'penny stocks'. Hence, the AO took the view that the Long Term Capital Gain declared by the assessee is bogus in nature. Accordingly, the AO issued summons u/s. 131 of the Act to the assessee and recorded the statement of oath from him. The assessee has also explained before the AO that the reasons for making investment in the above said company. Ultimately, the AO did not find any adverse features in the statement recorded by him from the assessee. The assessee has also invested in the shares of other companies also. However, the AO placed reliance on the report of the Investigation report and accordingly took the view that the long term capital gains declared by the assessee is bogus in nature. Accordingly, the AO assessed the Long Term Capital Gain of Rs. 66,69,936/- as 'un-explained money' u/s. 68 of the Act. The Ld.CIT(A) also confirmed the same.

3. The Learned AR submitted that the AO has placed his reliance entirely on the report given by the investigation wing and he did not disprove any of the evidences furnished by the assessee to prove the factum of purchase and sale of shares. He submitted that the shares were purchased and sold through stock exchange. Further, the payment was made/received through banking channel in respect of purchase/sale of shares. Further, the shares have entered into/exited from the Demat account of the assessee upon purchase/sale. Further, it is not an isolated case of transaction of purchase of shares entered by the assessee, i.e., the assessee is a regular investor and is holding shares of other companies. Accordingly, he contended that the AO could

not have doubted the genuineness of the purchase and sale of shares. In support of his contentions, the learned AR placed his reliance on the decision rendered by Hon'ble Bombay High Court in the case of PCIT Vs. Indravadan Jain, HUF (Income Tax Appeal No. 454 of 2018 dated 12-07-2023).

4. The Ld.DR, on the contrary, supported the orders passed by the tax authorities.

5. We heard rival contentions and perused the record. We notice that the assessing officer 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 gains 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. The Ld A.R also submitted that the regulator of stock market SEBI has not conducted any enquiry against the assessee.

6. We notice that the assessee has furnished reply to the notice issued by the AO and the AO could not find any adverse features from the said reply. The assessee has duly responded to the summons issued by the AO and no adverse feature was found in the statement recorded from the assessee. Further, the AO also could not disprove the share transactions by bringing any material on record. We also notice that the assessee has -

- (a) purchased and sold these shares by paying consideration through banking channels and through stock exchange platform.
- (b) the shares were received and issued through the Demat account of the assessee.

We notice that the assessee is a regular investor in shares. Further, the AO 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. We notice that the shares were purchase in an earlier year and the said purchase has not been suspected by the AO. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

7. We noticed earlier that the AO did not establish any link between the assessee and the reports of investigation wing. At this stage, we may refer to the decision rendered by Hon'ble Supreme Court in the case of *Adamine Construction P Ltd* (99 taxman 45), wherein, while dismissing the appeal of Revenue, the Hon'ble Supreme Court has referred to the following observations made by Hon'ble Delhi High Court:-

*“What is evident is that the AO went by only the report received and did not make the necessary 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 had discharged the onus initially cast upon it by providing the basic details which were not suitably enquired into by the AO.”*

Further, the facts available in the present case are that the shares were purchased and sold through the stock exchange platform. In the case of *PCIT vs. Indravadan Jain HUF* (ITA No.454 of 2018 dated 12<sup>th</sup> July, 2023), 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.”*

The facts available in the instant case are similar to the above said case. Accordingly, following above said decision, we hold that, in the facts and circumstances of the instant case, there is no reason to suspect the genuineness of purchase and sale of shares of above said company. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and direct the AO to delete the addition of sale proceeds of shares made.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24-02-2025

Sd/-  
[ANIKESH BANERJEE]  
JUDICIAL MEMBER

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Mumbai, Dated: 24-02-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai