

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

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

**I.T.A. No. 4544/Mum/2025
(Assessment Year: 2014-15)**

Yogeshkumar Pravinkumar Shah, 25, harhar Wala Building, S.V.P. Road, Opp. Moti Talkies, Mumbai-400004. PAN: AMZPS6493A	Vs.	Asstt. CIT-19(3), Piramal Chamber, Lalbaug, Mumbai-400012.
Appellant)		
: Respondent)		

Assessee / Appellant by : Shri K. Gopal & Om Kandalkar,
AR

Revenue / Respondent by : Shri Swapnil Choudhary, CIT-DR

Date of Hearing : 16.09.2025

Date of Pronouncement : 22.10.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 03.07.2025 for Assessment Years (AY) 2014-15. The assessee raised the following grounds of appeal:

***“GROUND 1: Addition of the sale proceeds of the share u/s 68 of the Act.
Learned Assessing Officer committed error of law and of facts in not
appreciating that the Appellant had earned tax free long term capital gain u/s.***

10(38) by selling his shares held for more than 20 to 28 months on Stock Exchange Platform and has duly paid STT levied by said Stock Exchange. Learned Assessing Officer generally relied upon the statements given by some Vipul Bhatt or Anil Khemka and nowhere learned AO could prove that assessee was part of the modus operandi or he was in any way connected to Vipul Bhatt or Anil Khemka to any other entity involved in this racket. Even Appellant's request for cross examination of Vipul Bhatt was also grossly rejected thereby depriving appellant of natural justice. Further addition is made u/s. 68 whereas Appellant has duly explained the whole capital gain and therefore the question of unexplained cash credit does not arise at all. Hence addition of Rs. 68,98,020/- deserves to be deleted.”

2. The assessee is an individual and filed the return of income for AY 2014-15 on 30.09.2024 declaring total income of Rs. 40,15,350/-. The case was reopened by issue of notice under section 148 of the Act for the reason that the assessee has sold share of alleged penny stock M/s Sunrise Asian Ltd. to the tune of Rs. 68,98,020/-. The assessee submitted various details before the Assessing officer (AO) with regard to the sale of shares. The AO after perusing the details held the impugned transaction as non-genuine and accordingly added the entire capital gain as unexplained under section 68 of the Act. The AO also added commission on the sale of alleged penny stock to the tune of Rs. 1,37,960/-. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) confirmed the addition made by the AO by holding that

“5. On the other hand, from the assessment order, it is noted that the case was reopened on account of suspicious transactions in penny stock companies—specifically, the sale of shares in Sunrise Asian Ltd. The assessee acquired 14,000 shares of Sunrise Asian Ltd. in September 2011 for Rs.2,80,000 at Rs.20 per share, eventually selling them between August 2013 and March 2014 for a staggering Rs.68,98,020 at an average of Rs.492.72 per share. This represented an increase of over 2456% in value within 22-29 months—an outcome deemed highly improbable under normal market conditions and defying the test of human probability.

5.1. The investigation, led by the Kolkata Directorate and supported by similar inquiries in Mumbai and Ahmedabad, uncovered a widespread modus

operandi used to fabricate long-term capital gains (LTCG) and short-term capital losses (STCL). The scheme revolved around routing unaccounted money into beneficiaries' books under the guise of LTCG through structured transactions in penny stock companies. Shares were typically acquired via preferential allotment, off-market transfers, or amalgamations—routes that allowed beneficiaries to receive shares at a low cost before manipulating share prices through circular trading orchestrated by so-called "operators." These operators controlled both the companies and the entities that served as "exit providers," who would buy the shares at inflated prices, further facilitating the laundering of unaccounted funds.

5.2. In the specific cases examined, it was determined that the rise in share prices had no basis in commercial fundamentals or market realities, with the financials of the companies being extremely poor and unattractive for investment. During investigation statements of key operators and brokers, like Sri Vipul Vidur Bhatt, in the instant case, admitted to providing fake LTCG entries in return for commissions and confirmed that Sunrise Asian Ltd. was a bogus or "paper" entity used for such purposes. The appellant is found to be one of the beneficiaries of the manipulation of share prices in the case of Sunrise Asian Ltd.

5.3. The investigation concluded that the transactions were not genuine investments but rather a series of pre-arranged, circular steps designed to convert unaccounted cash into tax-exempt capital gains. Evidence showed that the trading in these shares was devoid of bona fide commercial intent and was, instead, orchestrated to evade taxes. The purchase and sale were not influenced by natural market forces but by artificial manipulation among the parties involved. The failure of the assessee to explain the extraordinary fluctuation in share prices or to demonstrate any knowledge of the companies' fundamentals further supported the conclusion that the transactions lacked legitimacy. Additional findings of the assessing officer indicated that the net worth and business activities of these penny stock companies were negligible.

5.4. After analyzing the findings of the investigation and the enquiries made, the assessing officer concluded that the evidence demonstrated that the transactions entered into by the appellant were artificial, lacking commercial substance, and structured solely for the purpose of tax evasion. The elaborate scheme, involving share price rigging, creation of dummy entities, and circular trading, underscores the efforts taken to exploit exemptions on long-term capital gains and convert unaccounted money into legitimate-seeming income.

5.5. Furthermore, the appellant is not deemed to be an active investor or trader in stocks, except for his investments in the shares of Sunrise Asian Ltd, where he gained significantly by exploiting the orchestrated scam uncovered by the department. Given that M/s Sunrise Asian Ltd was utilized to provide accommodation entries by the entry operator Shri Vipul Vidhur Bhat, and the shares were artificially manipulated with the intent to provide bogus long-term capital gains (LTCG), and the appellant is one of the beneficiaries of such manipulation, I find no merit in the appellant's arguments and hereby confirm the addition of Rs.68,98,020 made by the assessing officer.

5.6. With regard to the addition of Rs.1,37,960 being the estimated commission payment @2% of the transaction value, I find no basis for the addition and accordingly the same is deleted.”

3. The Id. AR submitted that the assessee is a regular investor and has purchased the shares in M/s Sunrise Asian Ltd as part of his regular investment activity. The Id. AR in this regard drew our attention to the broker statement and the share certificate (page 91 to 93 of PB). The Id. AR further submitted that these shares were demated and subsequently sold in the market. The Id. AR also submitted that all the transactions of purchase and sale have been routed through banking channel and in this regard took us through the various documentary evidences (page 27 to 73 of PB). The Id. AR submitted that the AO while holding the impugned transaction as non-genuine did not record any adverse finding with regard to the various documentary evidences submitted by the assessee. The Id. AR further submitted that the AO has merely reproduced the various findings in the report of the Investigation Wing and the statement recorded but has not recorded any finding as to how the assessee is linked to the alleged price rigging. The Id. AR also relied on the decision of the Co-ordinate Bench in the case of Lalitaben Pravin Shah vs. CIT (ITA No. 2008/Mum/2023 dated 05.04.2024) where under identical facts of sale of M/s Sunrise Asian Ltd. the Co-ordinate Bench has given relief to the assessee.

4. The Id. DR on the other hand vehemently argued that the scrip is held to be a penny stock by the Kolkata Investigation Wing and there has been substantial increase in the share price. The Id. DR further argued that the AO has given a detailed finding with regard to price rigging and how the financial statements of M/s Sunrise Asian Ltd. does not support the increase in the share prices. The Id. DR also argued that the assessee has purchased the shares in Off Market Transaction which would mean that the assessee is well aware of the financial status of the company and therefore the claim that he has invested as a regular investor cannot be accepted. The Id. DR submitted that mere submission of various documents does not discharge the onus on the assessee to prove the genuineness of the impugned transactions.

5. We heard the parties and perused the material on record. The assessee during the year under consideration sold 14000 shares of Sunrise Asian Ltd and claimed the capital gain arising on the sale as exempt under section 10(38) of the Act. 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 order in the case of M/s.Monarch Health Services Ltd where the main director Shri Prakash Biyani accepted to be indulging into share manipulation*

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 Sunrise Asian Ltd. Though the AO has recorded that the assessee has traded through exit providers who did not respond to notice under section 133(6), the AO did not record any specific finding with regard to the names of the exit providers and any evidence that the assessee has transacted through the exit

providers. Therefore in our view, the reasons as recorded by the AO as above cannot be considered as only reason for treating the impugned transactions as bogus in the hands of the assessee without establishing assessee's involvement in the price movement or that the assessee has transacted through the exit providers. The findings of the AO with regard to SEBI report mentions a company name M/s. Monarch Health Services Ltd and its director without recording any finding regarding the assessee's connection with the brokers / entry operator. We in this regard further notice that the Co-ordinate Bench has considered the identical issue in the case of Lalitaben Pravin Shah (supra) where it has been held that

“8. We heard rival contentions 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, Kolkatta in order 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, Kolkata 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 also submitted that the regulator of stock market SEBI has not conducted any enquiry against the assessee.

9. We notice that the assessee has furnished reply to the notice issued by the AO and the AO could not find any adverse features from the said reply. Further, the AO also could not disprove the share transactions by bringing any material on record. 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. Further, 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. We notice that the shares were purchase in an earlier year and the said purchase has not been suspected by the AO. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

10. The Ld D.R placed his reliance on host of case laws to contend that addition relating to penny stock transactions has been confirmed in those cases. There should not be any dispute that the purchase and sale of shares reported by the assessee is a factual matter and each of the case has to be examined on the basis of facts prevailing therein. In respect of decisions rendered by co-ordinate Mumbai benches, we notice that they did not refer to the jurisdictional Bombay High Court decisions.

11. It is noticed that the AO did not establish any link between the assessee and the reports of investigation wing. At this stage, we may refer to the decision rendered by Hon'ble Supreme Court in the case of Adamine Construction P Ltd (99 taxman 45), wherein, while dismissing the appeal of Revenue, the Hon'ble Supreme Court has referred to the following observations made by Hon'ble Delhi High Court:-

“What is evident is that the AO went by only the report received and did not make the necessary further enquiries – such as into the bank accounts or other particulars available with him but rather received the entire findings on the report, which cannot be considered as primary material. The assessee had discharged the onus initially cast upon it by providing the basic details which were not suitably enquired into by the AO.”

The ld A.R placed his reliance on the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of Shyam Pawar (54 taxmann.com 108)(Bom), wherein 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.Sureshkumar 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 also refer to the decision rendered by Hon’ble Bombay High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022), wherein the Hon’ble Bombay High Court has observed as under:-*

“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)-I 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.

Further, in the case of CIT vs. Jamnadevi Agarwal (20 taxmann.com 529 (Bom), the Hon'ble Bombay High Court has 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) (ITA No. 454 of 2018)(Bom), 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.”

13. 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.

14. We notice that, in the instant case, 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. Hence the ratio laid down in the above said cases by the jurisdictional Hon'ble Bombay High Court shall apply to the facts of the present case. Accordingly, we are of the view that the Ld CIT(A) was not justified in confirming the addition made by the AO. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the addition of sale proceeds of shares made u/s 68 of the Act."

8. In the light of the above judicial precedence, when we examine the facts in the present case we notice that facts are identical. The assessee in the present case has discharged the onus by submitting the relevant details and the AO has not recorded any adverse findings with regard to the details submitted. Though the AO has elaborated the modus operandi and the findings of investigation wing, the AO in the assessment order did not record anything that links the assessee to the exit providers or entry operators or the assessee's involvement in price rigging. It is also relevant to notice that the assessee during the year under consideration has sold other shares and from the details of investments submitted, we see merit in the submission that the assessee is a regular investor. (page 18 to 20 of paper book). According we are of the considered view that the ratio laid down in the above case would apply to the present assessee also and therefore we direct the AO to delete the addition made with regard to the sale of shares of Sunrise Asian Ltd and the brokerage / commission thereon.

9. In result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 22-10-2025.

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

*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