

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.3601/Mum/2025
(Assessment Year :2012-13)**

ITO-42(1)(4), Mumbai	Vs.	Parul Kishor Patel Shop 1 & 2, Shreenath Building, Bajaj Road, Vile Parle (W) Mumbai- 400 067
PAN/GIR No.AGMPP1961D		
(Appellant)	..	(Respondent)

Assessee by	Shri Prakash Jotwani
Revenue by	Shri Virabhadra Mahajan, Sr. DR
Date of Hearing	15/07/2025
Date of Pronouncement	29/07/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 06/02/2025 passed by FAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 147.

2. In its grounds of appeal, the Revenue has assailed the deletion of an addition of Rs.97,21,227 made under Section 68 of the Act, being the income declared exempt under Section 10(38) on account of sale of shares. It has also challenged the

deletion of a notional commission addition of Rs.2,91,637 made under Section 69C by estimating commission at 3%.

3. At the outset, it was submitted that the issues raised in the present appeal stand squarely covered by the decision of this Tribunal in the case of the assessee's husband, Shri Harshit Kishor Patel vs. ITO in ITA No. 2040/Mum/2024 dated 23/10/2024, and also in the case of another family member, Shri Kishore Hargovind Patel (HUF) vs. ITO in ITA No. 4631/Mum/2023 dated 19/08/2024.

4. Briefly stated, the assessee had filed her return of income on 24/07/2012 declaring total income of Rs.7,09,210. The return was processed under Section 143(1). In the said return, the assessee claimed exemption under Section 10(38) on account of long-term capital gains arising from the sale of shares of M/s. Karma Ispat Ltd. Subsequently, the case was reopened under Section 147 pursuant to an investigation report from the DGIT (Inv.), Kolkata, which alleged that M/s. Karma Ispat Ltd. was a penny stock company. The Assessing Officer, relying on the said report, discussed in detail the alleged modus operandi employed in such transactions. It may be noted, however, that the said company had been incorporated on 30/08/1977 and was listed and regularly traded on the stock exchange.

5. The assessee had acquired 35,000 equity shares of M/s. Karma Ispat Ltd. on three different dates in January 2010 for a total consideration of Rs.10,37,763. These shares were sold

in May 2011 resulting in a long-term capital gain of Rs.86,83,463.

6. We have carefully considered the rival submissions and perused the relevant material available on record, including the assessment order, the impugned order of the learned CIT(A), and the decisions relied upon by the assessee. The core issue in the present appeal pertains to the genuineness of long-term capital gains claimed as exempt under Section 10(38) of the Act, arising from the sale of shares of M/s Karma Ispat Ltd., which the Assessing Officer has treated as a penny stock transaction pursuant to the investigation report of the Directorate General of Income Tax (Investigation), Kolkata. However, it is evident from the material placed on record that the assessee had purchased the said shares in January 2010 through a recognised stock exchange platform by making payments through proper banking channels. The shares were subsequently dematerialised and sold in May 2011, also through a recognised stock exchange, resulting in the impugned long-term capital gain. The requisite documentary evidences including contract notes, bank statements, demat account statements, purchase and sale bills, and broker ledgers were duly filed and were not controverted by the Assessing Officer.

7. The learned CIT(A), having meticulously examined the evidentiary matrix and legal parity with the earlier decisions, justifiably drew strength from the coordinate Bench rulings

and extended relief to the assessee in consonance with settled judicial precedent.

8. Before us, both the parties have fairly submitted that the issue involved is squarely covered by the decisions of this Tribunal in the cases of Shri Harshit Kishor Patel and Shri Kishore Hargovind Patel (HUF), which involved identical facts, including the same scrip of M/s Karma Ispat Ltd. The relevant observations and findings of the Tribunal in the case of Shri Harshit Kishor Patel (supra) are reproduced hereunder:

“9. We have heard the parties and perused the material available on record and considered the rival contentions of the parties and observe that in the case of Shri Kishore Hargovind Patel HUF (supra), the then Assessee had also purchased the share of Karma Ispat Ltd. which is under consideration before us and the Hon’ble Co-ordinate Bench of the Tribunal while analyzing the peculiar facts and circumstances of the case, as well as the judgment of the Hon’ble Jurisdictional High Court in the case of PCIT Mumbai Vs. Indravadan Jain HUF (supra), ultimately deleted the identical addition made on account of sale of shares of M/s Karma Ispat...”

“...6. On the aforesaid analyzations and respectfully following the dictum laid down by the Hon’ble High Court, we are inclined to delete the addition under consideration; hence, the same is deleted. 10. As the Hon’ble Co-ordinate Bench of the Tribunal in the aforesaid case has also dealt with the identical scrip, facts and circumstances and issues as involved in this, hence respectfully following the decision of the Hon’ble Co-ordinate Bench of the Tribunal, we are inclined to delete the addition of Rs.56,61,715/- (sale proceeds on sale of shares) which was made and affirmed as unexplained cash credit u/s 68 of the Act and added to the income of the Assessee. As we have deleted the substantive addition, hence the addition of Rs.1,69,851/- being commission @ 3% of Rs.56,61,715/- (sale

price of shares) as made and affirmed u/s 69C of the Act has lost its existence, hence the same is also deleted.”

9. In our considered view, the facts in the present case are pari materia to the cases relied upon. The scrip involved is the same, the pattern of transactions is identical, the mode and manner of purchase and sale are through recognised channels, and the documentary evidences remain unassailed. The Assessing Officer has not brought on record any direct material or incriminating evidence to prove that the transaction undertaken by the assessee was sham or accommodation in nature. The entire basis for the addition rests upon generalised suspicion arising from an investigation report, rather than specific evidence against the assessee. It is a settled position in law that no addition can be sustained merely on the basis of presumption or suspicion, without cogent material to support such conclusions.

10. It is also pertinent to note that the Hon'ble Bombay High Court in the case of PCIT vs. Indra Indravadan Jain HUF (ITA No. 454 of 2018), has upheld the Tribunal's findings on similar facts and has affirmed the deletion of addition made under Section 68 for long-term capital gains arising from alleged penny stock transactions. The Tribunal, in its earlier orders, has also placed reliance on this binding precedent of the jurisdictional High Court. Thus, respectfully following the same, and considering the parity of facts and legal position, we do not find any infirmity in the order of the learned CIT(A),

which we hereby affirm. The additions made by the Assessing Officer under Sections 68 and 69C stand deleted.

11. Since the principal addition made under Section 68 has been held to be unsustainable, the consequential addition made on notional basis towards alleged commission under Section 69C also cannot be sustained independently and therefore deserves to be deleted. This follows as a natural corollary to the deletion of the primary addition.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced on 29th July, 2025.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 29/07/2025

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai