

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
773/Mum/2022	2013-14	Shri Rajendra M. Jain, 2405, Panchratna, Opera House, Charni Road, Mumbai-400004 [PAN: ACPJ9853R]	ITO, Ward-19(3)(1), 2 nd Floor, Matru Mandir, Grant Road, Mumbai-400007
774/Mum/2022	2014-15		
775/Mum/2022	2015-16		

Assessee by : Ms. Ridhisha Jain a/w.
Shri Karan Jain

Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing : 18-03-2025

Date of Pronouncement : 09-04-2025

ORDER

PER B.R. BASKARAN, A.M :

All the three appeals filed by the assessee are directed against the orders passed by the Ld CIT(A), NFAC, Delhi and they relate to the Assessment Years (AYs.) 2013-14 to 2015-16. In all the three years, the assessee is aggrieved by the decision of the Ld CIT(A) in confirming the addition of sale consideration of shares as unexplained income u/s 68 of the Act and also confirming the addition of estimated expenses. In all the three appeals, the AO has made identical additions as mentioned above.

Accordingly, all the three appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. All the three appeals were disposed of by the earlier bench of Tribunal on 30-01-2023, since none appeared on behalf of the assessee. Subsequently, the assessee moved miscellaneous applications for recall of the orders passed ex-pare and the said applications were allowed by the Tribunal, vide its order dated 30-08-2023 and the earlier orders were recalled. Accordingly, all these three appeals are placed before us.

3. The facts relating to the above said issue are discussed in brief. In all the three years under consideration, the assessee had claimed exemption of long term capital gains arising on sale of shares u/ 10(38) of the Act. The assessee had earned above said long term capital gain on sale of shares of following companies in the assessment years mentioned below:-

Asst. Year	Name of Company	Sale Consideration	Cost	Long term capital gains
2013-14	Sunrise Asian Ltd	3,18,36,057	15,40,000	3,02,24,068
2014-15	Radford Global Ltd	4,13,05,258	15,00,000	3,97,18,725
2014-15	Pine Animation Ltd	1,79,25,360	60,000	1,78,65,360
	PSIT Infra Ltd	3,08,07,195	4,00,000	3,04,07,195
		4,87,32,555		4,82,72,555*
		=====		=====

(* The assessee has however computed capital gains of Rs.4,81,78,476/-for AY 2014-15)

M/s Sunrise Asian Ltd was earlier known as M/s Santoshi Maa Tradelinks Ltd. M/s Radford global Ltd was earlier known as PSI Global Ltd. The AO received information from the Investigation wing of Kolkatta that certain brokers are involved in manipulating the prices of small companies (called "penny stock") in order to generate bogus capital gains/losses. It was also informed that the above said four companies were also identified as penny

stocks. The AO noticed that the assessee has sold the shares for the consideration stated in the table above and declared Long term capital gain of the amount mentioned in each of the year mentioned in the above said table. The assessee claimed the long term capital gains as exempt u/s 10(38) of the Act. Based on the information so given by the Investigation wing, the AO took the view that the long term capital gains declared by the assessee is not genuine one. Accordingly, he reopened the assessments of AYs. 2013-14 and 2014-15. The return of income filed for AY 2015-16 was taken up for scrutiny.

4. Since the shares of above said companies have been identified as penny stocks, the assessing officer relied upon the report given by the investigation wing to arrive at the conclusion that the long term capital gains declared by the assessee in all the three years under consideration was not genuine. He observed that the financial results of the above said companies do not justify steep rise in the prices shares of above said company. He also noticed that the above said companies were declaring very low income and the prices of shares were not commensurate with the income of the companies. The AO also referred to the price movement charts prepared by the Investigation wing, wherein it was observed that the price movements in the form of ups and downs has happened in batches, which was considered as manipulation of price movements. The AO also referred to certain statements taken by the Investigation wing during the course of search, wherein they had admitted that they were operating the shares of above said company.

5. Based on the above said information, the AO sought explanations from the assessee. In response thereto, the assessee furnished all evidences in support of purchase and sale of shares of above said companies. The AO, however, fully relied upon the report given by the

investigation wing and took adverse view that the purchase and sale of shares undertaken by the assessee are not genuine and accordingly held that the assessee's claim for exemption u/s 10(38) of the Act cannot be allowed. Accordingly, the AO rejected the claim for exemption u/s 10(38) of the Act in all the three years and assessed entire sale consideration received on sale of shares as unexplained cash credit u/s 68 of the Act. The AO also took the view that the assessee may have incurred commission expenses in getting bogus long term capital gains and accordingly estimated the commission expenses incurred on procuring bogus long term capital gains in each of the three years and assessed the same u/s 69C of the Act. The learned CIT(A) confirmed both the additions in all the three years and hence the assessee has filed this appeal before the Tribunal.

6. The Ld.AR submitted that the assessee initially purchased shares of M/s Radford Global Ltd. on preferential allotment. Other three shares mentioned in the table were purchased from off market by paying purchase consideration through banking channel. Later on, entire shares of all four companies were sold in the stock exchange platform during the years relevant to the assessment years mentioned in the table and the sale consideration was also received through banking channels. He submitted that the assessee has furnished all the required documents to prove the factum of purchase and sale of shares. He submitted that the Assessing Officer did not find any deficiency/defect in the documents so furnished by the assessee. He submitted that the assessee is an ordinary investor in shares and it was not shown that the assessee was a part of the group, which was involved in the alleged prices rigging of the shares. Accordingly he submitted that the tax authorities are not justified in disbelieving the transactions of shares carried on by the assessee. In support of his submission, he placed reliance on various case laws.

7. On the contrary, the learned DR heavily placed reliance on the order passed by the Assessing Officer. He submitted that the Investigation wing has conducted inquiry in respect of the above said company and has come to the conclusion that the prices of the shares of above said company are being rigged. Further, the financial performance and fundamentals of these companies were not supporting the price rise and hence the same shows that the prices were rigged. Accordingly, the learned DR submitted that all these transactions of purchase and sale of shares have been preconceived and artificially structured with the sole intention to evade tax. He submitted that the assessing officer has issued notices u/s 133(6) of the Act to the Exit providers, but they did not respond. Accordingly he contended that the order passed by the learned CIT(A) should be confirmed.

8. In the rejoinder, the A.R submitted that the AO has fully relied upon the report given by the Investigation wing and did not conduct any independent enquiry. He has issued notices to the Exit providers, who have been alleged to have purchased the shares sold by the assessee. She submitted that the shares are sold in the online platform and it is not possible to find the buyers of shares in the online mode. He submitted that the report given by the investigation wing is related to some other persons and not that of the assessee. She submitted that the Hon'ble Supreme Court in the case of PCIT Vs. Smt. Renu Aggarwal (456 ITR 249) has affirmed the decision rendered by Hon'ble Allahabad High Court, wherein the Hon'ble High Court had held that the Assessing Officer could not have made the addition on the basis of the facts pertaining to completely unrelated person.

9. We heard the parties and perused the record. We notice that the assessing officer has primarily placed reliance on the report given by the

Investigation wing of the Income tax department, Kolkatta in order to arrive at the conclusion that the long term capital gains reported by the assessee in all the three years is bogus in nature. We notice that the investigation report prepared by Investigation wing, Kolkatta is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of prices. The Ld A.R submitted that the SEBI, who is regulator of stock market operations, have not conducted any enquiry with the assessee.

10. We notice that the assessee has
 - (a) purchased these shares by paying consideration through banking channels
 - (b) dematerialized the shares and kept the same in the Demat account.
 - (c) sold the shares through stock exchange platform
 - (d) received the sale consideration through banking channels.

Further, the shares have entered and exited the demat account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. As noticed earlier, the AO has not brought on record any material to show that the assessee was part of the group

which involved in the manipulation of prices of shares. Hence, we are of the view that there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

11. We may now refer to certain decisions rendered by Hon'ble Bombay High Court on identical issue. In the case of Shyam Pawar (supra), the Hon'ble Bombay High Court has observed as under:-

“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 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.Suresh kumar 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.”*

12. We may now refer to the decision rendered by the Hon'ble Jurisdictional High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022) and relevant discussions made by the 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.”*

In the case of CIT vs. Jamnadevi Agarwal (supra), the Hon'ble Bombay High Court held that the 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. In the case of PCIT vs. Indravadan Jain (HUF) (supra), the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were not doubted. Under these set of facts, the Hon'ble Bombay High Court held as under:-

“...The CIT(A) came to the conclusion that respondent bought 3000 shares of RFL, on the floor of Kolkatta Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkatta Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instruction slips and also received payment from Kolkatta Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT(A) found there was no reason to add the capital gains as unexplained cash credit under section 68 of the Act. The Tribunal while dismissing the appeals filed by the Revenue

also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal.”

In the instant case also, we noticed that the evidences furnished by the assessee to prove the purchase and sale of shares, payment made/received, entry/exit of shares in the demat account of the assessee etc., were not doubted with.

13. In the case of PCIT vs. Smt Krishna Devi (supra), the Hon'ble Delhi High Court has noticed that the reasoning given by the AO to disbelieve the capital gains declared by the assessee, viz., astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures. Accordingly, the Hon'ble Delhi High Court affirmed the decision rendered by ITAT in deleting the addition of capital gains.

14. Accordingly, in the facts and circumstances of the case, we are of the view that the decisions rendered by the jurisdictional Hon'ble Bombay High Court in the cases cited above shall apply to the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee. Accordingly, we are of the view that the AO was not justified in assessing the sale value of shares as unexplained income of the assessee and also in adding estimated commission expenses.

15. In view of the foregoing discussions, we hold that the sale consideration received on sale of shares cannot be assessed as unexplained cash credit u/s 68 of the Act and the long term capital gains declared by the assessee cannot be doubted with. Accordingly, we set aside the order passed by the Ld CIT(A) and direct the AO to delete both the

addition of sale consideration and also addition relating to estimated commission expenses.

16. In the result, all the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 09-04-2025

Sd/-
[NARENDER KUMAR CHOUDHRY]
JUDICIAL MEMBER

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

Mumbai,
Dated: 09-04-2025

TNMM

Copy to :

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

By Order

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