

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.524, 525 & 526/Nag./2024
(Assessment Year : 2014-15, 2015-16 & 2016-17)

Dy. Commissioner of Income Tax
Circle-2, Nagpur

..... Appellant

v/s

Naresh Laxminarayan Grover
245-H, Rajlaxmi Marg
Near GPO, Nagpur 440 001
PAN - ADNPG0426G

..... Respondent

Assessee by : Shri Aryan Grover
Revenue by : Shri Sandipkumar Salunke

Date of Hearing - 12/02/2025

Date of Order - 21/03/2025

ORDER

PER K.M. ROY, A.M.

Instant appeals by the Department are emanating from the impugned order dated 30/07/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2014-15, 2015-16 and 2016-17.

For the assessment year 2014-15, the Revenue has raised following grounds of appeal:-

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the short term capital gains earned from scrips Iris Mediaworks Limited amounting to Rs 1,09,21,799/- and Channel Guide (which changed its name to Iris Mediaworks Limited) amounting to Rs 37,43,902/- as genuine without considering the fact that the Ministry of Corporate Affairs vide letter F.No.03/73/2017-CL-II dated June 2017 to SEBI was categorized as a shell company.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the short term capital gains earned from scrip of Pro Fin Capital Services Ltd. amounting to Rs 1,64,68,624/- as genuine, when SEBI had imposed fine on the assessee for disclosure lapses with regard to trading in the shares of Pro Fin Capital Services Ltd. and the observation of the Assessing Officer that, what is apparent cannot be considered as real in the case of the assessee as the assessee had exhibited behavior of associating himself with companies which are engaged in fraudulent booking of LTCG/Loss and STCG.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in upholding that the Short Term Capital Gains of the assessee were real and genuine without analyzing the incriminating circumstances like the nature of stocks in which the transactions were undertaken by the assessee, even when, the AO in the assessment order had held that the assessee tends to associate himself with companies which are engaged in fraudulent booking of LTCG/Loss and STCG, and, therefore, whether what appears to be apparent is real in the case of the assessee, is to be determined, only after analyzing the incriminating circumstances as held by Hon'ble Apex Court in Sumati Dayal vs CIT (214 ITR 801).

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in holding that the Short-Term Capital Gains of the assessee were real and genuine without analyzing the incriminating circumstances given the dismissal of SLP by Hon'ble Apex Court in SLP (C) No. 21636/2024 in the case of Manoj Jain (HUF) against the order of Hon'ble High Court of Kolkatta in GA No. 1/2024 in which the Hon'ble High Court held that no substantial question of law arises in the order passed by ITAT, Kolkata in ITA No. 1782/Kol/2018, and the the Hon'ble ITAT in the aforesaid order relying upon the judgement of Hon'ble Kolkata High Court in the case of Swati Bajaj& Others where it was held that the transactions of earning long term capital gains of penny stock companies as bogus based on the test of preponderance of probability gathered from various circumstances like volume from trade, steep rise in price of equity shares not commensurate with the financial of the alleged penny stock companies etc. and dismissed the appeal of Manoj Jain (HUF).

5. The appellant craves leave to add, amend, later vary and/or withdrawn any or all the above grounds of appeal."

For the assessment year 2015-16, the assessee raised following grounds of appeal:-

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the Long term capital gains earned from scrip of Pro Fin Capital Services Ltd. amounting to Rs 15,57,347/- as genuine, when SEBI had imposed fine on the assessee for disclosure lapses with regard to trading in the shares of Pro Fin Capital Services Ltd. and the observation of the Assessing Officer that, what is apparent cannot be considered as real in

the case of the assessee as the assessee had exhibited behavior of associating himself with companies which are engaged in fraudulent booking of LTCG/Loss and STCG.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the short-term capital loss from scrip Trinity Tradelink Ltd. amounting to Rs 2,25,856/- as genuine without considering the fact that the Ministry of Corporate Affairs vide letter F.No.03/73/2017-CL-II dated June 2017 to SEBI was categorized as a shell company

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in upholding that the Long Term Capital Gain and Short Term Capital Loss of the assessee were real and genuine without analyzing the incriminating circumstances like the nature of stocks in which the transactions were undertaken by the assessee, even when, the AO in the assessment order had held that the assessee tends to associate himself with companies which are engaged in fraudulent booking of LTCG/Loss and STCG, and, therefore, whether what appears to be apparent is real in the case of the assessee, is to be determined, only after analyzing the incriminating circumstances as held by Hon'ble Apex Court in Sumati Dayal vs CIT (214 ITR 801).

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in holding that the Long-Term Capital Gain and Short Term Capital Loss of the assessee were real and genuine without analyzing the incriminating circumstances given the dismissal of SLP by Hon'ble Apex Court in SLP (C) No. 21636/2024 in the case of Manoj Jain (HUF) against the order of Hon'ble High Court of Kolkata in GA No. 1/2024 in which the Hon'ble High Court held that no substantial question of law arises in the order passed by ITAT, Kolkata in ITA No. 1782/Kol/2018.0 and the Hon'ble ITAT in the aforesaid order relying upon the judgement of Hon'ble Kolkata High Court in the case of Swati Bajaj& Others where it was held that the transactions of earning long term capital gains of penny stock companies as bogus based on the test of preponderance of probability gathered from various circumstances like volume from trade, steep rise in price of equity shares not commensurate with the financial of the alleged penny stock companies etc. and dismissed the appeal of Manoj Jain (HUF).

5. The appellant craves leave to add, amend, later vary and/or withdrawn any or all the above grounds of appeal."

For the assessment year 2016–17, the assessee raised following grounds of appeal:–

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the Long term capital gains earned from scrip of Pro Fin Capital Services Ltd. amounting to Rs 1,14,27,942/- as genuine, when SEBI had imposed fine on the assessee for disclosure lapses with regard to trading in the shares of Pro Fin Capital Services Ltd. and the

observation of the Assessing Officer that what is apparent cannot be considered as real in the case of the assessee as the assessee had exhibited behavior of associating himself with companies which are engaged in fraudulent booking of LTCG/Loss and STCG.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in upholding that the Long Term Capital Gains of the assessee were real and genuine without analyzing the incriminating circumstances like the nature of stocks in which the transactions were undertaken by the assessee, even when, the AO in the assessment order had held that the assessee tends to associate himself with companies which are engaged in fraudulent booking of LTCG/Loss and STCG, and, therefore, whether what appears to be apparent is real in the case of the assessee, is to be determined, only after analyzing the incriminating circumstances as held by Hon'ble Apex Court in Sumati Dayal vs CIT (214 ITR 801).

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in holding that the Long-Term Capital Gains of the assessee were real and genuine without analyzing the incriminating circumstances given the dismissal of SLP by Hon'ble Apex Court in SLP (C) No. 21636/2024 in the case of Manoj Jain (HUF) against the order of Hon'ble High Court of Kolkata in GA No. 1/2024 in which the Hon'ble High Court held that no substantial question of law arises in the order passed by ITAT, Kolkata in ITA No. 1782/Kol/2018, and the Hon'ble ITAT in the aforesaid order relying upon the judgement of Hon'ble Kolkata High Court in the case of Swati Bajaj & Others where it was held that the transactions of earning long term capital gains of penny stock companies as bogus based on the test of preponderance of probability gathered from various circumstances like volume from trade, steep rise in price of equity shares not commensurate with the financial of the alleged penny stock companies etc. and dismissed the appeal of Manoj Jain (HUF).

4. The appellant craves leave to add, amend, later vary and/or withdrawn any or all the above grounds of appeal."

2. Since the matter in these appeals are identical, ITA no.524/Nag./2024, for the assessment year 2014-15 is taken as lead case to decide and adjudicate in the present dispute, the decision of which shall mutatis mutandis apply to the remaining appeals as well.

ITA no.524/Nag./2024
Revenue's Appeal – A.Y. 2014-15

3. The facts of the case are that the genuineness of sale and purchase of the shares were examined by the Assessing Officer during original

assessment proceedings. The assessee submitted all relevant details before the Assessing Officer. The assessee was of the view that the action of the Assessing Officer in re-opening the assessment amounts to '*mere change of opinion*'. Further, reasons for re-opening do not indicate that the Assessing Officer was in possession of any fresh or new material. Thus, according to the assessee, the re-opening is, therefore, illegal.

4. The Assessing Officer added back ₹ 3,11,34,325 under section 68 of the Income Tax Act, 1961 ("*the Act*") holding short term capital gain considered to be not genuine.

5. During first appeal proceedings, the learned CIT(A) granted relief by holding as follows:-

"5.1.2. Thus, on perusal of submissions made by the Appellant and the assessment order, following undisputed facts emerge:

- *The Appellant has bought and sold these 03 scrips on BSE.*
- *These shares have been delivered in the DMAT account of the Appellant.*
- *The Appellant has transacted in these shares through leading brokers of the country.*
- *Transfer of money has been done through banking channel.*
- *There is no evidence on records nor any finding by the AO in the assessment order that the brokers through whom the Appellant has carried out share transactions are involved in the price rigging of these shares.*
- *There is no evidence on records nor any finding by the AO in the assessment order that the Appellant is involved in the price rigging of these shares.*

In this background, I find that the "Appellant has rightly placed reliance on decisions of Hon'ble Jurisdictional High Court of Bombay, wherein, appreciating the above facts, he Hon'ble entry and that the Court has held that the assessee has not indulged into taking any accommodation entry and that the gain made through such share transactions are genuine.

In the case of Principal Commissioner of Income Tax 3 Mumbai vs Ziauddin A Siddique, ITA No,2012 of 2017, dated 04/03/2022, the Hon'ble Bombay High Court has, thus, held that:

"2. We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged

penny stock of shares of Ramkrishna Fincap Ltd. ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.

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

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

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

6. The appeal is devoid of merits and it is dismissed with no order as to costs."

Similarly, Hon'ble Bombay High Court in the case *Principal Commissioner of Income Tax-31, Mumbai vs Indravadan Jain, HUF*, ITA No. 454 OF 2018, dated 12/07/2023, has held:

"4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 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 Demat instructions slip 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.

5. We also find no infirmity in the order passed by the ITAT and no substantial questions of law as proposed in the appeal arises."

I further find that the Appellant has also placed reliance on various decisions of Hon'ble ITAT Bombay, wherein, on identical facts relief has been allowed to the assessee. In the case of Mrs Pallavi Mayur Gandhi vs ITO, ITA No.2251/Mum/2022 dated 19/04/2023, the Hon'ble Tribunal has, thus, held as under:

"13. We heard the rival contentions assessee has furnished all the details in support of purchase and sale of shares of Mis Shreenath Commercial. & Finance Ltd and the said and the said fact has been recorded by the AQ in paragraph 2.5 of the assessment order. We noticed that the assessee has purchased the shares through preferential allotment and the said shares had lock in period of one year. The assessee has held 15,00,000 shares in the above said company and the assessee has sold 11,20,000 shares during the year under consideration almost after one year after expiry of lock in period. We notice that the assessing officer has not found fault with any of the documents furnished by the assessee in support of purchase and sale of shares. There is also no allegation made that the assessee was part of ring which indulged in the alleged price rigging. The allegation of the AO is that the assessee has availed accommodation entries by way of long term capital gains. We notice that an identical case of allegations that the assessee has availed accommodation entries for bogus capital gains was examined by the Hon'ble jurisdictional Bombay High Court in the case of Shyam Power (supra). The decision rendered by Hon'ble Bombay High Court in the above said case is extracted below:-

"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 use 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. The Hon'ble Jurisdictional High Court has considered an identical issue in yet another case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022) and and relevant discussions ARD 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."

15. We notice that the identical allegation of non-genuine long term capital gains generated on sale of M/s Shreenath Commercial & Finance Ltd was examined by the co-ordinate bench in the case of Mr Ripu Sudan Kundra vs. ITO (ITA No.2792/Mum/2018 dated 05-10-2021), wherein it was held as under:-

"We have given our anxious thought and consideration to the matter in hand. The AO has disallowed the claim of the assessee based on analysis of the information received from Directorate of Investigation as a result of enquires undertaken by the officers of the Directorate. Based on the said information received, the AO has observed a pattern in the trading in scripts of those companies that has resulted in the claim of short-term capital loss to the assessee. e. Such companies were seen to have little financial credentials, no profitability and no apparent explanation for in prices followed by a steep fall in price of shares. Besides, abrupt rise in price there are statements of brokers/entry providers who have accepted that they were involved in the scam of price rigging to facilitate accommodation entries to beneficiaries who have routed their unaccounted cash into the books through circuitous means. However, at the same time the assessee has produced documents to substantiate the genuineness of the transactions carried out through banking channels, through the medium of portfolio management whereby there is no contact between the buyer and the seller. The fact remains that there is direct evidence placed on record by the assessee to support the genuineness of the impugned transactions such as contract notes, share certificates, corroborative evidence indicating purchase/ sale through registered broker as juxtaposed against the findings of the AO based on the general report from Investigation and the modus operandi adopted by unscrupulous entry providers. There is no denying that there is no assessee-specific material on record of the AO to pin-point that the assessee has entered into an unholy nexus with entry providers so as to stage manage accommodation entry of STCL. The statements relied on by the AO in the nature of admissions are bereft of corroborative material to implicate the assessee herein in such scam. At the same time the material furnished by assessee to substantiate its claim remains unchallenged and uncontroverted. The purchases were neither off- market nor through preferential allotment. Besides, no copy of any report of information received was supplied to the assessee. The assessee was not confronted with any statement or material allegedly detrimental to the assessee arising or culled out of the Investigation report. Thus, the fact remains that the findings of the lower authorities are not based on evidence but on generalizations and probabilities. The AO could not place anything on record, maybe through a process of his own enquiry, to decisively prove that assessee has obtained bogus STCL through his connivance with entry operators / exit providers. No such enquiry or investigation is seen carried by the AO other than borrowing information to be used against the assessee from the general report of Investigation Directorate. The claim of the assessee appears to have been rejected more on the basis of presumption rather than evidence. The fact also remains that copies of statements used against the assessee were not provided to the assessee. It certainly has incapacitated the assessee from effectively rebutting the same and also from seeking an opportunity for cross examination. When copies of statements relied upon were not provided, when there was no opportunity to cross examine those witnesses whose statements were relied upon by the AO to conclude that the transaction in question was part of penny scam, we have no hesitation in holding that the lower authorities erred in disallowing the claim stating that the assessee failed to provide cogent and convincing reply to the allegations raised. We observe from the record that in identical situation the Coordinate Bench of ITAT in ITA Nos. 4843 & 1228/Mum/2018 for Assessment Year 2013-14 & 2014-15 in the case of Ramprasad Agrawal Vrs. ITO (reported in [2018] 100 taxman.com 172 - Mum Trib) and Kamla Devi S. Doshi vrs. ITO reported in 88 taxmann.com 773 (Mum-Trib) decided the issue in favour of the assessee on merits. From the above decision, it is trite that denial of such crucial rights is a fatal flaw that renders the assessment order a nullity. An assessment purely based on suspicion, surmises and conjectures without any tangible evidence on record against the assessee of any connivance or collusion is unsustainable in law."

16. In the instant case also, we noticed that the AO has simply relied upon the report of the investigation department and held that the long term capital gains declared by the assessee are not genuine. No other material was brought on record by the AO to prove that the assessee has indeed availed only accommodation entries. We noticed that the assessee has furnished all documents relating to purchase and sale of securities. The shares have entered and exited his demat account. The purchase and sale transactions have been routed through the bank accounts of the assessee. All these documentary evidences produced by the assessee have not been disproved. We also notice that the assessee has asked for opportunity of cross examination of the parties, whose statements were relied upon by the AO, but same was not provided. Hence the AO could not have placed reliance on those statements. On the conspectus of the matter, we are of the view that the decision rendered by the jurisdictional Hon'ble Bombay High Court in the above said case of Shyam R Pawar (supra) and Ziauddin A Siddique (supra) are squarely applicable to the facts of the present case. Accordingly, we set the order passed by Ld CIT(A) on the grounds raised on merits and direct the AO to delete the addition of long term capital gains.

17. The assessee has also raised a ground challenging the validity of reopening of assessment. Since we have deleted the addition on merits, this legal ground becomes academic in nature and accordingly we leave the same open and decline to adjudicate the same.

18. In the result, the appeal filed by the assessee is allowed."

Thus, in view of the facts discussed hereinabove and respectfully following the decisions of Hon'ble Jurisdictional Bombay High Court in the cases Ziauddin A Siddique (supra) and Indravadan Jain HUF (supra), I hold that the short term capital gain of Rs.3,11,34,325/- earned by the Appellant is genuine. Accordingly, I hold that the AO has erred in disregarding this transaction of STCG and adding the amount of Rs.3,11,34,325/- u/s 68 of the Act. Ground is, thus, allowed."

6. Before us, the learned Departmental Representative relied on the assessment order passed by the Assessing Officer and prayed that the impugned order passed by the learned CIT(A) be reversed. He submitted that the transactions are colourable device and corporate veil may be lifted.

7. Per-contra, the learned Authorised Representative for the assessee submitted a detailed synopsis and prayed that the impugned order passed by the learned CIT(A) be upheld. He meticulously took us through the

submissions in the Paper Book and harped upon the fact that the clean cheat is extended by Security Exchange Board of India (SEBI). The synopsis is reproduced below for reference:-

"Most Respectfully Showeth,

Response to the Grounds of Appeal filed by the Appellant -

GROUND 1-

A. "Whether on the facts and circumstances of the case, the Id. CIT(A) was correct in allowing the short term capital gain of Rs. 3,11,34,325/earned by the assessee as genuine without considering the fact that Ministry of Corporate Affairs published list of companies declared as shell companies and category marked against Iris Media Works Ltd. was SFIC i.e. Serious Fraud investigation Category and against Trinity Tradelink Limited was ASRC."

1. Based on the information received from Ministry of Corporate Affairs, SEBI has undertaken detailed investigation in Iris Media Works Ltd. Under Sections 11(1), 11(4), 11(4A), 11A, 118(1), 11B(2) read with Section 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Sections 12A(1), 12A(2) read with Section 23E and 23H of Securities Contracts (Regulation) Act, 1956 read with Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005. A copy of the Final Order of SEBI dated November 17, 2021 is attached as Annexure-A.

2. As part of its adjudication of Iris Media Works Ltd, SEBI had issued notices to the company, all its directors, and its auditors. Further, the Bombay Stock Exchange had ordered a detailed Forensic Audit Report of the company's financial statements for F.Y. 2015-16 and F.Y. 2016-17. It must be noted that the investigation done into Iris Media Works Ltd. was only for F.Y. 2015-16 and F.Y. 2016-17 and whereas assessee had invested into the company from 23/09/2013 to 27/03/2014 - hence all in F.Y. 2013-14.

3. Thus, the list issued by MCA placing Iris Media Works Ltd. in SFIO category - is only pertaining to its operations in F.Y. 2015-16 and F.Y. 2016-17-the period for which Forensic Audit Report was done. And whereas, the assessee was not invested in the company at that time. Thus, this contention of the Revenue is not correct and does not apply to the assessee's case.

4. Further, it must be noted that SEBI has in fact by its final order dated 17 November 2021 clearly stated that there has been no price manipulation in the script of Iris Media Works Ltd. Paragraph 38 of the order is reproduced below-

"38. Thus, as per the aforesaid explanation also any device, scheme or artifice to manipulate the books of accounts or financial statement of a company, in

order to be termed as manipulative, fraudulent and an unfair trade practice in the securities market should have directly or indirectly result into manipulation of the price of securities of that company. In the present case, there is no allegation of manipulation of price shares of Iris. I note that FAR does not allege any diversion/misutilisation of funds which as per the aforesaid explanation can be termed as manipulative, fraudulent and an unfair trade practice in the securities market without there being any direct or indirect manipulation of the price of the securities of the Company. Inote that there is no bar on taking action by SEBI on the basis of a FAR, invoking provisions of PFUTP Regulations, 2003 and other similar provision of SEBI Act, 1992 related to fraud, if, after examination of the matter, including the FAR, SEBI finds that there was impact on the securities market or the price of the scrip, which are ingredients to prove violations of PFUTP Regulations, 2003. I further observe that the definition of fraud as given under Regulation 2(1) (c) and as interpreted by the Hon'ble Supreme Court of India in Securities and Exchange Board of India and Ors v. Kanaiyalal Baldevbhai Patel and Ors. (2017) 15 SCC 753, makes it clear that 'inducement' is required to constitute 'fraud' under PFUTP Regulations 2003 and must be made while 'dealing in securities' and must be made for the purpose 'to induce others to deal in securities'. The allegations made in the SCN does not bring out findings or any facts relating to impact on trading in securities or these essential ingredients of 'fraud' such as 'manipulation in securities', 'dealing in securities', 'inducement', etc."

5. It is thus evidently clear and confirmed by SEBI, the statutory authority on market regulation, that there is no price manipulation in the shares of Iris. In fact, SEBI cleared the company of all wrongdoing under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003-and allowed the trading of the scrip on the stock exchanges. In fact, Iris Media Works Ltd., now known as WinPro Industries Ltd. -continues to trade on the stock exchanges to this day.

6. The contention of the Revenue that the Short Term Capital Gain earned by trading in shares of Iris Media Works Ltd is bogus/sham is completely unfounded and without any proof. The same has been confirmed by SEBI. Thus, the Short Term Capital Gain earned by the assessee in the script Iris Media Works Ltd was correctly held as genuine by the Ld. CIT(A).

7. And whereas the assessee has not traded in the shares of Trinity Tradelink Ltd. in the present financial year. This shows the non-application of mind of the revenue in drafting these grounds of appeal and it seems they have undertaken a copy and paste job. This ground is thus void-ab-initio and it is prayed that it is rejected.

8. And whereas it is abundantly clear and evident that the market regulator SEBI has done a detailed investigation into Iris Media Works Ltd and passed final order giving a clean chit against allegations of price rigging or price manipulation.

9. It is humbly prayed that when the principal securities market regulator, SEBI, has confirmed that there is no price rigging, it is not tenable for the Income Tax Department, which does not have jurisdiction under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 to identify and

punish price rigging - this ground of appeal of the revenue must be rejected and the STCG earned by the assessee in Iris Media Works Ltd be upheld as genuine.

GROUND 2-

B. "Whether on the facts and circumstances of the case, the Id. CIT(A) was correct in allowing the short term capital gain of Rs. 3,11,34,325/ earned by the assessee without considering the fact that Kolkata Investigation Wing has thoroughly investigated and proven the modus operandi of conversion of unaccounted income to counted one through penny stock by claiming bogus LTCG and STCG Loss."

10. How the case of the appellant is not covered by investigation report of the DDIT Inv Kolkata

a. In the instant case of the assessee, the assessee has earned SHORT TERM CAPITAL GAINS and same is offered to tax in its return of income hence report of DDIT Inv Kolkata is not applicable Ab Initio.

b. On perusal of the Judgement, it is seen that they have relied upon the investigation report of the DDIT Inv Kolkata wherein the detailed modus operandi has been given in case of penny stock transaction.

C. On perusal of the investigation report of the DDIT Inv Kolkata, it is seen that modus operandi explained in the report is not applicable in case of the assessee ab initio. As per the investigation report, the modus operandi stated, the investors has purchased shares at minimal price and then there is sudden rise in the price of the penny scrip which is not in ordinary course and during the price at peak, the investors has sold their investment thereby earning Long Term Capital Gains. Further, after such sell when prices of the penny stock starts to fall, the investors invested during the peak then sale those shares at low value thereby claiming either Long Term Capital Loss or Short Term Capital Loss.

d. Thus, on carefully reading and analyzing the modus operandi stated in the investigation report, it is clearly seen that investors has transacted in penny stock either to earn exempt LTCG or bogus LTCL / STCL. Nowhere in the report it is stated that investors have entered the transaction to earn bogus STCG.

e. Thus, merely making assumption that since assessee has traded in the penny stock, whatever earned, or loss incurred are bogus is bad in law and violation of natural justice to the assessee.

f. Notwithstanding above, the investigation report prepared by DCIT (Inv), Unit II (3), Kolkata dated 27.4.2015 is further distinguishable on facts enumerated as under which clearly shows that findings recorded in investigation report is itself not applicable ab initio in case of the assessee:

xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx

8. Thus, based on the above facts involved in case of the assessee read with the investigation report of DDIT (Inv), Kolkata, it is clearly evident that entire

investigation report is not applicable to the assessee on the basis of distinguishable facts as stated above.

11. Additional Points for distinguished facts:

i. The assessee submits that large number of issues involved and narrated in the chapter 2 of the report Detailed Comment on Modus Operandi of the syndicates providing Bogus Accommodation Entry of LTCG/STCL are not applicable in the case of the assessee

ii. Distinction of facts of chapter 4 of the report - Details of Share Brokers involved in the syndicate and their modus operandi.

The assessee had carried out business transaction with following brokers and names of first brokers are not included in the list of brokers as per Chapter 4 of the report.

iii. Distinction of facts of chapter 5 of the report Details of Entry Operators involved in the syndicate and their modus operandi.

None of the observations or assessment order refers to any of the details of entry operators and any nexus or connection of the assessee with any of such operator and hence the case of the assessee is fully distinguishable.

iv. Distinction of facts of chapter 6 of the report Details of Jamakharchi companies/ Bogus Clients used for purchasing shares of listed penny stocks for providing Long Term Capital Gain to Beneficiaries.

It is submitted that none of the observations referred to in Chapter 6 of the report are directly or indirectly applicable in the case of the assessee. The assessment order dose not refer to any indulgence of the assessee in any of the activities described in Chapter 6 and hence the case of the assessee is fully distinguishable.

V. Distinction of facts of chapter 7 of the report - Sample Cash Trail of 1500 Crore Rupees.

It is submitted that none of the observations referred to in Chapter 7 of the report are directly or indirectly applicable in the case of the assessee. The assessment order dose not refer to any indulgence of the assessee in any of the activities described in Chapter 7 and hence the case of the assessee is fully distinguishable.

vi. Distinction of facts of chapter 8 of the report - SEBI Action & Beneficiary's Covered under search/surveys

It is submitted that none of the observations referred to in Chapter 8 of the report are directly or indirectly applicable in the case of the assessee. The assessment order dose not refer to any indulgence of the assessee in any of the activities described in Chapter 8. In fact, SEBI has done detailed investigation and passed final adjudication order confirming that there is no price rigging or manipulation. No action has been reported against assessee and hence the case of the assessee is fully distinguishable.

vii. There are large number of judgements by various high courts of the country including jurisdictional high court in the case of PCIT vs Indravadan Jain, HUF INCOME TAX APPEAL NO. 454 OF 2018 12th JULY 2023 [2023] 156 taxmann.com 605 (Bombay) Various high courts have taken into account distinguishable facts of each of the case and have given judgement in favor of the assessee. All such judgment are provided herein below in our submission which is legal submission/ arguments.

12. Following are the legal arguments in the case of the assessee -

a. Hon'ble SC SLP dismissal in case of PCIT Vs Kuntala Mohapatra (Supreme Court of India) Special Leave Petition (Civil) Diary No(S). 5269/2024 vide order dated 04.03.2024 reaffirms the importance of adhering to principles of natural justice in tax proceedings. It clarifies the eligibility criteria for LTCG exemption under Section 10(38), particularly emphasizing transactions conducted through banking channels and stock exchanges

b. Hon'ble SC SLP dismissal in case of PCIT vs Renu Aggarwal 153 Taxmann.com 579 (SC) (03.07.2023) 456 ITR 249 (SC); approving underlying hon'ble Allahabad high court in case of PCIT vs Renu Agarwal ITA 44/2022 order dated 06.07.2022 and underlying Lucknow ITAT order in case of ITA 205/Lkw/2020 (17.10.2022) on merits of alleged bogus LTCG/penny stock addition

c. Hon'ble Bombay high court in case of PCIT vs Indravadan Jain, HUF INCOME TAX APPEAL NO. 454 OF 2018 12th JULY 2023 [2023] 156 taxmann.com 605 (Bombay)

"Respondent had shown sale proceeds of shares in scrip Ramkrishna Fincap Ltd. (RFL) as long term capital gain and claimed exemption under the Act.

Respondent had claimed to have purchased this scrip at Rs.3.12/- per share in the year 2003 and sold the same in the year 2005 for Rs.155.04/- per share. It was A.O.'s case that investigation has revealed that the scrip was a penny stock and the capital gain declared was held to be accommodation entries. A broker Basant Periwal & Co. (the said broker) through whom these transactions have been effected had appeared and it was evident that the broker had indulged in price manipulation through synchronized and cross deal in scrip of RFL. SEBI had also passed an order regarding irregularities and synchronized trades carried out in the scrip of RFL by the said broker. In view thereof, respondent's case was reopened under Section 148 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 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 Demat instructions slip 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."

d. Hon'ble Bombay High Court in the recent case of PCIT vs Ziauddin A Siddique in Income Tax Appeal No. 2012 of 2017 dated 04.03.2022 had held as under:- "2. We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramakrishna Fincap Ltd ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore, we find nothing perverse in the order of the Tribunal. 4. Mr. Walve placed reliance on a 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. 6. The appeal is devoid of merits and it is dismissed with no order as to costs."

e. Mumbai bench ITAT in case of YOGESH P THAKKAR ITA 1605/Mum/2021 order dated 03.02.2023

"5.14. We find that the Id. DR had relied on the decision of Hon'ble Calcutta High Court in the case of PCIT vs Swati Bajaj reported in 139 taxmann.com 352 which is an elaborate decision rendered after considering various decisions of various High Courts on the subject. In the said decision, it was held that assessee had to establish the genuineness of rise of price of shares within a short period of time that too when general market trend was recessive. But we find that when there are several decisions of Hon'ble Jurisdictional High Court as stated supra are already in favour of the assessee, the same would prevail over this tribunal and this tribunal need not take

cognizance of the Hon'ble Non-Jurisdictional High Court. The law is very well settled by the Hon'ble Supreme Court in the case of Union of India vs Kamalakshi Finance Corporation Ltd reported in 55 ELT 43 (1991) that the decision of Hon'ble Jurisdictional High Court would have higher precedence value than the decision of Hon'ble Non-Jurisdictional High Court on the Tribunal. The Hon'ble Supreme Court emphasised therein that the orders of the Tribunal should be followed by the authorities falling within its jurisdiction so that judicial discipline would be maintained in order to give effect to orders of the higher appellate authorities. The Hon'ble Apex Court has observed that utmost regard must be had by the adjudicating authorities and the appellate authorities to the requirement of judicial discipline. Hence, we deem it fit and appropriate to follow the decisions of Hon'ble Jurisdictional High Court referred supra wherein the impugned issue is decided in favour of the assessee. Moreover, when there are two conflicting decisions of various High Courts, the Hon'ble Supreme Court in the case of Vegetable Products reported in 88 ITR 192 (SC) had held that Construction that is favourable to the assessee should be adopted. Hence by following this principle, the decision of Hon'ble Calcutta High Court and other decisions that are rendered against the assessee, need not be followed by this Court in the peculiar facts and circumstances of the instant case." Same in case of Pankaj Kantilal Shah ITA 576/Mum/2022 order dated 16.06.2023.

f. Mumbai Bench of ITAT in Smt. Hema Ramesh Jain vs. Income-tax Officer ITA No. 2966/Mum/2023 held in Para 10 of its order -

10. The AO has disbelieved the claim of the assessee only on the basis of the investigation report of the department which identified the scrip of M/s. Sunrise as a penny stock. And after taking note of the contents of the investigation report (modus operandi) of unscrupulous entry operators, the AO was of the opinion that the assessee is a beneficiary of such modus operandi; and according to him, assessee has made bogus claim of LTCG, to convert her unaccounted income to white by bringing it into regular books (accounted income). However, we find that investigation report of department is a general-report, which has not spelled out any wrongdoing on the part of assessee or her broker. Therefore, the reliance made by AO on the general-report of investigation wing cannot be accepted. Likewise, the AO has also referred to the statement given by Shri Vipul Bhatt which also does not contain any direct testimony to incriminate the assessee or her broker (Anand Rathi share and stock broker Ltd) in any wrong-doing [wrongdoing as reported in the investigation report/modus-operandi]; Further, we note that department's case is not that the name of assessee or her broker finds mention in the list of 83 entities/persons identified by SEBI as having acted in concert with M/s. Sunrise and its directors to manipulate the price as given in SEBI order dated 19.12.2014. It is not disputed that no action has been taken by SEBI against the assessee or her broker M/s. Anand Rathi. So the reliance placed by AO on SEBI order without linking it with assessee or her broker is irrelevant/misplaced and erroneous. Since there is no testimony which incriminate assessee or her broker, reliance made by AO to draw adverse view cannot be countenanced. We note that the AO has also referred to the SEBI report wherein according to him, the SEBI was pleased to suspend the trading of the scrip of M/s. Sunrise for certain period. But, nothing turns on it, because by suspending sale for some time, does not in any way link assessee or her broker with wrongdoing or connected to Shri Vipul Bhat. We find that

similar action of the AO/Ld. CIT(A) came up before this Tribunal on similar facts and circumstances in the case of *Bhavin Vaghasia v. ITO* [ITA. No.2584/Mum/2018, dated 16-6-2023) and the Tribunal vide order dated 16.06.2023 has allowed the claim of LTCG on sale of shares of M/s. Sunrise by taking note that in that case also assessee had purchased share of M/s. Contart Traders and after amalgamation with M/s. Sunrise, the scrips were sold in the same manner as done in the case of the assessee; and the AO in that case also denied claim of exempt income u/s 10(38)/LTCG on the same reasons as done in this case. And the Tribunal allowed the claim of assessee. Since the facts and circumstances are similar/identical, we rely on the ratio of the decision in the case of *Bhavin Vaghasia (supra)* and applying the same *mutatis mutandis* with the facts of the assessee's case hold that the action of the AO cannot be sustained for the reason that there was no evidence to suggest that the assessee had indulged in any wrong doing for making the claim of LTCG/exemption u/s 10(38) of the Act. There is no evidence to suggest that the assessee had any link with Shri Vipul Bhatt; and note that the SEBI order has not made any adverse order against assessee/broker. And the AO has not found any infirmity of the primary documents filed by assessee to prove the purchase & sale of the shares. In such a scenario, we rely on the decision of the Tribunal in the case *Bhavin Vaghasia (supra)* and allow the appeal of the assessee on the same reason as given by this Tribunal in the case of *Bhavin Vaghasia (supra)* which is reproduced as under:

Thus, the DDIT (Inv) Kolkata report is not applicable to our case and it is humbly prayed that this ground of the revenue is rejected.

GROUND 3-

C. "Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in upholding that the Short Term Capital Gains of the assessee were real and genuine without analysing the incriminating circumstances like the nature of stocks in which the transactions were undertaken even when the AO in the assessment order had held how the assessee tends to associate himself with companies which are engaged in fraudulent booking of LTCG/loss i.e. preponderance of probability and AO had relied upon the judgement of Hon'ble Supreme Court in *Sumati Dayal vs CIT* (214 ITR 801). which states that whether apparent is real is to be decided based on incriminating circumstances which are seen in this case."

13. It is humbly submitted that the AO has baselessly claimed that "assessee tends to associate himself with Trinity Tradelink Ltd." however he has failed to provide any evidence of said association. It is humbly reiterated that the assessee is a mere ordinary public retail investor, who is not associated or related to Trinity Tradelink Ltd. in any way whatsoever.

14. Further, the reliance of the revenue on *Sumati Dayal vs CIT* (214 ITR 801) is misplaced as the said case is beyond the realm of preponderance of probabilities and assumptions - since SEBI has in clear terms in its final adjudication orders held that there was no price rigging or manipulation in the case of *Iris Media Works Ltd* and *Trinity Tradelink Ltd*. Revenue has failed to appreciate the impact of the SEBI orders and give effect to the same. Thereby vide the SEBI orders there is removal of any and all incriminating

circumstances and in the face of clear cut evidence in favour of assessee it is not correct to rely on preponderance of probabilities.

15. Further, in the case of assessee's trades in Pro Fin Capital Services Ltd., SEBI has conducted an examination into the trading of the scrip of Pro Fin Capital Services Ltd for the period from July 01, 2012 to January 31, 2014. After such examination, SEBI found that the assessee had acquired more than 5% of total paid-up capital of Pro Fin Capital Services Ltd and failed to make appropriate disclosure of the same fact under regulation 13(1) of SEBI(Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') and regulation 29(1) read with 29(3) of SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "SAST Regulations"). SEBI has thus imposed a fine of Rs. 15,00,000/on the assessee for this technical violation. Order is attached as Annexure-C.

16. With reference to this adjudication order, it is brought to notice that not only has SEBI examined all trading in the scrip of Pro Fin Capital Services Ltd thereby verifying genuineness of all trades undertaken in it but also verified that the shareholding of the assessee in Pro Fin Capital Services Ltd as genuine.

17. Further, even after an examination into the trading of the scrip of Pro Fin Capital Services Ltd, SEBI did not find anything perverse or illegal in terms of price manipulation or rigging.

18. It is also reiterated that Pro Fin Capital Services Ltd does not feature on any list of shell companies or penny stock and does not feature in the DDIT (Inv) Kolkata Report. It is thus a purely legal trade, verified by SEBI as genuine and thus the Ld. CIT(A) was correct in allowing the STCG earned by assessee as genuine.

19. Thus it is humbly prayed that this ground of the revenue should be rejected.

GROUND 4-

D. "Whether on the facts and circumstances of the case, the Id. CITIA) was justified in holding that the Long Term Capital Gains of the assessed were real and genuine without analysing the incriminating circumstances in view of dismissal of SLP by Hon'ble Apex Court in SLP (C) No. 21636/2024 on the issue of bogus capital gains claim in penny stock transaction case and upholding the order of the Hon'ble High Court of Calcutta in which the Hon'ble Court has upheld the decision of Hon'ble ITAT which had relied upon the ratio of the judgement of Hon'ble High Court of Calcutta in Swati Bajaj and others case in which transactions of earning long term capital gains of penny stock companies were held as bogus based on test of preponderance of probability gathered from various circumstances like volume from trade, steep increase in price of the equity shares not commensurate with the financial of the alleged penny stock companies etc"

20. It is further reiterated that all trades undertaken by the assessee in all the 3 scrips were done via -

a. Banking channels via accounts declared in Income tax return for payment of consideration to purchase shares and for receiving consideration after sale of shares.

b. Via reputed broker viz. Sharekhan Limited and Globe Capital Market Limited both of which not investigated by SEBI not named in DDIT(Inv) Kolkata report.

c. Securities Transaction Tax paid on all transactions.

d. All transactions done via Recognized Stock Exchanges viz. Bombay Stock Exchange.

21. Thus the case of the assessee falls squarely under the SLP dismissal of Hon'ble Supreme Court in PCIT vs. Kuntala Mohapatra SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 5269/2024 which upheld order of Hon'ble Orissa High Court in ITA No. 23 of 2022.

22. How the case of the assessee is distinguishable with the case of PCIT vs Swati Bajaj and others (Kolkata High Court) 446 ITR 56-

a. On perusal of the Judgement in case of Swati Bajaj it is seen that primary fact involved in case of Swati Bajaj & Ors was that parties involved had claimed BOGUS LONG TERM CAPITAL GAINS and same were claimed as exempt u/s 10(3) of the Act thereby not paying any taxes on such gains. However, in the instant case of the assessee, the assessee has earned SHORT TERM CAPITAL GAINS and same is offered to tax in its return of income. Accordingly, the primary fact involved in itself is different from the facts of the case of the assessee thereby entire basis of relying upon the pronouncement of Swati Bajaj is void ab initio and irrelevant.

b. Further, on perusal of the Judgement, it is seen that they have relied upon the investigation report of the DDIT Inv Kolkata wherein the detailed modus operandi has been given in case of penny stock transaction.

c. On perusal of the investigation report of the DDIT Inv Kolkata, it is seen that modus operandi explained in the report is not applicable in case of the assessee ab initio. As per the investigation report, the modus operandi stated, the investors have purchased shares at minimal price and then there is sudden rise in the price of the penny scrip which is not in ordinary course and during the price at peak, the investors has sold their investment thereby earning Long Term Capital Gains. Further, after such sell when prices of the penny stock starts to fall, the investors invested during the peak then sale those shares at low value thereby claiming either Long Term Capital Loss or Short Term Capital Loss.

d. Thus, on carefully reading and analyzing the modus operandi stated in the investigation report, it is clearly seen that investors has transacted in penny stock either to earn exempt LTCG or bogus LTCL / STCL. Nowhere in the report it is stated that investors have entered into transaction to earn bogus STCG.

e. Thus, merely making assumption that since assessee has traded in the penny stock, whatever earned or loss incurred are bogus is bad in law and violation of natural justice to the assessee.

f. Further, scrips traded by the assessee in the given financial year are not mentioned in DDIT (Inv) Kolkata report.

8. In the judgement of the Swati Bajaj, the hon'ble Court has relied upon investigation report and has accepted the cases where bogus LONG TERM CAPITAL GAINS have been earned.

h. Since, the primary facts involved in the case of the assessee are completely distinguishable from the facts involved in the case of Swati Bajaj, the reliance on the judgement of Swati Bajaj shall lead to denial of natural justice to the assessee.

i. Accordingly, no reliance can be placed on the judgement of Swati Bajaj & Ors as facts are completely distinguishable and different.

It is thus humbly prayed that this ground of the revenue is rejected.

PRAYER

It is, therefore, most respectfully prayed to this Hon'ble Income Tax Appellate Tribunal

1. To pass an order dismissing this appeal of the appellant and confirming the order of the Ld. CIT(A),

2. To award costs as the Hon'ble Income Tax Appellate Tribunal may deem fit to the respondent,

3. To pass such other or further orders as this Hon'ble Income Tax Appellate Tribunal may deem fit and proper in the interest of justice."

8. He also submitted a Paper Book containing the below mentioned documents and case laws relied upon.

- "A. SEBI Final Order in case of Iris Media Works Ltd. & Ors.
 - B. SEBI Final Order in case of Trinity Tradelink Ltd. & Ors.
 - C. SEBI Final Order in case of Naresh Laxminarayan Grover & Ors.
 - D. PCIT vs Kuntala Mohapatra SLP(C) Diary No. 5269/2024
 - E. PCIT vs Kuntala Mohapatra ITA no. 23 of 2022, Orissa HC
 - F. PCIT vs Renu Aggarwal SLP(C) 13033/2023
 - G. PCIT vs Renu Aggarwal ITA no. 44 of 2022, Allahabad HC
 - H. ITO (1)(3), Kanpur vs Renu Aggarwal ITA No. 204/Lkw/2020, ITAT Lucknow
 - I. PCIT vs Indravadan Jain, HUF ITA No. 454 of 2018, Bombay HC
 - J. PCIT vs Ziauddin A Siddique ITA No. 2012 of 2017, Bombay HC
 - K. Yogesh P Thakkar vs DCIT, CC-3(4) ITA No. 1605/Mum/2021, ITAT Mumbai
 - L. Pankaj Kantilal Shah vs DCIT, CC-6(3) ITA No. 576/Mum/2022, ITAT Mumbai
 - M. Hema Ramesh Jain vs. ITO, ITA No. 2966/Mum/2023, ITAT Mumbai
- (Certified that Sr. No. A to C are orders of SEBI in record of A.O and No. D to M are judgements)"

9. We have carefully analysed the detailed contentions. The facts cited by the Assessing Officer are illusory and baseless. It is surprising that when the assessee has paid tax on short term capital gain under section 111A @15%, the Assessing Officer is reclassifying the same to be taxed under section 68 r/w section 115BBE of the Act without any basis. This cavalier attitude of the Assessing Officer cannot be countenanced in the absence of any worthwhile enquiry. There is no scope to tinker with the well-reasoned order passed by the learned CIT(A). The final acquittal order of the SEBI for all these three companies are like a final nail on the coffin and dispel all doubts and aspersions castigated by the Assessing Officer.

10. For other two assessment years, transactions were made in same companies. But long term capital gain was generated and short term capital loss had also crystallised. Be that as it may, there will be no difference in the final conclusion drawn in the appeal being ITA no.524/Nag./2024, for the assessment year 2014-15, because the evidences submitted are fairly applicable for these years also and the Department has failed to impeach the credibility thereof.

11. Incidentally, the tax effect in all these three appeals is below prescribed monetary limit of ₹ 60 lakh. There is no allegation that the assessee is a part of organised tax evasion involving penny stock and accommodation entry. However, keeping in mind the factual contours of the dispute and more particularly the various binding judicial precedents and the overarching

dictum of statutory authority having plenary powers, passing a detailed order was deemed expedient in the peculiarity of the circumstances.

12. In the result, all these three appeals for the A.Y. 2014-15, 2015-16 and 2016-17 by the Department are dismissed.

Order pronounced in the open Court on 21/03/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/03/2025

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur