

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2280/MUM/2024
Assessment Year: 2015-16**

Income Tax Officer- 19(2)(2), Mumbai	Vs.	Mitesh Mehta HUF, 432, Lamington Road, Shigney Building, Opera House, Mumbai – 400004 (PAN : AADHM4374A)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Mitesh Mehta, CA
Revenue : Shri R. R. Makwana, Addl. CIT

Date of Hearing : 09.01.2025
Date of Pronouncement : 07.04.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1061827856(1), dated 01.03.2024, passed against the assessment order by Assessing Officer, Ward 19(2)(3), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 28.12.2017, for Assessment Year 2015-16.

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

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to delete the addition of Rs. 99,18,288/ which is taxable under section 68 of the Income Tax Act, 1961?"

2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) failed in appreciating the fact that the company, M/s GCM Securities Limited and the brokers/ other entities were involved in price manipulation in the scrip thereby confirming the investigation of the department that the scrip is utilized by entry operators for providing accommodation entries under the garb of LTCG by manipulating/ rigging up the share price?"

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that there was huge price jump in the script of M/s GCM Securities Limited. without any economic rationale which was an arrangement for converting the unaccounted income of the beneficiaries into legitimate income under the garb of exempt LTCG without paying any taxes and assessee was one such beneficiary?"

4. "Whether on the facts and circumstances of the case and in law the Learned CIT(A) erred in ignoring the direct and circumstantial evidence brought on record by the Assessing Officer to establish that the assessee had indulged in manipulation of the share prices of M/s GCM Securities Limited with a view to record fictitious Long Term Capital Gains of Rs. 99,18,288/ claiming these as exempt from taxation?"

5. "Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the disallowance of Long-Term Capital Gains of Rs. 99,18,288/ overlooking the fact that the entire transactions were stage managed with the object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gains and claim bogus exemption?"

6. "Whether on the facts and circumstances of the case and in law the Ld CIT(A) has erred in ignoring the direct and circumstantial evidences while passing the order, whereas in view of the decisions in Durga Prasad More and Sumati Dayal rendered by the Hon'ble Supreme Court, where under it was held that the Court and Tribunal have to judge the evidence before it by applying the test of human probabilities, the surrounding circumstances which exercise had been done by the Assessing Officer?"

7. "Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the disallowance of Long-Term Capital Gains of Rs. 99,18,288/- without considering the fact that Assessing Office relying on the report of Investigation wing which is premier investigation authority of Income tax department, and the onus is on the assessee to establish the genuineness of the price hike and also has to prove that the price of the share of M/s GCM Securities Limited was not manipulated. Reliance is placed on Calcutta High Court decision in the case of Pr.CIT Vs. Swati Bajaj (I.A. No.GA/2/2022 in ITAT No. 6 of 2022 dated 14.06.2022.

8. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to delete the addition of Rs 2,97,549/- which is taxable under section 69 of the Income Tax Act, 1961?"*

9 *"Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the addition of Rs. 2,97,549/ being commission calculated @3% of Rs. 99,18,288/- overlooking the fact that assessee could not have ploughed back its unaccounted income in the form of fictitious Long Term Capital Gain without paying commission to the brokers?"*

10. *This appeal is being filed as it is covered under the exception provided in the CBDTs Circular No. 23/2019 Dated. 06.09.2019, the assessee is involved in trading of penny stocks scrip and claimed bogus LTCG on sale of penny stock."*

3. Brief facts of the case are that, assessee is a HUF and its karta is a practicing Chartered Accountant since 1988. Assessee filed its return of income on 19.08.2015 reporting total income at Rs.9,74,070/- wherein it reported long term capital gain (LTCG) of Rs.96,49,488/- on sale of shares of listed company viz. GCM Securities Ltd. (GCM) and claimed it as exempt u/s 10(38) of the Act. This return was subjected to scrutiny assessment and was assessed at total income of Rs.1,11,89,910/- by disallowing the claim u/s 10(38) and making addition u/s 68 towards sale consideration received on sale of shares of GCM and u/s 69C of commission @ 3% of Rs.2,97,549/- on the said sale consideration. Ld. Assessing Officer made the said assessment based on information received from DDIT (Inv)-2, Kolkata and statements recorded of third parties. Since assessee traded in the scrip of GCM, 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.

3.1. Assessee applied for private placement of 24,000 equity shares of GCM at price of Rs.20/- per share which had a lock in period of 12 months. GCM allotted the said shares in preferential allotment with

these coming directly in the DMAT account of the assessee. Payment for the same was made by the assessee through banking channel, directly to GCM. Details of purchase and sale of shares as furnished by the assessee are extracted below:

Details of purchase of shares in AY 2013-14:

- a. Date of purchase: 13.02.2013
- b. No. of shares purchased: 24,000
- c. Mode of purchase: Cheque
- d. Vendor name: under preferential allotment directly from GCM
- e. Documents in support: Share application form, Bank Statement, Share allotment letter, DMAT statement

Details of shares sold in A.Y. 2015-16:

- a. Date of sale: 16.09.2014 to 21.01.2015
- b. No. of shares sold: 86,400 (balance held by the assessee)
- c. Mode of sale: banking channel
- d. Broker: Motilal Oswal Securities Ltd (SEBI registered)
- e. Documents in support: Contract Notes, Ledger Account from broker, bank statement, sale invoices, DMAT statement reflecting share movement and balance held

4. 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 496 pages, which includes:

- i. Photocopy of contract Notes issued by Motilal Oswal.
- ii. Photocopy of Ledger account in the name of ass issued by Motilal Oswal.
- iii. Photocopy of Bank Statements showing amount paid to GCM and received through 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.

4.1. 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.

4.2. 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.

4.3. Ld. Assessing Officer, thus completed the assessment by making an addition u/s 68 of the Act towards entire sale consideration of Rs.

99,18,288/- received by the assessee on the transaction of sale of shares in the aforesaid scrip and u/s 69C of commission @ 3% of Rs.2,97,549/- for arranging the said transaction. Aggrieved, assessee went in appeal before the ld. CIT(A), who after detailed examination and deliberation of facts and jurisprudence, deleted 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 order of SEBI referred by ld. DR.

5.1. Assessee strongly contended that it is a regular investor in capital market and not a one-time adventurer. He furnished the details of his portfolio of shares as reflected in the DMAT statement placed in the paper book at pages 173 to 177. Perusal of the same shows that assessee held shares of, to name a few, Thermax, Reliance Industries, Trent, Vascon, BHEL, NMDC, L&T, Century Textiles, Tata Chemicals, Tata Steel, Infosys, Gruh Finance, etc. demonstrating its claim as a regular investor. Further, assessee contended that it sold only a portion of its shareholding in GCM and withheld the balance. This holding also demonstrates the bonafides of the assessee being regular investor and the allegations made by ld. Assessing Officer are without any basis.

5.2. It was pointed out by the assessee that apprehension and doubt raised by the ld. Assessing Officer and ld. DR about order passed by

Securities Exchange Board of India (SEBI) on inspection of GCM. In this respect, assessee submitted that SEBI order was passed on 28.02.2023, much after the completion of impugned assessment on 28.12.2017 which was for some minor procedural lapses relating to filing of certain forms and details at the time of preferential allotment and private placement and prospectus. There is no irregularity or any reference as regards price rigging, insider trading or any other offence presumed by the Revenue alleging it as a penny stock.

5.3. In summary, assessee contended that –

- i. it is a regular investor in the market and not a onetime adventurer.
- ii. it has carried out transaction through SEBI registered reputed broker.
- iii. it has made the investment in various scrips and after a lock in period of one year, sold the GCM shares after payment of the applicable STT, which as per provisions of section 10(38) of the Act is considered as exempt income.
- iv. genuineness of the transactions is supported by contract notes, ledger copy, DMAT statement 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. No adverse finding by SEBI on the trading in GCM scrip, thus, doubts and apprehensions raised by the Id. Assessing Officer does not hold ground.

6. In the course of hearing, ld. 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.

7. We note that transactions were undertaken through the SEBI registered broker Motilal Oswal 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.

7.1. 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, more importantly, its karta being a professionally qualified Chartered Accountant, holding shares in large number of scrips. The finding arrived at by the ld. 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.

7.2. Reliance placed by the ld. 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. We have perused the order of Id. CIT(A) to note point wise elaborate exposition on each of the aspect alleged by Id. Assessing Officer. Id. CIT(A) has dealt with both, fact and jurisprudence relating to the transaction undertaken by the assessee in his 48 points detailing. The same is extracted below for ready reference:

“3. STATEMENTS OF FACTS:-

1. The appellant had filed Return of Income on 19.08 2015 declaring Total Income of Rs 9,74,070/-

2. During the year the appellant had earned Long Term Capital Gain of Rs 96-49-406-0 Sale of shares of GCM Securities Ltd., which was claimed as exempt income u/s. 10(38) of IT Act, 1961 in the return of income filed.

3. The transaction trail of above mentioned LTCG is reflected as below:

a. Appellant made application for preferential allotment for 12,000 shares having face value of Rs. 10 each at premium of Rs. 10 per share.

b. The appellant was allotted 12,000 shares and all the shares were directly credited in the demat account.

c. Subsequently, the above shares were sold in open market on the BSE platform through the regular broker Motilal Oswal Securities Limited.

4. Later on the case was selected for scrutiny and notice u/s. 142(1) along with questionnaire was issued. The appellant complied with the said notice by filing all the required details along with necessary documents vide letter at, 27.09.2016.

5. Subsequently, the learned AO vide his letter dated 08.12.2017, based on statements recorded of third parties and information received from Pr. Director of Income Tax (Invnt.) -2 Wing Kolkata had issued show cause notice for Rejecting the Long Term Capital Gain claimed in the Return of Income.

6 In response of the show cause notice, detailed submission along with affidavit was filed by the appellant on 19.12.2017

7. Appellant, in view of the Supreme Court decision reported in Ms Andaman Timber Industries (Civil Appeal No.4228 of 2006), sought an opportunity to cross examine the third party whose statements were relied upon by the assessing officer. However the same was denied and no opportunity was granted

8 Without considering the assessment submissions and providing reasonable opportunity to cross examine the third party evidences, the Assessment order was passed es 143/3) the I.T. ACT, 1961.

9. The assessing officer has passed the order by rejecting the exemption u/s 10(38) claimed by the assessee, and made the addition of Rs 99 18.288- u/s 68 and Rs. 2,97,549-69C towards 3% commission for arranging the said transaction

10. There are various remarks and observations, which are factually wrong and baseless

11. Therefore, the present appeal is filed.

4. APPELLATE OBSERVATION & FINDINGS -

The detailed paper book/ submissions of the Appellant and the assessment order of the AO has been perused Based on the same this Appellate authorly goes onto note the following observations and findings

1. The Karta of assessee HUF is said to be a practicing Chartered Accountant for more than 3 decades.

2. It seems that the assessee HUF applied for 24,000 Equity shares in the Private placement of NSE broker, GCM Securities Limited on payment of Rs. 4,80,000/- on 09/02/2014, relevant to Assessment Year 2014-15

3. IPO of the company hit the market was in March 2014, it was oversubscribed by about 2.45 times.

4. The shares were issued directly in the normal DMAT account of the assessee HUF.

5. The assessee sold shares in 4 tranches on the BSE platform through M/s Motilal Oswal Securities Limited and has duly paid STT on the same. The details of sale of shares were as follows:

Date Of Sale	Quantity Of Shares Sold	Net Rate (Rs.)	Amount (Rs.)
16/09/2014	5,600 (Face Value of Rs. 10)	691.26	38,71,048
27/11/2014	19,200 (Face Value of Rs. 1)	85.96	16,50,336
16/12/2014	11,200 (Face Value of Rs. 1)	85.66	9,59,340
21/01/2015	48,000 (Face Value of Rs. 1)	71.32	34,23,197
	Total		99,03,921

6. The assessee claimed the profit arising from the above sale of shares Term capital gain u/s 10 (38) in the Return of income filed on 19/08/2015

7. The said return was selected for complete scrutiny vide Notice No. ITBA/AST/S/143 (2)/2016-17/1000203519 (1) dated 28 July 2016

The assessee filed relevant details vide letter dated 27 September 2016 along with all the necessary documents for claiming exemption u/s 10 (38).

9. The assessing officer issued a show cause notice dated 18th December 2017 wherein, he, for the first time, stated about information received from Director of Income Tax (Inv). Kolkata (vide letter F No 75A/2015-16/257-273 dated 27 April 2015) about assessee being one of the beneficiaries in alleged LTCG scam. He briefly stated that Investigation carried out by the Department has proved that scheme was hatched to provide accommodation entry of bogus long term capital gain through manipulation of stock market and the name of script M/s GCM Securities Limited is appearing in the list of penny stock, which has been used for generating bogus LTCG as stated in the said report The said SCN also stated that Statements of Shri Alok Kumar Das (Operator), Shri. Ashish Kumar Agarwal (Exit provider), Shri Devesh Upadhyay (Exit Provider), and Shri Gautam Bose (Operator) were also attached along with the said show cause notice.

Sr.	Name	Particulars
1.	Shri Alok Kumar Das	Stat dated 27/05/2015 and Anx A
2.	Shri Ashish Kumar Agarwal	Stat dated 27/01/2015 along with Annexures
3.	Shri Upadhyay Devesh	Stat dated 01/05/2015, 02/03/2015 & 30/12/2014 along with Annexures
4.	Shri Gautam Bose	Stat dated 02/06/2015, 27/05/2015, 16/04/2015 & 13/04/2015

10. The assessee has filed a detailed reply vide a Paper book dated 18 December 2017 along with various annexures along with a sworn affidavit of the assessee.

11. The assessee, in his sworn affidavit, as well as detailed reply to show cause notice has clearly and specifically denied having known any of the above named persons and any dealings with them

12. The assessing officer passed the assessment order U/s 143 (3) on 28 December 2017 assessing total income at 11,189,910, by making an addition of 9,918,288 U/s 68 and 2,97,549 U/s 69C as 3% of the addition made u/s 68 as above.

13. The assessee filed an appeal against the above assessment order and the said order is passed to dispose the said appeal

14. In response to the notice of appeal hearing (DIN ITBA/NFACIF/APL 1/2023 24/1061173106(1) Dated 20/02/2024), the assessee has filed a detailed reply vide letter dated 19/02/2024 along with several attachments. The reply to this appeal has been filed by the assessee in three parts and its Income Tax E-proceedings Response Acknowledgment Numbers are (i) 117119521190224, (ii)

116862441190224, and (iii) 116836611190224. The same has been verified and the said order has been passed after evaluating the same.

15. The assessee has submitted a detailed submission spread over 143 pages along with 51 attachments vide the above mentioned E-proceedings Response Acknowledgment Numbers.

16. The assessee has explained the (i) facts of the case in detailed with relevant documents, (ii) Observations and Remarks on Assessment Order, (iii) Observations and Remarks on Investigation Report of DIT (Inv), Kolkata, (iv) Appeal Submissions and (v) Judgements relied upon by the assessee.

17 Facts of the case as submitted by assessee is summarised as follows

(a) The assessee came to know about NSE Member GCM Securities Ltd. He did some research about the same and came to know that this Financial Sector NSE member Company has all Chartered Accountant Promoters and very soon, it is coming out with IPO and soon will be listed on BSE.

(b) On gaining confidence about the promoters and the nature of business of the company, the assessee applied for 24,000 Equity shares in a private placement and paid Rs. 4,80,000 by RTGS directly to the company on 09/02/2013 And the said assessee was allotted 24,000 shares on 13/02/2013

(c) The assessee received the shares directly in his DMAT account.

(d) As expected by assessee, the IPO of the said company hit the market on 18/03/2013. The said IPO was oversubscribed by 2.4 times.

(e) The shares of the said company was then listed on BSE.

(f) After a period of 17-18 months, the assessee sold part of the shares on 4 various dates through its regular broker, Motilal Oswal Securities Ltd, on Bombay stock exchange on-line portal.

(g) As the said shares were sold on BSE and STT was paid thereon, the capital gain amounting to 19,649 488 was claimed as exempt long term capital gain u/s 10 (38) in the return of income filed

(h) The assessee has kept about 50% of the quantity of shares for another long-term capital appreciation and sold only about 50% to cash in sudden appreciation. The said 50% shares are still held by the assessee even as on today, it is claimed.

(i) The assessee has filed all the relevant documents in support of the entire transaction right from knowing about the said company till the shares being sold on BSE

(j) The assessing officer issued a show cause notice dated 08/12/2017, along with the statements recorded of (i) Shri Alok Kumar Das (Operator) (i) Ashi Ashish Kumar Agarwal (Exit Provider), (iii). Shri Devesh Upadhyay (Exit Provider), and

(iv) Gautam Bose(Operator). By different investigation units of Director of Income Tax (investigation), Kolkata in 2015 along with some annexures

(k) There is nothing in these statements and its annexures which has any smallest iota of evidence as regards this transaction.

(l) The assessee has also given an analysis highlighting the questions and the answers are recorded in these statements which nowhere shows any wrong doings by the assessee as regards this transaction.

(m) It is not known as how and why, based on these statements, these 4 persons are termed as Operators and Exit Providers, especially, with reference to the assessee's case. There is not even a reference of assessee even once in these statements

(n) The assessee, in his submissions, has pointed out various defects/mistakes/wrong observations etc by the assessing officer in his submissions, specifically in point No 29 (ranging from page no.-9 to page no.-85) of its submission dated 19th February 2024, about observations of the Assessee about the short comings of the Assessment Order. Few of them are summarized as follows:

- The assessing officer has not found any defects in any details or documents submitted during the assessment proceedings before summarily rejecting them in totality.*
- The assessing officer has stated that the details are test checked despite details in very small volume of papers.*
- The entire order is totally based on the report by Dhruva Purari Singh, DDIT (Inv). Unit 2 (3), Kolkata, which is a general study report and not a conclusion or conclusive finding in particular for any assessee. As against this, the assessing officer has treated the same as the Conclusive report against the assessee.*
- The assessment order has different names of So-called operators and Exit providers, viz. (i) Pushpanjali Commotrade Private Limited, Kolkata and (ii) Ranisati Dealer Private Limited. Kolkata The assessee has no connection or any dealing of any kind with any of them. The assessee does not know them at all. in fact, these names appeared for the first time in the Assessment order and these names are different than the ones stated by the assessing officer in show cause notice dated 08/12/2017*
- The assessing officer, has stated different sets of people as operator and exit provider in show cause notice, whereas in the assessment order, totally different names appeared and that too, for the 1st time in the assessment order and they are not discussed further at all but hastily concluded upon.*

- *The assessee was not asked for any reconciliation or was not informed about any non reply in response to any notices sent by the assessing officer U/s 133 (6) of the Act.*
- *From the copy of the statement given of 4 persons, it is evident that there are no brokers or operators confession as regards the transaction of GCM Securities Ltd or the assessee is concerned*
- *The purchases were not made in the current year but was carried forward from the Assessment Year 2013-14. The said assessment was not reopened by the Department, even though there was sufficient time available with the department for the same.*
- *The statement recorded of the assessee on oath does not contain anything which the assessing officer has stated as being recorded in the statement of assessee. It is seen that the assessee never said that they got some information about some scrips having reasonable chances of getting good return in the short-term amongst several other statements*
- *There are several paras in the assessment order which refers to off market transactions etc. which clearly is not the case with the assessee.*
- *The assessing officer has also stated that statements related to the scrips traded by assessee and exit entry providers are directly linked to assessee as they have purchased the shares from assessee on stock exchange is also not correct as there is no such evidence brought out by the assessing officer and stated in the assessment order. In fact, every time the names are different. So in all, the assessing officer himself is not sure which name to use as Entry/Exit provider and Operator in the present case.*
- *The assessing officer is also stated that the assessee has purchased the shares of Jackson investment Ltd, is also not correct as the assessee does not have anything to do with the said company.*
- *What Assessee did was an act of prudence, which any financial savvy investor will do To profit in rising market, to encash partial profit in the falling market and to hold certain shares for another long term appreciation is not wrong by any means. This simple financial logic was not understood by the assessing officer.*
- *There is no cash trail identified or proved by the assessing officer at all in the present case. There is no evidence of anyone receiving cash for sale proceeds being received by the assessee There is no evidence of assessee paying cash to anyone for the same either*
- *The assessee being a beneficiary of the Bogus | TCG scam is only a suspicion which has not been proved at all by the assessing officer at all.*
- *The said report of DDIT, Kolkata, was also not given to assessee for any explanation thereon but simply used as conclusive evidence against the assessee by the assessing officer in a hurry.*

- *The said order is copy paste order as there are various statements which are unrelated to the facts of the case like (a) Name of the company has been stated as Jackson Investments Limited, (b) assessee has been referred as "she" and "her" (c) the source has been treated as off market, to name a few etc. etc.*
- *The assessing officer stated that the assessee has failed to show having any knowledge of the shares traded and having any knowledge about the fundamentals of the penny stock companies forgetting the fact that the assessee is himself a CA and totally market savvy. The statement recorded by the assessing officer is a glaring example of the said overlook and oversight by the assessing officer*
- *The assessing officer has stated that SEBI has passed an order that the main operator Shri Anil Agarwal and M/s Comfort Fincorp are said to be indulging in shared manipulations which again is far away from reality.*
- *The assessing officers also stated that the fund flow analysis in the accounts of the entry providers has established the cash out from various accounts to provide accommodations to the assessee.*

18. It is also seen that the name of assessee HUF is not seen in any of the questions as well Answers in the statement (which are part of the show cause notice), as well as annexure thereon.

19. It is also evident that from the records available before me, that the assessee has not dealt with any of the above parties per-se.

20. It is stated that the investigation report solely relied upon by the assessing officer is general in nature and it is just a study report and it is not known that which cases are investigated thoroughly for making such report and it is also not known to what extent it was investigated and how reliable it is.

21. It is stated that the assessing officer has not done any thorough investigation or at least not proved anything and/or not have any evidence/connection of assessee as regards so-called long term capital gain penny stock scam is concerned.

22. It is stated that the statement of 4 people alleged to be Operator and Exit Providers. were relied upon by the assessing officer and given to assessee for its comments were not recorded. Furthermore, there was no cross-examination opportunity given to the assessee. These statements nowhere have the name of the assessee, or any evidence of any cash paid by the assessee for purchasing so-called capital gain. Furthermore these statements nowhere has any evidence of any cash received from assessee by anyone towards these so-called capital gain or even otherwise.

23. The detailed affidavit filed by the assessee in reply to the show cause notice also has been accepted by the assessing officer with full contents thereof as

assessing officer has not pointed out any defects therein or stated so in his assessment order.

24. There is no BSE or SEBI enquiry even initiated as regards GCM securities Limited is concerned as certified by the said company in its letter to the assessee. The said letter was written by the company in response to assessee's letter followed by another reminder. There is nothing contrary to the same in the Public Domain.

25. It is submitted that not even 1 defect in any / all the evidences filed by the assessee for claiming long term capital gain as exempt U/s 10 (38) is pointed out by the assessing officer before summarily rejecting the exemption u/s 10 (38).

26. It is submitted that there is not even an iota of evidence pointed out against assessee being involved in so-called penny stock scam by the assessing officer.

27. It is submitted that there is no reference, name, statement, evidence for receipt of cash in lieu of long term capital gain by anyone or evidence of payment of cash by assessee for purchasing such long term capital gain

28. It is stated that the assessing officer has made several factually incorrect remarks in the assessment order on a recurring basis and the said order is not a result of thorough investigation and application of mind but simply copy paste from someone else's order

29. Assessing officer has even taken the name of the company as some other company and not the company in which the assessee HUF as on long term capital gains. The name has stated as Jackson investments Ltd and the assessee is referred to as "she/her" in most of the parts of the order.

30 The assessee has not only dealt in these shares out has been an avid investor having full knowledge of the stock exchange and financial markets. The said fact was also given in the statement recorded of the Karta during the assessment proceedings by the assessing officer, but he has a copy pasted someone else's facts in the said order disregarding the actual facts of the case.

31. It was also stated that since the shares were sold on BSE on-line portal, even the broker (forget the assessee) selling the shares does not know any knowledge about the purchaser of the said shares and hence the Nexus to alleged Exit provider is baseless and there is no evidence whatsoever as regards any Nexus to the assessee. The assessing officer is silent on this issue in the assessment order. Even otherwise, there are various names of Exit providers and Operators taken by the assessing officer in the assessment order loosely without any evidence at all.

32. All the conditions laid down U/s 68 are also fulfilled. The assessing officer has not explained how and which condition is not fulfilled by the assessee before invoking the provisions of section 68 and making such a huge addition (a) To prove identity of creditor and nature of transaction, the assessee has submitted a copy of sale contract note on BSE platform through Motilal Oswal securities Ltd. The contract note shows the quantity, rate, timestamp, value, taxes and charges, STT, brokerage, SEBI and exchange turnover charges, service tax and stamp duty

incurred on the transactions done on BSE platform which is recognized by the market regulator SEBI. The documents have been accepted by the assessing officer (b) Bank statement showing the sale proceeds credited by Motilal Oswal Securities Ltd. DMAT account of the assessee showing HUF has sold the shares and transferred the same to broker is also filed, these are also not doubled by the assessing officer (c) The sale consideration received by assessee, from Motilal Oswal securities Ltd, registered broker of SEBI/BSE as per contract note, directly in the bank account after shares are delivered from DMAT account and received by the assessee. This explains the identity of the creditor and source of money paid to assessee for genuine transaction of sale of shares. (d) shares are sold by assessee broker on BSE platform and not off market to any buyer. Hence the sale is on BSE clearing system and not to any random person. The transaction is also at the prevailing market rate on the public domain which prove the genuineness of the transaction. (e) In the absence of SEBI/BSE enquiry or even initiation of enquiry and the letter from the company that a fact proves that there is no Nexus as alleged by the assessing officer in his order.

33. It is stated that 3rd party evidence can be just starting reference point and needs to be developed and investigated upon before throwing it open to assessee for its remarks followed by the cross-examination opportunity of both the parties before strictly relying upon it and concluding against anyone. This is exactly what has not been done in the present case.

34. It is settled law based on a very old Supreme Court case reported in 37 ITR 151 (SC) that no addition can be made on the basis of surmises suspicion and conjectures It is also stated that the Investigation Wing is a separate department which has not been assigned assessment work but has been delegated the work of only making investigation. The act has vested widest power in Investigation Wing to conduct proper and detailed enquiry in any manner where there is allegation of tax evasion. Therefore. in absence of any findings specifically against the assessee in the Investigation Wing report, the assessee cannot be held to be guilty. The assessing officer has not brought on record any evidence to prove that the transactions entered into by the assessee which are otherwise supported by proper third-party documents are conducive transactions for alleged exchange of unaccounted cash.

35. The assessing officer has not produced or brought on record any evidence whatsoever in support of his suspicion of manipulation or tax evasion in any manner or any co-relation between the amounts sought to be added to any entries in any alleged documents which indicate that there was some tax evasion.

36. The said investigation report has listed 28 BSE listed scripts suspended by SEBI. Even though this report was made in 2015 and 9 long years have passed thereafter however there is no notice received by any irregularity or default by BSE/SEBI as certified by GCM securities Ltd.

37. Even in cash trail of 1570 crores spread over alleged 25 operators, 5000 paper shell companies, and 34 share broking entities, there is no name of anyone involved in purchase and sale transactions of GCM securities Ltd by the assessee.

38 It is stated that SEBI/BSE/NSE conducts periodical audits not only of books of accounts but also of internal controls and systems of their members and for the smallest violation it levies heavy penalty. It is stated that the said companies name does not appear on Prima Facie, research on public domain for any such violation. The said company was there were issued any notice for price rigging or any such serious wrongdoing/fraud/scam.

39. In nutshell the assessing officer has no evidence whatsoever against the assessee to prove their allegations AND at the same time, the assessee has produced all possible relevant proofs to claim the exemption U/s 10 (38) including even all 3rd party documents are also verifiable if needed. At the time of assessment order or during the assessment proceedings, the assessing officer has not found any defect whatsoever in any of the documents or submissions submitted by the assessee.

40. It is also observed from the statements recorded by DIT (Inv), Kolkata and provided to the assessee by the assessing officer that there is nothing which brings out any evidence or any information to confirm the suspicion to reach its logical and with a view to nail assessee for any wrongdoing. There is simply no evidence in the present case. All the statements recorded are general statements and there is no reference of GCM securities Ltd involved in such dealings or assessee being beneficiary of such long term capital gain scam or any exchange of cash to qualify for any addition

41. It is also observed from the statement on oath of the assessee recorded by the assessing officer, the assessee has himself invested in the said company without any outsider's advice. The character of the assessee being a Chartered Accountant himself has the requisite and sufficient knowledge of the financial market. In the statement he has clearly given the reasons for the said investments. He has clearly demonstrated the entire process for the investment into the said script. Unlike what he has stated in the said statement, the assessing officer has observed and remarked on certain statements which are not part of the said statement of the assessee recorded during the assessment proceedings. In the absence of any other statement recorded by the assessee, it is clear that the assessing officer has clearly goofed up in the assessment order and made certain wrong observations which are not made by the assessee. It seems to be from someone else's case records is not reliable

42. It is also observed that the assessing officer has placed total reliance on the information received from Investigation Wing report and passed the assessment order without connecting the dots if any.

43. It is stated that in the present case, after receipt of information based on Investigation Wing report, the assessing officer failed to collect the material and information which is tangible and which has live link with the undisclosed income before making any addition U/s 68. Live link would mean direct and close nexus, immediate connection between the information from the DDIT report and any information and evidence which he could gather. This material gathered should have a rational connection or a relevant bearing with the information received. This is a settled law as held in the Supreme Court decision as old as (1976) 103 ITR 437 (SC) in the case of ITO v/S Lakshmani Mewal Dass

44. *It is also true that they should be no holes between the information received and the materials gathered by the ITO during or before the assessment proceedings.*

45. *In the present case the assessing officer, has simply failed to connect the dots and there are no evidences for making any addition. The assessing officer has also not found any defects in the documents submitted by the assessee.*

46. *The documents submitted by the assessee are largely sufficient to prove the genuineness of allotment of shares by the company and the subsequent sale thereof, mother words the entire transaction*

47 *The documents submitted by the assessee are:*

- *share application form dated 9 February 2013*
- *the bank statement highlighting payment made to company*
- *share allotment letter from company dated 13 February 2013*
- *Motilal Oswal securities Ltd website "forthcoming IPO" page*
- *IPO prospectus extracts*
- *press release for public issue-newspaper cutting*
- *Demat statement showing credit of shares*
- *4 sales invoices of Motilal Oswal securities Ltd*
- *Ledger confirmation of Motilal Oswal securities Ltd*
- *bank statement*
- *affidavit on solemn affirmation that assessee has not given any cash or any amount to ultimate buyer or brokers in lieu of checks issued towards sale of shares*
- *calculation of capital gains.*

48. *It is noted that the assessing office failed in do any of the following or did something erroneous:*

(a) to collect any evidence to the effect that cash has been deposited in any account to facilitate the payment of sales of shares by the assessee;

(b) to examine buyers with reference to their bank account and source of deposit if any by them in their bank account;

(c) to examine truthfulness of the documents submitted by assessee or otherwise,

(d) to record any person's statement rely on for making addition after giving opportunity of cross-examination to the assessee;

(e) To rely on information from Investigation Wing report and straightaway use against the assessed without any justification or direct evidence,

(1) not considered the documents and submission filed by the assessee or summarily rejecting them without finding any fault on it,

(g) not distinguishing or discussing the case laws relied upon by the assessee but summarily rejected them;

(h) not establishing any nexus between the assessee the company, the so-called alleged operators and exit providers as slated in the show cause notice and the assessment order at various places for so-called purchases of long term capital gain:

(i) to err on numerous occasion and making factually wrong observations (including basic facts like name of the company) which could easily be avoided on proper application of mind and accuracy.

(j)land not doing proper home-work and verification even in public domain and also in the details received along with the said investigation report of the DDIT (Inv). Kolkata

(k) not providing the opportunity to cross-examine the persons whose statements he has stated to be relying on in the show cause notice dated 08 12 2017 and assessment order.”

8.1. Taking into consideration the above fact based thoroughly analysed findings by ld. CIT(A) and the submissions made by the ld. Counsel of the assessee corroborated by relevant documentary evidences, we do not find any reason to interfere with the said findings so arrived by ld. CIT(A).

9. In addition to the above stated findings of ld. CIT(A), 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.

10. We also 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"

11. Further, revenue in its ground of appeal has contended that issue is a covered matter by the decision in the case of Swati Bajaj & others v. PCIT [2022] 446 ITR 56 (Cal). In the said decision, it was held that assessee had to establish the genuineness of rise in price of shares within a short period of time that too, when general market trend was recessive. However, we note that there are several decisions of Hon'ble Jurisdictional High Court as stated supra which are in favour of the assessee. Accordingly, the same would prevail on the issue before this Tribunal. In the present case, decision of the Hon'ble Non-Jurisdictional High Court carries only a persuasive value. 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 on the Tribunal than the decision of Hon'ble Non-Jurisdictional High Court. Hon'ble Supreme Court emphasised therein

that the orders of 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. Respectfully following the same, we deem it fit and appropriate to follow the decisions of Hon'ble Jurisdictional High Court of Bombay referred supra wherein the impugned issue is decided in favour of the assessee. Moreover, when there are conflicting decisions of various High Courts on the same issue, 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, reliance placed by revenue on the decision of Hon'ble Calcutta High Court in Swati Bajaj (supra) does not hold its fort. Further in the present case, we find that assessee has duly established the nature and source of credit representing sale proceeds of shares of GCM. Accordingly, grounds taken by the revenue in this respect are dismissed.

12. Considering the totality of facts and circumstances of the case, factual matrix and submissions of parties narrated as well as detailed analytical findings arrived at by Id. CIT(A), we have no reason to interfere with the first appellate order whereby addition made u/s 68 towards proceeds of sale of listed shares of GMC which gave rise to Long Term Capital Gain on the said sale, claimed exempt by the assessee u/s 10(38) has been deleted. Accordingly, grounds taken by the revenue in this respect are dismissed.

13. Addition made by the ld. Assessing Officer on estimate basis towards commission for arranging alleged artificial capital gains @ 3% amounting to Rs. 2,97,549/- is consequential to the addition made towards receipt of sale proceeds of alleged penny stock. Since we have upheld the deletion of the said addition towards sale proceeds of alleged penny stock in terms of above stated observations and findings, this consequential addition of commission also receives the same fate, affirming the finding of ld. CIT(A) to this effect. Accordingly, grounds taken by the revenue in this respect are dismissed.

14. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 07 April, 2025

Sd/
(Saktijit Dey)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 07 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