



**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, V.P.
AND
MS. PADMAVATHY S, A.M.**

ITA Nos.853 & 854/Mum/2025		A.Ys. 2015-16 & 2016-17
Sangita Ben Mardia, 701, Parswa padam Muthaliya Residency, Dattaram Lad Marg Kaka Chowky, Mumbai 400033	Vs.	Income Tax Officer, Piramal Chamber Dr Ss Rao Marg, Parel, Mumbai-400012
(Appellant)		(Respondent)
PAN		AAEPM 3314P
Assessee by		Shri R.M. Jain
Revenue by		Shri Leyaqt Ali Aafaqui, Sr. DR
Date of hearing		22.04.2025
Date of pronouncement		28.05.2025

ORDER

PER SAKTIJIT DEY, V.P.:

These appeals by the assessee arise out of two separate orders, both dated 08.01.2025, passed by the National Faceless Appeal Centre (NFAC), Delhi for the Assessment Years (AYs) 2015-16 and 2016-17. Grounds raised are common in both the appeals, except variance in figures.

2. Though, the assessee has challenged the validity of the assessment orders by raising certain legal and jurisdictional issues in Ground Nos. 1 to 3, however, at the time of hearing, learned counsel appearing for the assessee



urged the Bench to decide the appeals on merits in terms of Ground Nos. 4 and 5.

3. Briefly the facts are, the assessee is a resident individual. For the assessment years under dispute, the assessee had filed her returns of income in regular course. Subsequently, as per the information available in the portal of the Department, the Assessing Officer (AO) was found that assessee had sold 10250 shares of M/s. Appu Marketing and Manufacturing Ltd. also known as Ejecta Marketing Ltd. in A.Y. 2015-16 for an amount of Rs.67,68,101/- and claimed such income as exempt under the head Long Term Capital Gain. Similarly, she had sold 23250 shares of the same company in A.Y. 2016-17 for Rs.1,38,72,950/- and claimed exemption of Long Term Capital Gain (LTCG). Based on such information, assessments in case of the assessee for the aforesaid years were reopened u/s. 147 of the Income Tax Act 1961 (in short the 'Act'). To verify the genuineness of exemption claimed in respect of Long Term Capital Gain arising out of sale of shares of the above noted company in course of assessment proceedings, the Assessing Officer (AO) observed that as per information available with the Department, Ejecta Marketing Ltd./M/s. Appu Marketing and Manufacturing Ltd. is a public Ltd. company incorporated on 19.02.1983 and classified as non-government company with the Registrar of Company (ROC), Kolkata. He further observed, authorized share capital was



Rs.150,000,000/- and paid-up capital was Rs.145,764,992/- and company was stated to be engaged in the business of non-agricultural intermediate products and waste and scrap. However, the Assessing Officer observed that as per the investigation carried out by the Investigation Wing, the company shell penny stock company and involved in price rigging in a synchronized manner. He observed, though the value of shares was Rs.10/- per share however, through price manipulation and rigging the share price was inflated to Rs.309.75 per share to 52 week high of Rs.790/- per share on 18.03.2015. Subsequently, the share price drastically reduced and ended at Rs.400/- by 24.12.2015. He observed, the net worth as per the financials of the company do not justify such high pricing. Proceeding further, he observed, as per the direction of SEBI, Bombay Stock Exchange (BSE) has suspended trading in 35 listed companies including M/s Appu Marketing Ltd. Thus, ultimately, Assessing Officer concluded that the scrip of M/s Appu Marketing Ltd./Ejecta Marketing Ltd. is penny stock and the entire share transaction is non-genuine and was entered into for providing accommodation entries to generate artificial profit/loss. Thus he held that the Long Term Capital Gain shown from sale of shares of M/s Appu Marketing and Manufacturing Ltd./Ejecta Marketing Ltd. is essentially unexplained income of the assessee. Accordingly, invoking the provisions of Section 69A of the Act, he added back the aforesaid amounts as income of the assessee.



4. Though, the assessee contested the aforesaid additions, by filing appeal before First Appellate Authority, however, she was unsuccessful.

5. We have considered rival submissions and perused the materials on record. No doubt, the assessee had purchased 50000 shares of Appu Marketing/Ejecta on 05.10.2013 through proper banking channel. However, the shares have got credited to assessee's Demat account on 25.10.2013. It is further relevant to observe, the shares of the aforesaid company were listed in BSE and transaction in the shares taken place through BSE. The materials on record reveal that out of 50000 shares of the company purchased by the assessee in 2013, 10200 shares were sold in A.Y. 2015-16, 23200 shares were sold in A.Y. 2016-17, 3000 shares were sold in A.Y. 2016-17 and 8100 shares were sold in A.Y. 2018-19. Thus, by the end of the A.Y. 2019-20, the assessee had sold 44500 shares. Even as on date, the assessee is still holding 5500 shares of the company. These facts clearly reveal that the assessee had purchased the shares of the M/s Appu Marketing/ Ejecta as a genuine investor and not to avail accommodation entry to claim exempt LTCG. Had it been the case that the assessee had indulged in share transaction as a tool to convert her unaccounted money to accounted money and bring it to main stream, she should not have held on to some of the shares even till today. Pertinently, the assessee had effected sale of shares through registered stock broker M/s Allvin Securities Ltd. and copies of contract notes are available

on record. No independent enquiry has been conducted by the AO to establish that the persons to whom the assessee had sold shares are essentially exit providers.

6. A reading of the assessment order would reveal that the AO has got completely swayed away by the information available in the system of the Department through investigation carried out by its Investigation Wing. In fact, the AO admits that, though, as per the direction of SEBI, BSE had imposed restriction in the trading of shares of M/s Appu/Ejecta Pvt. Ltd., however, subsequently trading in shares were allowed. In fact, the AO has further stated that no final report of the SEBI is available commenting anything adverse with regard to the conduct or activity of the company. Thus, in our view, the conclusion drawn by the Departmental Authorities are based more on conjectures, surmises, suspicion rather than concrete evidence. Pertinently, learned counsel appearing for the assessee has relied upon a decision of the Coordinate Bench in case of 'Shrenik Kumar VirchandMardia vs. ITO' in ITA No. 558/Mum/2025 dated 24.03.2025, wherein, the Bench while dealing with identical nature of the dispute involving the scrip of Appu/Ejecta has decided the issue in favour of the assessee as under:-

“8. We heard the rival submission and considered the documents available in the record. We find that the assessee has purchased the shares off-line 1,10,000 shares of AMML. Out of that the

assessee sold 31,800 shares and received the amount through banking channel. All the relevant documents are duly submitted before the revenue authorities like bill, contract note, bank statement, ledger copy of the broker, which are also annexed in the paper book filed before the Bench. The assessee during the assessment proceeding filed the letter dated 13/05/2023, annexed in APB pages 44 to 46 where the assessee asked for the relied upon documents and the statement of Mr. Jajodia. But by passing the alleged letter of the assessee the impugned assessment order was passed by the Ld. AO. The sale transactions of these shares were also conducted through a banking channel, and the LTCG amounting to Rs. 2,04,42,976/- earned and claimed as exempt income under Section 10(38) of the Act. This exemption applies as the sales were conducted on the Bombay Stock Exchange (BSE) and the requisite Securities Transaction Tax (STT) was duly paid. The Ld. AO, however, treated the LTCG as bogus based on an interim report by the SEBI. Upon examining the final report, we note that SEBI subsequently withdrew the restrictions imposed in its interim order against the AMML vide notice no. 20161116-32 dated 16/11/2016. Furthermore, there is no evidence to suggest that the assessee engaged in price rigging or manipulation of share prices. The assessee submitted all necessary documentation related to the LTCG transactions before the Ld. AO, including contract notes, share certificates, DEMAT account statements, broker confirmations, and transactions through banking channel records. The Ld. AO did not reject any of these primary pieces of evidence. In this context, the Hon'ble Bombay High Court in Shyam R. Pawar (supra) held that when details of share transactions are substantiated by DEMAT account statements and contract notes, and the Assessing Officer fails to prove such transactions as bogus, the capital gains cannot be treated as unaccounted income under Section 68 of the Act. Same view is taken in the case of Ziauddin A Siddique (supra). Similarly, the Coordinate Bench-E of ITAT-Mumbai in Vijayrattan Balkrishan Mittal (supra) observed that additions under Section 68 cannot be sustained when the assessee has provided sufficient evidence to establish the identity, source, and nature of the transactions, and the Assessing Officer has not identified any deficiencies in such documents. In the case of Archit Gupta (supra) the coordinate bench of ITAT-Delhi held that where all characteristics of penny stock existed in present case, however, revenue had not brought on record any materials

linking assessee in any of dubious transactions relating to entry, price rigging or exit providers and even in SEBI report, there was no mention or reference to involvement of assessee, impugned reopening of assessment on ground that assessee had earned LTCG on sale of shares through accommodation entries was unjustified. Conversely, the Ld. DR relied on the judgment in Pr. CIT-V, Kolkata vs. Swati Bajaj, 139 taxmann.com 352 (Cal). While we have respectfully considered this case, we note that the Tribunal disposed of 89 appeals in a single consolidated order without taking into account the specific facts of each case. Such a generalized exercise lacks merit when proper facts are not considered. In the present case, the Ld. DR's argument primary related to transaction which is nothing but accommodation entry. However, it is crucial to note that the assessee sold the shares during the period from 19/12/2014, to 16/02/2015, in a staggered manner. Although SEBI had withdrawn suspension by the notice dated 16/11/2016 w.e.f. 21/11/2016. Upon careful evaluation, we find that the Ld. AO based his allegations against the assessee solely on the report of the Investigating Authority of the Department, without conducting any independent inquiry of his own. Consequently, in the absence of any specific supporting evidence, we find no justification to uphold the allegations. Furthermore, the Ld. AO failed to consider the assessee's letter dated 13/05/2023, wherein a request was made for the supply of relied-upon documents. Given these circumstances, we are of the considered view that the impugned appellate order is unsustainable. Accordingly, the additions of Rs.2,04,42,976/- and Rs.4,08,860/- are quashed, and the appeal order is set aside."

7. Aforesaid observations of the Coordinate Bench squarely apply to the facts of the present appeals also. In view of aforesaid, we hold that the additions made in both the assessment years under dispute are unsustainable. Accordingly, AO is directed to delete the additions.



8. In the result, appeals are partly allowed as indicated above.

Order pronounced in the open court on 28/05/2025.

Sd/-

(PADMAVATHY S)
(ACCOUNTANT MEMBER)

Sd/-

(SAKTIJIT DEY)
(VICE PRESIDENT)

Mumbai, Dated: 28.05.2025

Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai