

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

**BEFORE JUSTICE (RETD.) C V BHADANG, PRESIDENT &
MS PADMAVATHY S, AM**

**I.T.A. No. 1938/Mum/2023
(Assessment Year: 2014-15)**

Income Tax Officer-27(3)(1), Room No. 422, 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai- 400703.	Vs.	Sachin Velji Shah, 72B, 4 th Floor, Girdhar Nagar, Jivdaya Lane, Ghatkopar-West, Mumbai-400086 PAN: AWUPS7545N
Appellant)	:	Respondent)

Revenue / Appellant by : Shri Swapnil Choudhary, Sr. DR

Assessee / Respondent by : Shri Prakash Jhunjunwala, AR

Date of Hearing : 20.08.2025

Date of Pronouncement : 02.09.2025

ORDER

Per Padmavathy S, AM:

This appeal by the revenue is against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 29.03.2023 for Assessment Year (AY) 2014-15. The revenue raised the following grounds of appeal:

“1. Ground:1 i) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the order passed by the AO u/s. 143(3) of the Income-tax Act, 1961, without appreciating the fact that the AO has passed the order after detailed analysis of share market

fundamentals and financials of the company, namely M/s. Surabhi Chemicals and Investment Ltd.

2. Ground: 2ii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the order passed by the AO u/s. 143(3) of the Income-tax Act, 1961, without appreciating the fact that the AO had carried out investigation u/s. 133(6) of the Act regarding the purchasers of the shares/exit providers sold by the assessee and no response was received from the purchasers/exit providers, and had also recorded statement of the bankers, who had detailed the modus operandi of giving accommodation entries in the statement recorded u/s. 132(4) of the Act.

3. Ground :3 iii) Whether on the facts and in the circumstances of the 0 case and in law, the Ld. CIT(A) has failed to appreciate that the addition of Rs. 1,07,32,858/-made by the A.O. under section 68 being sale proceeds of shares on the basis of report of Investigation Wing Kolkata that the scrip of Surabhi Chemicals and Investments Limited was suspicious penny stock and the price of this share was rigged artificially to provide bogus entries of long term capital gain to the beneficiaries and the assessee being one of the beneficiaries of the same?

4. Ground :4 iv) Whether on the facts and in the circumstances of the 0 case and in law, the Ld. CIT(A) was justified in deleting the order passed by the AO u/s.143(3) of the Income-tax Act, 1961, without appreciating the fact that the SEBI has suspended the scrip of M/s. Surabhi Chemicals and Investments Limited on 01.01.2015.

5. Ground:5 v) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the addition of Rs.6,13,671/- made by the A.O. under section 69C of the Act, being 6% of commission paid to broker for arranging capital gain to various parties without appreciating the fact that without looking into the fact noted by the CIT(A) that the assessee had to give commission to the brokers to rig and to provide the accommodation”

2. The assessee is an individual and filed the return of income for AY 2014-15 declaring Nil income on 31.07.2014. The case was selected for scrutiny and the statutory notices were duly served on the assessee. During the course of assessment the AO noticed that the assessee has declared Long Term Capital Gain (LTCG) on sale of share of the scrip M/s Surabhi Chemicals and Investments Ltd.

which is claimed as exempt under section 10(38) of the Act. The AO called on the assessee to furnish details pertaining to LTCG. The assessee in response filed various details including the bank statements, Demat A/c, share certificate, contract note, ledger a/c etc. The AO held that the LTCG declared by the assessee as not genuine for the reason that the investigation carried out by the Kolkata Investigation Directorate has given a finding that the scrip M/s Surabhi Chemicals and Investments Ltd. is a penny stock. The AO has given a detailed finding with regard to the report of the Investigation Directorate and the modus operandi with regard to the price rigging of the alleged penny stock. The AO has also recorded a finding that the purchase of the impugned shares is by private placement through M/s Sarvottam Advisory Pvt. Ltd. and that the said company is not in existence as per the report filed by the Inspector. Accordingly, the AO made an addition of the entire sale consideration under section 68 of the Act. The AO also made an addition towards commission at 6% of the sale consideration as non-genuine under section 69C of the Act. On further appeal, the CIT(A) deleted the addition made by the AO by holding that

“6.1 I have gone through the order of AO and submission made by the appellant. The appellant has raised multiple grounds and same are disposed off collectively as under.

6.2 The learned AO has treated share dealing made by the appellant as bogus and thereby added back exempted capital gain to taxable income. The learned AO also added back the commission as well.

6.3 The appellant had purchased shares of Surbhi Chemicals and claimed exempted long term capital gain of Rs. 1,07,32,858/- on sale of such shares the same was disallowed by learned AO along with notional commission of Rs.6,13,671/-.

6.4 The learned AO alleged it to be penny stock and he claimed that the trading in such stock was controlled by few operators and rise in prices of this stock was artificially created. He also gave finding that he re-opened the case based on information received from Director of Income Tax (Inv). He

suspected about the same and presumed that the trading was pre-arranged. He finally concluded assessment by assigning following reasons:

- Assessee failed to discharge onus of explaining unusual growth in trading volumes of shares of Surbhi Chemicals.*
- Assessee was having knowledge about penny stock*
- Assessee was ignorant about financial health of penny stock company and artificially rigged prices*
- The investigations in the fund flow analysed that cash was routed through many layers of companies*

The transaction were entered with pre-conceived series of steps and true nature of transaction was not present and being artificially structured with intent to evade tax.

- Revenue cannot accept this make believe arrangement*

6.5 The appellant claimed the transaction to be genuine and filed following documents before learned AO at the time of assessment:

Broker note for sale and purchase of shares

Bank statement depicting payments made for purchase of shares

Statement of holding shares

Statement issued by CDSL confirming shares sold

Bank statement depicting receipt of money after sale of shares

6.6 The learned AO has made the adjustment by forming opinion on search conducted by some other assessee. He has not performed due diligence in specific to the appellant's case.

6,7 The learned AO has not mentioned any shortcoming in broker notes, bank payments and other supporting documents filed by the appellant. He has also not proved that cash was involved in the appellant's transaction. He passed the order merely under suspicion.

6.8 The learned AO alleged that the appellant could not prove why there was surge in volume of stock. Whereas the trading was done through software based platform wherein the trader does not have visibility on counter party buying/ selling.

6.10 In view of the facts and circumstances of the case and having regard to varied judicial pronouncements including jurisdictional ITAT, I am of the considerate view that the learned AO has not carried out investigation of the fact of the case which are specific to the appellant. Therefore, the additions made by the learned AO for sum of Rs.1,07,32,858/- and Rs.6,13,671/- on account of capital gain and commission respectively are deleted.”

3. The revenue is in appeal against the order of the CIT(A).
4. The ld. DR argued that the CIT(A) has not given a detailed finding with regard to the various reasons given by the AO for making the addition. The ld. DR further argued that the CIT(A) has merely relied on the various details submitted by the assessee stating that the AO has not recorded any adverse findings with regard to the document filed by the assessee. The ld. DR also submitted that the CIT(A) has not considered the fact that the broker through whom the assessee has acquired the shares is found to be bogus entity and the Inspector's report in this regard is ignored by the CIT(A). The ld. DR submitted that existence of all the documentary evidences will not take away the fact that the scrip of M/s Surabhi Chemicals and Investments Ltd. is a penny stock and that the SEBI has given a finding in this regard. The ld. DR relied on the decision of the Hon'ble Calcutta High Court in the case of Swati Bajaj [[2022] 139 taxmann.com 352 (Calcutta)] to submit that the Hon'ble High Court in the decision has specifically given finding with regard to M/s Surabhi Chemicals and Investments Ltd. and that the CIT(A) without taking cognizance of these facts has deleted the addition which is not tenable.
5. The ld. AR on the other hand submitted that the CIT(A) has given relief based on the documentary evidences submitted by the assessee and has considered the fact that the assessee has discharged the onus of proving the genuineness of the transaction. The ld. AR further submitted that the assessee has converted the shares

into his Demat A/c which are sold in the open market and the allegation that assessee could not explain the growth in the trading volume of the scrip which is beyond the control of the assessee. The Id. AR also submitted that the other allegations of the AO stating that the assessee is aware of the scrip being a penny stock, the cash being routed, the assessee having knowledge about the price rigging etc. are without any basis and no evidence in this regard has been brought on record. With regard to the SEBI report the Id. AR submitted that though the scrip of M/s Surabhi Chemicals and Investments Ltd. is part of SEBI investigation the period of alleged price manipulation is from 10.04.2013 to 04.09.2013 which is outside the period under consideration in assessee's case. The Id AR further submitted that in the final order the SEBI has levied penalty on two unconnected individuals and that there is no allegation has been framed by the SEBI against the assessee. The Id. AR relied on the decision of the Co-ordinate Bench in the case of Chirag Tejprakash Dangi vs. ITO (ITA No. 3256/Mum/2022 dated 20.02.2024) to submit that in the said case the same scrip for the same AY has been considered and it was held that the LTCG cannot be treated as non-genuine.

6. We heard the parties and perused the material on record. During the year under consideration the assessee has sold shares of M/s Surabhi Chemicals and Investments Ltd. and earned a capital gain which is claimed as exempt under section 10(38). The details with regard to the impugned transactions are as tabulated below:

Scrip Name : Surabhi chemicals & Investments (Now Superspace infrastructure Ltd.) (Formerly Surabhi Chemicals Ltd)							
Buy/Bonus				Sell			
Date of pur. / sale	quantity	rate	amount	quantity	Rate	Amount	Gain
10.04.2012	2000	250	5,00,000				
commission			5000				
14.08.2012	*18000 Recd. Bonus shr	NIL bonus	NIL bonus				
12.04.2013	Split at 10Rs per sh. Now 200000 shr with 'A'	Free split	NIL				
17.09.2013				10000	43.45	434500	
18.09.2013				40000	44.30	1772000	
08.10.2013				30000	55.85	1675503	
18.10.2013				35000	57.15	2000250	
21.10.2013				17500	57.25	1001875	
28.10.2013				67500	57.70	3894750	
Total			505000	200000		10732858	10227858

7. It is the contention of the revenue that based on the findings of the Kolkata Investigation Directorate the impugned shares are found to be penny stock and hence the LTCG claimed as exempt by the assessee is non-genuine. We notice in this regard that the assessee during the course of assessment has furnished documentary evidences with regard to purchases through banking channel, shares certificate, Demat Statements, contract note for sale, broker statement etc. It is relevant to mention here that the AO did not record any adverse finding with regard to the various documentary evidences furnished by the assessee. It is relevant to take note of the following findings of the AO with regard to the conclusion that the impugned transactions are non-genuine.

“e. Failure of Assessee to discharge his onus: The assessee has not been able to prove the unusual rise and fall of share prices to be natural and based on the market forces. It is evident that such share transactions were closed circuit transactions and clearly structured one.

f. Ignorance of the assessee about shares and penny stock companies: *Assessee has failed to show of having any knowledge about the shares traded and having any knowledge about the fundamentals of the penny stock companies.*

g. Financial analysis of the penny stock companies: *The net worth of the penny stock company is negligible. Even though the net worth of the company and the business activity of the company is negligible the share prices have been artificially rigged to unusual highs.*

h. Order of the SEBI: *SEBI has passed orders where several exit providers and operators associated with these transactions have been held guilty. The SEBI has also suspended this particular scrip M/s Surabhi Chemicals Investment Ltd after finding it guilty as involved in providing bogus accommodation entries of LTCG to the beneficiaries.*

i. Cash trail in the accounts of the entry providers: *The Investigations in the fund flow analysed in the accounts of the entry providers have established that the cash has been routed from various accounts to provide accommodations to assessee.*

j. Arranged transactions: *The transactions entered by the assessee involve the series of preconceived steps, the performance of each of which is depending on the others being carried out. The true nature of such share transactions lacked commercial contents, being artificially structured transactions, entered into with the sole intent, to evade taxes.”*

8. From the above findings we notice that various findings as reasons for making the addition is that the assessee unable to substantiate the price movement in the share market, failed to prove assessee's knowledge about the company etc. We further notice that the other findings of the AO are general pertaining to the scrip of M/s Surabhi Chemicals. In our view, the above findings cannot be considered as valid reason for treating the impugned transactions as bogus in the hands of the assessee unless the AO is able establish assessee's involvement in the price movement. From the perusal of the SEBI report relied on by the AO we notice that though the SEBI has recorded that the price of the scrip of M/s Surabhi Chemicals and Investments Ltd. has been manipulated, the period of manipulation

as stated in SEBI report is from 10.04.2013 to 04.09.2013 and in assessee's case the impugned transactions were carried on between 17.09.2013 to 28.10.2013 (refer table above). Further we notice from the SEBI report that in the final order penalty has been levied on two individuals and from the perusal of records nothing has been brought on record that the assessee is in anyway connected with those individuals and assessee is not named in the SEBI report. We in this regard also notice that the Co-ordinate Bench on identical facts in the case of Chirag Tejprakash Dangi (supra) has held that

“9. We heard the parties and perused the record. We notice that the assessing officer has primarily placed reliance on the report given by the Investigation wing of the Income tax department, Kolkata to arrive at the conclusion that the long term capital gains reported by the assessee is bogus in nature. We notice that the investigation report prepared by Investigation wing, Kolkatta is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of prices. The Ld A.R submitted that the SEBI, who is regulator of stock market operations, have conducted enquiries and the interim order passed by it suspending the trading in two of the companies mentioned above, has since been revoked. In any case, it is stated by Ld A.R that the transactions carried on by the assessee were not subjected to scrutiny by SEBI at all.

10. We notice from the statement recorded by the AO from the assessee u/s 131 of the Act that the assessee herein is a Chartered Accountant. In the statement, the assessee has specifically stated that he is a long term investor, meaning thereby, he would not be watching the share price movements on day to day basis. Hence, we are unable to understand as to how that AO could observe that the assessee herein was ignorant of stock market operations. We also notice that the assessee has

- (a) purchased these shares by paying consideration through banking channels*
- (b) dematerialized the shares and kept the same in the Demat account.*

- (c) sold the shares through stock exchange platform*
- (d) received the sale consideration through banking channels.*

Further, the shares have entered and exited the demat account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. As noticed earlier, the AO has not brought on record any material to show that the assessee was part of the group which involved in the manipulation of prices of shares. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

11. We may now refer to certain decisions rendered by Hon'ble Bombay High Court on identical issue. In the case of Shyam Pawar (supra), the Hon'ble Bombay High Court has observed as under:-

“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.Sureshkumr, 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 deeper scrutiny. 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.Suresh kumar that the Tribunal misdirected itself and in law. 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.”

12. We may now refer to the decision rendered by Hon'ble Jurisdictional High Court in the 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 Ramkrishna Fincap 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.

In the case of CIT vs. Jamnadevi Agarwal (supra), the Hon’ble Bombay High Court held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of PCIT vs. Indravadan Jain (HUF) (supra), the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were not doubted. Under these set of facts, the Hon’ble Bombay High Court held as under:-

“....The CIT(A) came to the conclusion that respondent bought 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 slips and also received payment from Kolkatta 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.”

In the instant case also, we noticed that the evidences furnished by the assessee to prove the purchase and sale of shares, payment made/received, entry/exit of shares in the demat account of the assessee etc., were not doubted with.

13. In the case of PCIT vs. Smt Krishna Devi (supra), the Hon’ble Delhi High Court has noticed that the reasoning given by the AO to disbelieve the capital gains declared by the assessee, viz., astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures. Accordingly, the Hon’ble Delhi High Court affirmed the decision rendered by ITAT in deleting the addition of capital gains.

14. Accordingly, in the facts and circumstances of the case, we are of the view that the decisions rendered by the jurisdictional Hon’ble Bombay High Court in the cases cited above shall apply to the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee.

15. We noticed earlier that the AO has assessed the Sale consideration of shares as unexplained cash credit u/s 68 of the Act. It is pertinent to note that the purchase of shares made in an earlier year has been accepted by the revenue. The sale of shares has taken place in the online platform of the Stock exchange and the sale consideration has been received through the stock broker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms of sec. 68 of the Act.

16. Since we have held that the sale transactions of shares cannot be doubted with, the addition made by the AO with regard to estimated commission expenses is also liable to be deleted.

17. In view of the foregoing discussions, we hold that the sale consideration received on sale of shares cannot be assessed as unexplained cash credit u/s 68 of the Act and the long term capital gains declared by the assessee cannot be doubted with. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned additions made by him.”

9. We notice that in the above decision, the scrip is same as in assessee's case i.e. M/s Surabhi Chemicals and Investments Ltd and that the coordinate bench has relied on the jurisdictional high court decision while holding the transaction to be genuine. With regard to the contention of the ld. DR that the Inspector's report on the broker being found as a non-existing company, the ld. AR drew our attention to the following observations of the Co-ordinate Bench in the case of ITO vs. Seema Narendra Bapna (ITA No. 1120/Mum/2024 dated 10.10.2024) where it has been held that

“32. Securities and Exchange board of India has passed an order against Sarvottam advisory private limited from whom the assessee has purchased shares, however the period of investigation was different then the period in which the assessee has purchased the shares from that party. Even in the subsequent order of the SEBI no penalty was imposed on Sarvottam advisory private limited. Therefore, that party was exonerated.”

10. Considering the facts and circumstances of the case as elaborated hereinabove we are of the view that the ratio laid down in the above decisions of the Co-ordinate Bench is applicable to assessee's case also and accordingly we hold that there is no infirmity in the order of the CIT(A) in deleting the addition made by the AO without establishing the fact that the assessee in any way is connected with the price manipulation or exit providers.

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

Order pronounced in the open court on 02-09-2025.

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
President

Sd/-
(PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

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