

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SMT.RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 6361/Mum/2024  
(Assessment year: 2015-16)

<b>Heaven Mahendra Shah</b> 501/502, Cosmos, N.M. Road, Vile Parle (West), Mumbai-400 056 <b>PAN: AAGPS3148F</b>	<b>vs</b>	<b>Asst. CIT-33(1), Mumbai</b> C-12, 7 <sup>th</sup> Floor, Pratyaksha Kar Bhavan, BKC, Bandra (East), Mumbai-400 051
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Ashok Bansal, CA a/w Shri Ajay Daga, CA  
Respondent by : Shri Hemanshu Joshi - SR DR

Date of hearing : 09/07/2025  
Date of pronouncement : 21/07/2025

**ORDER**

**Per: Anikesh Banerjee (JM)**

The instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax Appeal / Addl / JCIT(A)-4, Chennai [for brevity, the "Ld. CIT(A)"] passed under section 250 of the Income tax Act, 1961 [for brevity "the Act"] for Assessment Year 2015-16, date of order 27/11/2024. The impugned orders emanated from the order of the Learned Assistant Commissioner of Income-tax 33(1), Mumbai (for brevity the "Ld. AO"), passed under section 143(3), date of order 28/12/2017.

2. The brief facts of the case are that the assessee filed the return under section 139(1) of the Act and declared total income amount to Rs. 1,24,64,340/-. The return was selected for scrutiny and the notices under section 143(2) and 142(1) of the Act were issued. During the impugned assessment year, the assessee sold shares of Pearl Agriculture Ltd (PAL) and Pearl Electronics Ltd (PEL), total amount to Rs.26,02,806/-. The assessee purchased 4,000 share of NGVL on 25/03/2011 with cost of Rs.7,68,680/- on demerge of agricultural division and electronic division of NGVL into PAL and PEL. The shareholder of NGVL on 01/01/2013 received 2235 shares of PAL and 2271 shares of PEL in terms of scheme of arrangement sanctioned by Hon'ble Bombay High Court. During the scrutiny, the Ld.AO added the entire sale transaction of Rs.26,02,806/- under section 68 of the Act. Aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) upheld the impugned assessment order. Being aggrieved, assessee filed an appeal before us.

3. The Ld.AR filed a paper book containing pages 1 to 125 which is kept on record. The relevant paragraphs of the submission of the Ld. AR are reproduced as below:-

*1. The assessee is an individual and earns salary income, house property income, capital gains, dividend & interest etc. He is a regular investor in shares and during the year under appeal has earned capital gains in around 30 scrips and at the year end, his portfolio had investment in around 60 scrips. The assessee filed return of income for the assessment under appeal declaring total income of Rs. 12464340/- & interalia claimed exempt long-term capital gain u/s 10(38) of Rs. 3652807/-.*

*2. The issue in appeal is with regard to denying the exemption claimed u/s 10 (38) of the Act in the scrips Pearl Agriculture Ltd (PAL) and Pearl Electronics Ltd (PEL), on the ground that the said scrips are penny stocks and the capital gain is, therefore, bogus and in making the addition of the sale proceeds of the said scrips aggregating to Rs. 26,02,806/- as unexplained cash credit u/s 68 of the Act.*

3. The said scrips were allotted to the assessee in Jan, 2013 pursuant to Bombay High Court order in the demerger scheme in respect of his holding of 4000 shares of Nouveau Global Ventures Ltd (NGVL) (earlier known as Nouveau Multimedia Ltd) which shares were purchased on BSE platform through SEBI regd. share broker on 25.3.2011. The scrips of PAL & PEL received on demerger were sold during the year under appeal on BSE platform. The details of said acquisition & sale thereof in a tabulated form is given here under:

**Investment Made**

<i>Date of purchase of shares of Nouveau Multimedia Lted (NGVL)</i>	<i>Purchased through</i>	<i>Qty (Nos.)</i>	<i>Purchase Amt. (Rs.)</i>	<i>Consideration paid on</i>
<i>25.03.2011 (PB Page 19)</i>	<i>Online purchase through SEBI regd. Share broker M/s JHP Securities (P) Ltd</i>	<i>4000 (FV of Rs.10/-)</i>	<i>768680/- @Rs.192 / 17 per share)</i>	<i>7.4.2011 Through ch.no.21345 drawn on The Saraswat Co-op. Bank (PB page 20-21)</i>

**Shares of Pearl Agri and Pearl Electronics received on demerger of Agriculture Division & Electronic Division respectively of Nouveau Global Ventures Ltd (NGVL) pursuant to Scheme approved by the B'bay HC**

<i>Shares issued by Pearl Agriculture pursuant to the Scheme</i>	<i>No. of shares of Pearl Agriculture allotted to the appellant</i>	<i>Shares issued by Pearl Electronics pursuant to the Scheme</i>	<i>No. of shares of Pearl Electronics allotted to the appellant</i>	<i>Date of receipt of credit in demat a/c of shares of Pearl Agriculture &amp; Pearl Electronics</i>
<i>55.89 shares for every 100 shares of NGVL (PB Page 29)</i>	<i>2235 shares of Rs.10/- each (PB Page 30) [on sub-division of FV of Rs.10/- to Re.1, the</i>	<i>56.79 shares for every 100 shares of NGVL (PB Page 29)</i>	<i>2271 shares of Rs10/- each (PB Page 30)</i>	<i>01.01.2013</i>

	holding PAL w.e.f. 20.8.14 became 22350 shares (PB Page 32-33]			
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<i>Date of Sale</i>	<i>Sold through</i>	<i>Qty (Nos.)</i>	<i>Sale Amt. (Rs.)</i>	<i>Date of debit in Demat A/c</i>	<i>LTCCG</i>
17.11.2014 (PB Page 35)	Online sale through SEBI regd. Share broker M/s Motilal Oswal Securities Ltd	8400 [FV of Re.1/-]	1035756/- {@Rs.56 / 29 per share)	18.11.2014 (PB Page 37)	1037576/-
18.11.2014 (PB Page 36}	Online sale through SEBI regd. Share broker M/s Motilal Oswal Securities Ltd	3950 [FV of Re.1/-]	220963/- {@R.55/94 per share)	37) 19.11.2014 (PB Page 37)	220963/-
<i>Total</i>		22350			12,58,539/-

**Shares of Pearl Electronics Sold**

<i>Date of Sale</i>	<i>Sold through</i>	<i>Qty (Nos.)</i>	<i>Sale Amt.(Rs.)</i>	<i>Date of debit in Demat A/c</i>	<i>LTCCG</i>
12.06.2014 (PB Page 50)	Online sale through SEBI regd. Share broke JHP Securities (P) Ltd.	2271 [FV of Rs.10/- ]	1344267/- @Rs.591 / 93 per share)	13.06.2014 (PB Page 51)	1344267/-

4. *The assessee in the course of assessment proceedings, furnished following details to substantiate the above transactions:*

*i. Copy of Client Master Data from the DP- The Saraswat Co-op. Bank Ltd. disclosing the date of opening of Demat A/c as 30.10.2002 (PB Page 17);*

*ii. Copy of broker's bill dt.25.03.2011 towards purchase of 4000 eq. shares of Nouveau Multimedia Ltd. @ Rs. 192/17 per share (PB Page 19);*

*iii. Copy of relevant bank statement evidencing payment made to broker towards purchase of above shares (PB Page 20-21);*

*iv. Copy of Demat statement as on 31.03.2015 disclosing holding of the above shares at the yearend (PB Page 22-23);*

*v. Copy of Notice dt. 21.04.2012 convening meeting of equity shareholders of Nouveau Multimedia Ltd. (now known as Nouveau Global Ventures Ltd.) regarding Scheme of Arrangement for demerger of agriculture & electronic division of Nouveau into Pearl Agriculture Ltd and Pearl Electronic Ltd respectively (PB Page 27 - 28);*

*vi. Corporate Action Announcement of Nouveau to BSE giving details of demerger and ratio of allotment of shares of Pearl Agriculture and Pearl Electronics to the shareholders of Nouveau in lieu of demerger of its agriculture & electronic units (PB Page 29);*

*vii. Demat statement for the period 01.01.2013 to 31.01.2013 giving the details of shares of Pearl Agriculture and Pearl Electronics received on demerger of Nouveau (PB Page 30-31);*

*viii. Corporate Action Announcement of Pearl Agriculture to BSE intimating sub-division of face value of its shares from Rs. 10/- to Re.1/-(PB Page 32);*

*ix. Demat statement for the period 01.08.2014 to 31.08.2014 giving details of change in holding of number of shares of Pearl Agriculture pursuant to sub-division of its face value (PB Page 33-34);*

*x. Copy of broker's bills dt. 17.11.2014 & 18.11.2014 towards sale of 22350 eq. shares of Pearl Agriculture (PB Page 35-36);*

*xi. Copy of Demat statement for the period 01.11.2014 to 30.11.2014 giving details of debit of 22350 shares of Pearl Agriculture on sale of the said scrip (PB Page 37-38);*

*xii. Statement of short-term and long term capital gain on sale of shares (PB Page 40)”*

*The Ld.AR further argued that the Ld.AO has issued notice to the party under section 133(6) of the Act to cross and so which has no relation with the assessee's transactions. So accordingly, for cross verification was allowed to the assessee in relation to verification done by Ld.AO under section 133(6) of the Act by notice dated 18/09/2017 and 17/11/2017.*

*The Ld.AO noted that the said notice under section 133(6) of the Act are issued to the purchasers and the exit providers of the shares and calling of details of sales and purchases with the assessee during the year. But both the letters were returned unserved by the postal authorities. None of them filed any reply before the Ld.AO. The Ld.AR took a plea that the assessee had not cross verified on any of the said notices and even the Ld.AO had not allowed the assessee for further verification of the said investigation.*

4. The Ld. DR argued and stands in favour of the orders of the revenue authorities. The Ld. DR specifically mentioned paras 4.11 and 4.12 of the impugned appellate order, which are extracted below: -

*4.11 Reliance is also placed in the case of Principal Commissioner of Income tax v. Nand Kishore Agarwala\*[2022] 143 taxmann.com 402 (Calcutta) wherein the Hon'ble High Court of Kolkata has again held that 'Where assessee had stage managed transactions of sale of shares with object to plough back his unaccounted income in form of fictitious long-term capital gains (LTCG) and claim bogus exemption under section 10(38), such exemption denied by Assessing Officer by way of treating bogus LTCG in penny stock under purview of unexplained cash under section 68 and unexplained expenditure u/s 69C was justified'.*

*4.12 Therefore, basis the discussions in the above paras, it is held that the AO had extensively proved beyond doubt that the investment made by the appellant is nothing but a sham transaction in a penny stock company mainly with the intention of claiming bogus LTCG which is an exempt income and hence, going by the AO's findings and as held by various courts as discussed in the above paras, the addition made by AO u/s68 is held correct and no infirmity is found in the order of AO. All grounds of appeal in this regard are dismissed.”*

5. The Ld.AR further relied on the order of the co-ordinate bench of ITAT, Mumbai in the case of **Poornima Ramesh Shenoy vs ITO ITA No.141/Mum/2023**, date of pronouncement **23/08/2023**. The relevant paragraph 8 is extracted below:-

*“8. It is pertinent to note that in the statement recorded of the Authorised Representative of the assessee during the assessment proceedings, it was specifically submitted that the assessee has never invested through preferential allotment and also disclosed the name and address of the broker, i.e. HDFC Securities Ltd. However, the AO without finding any fault with the evidence submitted by the assessee proceeded to treat the transaction as non-genuine and the long-term capital gains earned by the assessee as bogus. Further, we find that the SEBI vide its order dated 26/06/2020, had conducted an enquiry into the manipulation of the price of the scrip of Mystic Electronics Limited, by certain operators and the entities connected to such operators. From the perusal of the said order, which was furnished during the course of the hearing, we find that there is no allegation that the assessee has transacted with the alleged operators or their entities for earning the long-term capital gain of Rs.5,47,190. In the absence of any other allegation of the Revenue, we find no merits in the impugned order upholding the addition of Rs.5,47,190, made under section 68 of the Act and disallowing the exemption of long-term capital gains earned by the assessee. Accordingly, the grounds raised by the assessee are allowed.”*

6. The Ld.AR further relied on the order of Hon’ble jurisdictional High Court in case of **PCIT-31, Mumbai vs Indravadan Jain, HUF, ITA No.454 of 2018**, date of order **12/07/2023**. The relevant paragraph 4 is reproduced as below: -

*“4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in*

*RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata 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 Kolkata 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 instructions slip and also received payment from Kolkata 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."*

7. We have heard the rival submissions and examined the documents available on record. The assessee has filed an appeal against the addition made in respect of the profit on sale of shares amount to Rs.2602806/- being the aggregate of sale proceeds of shares of Pearl Agriculture Ltd (PAL) of Rs.1258539/- and of Pearl Electronics Ltd. (PEL) of Rs.1344267/-. The said scrips were allotted to the assessee in January, 2013 pursuant to Hon'ble Bombay High Court order in the demerger scheme in respect of his holding of 4000 shares of Nouveau Global Ventures Ltd (NGVL) (earlier known as Nouveau Multimedia Ltd) which shares were purchased on BSE platform through SEBI regd. share broker on 25.3.2011. The scrips of PAL &

PEL received on demerger were sold during the impugned financial year on BSE platform. We observe that the entire addition was confirmed solely on the basis of the report of the Investigation Wing of the Income-tax Department, Kolkata, which alleged that the rise in share price was manipulated, and that the assessee had introduced unaccounted income in the guise of LTCG through a circular transaction. During the assessment as well as appellate proceedings, the assessee submitted all requisite documentary evidence, including the demat account statement, bank statement, sale bill, and share allotment documents. All such documents have been placed on record in the assessee's paper book. This demerger was carried out through a proper legal process. Importantly, the documents submitted by the assessee during the assessment proceedings were neither challenged nor discredited by the revenue authorities. Therefore, the assessee has discharged the primary onus of proving the genuineness of the transactions.

The LTCG proceed was received by the assessee through regular banking channels. The purchased shares were credited to the assessee's demat account, and the entire transaction was routed through the BSE. No evidence has been brought on record by the revenue to demonstrate that the assessee was involved in any price manipulation or rigging with respect to the shares of PAL & PEL.

We also note that the co-ordinate bench of the ITAT has taken a similar view in relation to the this transaction. Accordingly, we respectfully rely on the decisions of the Hon'ble Jurisdictional High Court in **Indravadan Jain** (supra) and order of the co-ordinate bench in the cases of **Poornima Ramesh Shenoy** (supra). We seaside the impugned appellate order. The additions made by the Ld. AO under Section 68 of the Act, amounting to Rs.26,02,806/- on account of LTCG, is hereby deleted.

8. In the result, the appeal of the assessee bearing **ITA No.6361/Mum/2024** is allowed.

Order pronounced in the open court on 21<sup>st</sup> day of July 2025.

Sd/-

sd/-

(SMT. RENU JAUHRI)

(ANIKESH BANERJEE)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 21/07/2025

Pavanan

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai