

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2452/MUM/2024  
Assessment Year: 2016-17**

Dilipkumar Hazarimal Ahuja D-2, Plot No.145 Gold Mine, Sector – 21 Nerul, Navi Mumbai-400706  (PAN:ACJPA1575F)	Vs.	Commissioner of Income- tax(Appeal), National Faceless Appeal Centre Navi Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Ms. Ritika Agarwal, Advocate  
Revenue : Shri R.R. Makwana, Sr. DR

Date of Hearing : 23.01.2025  
Date of Pronouncement : 04.04.2025

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Centre(NFAC), vide order no. ITBA/NFAC/S/250/2023-24/1062391726(1), dated 11.03.2024 passed against the assessment order by Addl./Joint/Deputy/Asst. Commissioner of Income Tax, NFAC, Delhi., u/s.147 r.w.s.144B of the Income-tax Act (hereinafter referred to as the “Act”), dated 26.03.2022 for Assessment Year 2016-17.

2. Grounds taken by the assessee are reproduced as under:

*1. The CIT(A) erred in law and on facts in accepting the additions made by the Assessing officer under Section 68 of the Income Tax Act with regards to long-*

*term capital gains on the sale of shares of Goenka Business Finance Ltd without understanding the facts and circumstances of the case.*

*2. The learned CIT (A) and the Assessing officer made additions without providing a cross-examination of the witness and not following the principles of natural justice.*

*3. The authority to assess the cases where search is initiated under section 132 is provided under section 153A or 153C and not under section 148 of the income tax act. The re-opening under section 148 was made without jurisdiction*

*4. The learned CIT (A) has passed the assessment order without any direct evidence against appellant and merely on report of investigation wing. The entire addition has been made purely on suspicion without any direct evidence against the Appellant, merely on the basis of untested and uncorroborated report of Investigation Wing and on borrowed satisfaction of the investigation authorities.*

2.1. Assessee has also raised additional grounds, as ground no.5 and 6 vide application dated 08.10.2024 which are reproduced as under. For the purpose of admission of these additional grounds, it is submitted that assessee inadvertently omitted to include them in the original appeal memo in Form No.36. According to the assessee these grounds relate to legal issues and goes to the root of the matter. Assessee placed reliance on the decision of Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. vs. CIT(A) [1997] SSC 489. There being no objection from the other side on the admission of these grounds, the same are admitted.

*"5. BECAUSE, the AO has erred in adding the entire sale consideration of Rs.50,91,646/- u/s 68 without reducing the undisputed cost of acquisition of the shares being Rs.2,10,000/- due to non-application of mind.*

*6. BECAUSE, the reasons recorded by the AO for reopening of the assessment proceedings are invalid, being based merely on information received from Inv. Wing, Delhi and without being in possession of any "material" supporting such "information" in the case of a third party named 'SMC Global Capital Markets Limited."*

3. Brief facts of the case are that, assessee filed his return of income on 30.07.2016 reporting total income at Rs.14,79,980/- which was revised on 07.06.2016 reporting total income at Rs.21,71,820/-. This

return was subjected to scrutiny assessment and was assessed at the returned income u/s.143(3) vide order dated 17.09.2018. Subsequently, Id. Assessing Officer received information from DDIT (Inv), Unit-5(1), Delhi, that a search was conducted on SMC Global Capital Market Ltd., during which it was found that Goenka Business and Finance Ltd., i.e., the scrip in which assessee dealt with is a penny stock scrip used for generating bogus capital gain/loss. Since assessee also traded in the scrip, amounting to Rs. 50,91,646/-, it was alleged that assessee had brought its unaccounted money in the books of account through accommodation entry involving sale and purchase of this alleged penny scrip. Accordingly, reasons to believe were recorded for initiating re-assessment proceedings u/s.147 to issue a notice u/s. 148.

3.1. In the return, assessee reported long term capital gain of Rs.1,26,88,891/- on sale of shares of Goenka Business and Finance Ltd. which was claimed exempt u/s. 10(38) of the Act. Details of purchase and sale of shares as furnished by the assessee are extracted below:

**Details of purchase of shares in AY 2015-16:**

- a. Date of purchase: 16.06.2014
- b. No. of shares purchased: 21,000
- c. Mode of purchase: Cheque
- d. Vendor name: Arena Infotech Limited
- e. Documents in support: Ledger account of ALL, bank statement, contract notes. Refer PB pg nos. 71,110, 111, 112, 226

**Details of shares sold in A.Y. 2016-17:**

- a. Date of sale: 01.10.2015

- b. No. of shares sold: 11,470 (balance still held)
- c. Mode of sale: RTGS and Cheque
- d. Broker: Joindre Capital Services Limited (JCSL)
- e. Documents in support: Contract Notes, Ledger Account of JCSL, bank statement, contract notes. Refer in PB pg nos. 71, 121, 122, 142, 156, 157, 226

3.2. In the course of assessment, Ld. Assessing Officer called for details and explanations in respect of the transaction of sale of shares on which exemption has been claimed under section 10(38) on account of long-term capital gain earned by the assessee. To corroborate the facts, assessee furnished relevant documentary evidences which are placed on record in the paper book before us, containing 244 pages, which includes:

- i. Photocopy of contract Notes issued by JCSL.
- ii. Photocopy of Ledger account in the name of ass issued by JCSL.
- iii. Photocopy of Bank Statements showing amount paid and received to broker.
- iv. Copy of DMAT account where these shares are held.
- v. STT is duly paid by the broker and is reflected in the bills issued by the broker.

3.3. Assessee strongly contended that he is a regular investor in capital market and not a one time adventurer. He furnished the details of his portfolio of shares amounting to Rs.35,51,137/- as on 31.03.2016 to demonstrate his claim as a regular investor. The details of portfolio are extracted below as contained in the paper book at page 36-

1-Apr-2015 to 31-Mar-2019

Page 1

Particulars	Opening Balance	Transactions		Closing Balance
		Debit	Credit	
Accelya Kale Solution	95,700.74 Dr		95,700.74	
Allied Computers	9,771.00 Dr			9,771.00 Dr
Axis Bank	2,60,116.39 Dr	55,461.35		3,15,577.74 Dr
Biocon	26,493.80 Dr		26,493.80	
Bluestar Information	2,27,885.16 Dr	2,24,700.96	4,52,586.12	
Chemfab Alkalies	46,870.00 Dr		46,870.00	
Gic Housing	2,19,560.18 Dr			2,19,560.18 Dr
Glory Poly	43,760.00 Dr			43,760.00 Dr
Goenka Business & Fin	2,10,000.00 Dr		1,14,700.00	95,300.00 Dr
Granules	37,720.39 Dr	5,162.00	42,882.39	
HIND RECTIFIERS	32,140.36 Dr		32,140.36	
J B CHEM PHR	19,236.14 Dr		19,236.14	
Kalyani Steels	6,616.14 Dr			6,616.14 Dr
Kpit Technology	1,71,886.93 Dr	2,03,411.36		3,75,298.29 Dr
L&T Finance Holding	11,84,705.87 Dr			11,84,705.87 Dr
Opto Circuit	57,319.04 Dr			57,319.04 Dr
Polarisis Software		1,07,052.57	1,07,052.57	
PRIME PROPTY	2,64,151.30 Dr			2,64,151.30 Dr
Rpg Life Science		4,89,188.40		4,89,188.40 Dr
SESA STERLITE	91,349.63 Dr			91,349.63 Dr
SILKTEX	39,712.39 Dr			39,712.39 Dr
Sintex Industries	1,88,484.71 Dr	2,37,464.00	1,71,644.00	2,54,304.71 Dr
STEEL AUTHOR	38.60 Dr		38.60	
Supernova Advg.Ltd	2,00,000.00 Dr		1,90,000.00	10,000.00 Dr
Surya Roshni Ltd	54,227.62 Dr		54,227.62	
Titan Industries	168.50 Dr		168.50	
Varun Resolu		1.00		1.00 Dr
Varun Shipping	25,530.66 Dr	1,08,245.74	88,200.00	45,576.40 Dr
VIJAY BANK	48,944.99 Dr			48,944.99 Dr
ZensarTech Ltd		41,652.50	41,652.50	
<b>Grand Total</b>	<b>35,62,390.54 Dr</b>	<b>14,72,339.88</b>	<b>14,83,593.34</b>	<b>35,51,137.08 Dr</b>

3.4. In this respect, he also furnished details of capital gains earned by him in the years subsequent to the year under consideration, both short term and long term which were duly reported in his regular income tax returns. The said details are tabulated below:

Financial year	Short term profit	Long term profit
16-17	19,476.82	2,76,223.74
17-18	2,42,370.29	3,97,507.41
18-19	2,123.00	--
19-20	61,531.78	82,977.88
20-21	6,672.52	2,26,928.10

3.5. In the year under consideration, assessee reported long term capital gain on sale of shares of Rs.1,26,07,223/- which includes various scrips. Out of this total amount, assessee earned long term capital gain of Rs.49,62,476/- on the sale of shares in the scrip of

Goenka Business and Finance Ltd. Details of entire long term capital gain earned and reported by the assessee in his return of income for the year under consideration is extracted below for ready reference which according to the assessee also evidently demonstrates that he is a regular investor in the market. Further, in this respect assessee contended that he still holds shares of the said alleged scrip as penny stock since only 11,470 shares were sold in the year under consideration, out of 21,000 shares purchased by the assessee. This holding also demonstrates the bonafides of the assessee being regular investor and the allegations made by Id. Assessing Officer are without any basis.

Name	Purchase				Sale				short term	long term
	date	qty	rate	cost	date	qty	rate	cost		
Biocon		100	265	26,494	15.7.15	100	489	48,807		22,313
Blue Star	9.12.14	24	202	4,857	22.9.15	24	275	6,610	1,753	
Blue Star	9.12.14	2	202	405	19.8.15	2	304	608	203	
Blue Star	22.1.15	800	223	178,096	22.7.15	800	268	214,712	36,616	
Blue Star	22.1.15	200	223	44,524	22.9.15	200	289	57,801	12,336	
Blue Star	21.7.15	300	245	73,485	22.7.15	300	249	74,604	1,119	
Blue Star	22.7.15	150	261	39,216	30.7.15	150	286	42,947	3,782	
Blue Star	22.7.15	350	261	91,504	19.8.15	350	304	106,325	15,391	
Blue Star	22.9.15	24	289	6,936	19.8.15	24	304	7,291	355	
Blue Star	22.9.15	24	289	6,942		24	304	7,291	349	
Chem Alkalies		500	94	46,870	28.7.15	500	95	47,760		890
Goenka	21.6.14	3,000	10	30,000	1.10.15	3,000	481	1,443,592		1,413,592
Goenka	21.6.14	1,000	10	10,000	7.10.15	1,000	455	454,708		444,708
Goenka	21.6.14	7,470	10	74,700	15.10.15	7,470	426	3,178,876		3,104,176
Granules	19.5.14	50	343	17,140	23.7.15	50	105	5,232	-11,908	
Granules	19.5.14	50	343	17,140	24.7.15	50	104	5,188	-11,767	
Granules	19.5.14	10	343	3,428	21.7.15	10	102	1,016	-2,412	
Granules	31.3.15	200	0	2	23.9.15	200	134	26,884	26,882	
Granules	31.3.15	100	0	1	24.9.15	100	143	14,339	14,338	
Granules	31.3.15	150	0	2	7.10.15	150	154	23,154	23,153	
Granules	31.3.15	350	0	4	19.8.15	350	127	44,324	44,321	
Granules	31.3.15	190	0	2	18.8.15	190	119	22,697		22,506
Granules	23.7.15	50	103	5,162	24.7.15	50	109	5,467	305	
Hind rectifier		500	64	32,140	29.12.15	500	89	44,685	12,545	
J B Chemicals	24.3.15	100	192	19,234	13.7.15	100	257	25,706	6,472	
Kale solution	25.3.14	20	319	6,380	20.4.15	20	1,090	21,800		15,357
Kale solution	25.3.14	280	319	89,320	3.6.15	280	962	269,220		179,859
Polaris software	15.7.15	600	178	107,052	18.1.15	600	212	127,164	20,112	
Supernova	31.3.14	3,000	10	30,000	16.7.15	3,000	400	1,199,578		1,169,578
Supernova	31.3.14	2,500	10	25,000	20.7.15	2,500	400	999,648		974,648
Supernova	31.3.14	2,500	10	25,000	23.7.15	2,500	400	999,648		974,648
Supernova	31.3.14	3,000	10	30,000	27.7.15	3,000	400	1,199,572		1,169,572
Supernova	31.3.14	3,000	10	30,000	31.7.15	3,000	398	1,193,584		1,163,584
Supernova	31.3.14	2,500	10	25,000	10.8.15	2,500	399	997,151		972,151
Supernova	31.3.14	2,500	10	25,000	13.8.15	2,500	402	1,004,642		979,642
Sintex industries	8.12.14	300	102	30,714	21.7.15	300	116	34,653	3,939	
Sintex industries	21.7.15	1,000	106	106,100	22.7.15	1,000	107	106,670	570	
Sintex industries	23.7.15	300	116	34,830	23.7.15	300	116	34,653	-177	
Surya roshni	27.3.15	500	108	54,225	2.7.15	500	125	62,617	8,392	
Varun shipping	5.6.15	10,000	9	88,200	12.6.15	10,000	9	86,830	-1,370	
Zensar The Ltd	27.7.15	50	833	41,653	17.11.15	50	1,015	50,754	9,102	
									214,400	12,607,223

3.6. In the course of assessment, assessee asked for cross examination of the parties whose statements have been relied upon by the

Investigation Wing which forms the basis for alleging the assessee undertaking accommodation entry by way of transaction of sale and purchase of shares of Goenka Business and Finance Ltd. In this respect, ld. Assessing Officer noted in his order disposing all the objections raised against reasons for reopening, dated 06.02.2022 in para-9 that *“The information made available to the Assessing Officer could not have been shared by him as it contained information related to various assessee, and sharing the same would have revealed information of those assesses. Though certain parts (relevant for reopening and objections raised by the assessee) have been discussed herein.”*

3.7. Further, it was pointed out by the assessee that apprehension and doubt raised by the ld. Assessing Officer about order passed by Securities Exchange Board of India (SEBI) on suspending trading in the scrip of Goenka Business and Finance Ltd. turned out to be otherwise, since the trading was resumed in 2016. Fact relating to this aspect is that Bombay Stock Exchange (BSE), after passing an interim order for suspension in trading of scrip of Goenka Business and Finance Ltd. conducted comprehensive and thorough investigation and finally passed an order resuming the trading, later in 2016. This fact is accepted by ld. Assessing Officer in the impugned assessment order, in para 5.6(1), which is reproduced as under:

*“On 21st December 2015, BSE suspended trading in 35 listed companies as per the direction of SEBI. These companies were found violating the various norms and were involved in fraudulent trade. The name of Goenka Business and Finance Ltd is found to be appearing at serial No. 11 of the list. However, the trading was resumed later in 2016.”*

3.8. Thus, in summary, assessee contended that –

- i. he is a regular investor in the market and not a onetime adventurer.

- ii. he has carried out transaction through SEBI registered reputed broker.
- iii. he has made the investment in various scrips and after a lock in period of one year sold the shares after payment of the applicable STT, which as per provisions of section 10(38) of the Act are considered as exempt income.
- iv. genuineness of the transactions can be supported by contract notes, ledger copy and bank statement.
- v. transactions were made through banking channel.
- vi. No cross examination opportunity afforded for material and statement relied upon by the Id. Assessing Officer based on information supplied by the Investigation Wing violating the principles of natural justice.
- vii. Trading in the scrip of Goenka Business and Finance Ltd. was resumed in 2016 by SEBI after detailed enquiry and investigation. Thus, doubts and apprehensions raised by the Id. Assessing Officer does not hold ground.

4. Ld. Assessing Officer, after considering the submissions made by the assessee, arrived at the adverse conclusion by observing that there is unusual rise in the price of the shares sold by the assessee which has been investigated by the Investigation Wing of the Department to establish that cash has been routed from various accounts to provide accommodation to the assessee and that assessee had failed to discharge his onus to prove the unusual rise and fall of share prices. Ld. Assessing Officer placed heavy reliance on the doctrine of preponderance of human probability to hold that the assessee is indulged in bogus and dubious share transactions since he had not been able to adduce cogent evidences in this regard.

4.1. It is worth noting that before drawing adverse conclusion, ld. Assessing Officer deliberated on the general modus operandi of such transactions as well as background of the investigation carried out by the wing, without pinpointing anything specific towards assessee, in this regard.

4.2. Ld. Assessing Officer, thus completed the assessment by making an addition u/s 68 of the Act towards entire sale consideration of Rs. 50,91,646/- received by the assessee on the transaction of sale of shares in the aforesaid scrip. Aggrieved, assessee went in appeal before the ld. CIT(A), who upheld the same.

5. Before us, ld. Counsel for the assessee has reiterated the submissions made before the authorities below. He has also placed on record all the relevant documents and evidences in the form of paper book, details of which are already noted above, backed by judicial precedents of the Hon'ble jurisdictional High Court of Bombay. The submissions so made are not reiterated to avoid duplicity. Ld. Counsel for the assessee has placed on record his rebuttal and clarifications on the orders of SEBI referred by ld. Assessing Officer. According to the ld. Counsel, SEBI resumed the trading in the scrip of the company in 2016 itself.

5.1 In the course of hearing, ld. Sr.DR had placed reliance on the order of ld. Assessing Officer and referred to adjudication orders passed by SEBI and asserted that the share transactions undertaken by the assessee are of tainted scrip which were investigated and subjected to penalties.

6. We note that transactions were undertaken through the SEBI registered broker Joindre Capital Services Ltd. on the stock exchange platform on which STT was levied and the consideration was routed through normal banking channel. The entire flow of these transactions is corroborated by relevant documentary evidences placed on record. While making the addition, there are no discrepancies pointed out by the Assessing Officer in the documents and the details furnished by the assessee. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the assessee. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. At any stage of the present case, Revenue has not brought on record any material about participation of the assessee with any such dubious transactions relating to accommodation entry, price rigging or exit providers. To our mind, Ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details furnished in his office. Once the assessee has produced documentary evidence to establish the veracity of his claim, the burden would shift on the Revenue to establish its case.

6.1. On the perusal of records, it is discernible that ld. Assessing Officer had proceeded on the basis of analysis of the financials of the company. According to him, sharp movement in the share prices of the aforesaid scrip is not justified. He has relied upon the search and survey operations conducted by the investigation wing of the Department at various locations in respect of alleged penny stock which sets out the modus operandi adopted in the business of providing entries for bogus capital gains. The conclusion drawn by the ld. Assessing Officer of

implicating the assessee is un-supported by any cogent material on record. It is also a fact on record that assessee is a regular investor, holding shares in large number of scrips and has earned capital gains in subsequent year which has been offered by him in his regular income-tax returns. The finding arrived at by the Id. Assessing Officer is thus purely an assumption based on conjectures and surmises. In our thoughtful considerations to the facts and circumstances of the case, it is not in controversy that assessee has discharged his burden by submitting the relevant documents, details of which are already noted above, forming part of the paper book.

7. For our observations and findings, we place reliance on the decision in the case of CIT vs. Jamnadevi Agrawal [2012] 20 taxmann.com 529 (Bom), wherein it was held that transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. We also draw our force from the decision of Hon'ble High Court of Delhi in the case of PCIT v. Krishna Devi [2021] 126 taxmann.com 80 (Del) wherein the Hon'ble Court noticed that the reasoning given by the Assessing Officer to disbelieve the capital gain declared by the assessee, viz. astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures.

8. Reliance placed by the Id. Assessing Officer on the report of investigation wing without further corroboration based on cogent material does not justify the conclusion that the impugned transaction is bogus, sham and part of racket of accommodation entries. It does not prove that the assessee has carried out the impugned transactions of

purchase and sale of shares in connivance with the people who were involved in the alleged rigging of share prices. In absence of any such material, enquiry and examination, the addition made pertaining to receipt of sale consideration of the impugned transaction cannot be sustained. In our considered view, ld. Assessing Officer has not established that the assessee was involved in price rigging.

8.1 For our observations and to arrive at the findings, we find force of binding nature from the decisions of Hon'ble High Court of Bombay being a jurisdictional High Court:

i) Pr. CIT v. Ziauddin A Siddique [Income-tax Appeal No. 2012 of 2017, dated 4-3-2022] held as under:-

*"1. The following question of law is proposed:*

*"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of Rs. 1,03,33,925/- made by AO u/s 68 of the I.T. Act, 1961, ignoring the fact that the shares were bought/acquired from off market sources and thereafter the same was DMATed and registered in stock exchange and increase in share price of Ramkrishna Fincap Ltd. is not supported by the financials and, therefore, the amount of LTCG of Rs. 1,03,33,925/- claimed by the assessee is nothing but unaccounted income which was rightly added u/s 68 of the I. T. Act, 1961?"*

*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 v. NRA Iron & Steel (P.) Ltd. 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.”*

ii) PCIT vs. Indravadan Jain HUF [2023] 156 taxmann.com 605 (Bom) wherein it was held:

*“Where shares were purchased by assessee on floor of stock exchange and not from broker, payment was made through banking channel, deliveries were taken in DMAT account where shares remained for more than one year, contract notes were issued and shares were also sold on stock exchange, there was no reason to add capital gains as unexplained cash credit under section 68”*

iii) CIT vs. Shyam R. Pawar [2015] 54 taxmann.com 108 (Bom) wherein it was held:

*“Where DMAT account and contract note showed details of share transaction, and Assessing Officer had not proved said transaction as bogus, capital gain earned on said transaction could not be treated as unaccounted income under section 68”*

9. Considering the totality of facts and circumstances of the case, factual matrix and submissions of parties narrated as well as discussion and observations made herein above, we delete the addition made u/s 68 towards proceeds of sale of listed shares of Goenka Business and Finance Ltd. which gave rise to Long Term Capital Gain

on the said sale, claimed exempt by the assessee u/s 10(38). Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order is pronounced in the open court on 04 April, 2025

Sd/-  
(Amit Shukla)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 04 April, 2025***

*MP, Sr.P.S.*

**Copy to :**

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai