

|आयकर अपीलीय न्यायाधिकरण न्यायपीठ, मुंबई|

IN THE INCOME-TAX APPELLATE TRIBUNAL "A" BENCH,
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 3929/MUM/2024
(निर्धारण वर्ष / Assessment Year :2016-17)

ACIT, Circle, Mumbai 601, 6 th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400012	v/s. बनाम	Abhishek Rajendrakumar Mundra C-28, Ameya Building, Behind YMCA, DN Nagar, PO Azad Nagar, Andheri West, Mumbai-400053
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACPM5067H		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

प्रति आपत्ति सं./ CO No. 100/MUM/2025
(Arising out of ITA No. 3929/MUM/2024)
(निर्धारण वर्ष / Assessment Year :2016-17)

Abhishek Rajendrakumar Mundra C-28, Ameya Building, Behind YMCA, DN Nagar, PO Azad Nagar, Andheri West, Mumbai-400053	v/s. बनाम	ACIT, Circle, Mumbai 601, 6 th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACPM5067H		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Vimal Punmiya
राजस्व की ओर से /Revenue by:	Shri Aditya Rai, Sr. DR

सुनवाई की तारीख / Date of Hearing	11.06.2025
घोषणा की तारीख/Date of Pronouncement	16.06.2025

आदेश / ORDER

PER SANDEEP GOSAIN [J.M.]:-

This appeal is filed by the revenue, against which the assessee has filed cross-objections, challenging the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi (hereinafter referred to as "CIT(A)") dated June 15, 2024, passed under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year (A.Y.) 2016-17.

2. The revenue has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition made by the AO without appreciating the facts of the case and modus operandi as a detailed investigation has been carried out by the Investigation Wing in the scrip of M/s Yamini Investment Company Limited where the assessee name has been surfaced and a detailed finding has been given by the Investigation Wing.

2. On the facts and the circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made by the AO without appreciating the facts that in such penny scrip, trading transactions of purchase and sales are not affected for commercial purpose but to create artificial gain and complete the cycle of circular trading with a view to evade taxes.

3. On the facts and the circumstance of the case and in law the Ld. CIT(A) erred in not appreciating the fact that transaction of shares of such penny scrip are not governed by market factors prevalent at relevant time rather transactions are product of design and mutual connivance on part of assessee and operators.

4. On the facts and the circumstance of the case and in law the Ld. CIT(A) erred in not appreciating the fact of the case and modus operandi as detailed investigation has been carried out by the investigation wing and confirming



that the scrip is utilized by entry operators for providing accommodation entries under the garb of Long Term Capital Gain/Short Term Capital Gain Loss by manipulating/rigging up the share price.

5. On the facts and the circumstances of the case and in law the Ld. CIT(A) erred in not appreciating the facts that no prudent person would have entered into this transaction of penny stock and thus erred in holding that the transactions in shares of M/s Yamini Investment Company Limited have been carried out by the assessee in normal course of business and not with any intention of specific undue gain.

6. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in ignoring the direct and circumstantial evidence brought on record by the Assessing Officer to establish that the assessee has indulged in manipulation of the share prices of M/s Yamini Investment Company Limited claiming these as exempt from taxation.

7. On the facts and circumstance of the case and in law the order of the Ld. CIT(A) suffers from perversity as it ignores the facts brought on record establishing manipulation of share prices of M/s Yamini Investment Company Limited as part of colourable device to generate fictitious Long Term Capital Gain with the aim to evade taxes due.

8. On the facts and circumstance of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.59,74,150/- for A.Y 2016-17 as unexplained investment u/s 68 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 Gain.

9. On the facts and circumstance of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.2,98,707/- u/s 69C for A.Y 2016-17 of the Income Tax Act, 1961 being the amount of the commission paid for aforesaid sale of share of M/s Yamini Investment Company Limited.

10. On the facts and the circumstances of the case and in law, Ld. CIT(A) erred in ignoring the decisions in Sumati Dayal v. CIT 214 ITR-80 and CIT v. Durga Prasad More 82 ITR-540 (S.C.) and coming to a conclusion only on the basis of the arguments advanced by the assessee.”

3. The assessee has raised the following ground of objection:

“1. On the facts and circumstances of the case and in law the Ld. AO, has not acquired the mandatory approval by Principal Chief Commissioner or other specified authority for the purpose of section 148 as required u/s 151 of the Income Tax Act, 1961. Therefore, the assessment itself is bad in law and ought to be quashed.”



4. All the grounds raised by the revenue are interrelated, interconnected and relate to challenging the order of Ld. CIT(A) in deleting the additions made by the AO u/s 68/69C of the Act. Therefore, we have decided to adjudicate these grounds through the present consolidated order.

5. We have heard the counsels for both the parties, perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities.

6. From these facts, we notice that the assessee was allotted 12,500 equity shares of M/s Anax Com Trade Ltd. on 21.01.2013 for a value paid amounting to Rs. 1,25,000/- at face value of Rs. 10. Thereafter, M/s. Anax Com Trade Ltd. split the face value of the shares from Rs. 10 to Rs. 1. However, on 09.05.2014, the said 1,25,000 shares of M/s Anax Com Trade Ltd. were converted, by merger/amalgamation, following the Hon'ble Bombay High Court order to 1,00,000 shares of Yamini Investments Company Ltd. (Yamini). Hence, the basic contention of the revenue was that the shares of Yamini Investments Company Ltd. were purchased, which is incorrect, as the assessee has come to hold shares of Yamini due to the said court order after many months of purchases of M/s. Anax Com Trade Ltd. equity shares. We also notice that the merger order of the Hon'ble Bombay High Court was followed by approval of the Securities and Exchange Board of India (SEBI) and government agencies for trading at the Bombay Stock Exchange (BSE). Later on, in response to the



Hon'ble High Court order of merger, the assessee got entitled to 1,00,000 equity shares of Yamini Investments Company Ltd., which was lesser than the acquired 1,25,000 shares of M/s. Anax Com Trade Company Ltd. Later on, looking at market volatility and better returns, the assessee sold these equity shares at Recognized Bombay Stock Exchange through Brokers viz. Angel Broking Pvt. Ltd., IL & FS Securities Services Limited and Arcadia Share & Stock Brokers Pvt. Ltd from a price range of Rs. 49 to Rs. 62 per share. The shares of Anax Com Trade Limited were purchased and were received in the Demat account and payment is made through banking channel vide account payee cheque, thus no question of raising doubt about the purchase of shares by the assessee is sustainable. STT has also been paid on all the Sales Transactions. The sale of shares was also evidenced from transaction undertaken through registered stock at a specific trade time in BSE and after the sale of shares, the net receipts had been credited to the assessee's bank account. And this hence, the nature of the transaction was clearly purchase and sale of shares and the source of the credit, from the material facts on record were quite evident that it was from the sale of shares. As there was no tangible material brought on record to convert these transactions then it is very difficult to treat the sale proceeds of the shares as unexplained cash credit to be added under deeming provisions of section 68. We also found from the records that there was no evidence or any



whisper that some unaccounted money had been routed, and hence, in our view, the sale proceeds could not be added.

7. Reliance is being placed on the case involving the Yamini Investments Company Ltd., wherein the coordinate benches of ITAT have taken a consistent view in the case of ***Sujit Madan v/s DCIT in ITA No. 3436/Del/2023 dated 20.01.2025***. The relevant findings of the coordinate bench are reproduced below:

“Further, even in the Mumbai Tribunal relied upon by the ld DR vehemently, there is an observation that people who had approached the tainted parties in order to get accommodation entries in the form the exempt long-term capital gains. There is absolutely no evidence brought on record by the revenue in the instant case before us that assessee had either approached the alleged tainted parties/entry operators who were involved in artificial rigging of share price of Yamini Investment Company ltd in order to receive accommodation entries in the form of exempt long-term capital gains. It is pertinent to note that assessee has been holding the share from September 2012 onwards and the price of the very same scrip in the open market in October 2014 was ranging from Rs. 452 to 496 per share. Considering the drastic fall in the said scrip, the assessee had chosen to sell it in three tranches at the price 61.70 per share; Rs 58.15 per share and Rs. 30.85 per share. This is classic case of assessee falling in the category of gullible investor who had been hit by the declining market prices due to alleged manipulation and artificial rigging of share prices carried out by some 3rd party who are totally unconnected with the assessee. Hence, in our considered opinion, reliance placed on the decision of the Mumbai Tribunal would not come to the rescue of the revenue.”

14. Further, we find that in assessee's brother's case, Shri Rajiv Madan, in respect of identical facts of sale of shares of Yamini Investment Company Limited, the income tax department had accepted the claim of short term capital gains disclosed by him to be genuine in the reopened assessment proceedings under section 143(3) read with section 147 of the Act dated 26-5-23. The learned AR placed on record the copy of the said assessment order in pages 53-56 of the synopsis. This evidence also goes against the department wherein for the same set of shares, in case of assessee's brother, the entire transactions have been accepted as genuine by the department whereas, exactly contrary view has been taken in the case of the assessee herein.

15. In view of the aforesaid observations, we hold that there is absolutely no case made out by the revenue for justifying the denial of exemption under section 10(38) of the Act in the facts and circumstances of the instant case. Accordingly, the Ground Nos. 2, 3 and 5 raised by the assessee are hereby allowed.”



8. Apart from the above coordinate Bench of the Tribunal, in a case involving the identical scrip, has also decided the issue in favour of the assessee and deleted the additions, the details of which are reproduced hereunder:

1. ITA No. 2016/Mum/2024 Jaibhagwan Banarasidas Jindal v/s ITO, Ward-1 Jalna.
2. ITA No. 1253/Jpr/2024 The ACIT v/s Hans Raj Agarwal
3. ITA No. 1191/JP/2024 ACIT/DCIT v/s Alok Kumar Jain

9. After considering the entire facts and circumstances of the case, Ld. CIT(A) has rightly deleted the additions u/s 68/69C of the Act. No new facts or circumstances have been placed before us in order to controvert or rebut the findings so recorded by the Ld. CIT(A). Therefore, we find no reason to interfere with or deviate from such findings. Thus, we uphold the findings of the Ld. CIT(A) and dismiss the grounds of appeal raised by the revenue.

10. Since we have dismissed the appeal filed by the revenue and upheld the deletions, the CO filed by the assessee has become infructuous.

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

Order pronounced in the open court on 16.06.2025.

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य/JUDICIAL MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 16.06.2025

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :



1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

