

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**  
**BEFORE SHRI PAWAN SINGH, HON'BLE JUDICIAL MEMBER**  
**ITA No. 2762/MUM/2025 (AY: 2011-12)**

<b>Alpa Rajendra Jain</b> 2405 Panchratna, M.P. Marg Opera House, Mumbai-400004. [PAN: ACP PJ9850N	Vs	<b>DCIT, Circle – 19(1), Mumbai</b> Piramal Chambers, Lalbaug, Mumbai – 400012.
(Appellant)		(Respondent )
Assessee Represented by	:	Ms. Ridhisha Jain, CA (Virtually)
Department Represented by	:	Shri Surendra Mohan, Sr. DR
Date of Institution	:	22.04.2025
Date of Conclusion of hearing	:	24.07.2025
Date of Pronouncement of Order	:	08.08.2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against order of Ld. CIT(A) – 51, Mumbai dated 04.04.2025 for A.Y. 2011-12. The assessee has raised the following grounds of appeal: -

*"1. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the addition made by the Ld AO of Rs. 25,84,548/- on account of LTCG earned on sale of shares of M/s Sampada Chemicals Ltd claimed as exempt u/s 10(38) of the IT act as unexplained credit u/s 68 of the IT act 1961 and the reasons assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under.*

*2. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the addition made by the Ld AO of Rs. 77,536/- to the returned income by wrongly assuming that commission has been paid to earn LTCG and the reason assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under.*

*3. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the penalty initiated by the Ld AO u/s. 271(1)(c) of the IT Act 1961 and the reasons assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.*

*4. Your Appellant craves, leave to add, alter, amend or modify any or all grounds of appeal on or before the date of hearing."*

2. Rival submissions of both the parties have been heard and record perused.

The learned Authorised Representative (Id. AR) of the assessee submits that during the relevant financial year, the assessee purchased 100000 equity shares of Sampada Chemicals Ltd. for a total consideration of Rs. 6,04,500/-. The assessee made purchases on 04.01.2010. The assessee purchased such share through her share broker i.e. Share Khan Limited. The share was purchased on platform of Bombay Stock Exchange (BSE). The assessee made payment through his bank. The assessee received such share in DEMAT Account in her account with depository with HDFC Bank. Copy of contract note and DEMAT statement is filed on record. The assessee after holding shares for more than one year sold such share on BSE platform through registered broker for a sale consideration of Rs. 25,84,548/-. On sale, shares were transferred to stock exchange depository and they issued cheque / credit to broker's account who in turn issued cheque to the assessee. The assessee earned a gain of Rs. 19,80,047/-. During assessment, the assessee furnished all details and explanation before assessing officer. The assessee discharged her primary onus. The assessing officer disregarded the submission of assessee and on the basis of information with him treated the sale of shares as unexplained credit. The assessing officer added the entire sale consideration under section 68. The assessing officer also presumed that assessee has paid commission for opening long term capital gain @ 3%. The assessing officer has not made any independent investigation of fact. The

transaction of assessee is genuine and is supported with documentary evidence. The assessee was regularly indulging in purchase and sale of scrips of various shares. The assessee also earned short term capital gain of more than Rs. 1.00 lakh during the year. There is no allegation either against the assessee or her broker for manipulating price of Sampada Chemicals Ltd. The assessing officer has not brought any adverse material against the documentary evidence furnished by assessee. Since the transaction of assessee is genuine, the assessee purchased and sold share through registered broker of Bombay Stock Exchange and merely there was gain, the transaction cannot be doubted or it cannot be considered as sham transaction. The Id. AR of the assessee submits that on similar transaction of similar scrips in case of assessee's daughter Krutika Rajendra Jain in ITA No. 139/Mum/2023 dated 28.07.2023 and other family member's case in ArtiShailesh Jain in ITA No. 4192/Mum/2023, similar capital gain on sale of Sampada Chemicals Ltd. was allowed, copy of decision of Tribunal is placed on record. Facts of assessee's case is identical, thus, the grounds of appeal raised by assessee is in fact covered.

3. In alternative submission, the Id. AR of the assessee submits that case of assessee was reopened the completed assessment, by issuing notice under section 148 dated 22.03.2018. The case was reopened on the basis of information of Investigation Wing. The assessing officer has not verified the information before issuing notice under section 148. Once, the transaction of purchase in previous financial year was not doubted, the sale of same cannot

be doubted when transaction of purchase as well as sales were carried through Bombay Stock Exchange. The assessing officer as well as Id. CIT(A) acted mechanically without bringing any adverse material record. To support her submission, the Id. AR of the assessee relied upon the decision of Tribunal in assessee's family member's case in Krutika Rajendra Jain and Arti Sailesh Jain (supra). The Id. AR of the assessee also relied on the decision of Hon'ble Jurisdictional High Court in PCIT vs Indravadan Jain, HUF in Income Tax Appeal No. 454 of 2018 and PCIT vs Ziauddin A Siddique (Income Tax Appeal No. 2012 of 2017 dated 4<sup>th</sup> March, 2022).

4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the Revenue supported the order of lower authorities. The Id. Sr. DR for the revenue submits that case of assessee was reopened on the basis of specific information from DDIT, Mumbai that a search action was carried out on Vipul Vidur Bhatt. His statement was recorded under section 132(4) wherein he accepted that he was providing accommodation entries through various entities / companies. Sampada Chemicals Ltd. was also used at penny stock company. The assessee is beneficiary of capital gain earned on sale of shares of Sampada Chemicals Ltd. The assessing officer after allowing opportunity to the assessee made addition of transaction carried out by assessee. Such transaction of entry was made on making certain payments of commission; therefore, the assessing officer was fully justified in making addition of commission for availing such entry.

5. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I find that on similar allegation, the case of assessee Krutika Rajendra Jain (daughter of assessee) was also reopened by revenue. On similar allegation, the similar transaction on sale of share was treated as unexplained credit and further addition of unexplained expenditure on account of alleged commission payment was made. On appeal before Id. CIT(A), the addition was confirmed. However, on further appeal before Tribunal. That assessee has taken similar ground of appeal as well as made similar submission. The contentions of Id SR DR for the revenue was also considered by divisions bench of Tribunal. The division bench of Mumbai Tribunal on considering the similar submission passed the following order in Krutika Rajendra Jain in ITA No. 139/Mum/2023 dated 28.07.2023:

*"7. We heard the parties and perused the record. There is no dispute with regard to the facts that the assessee has purchased the shares through a broker by paying the consideration in cheque in stock exchange platform. The said shares have been held for more than one year and sold through the stock exchange platform only. We further notice that the assessee has furnished all the documents in support of purchase and sale of shares. However, the AO did not examine those documents and find fault with them. Further, the shares have entered and exited the demat account of the assessee. In the facts of the case, it is clear that the assessee has not dealt with VipulVidur Bhatt Group. The assessee has invested in shares of M/s Sampada Chemicals Ltd as an ordinary investor. We also notice that it is not a case of isolated transaction, i.e., the assessee is a regular investor in shares. Further, there is also no allegation made that the assessee was part of ring which indulged in the alleged price rigging. We notice that the AO has placed reliance on the report of Investigation wing to hold that the assessee has availed accommodation*

*entries by way of long term capital gains. We notice that an identical case of allegations that the assessee has availed accommodation entries for bogus capital gains was examined by the Hon'ble jurisdictional Bombay High Court in the case of Shyam Power (2015) 55 taxman.com 108(Bom). The decision rendered by Hon'ble Bombay High Court in the above said case is extracted below:-*

*"3. Mr. Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Sureshkumar, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.*

*4. Mr. Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.*

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeperscrutiny. It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to

*20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.*

*7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and inlaw. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.*

*8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature*

*can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law."*

*8. The Hon'ble Jurisdictional High Court has considered an identical issue in yet another case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022) and relevant discussions made by Hon'ble Bombay High Court are extracted below:-*

*"2. We have considered the impugned order with the assistance of learned counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of shares of the alleged penny stock of shares of RamkrishnaFincap Ltd ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against the assessee that it has participated in any price rigging in the market on the shares of RFL.*

*3. Therefore we find nothing perverse in the order of the Tribunal.*

*4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) but that does not help the revenue in as much as the facts in that case were entirely different.*

*5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.*

*9. In the case of PCIT vs. Indravadan Jain HUF (Income tax Appeal No.454 of 2018 dated 12th July, 2013), the Hon'ble Bombay High Court held as under:-*

*"4. ....The CIT(A) came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkatta 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 Kolkatta 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 instruction slip and also received payment from Kolkatta Stock Exchagte. The cheque received was deposited in respondent's bank account. In view thereof, the CIT(A) found there was no reason to add 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 the 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.*

*5. We also find no infirmity in the order passed by the ITAT and no substantial question of law as proposed in the appeal arises."*

*10. Accordingly, in the facts and circumstances of the case, we are of the view that the decision rendered by the jurisdictional Hon'ble Bombay High Court in the above said case of Shyam R Pawar (supra), Ziauddin A Siddique (supra) and Indravadan Jain, HUF (supra) are squarely applicable in the present case. Accordingly, we hold that the long term capital gains declared by the assessee cannot be doubted with. Accordingly, we hold that the AO was not justified in assessing the sale value of shares as unexplained cash credit in the year under consideration. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the addition relating to capital gains.*

*11. since, we have deleted the addition relating to capital gains, the consequential addition of estimated expenses made by the AO is also liable to be deleted. We order accordingly.*

*12. The assessee has raised a legal ground challenging the validity of reopening of assessment proceeding. Since we have deleted the addition on merits, we do not find it necessary to adjudicate the legal ground and accordingly leave the same open."*

6. I further find that in other family member's case in Arti Shailesh Jain in ITA No. 4192 & 4178/Mum/2023 for A.Y. 2011-12 & 2014-15, the division bench of Mumbai Tribunal followed the order in Krutika Rajendra Jain (supra). Considering the decision of division bench of Mumbai Tribunal on similar set of fact in assessee's family member's case, the transaction of similar scrip was accepted. Thus, respectfully following the same, the grounds of appeal raised by assessee are allowed.

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

Order pronounced in the open Court on 08.08.2025.

Sd/-

**PAWAN SINGH**  
**JUDICIAL MEMBER**

MUMBAI, DATED: 08.08.2025  
*Biswajit*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai