

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

**BEFORE SHRI PAWAN SINGH, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 1956/Mum/2025
(Assessment Year: 2015-16)**

Smita Jawaharlal Shah, Shah Baug No.1, Bayramji Gamadia Road, Next to Prabhukunj Building, Mumbai-400026. PAN: AFBPS4045R	Vs.	ITO, Ward-19(3)(3), Piramal Chambers, Lalbaug, Current JAO is 19(1)(1), Piramal Chambers, Lalbaug, Mumbai-400012.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Apurva Shah, CA

Revenue / Respondent by : Shri Surendra Mohan, Sr. DR

Date of Hearing : 07.07.2025

Date of Pronouncement : 09.07.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals), Panchkula [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 27.01.2025 for Assessment Year (AY) 2015-16. The assessee raised the following grounds of appeal:

“- In confirming the addition made by the Assessing Officer of Rs. 23,74,500 as taxable Long Term Capital Gains.

- In confirming that a deduction could not be given u/s 10(38) for capital gains that were otherwise exempt from tax only because the same were not included

in the tax return filed as exempt income and that a deduction could not be granted by an AO following the judgment in the case of Goetze India Limited notwithstanding that complete details of the sale as well as the gain were available with the AO and hence it had already been verified that Securities Transaction tax had been paid on these sale of shares.

- In passing the order ex-parte by holding that the AO had passed a speaking and reasoned order whereas the only reason for denial of the exemption by the AO was that a claim was not made in the return and this claim could have been entertained by the CIT(A) as the Assessment Order already mentioned that complete details and evidence were filed and that the income was long term capital gains. The appellant is a Senior Citizen and the email sent fixing the hearing was missed out by her to be checked.

The appellant retains the right to add, alter or amend the grounds as may be advised from time to time.”

2. The assessee is an individual deriving income from business, capital gains and other sources. The assessee filed the return of income for the AY 2015-16 on 31.08.2015 declaring a total income of Rs. 2,96,940/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. In the return of income the assessee has declared a Long Term Capital Gain (LTCG) of Rs. 9,97,28,981/- and claimed the same as exempt under section 10(38) of the Act. The Assessing Officer (AO) called on the assessee to furnish the details pertaining to the LTCG. After perusing the details furnished by the assessee the AO noticed that a transaction amounting to Rs. 23,74,520/- carried out through broker code 11815 (M/s Harley Securities Pvt. Ltd.) whereof sale of shares of various companies and that the assessee has not included the gain from the said transaction in the return of income. The AO issued a notice to show-cause as to why the above transaction can not be treated as unexplained in the hands of the assessee. The assessee in response filed a detailed reply along with the documentary evidences and submitted that due oversight the transaction through the M/s Harley Securities Pvt. Ltd. was omitted to be included in the return of income. The assessee further submitted that the LTCG is

exempt under section 10(38) and prayed that the impugned transactions may be added to the income of the assessee and the exemption be granted under section 10(38) of the Act. The AO after perusing the details furnished by assessee held that the assessee cannot claim exemption otherwise than by way of filing the revised return of income. In this regard the AO placed reliance on the decision of the Hon'ble Supreme Court in the case of Goetz India vs. CIT 244 ITR 323 (SC). Accordingly, the AO added the amount of Rs. 23,74,520/- as LTCG in the hands of the assessee. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) pass an ex-parte order confirming the addition made by the AO stating that the assessee has not responded to the various notices issued by the CIT(A).

3. The ld. AR submitted that the assessee is a senior citizen aged about 86 years and was not fully aware of the appellate proceedings pending before the CIT(A). The ld. AR further submitted that the appeal was filed way back in 2017 and only when the Chartered Accountant (CA) was checking the ITBA Portal came to know that the appeal has been disposed of by the CIT(A). Accordingly, the ld. AR submitted that the non-appearance before the CIT(A) was not intentional. On merits the ld. AR submitted that the assessee has furnished all the relevant details including the broker note etc. before the AO and the only reason for denying the exemption under section 10(38) was that the same cannot be claimed without filing a revised return. The ld. AR submitted a Paper Book containing all the relevant details evidencing the transaction (page 1 to 16 of PB) and prayed that the same may be considered for allowing exemption under section 10(38).

4. The ld. DR on the other hand vehemently argued that the assessee has been non-cooperative and does not responded to the notices issued by the CIT(A). The ld.

DR further argued that the assessee cannot claim exemption without filing the revised return of income and accordingly supported the order of the AO.

5. We heard the parties and perused the material on record. The assessee omitted to include the following transaction while filing the return of income towards LTCG.

Sr. no.	Particulars	Quantity	Date of Purchase	Date of Transfer	Net Sale Consideration Rs.	Gross sale proceeds Rs.	Net Sale Conditeration Rs.	Cost of Acquisition Rs.	Short term gain u/s 111A	LTCG exempt u/s 10 (38)
1	Grasim Industries	104	01-Apr-06	30-May-14	3,28,682	3,32,800	3,28,682	235081		93601
2	Garden Sil Mills	2000	01-Apr-06	24-Jul-14	94,540	95,500	94,540	31800		62740
3	Rashtriya Chemicals	1000	01-Apr-09	24-Jul-14	56,861	57,430	56,861	53930		2931
4	Unichem Laboratories Ltd	1000	01-Apr-06	24-Jul-14	1,95,530	1,97,500	1,95,530	140000		55530
5	CIPLA	1000	Received Legacy from mother in june 1991	27-Aug-14	4,98,322	5,04,463	4,98,322	0		4,98,322
6	CIPLA	1000	Received Legacy from mother in june 1991	03-Sep-14	5,22,457	5,29,000	5,22,457	0		5,22,457
7	CIPLA	500	Received Legacy from mother in june 1991	30-Sep-14	3,05,425	3,06,158	3,05,425	0		3,05,425
8	CIPLA	500	Received Legacy from mother in june 1991	28-Oct-14	3,13,527	3,14,278	3,13,527	0		3,13,527
9	CIPLA	500	Received Legacy from mother in june 1991	03-Dec-14	3,18,511	3,19,275	3,18,511	0		3,18,511
10	CIPLA	300	Received Legacy from mother in june 1991	18-Feb-15	2,01,476	2,01,960	2,01,476	0		2,01,476
	Total				28,35,331	28,58,364	28,35,331	0	0	23,74,520

6. We notice that the transactions in the above table are supported by the Contract Notes (page 2 to 9 of PB) and that the assessee has paid STT on all the transactions. From the perusal of the AO's order we notice that the AO has made the addition under the head "LTCG" and has denied the benefit under section 10(38) only for the reason that the same cannot be done without filing a revised return. We further notice that the AO has not recorded any adverse findings with regard to the

documents filed by the assessee with regard to the LTCG. Therefore, considering the facts and circumstances of the case and the material submitted before us, we are of the view that the transactions towards which the addition is made by the AO under the head LTCG are eligible for exemption under section 10(38). Accordingly, we direct the AO to allow the exemption to the assessee.

7. In result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09-07-2025.

Sd/-
(PAWAN SINGH)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai