

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'E': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**AND**

**SHRI AMITABH SHUKLA, ACCOUNTNAT MEMBER**

**ITA No.3488/Del/2025  
[Assessment Year: 2013-14]**

Income Tax Officer, 1707 E-2 Block Civic Centre, New Delhi-110002	Vs	Megha Garg, 160 Saraswati Vihar Vaishali, Pitampura, Delhi-110034
		<b>PAN-AECPG7098C</b>
Appellant		Respondent

Assessee by	Shri Suresh Kumar Gupta, CA
Revenue by	Ms. Ankush Kalra, Sr. DR

<b>Date of Hearing</b>	<b>14.10.2025</b>
<b>Date of Pronouncement</b>	<b>27.10.2025</b>

**ORDER**

**PER AMITABH SHUKLA, AM,**

This appeal has been preferred by the Revenue against order dated 29.03.2025 of National Faceless Appeal Centre (NFAC), Delhi, in Appeal No.NFAC/2012-13/10260068, arising out of order passed u/s 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by National Faceless Assessment Centre, Delhi, pertaining to Assessment Year 2013-14.

2. The Revenue has raised following grounds of appeal contesting the order of Ld. First Appellate Authority.

*1. On the facts AMD circumstances of the case, the Ld. CIT(A) has erred in law AMD facts in deleting the addition of Rs.62,78,065/-*

*made by the AO on just questioning the section of addition but not considering the fact that the assessee has failed to establish that the price rise was genuine AMD consequently she was entitled to claim LTCG on the transaction. As regards quoting section 68/69A of the Act, the AO implied that the addition was made us 68 of the Act. So far as holding of penny stock till the end of financial year is concerned, the AO for abundant precaution mentioned section 69A.*

*2. On the facts AMD circumstances of the case, the Ld. CIT(A) has erred in law AMD facts by not considering the fact that assessee has failed to furnish confirmation from M/s Economy Supplier Pvt. Ltd for purchase of shares of M/s PMC Fincorp Pvt. Ltd (Earlier known as Priti Marcantile co. Ltd), as the purchases of share was made through off market AMD contract note/ bill furnished by the assessee was fabricated*

*3. On the facts AMD circumstances of the case, the Ld. CIT(A) has erred in law AMD facts by not considering the fact that the assessee has not reported the transactions of sale of shares in her return of income which also establishes that assessee has deliberately not disclosed the transactions in view of tax evasion.*

3. At the outset, the ld. Counsel for the assessee submitted that the appeal of the Department is hit by the latest CBDT Circular of not contesting appeals in cases where a tax effect is less than Rs.60 lakhs. The ld. Counsel argued that as per Form 36 filed by the Revenue, the tax effect in this case is Rs.20,13,407/- and therefore the appeal per se is non-maintainable and deserves to be dismissed. The ld. DR vociferously countered the proposition submitting that this appeal is covered by the exceptions mandated in the impugned circular. Accordingly, we do not find any merit in the arguments of the ld. Counsel for the assessee and proceed to adjudicate this appeal.

4. Coming to the factual matrix of the case, the Revenue is contesting the action of ld. CIT(A) in deleting an addition made by ld. AO amounting to

Rs.62,78,065/- invoking provisions of section 68/69A of the Act. In the instant case, the assessee was noted to have indulged in sale/purchase transactions of a company by the name of M/s PMC Fincorp Limited. It has been noted by the ld. AO based upon the enquiries conducted during search proceedings in the case of impugned company as well as noting the weak financials of the company, concluded that the impugned company is a penny stock company and proceeded to make the impugned addition u/s 68/69A of the Act of Rs.62,78,065/-, denying the assessee the benefit of Long Term Capital Gains u/s 10(38) of the Act. The ld. CIT(A) deleted the addition noting that the ld. AO has not placed on record any independent and cognizable evidences to allude any price rigging by the assessee. While drawing his conclusions, the ld. CIT(A) placed reliance upon the decision of Amrtisar Bench of ITAT in the case of Rama Mittal as at 163 taxmann.com 612.

5. Per Contra, the ld. DR argued in favour of the order of the ld. AO. It was vehemently argued that M/s PMC Fincorp is a penny stock company and that therefore the assessee has indulged in sham transaction and obtained bogus capital gains income.

6. We have heard rival submissions in the light of materials available on record. The ld. Counsel for the assessee has largely reiterated the arguments taken before the ld. First Appellate Authority. It was contended that the relief accorded is based upon correct interpretation and understanding of the facts of the case. The ld. Counsel submitted that the very fact that ld. AO has invoked

section 68 and 69A of the Act shows that he is unsure of the section in which the impugned addition is to be made. It was argued that addition u/s 68 was in any case impermissible as the assessee is an individual having no other business income and consequently not maintaining any books of accounts. Reliance in this regard was placed upon the decision of Hon'ble Delhi High Court in the case of Ms. Mayawati 338 ITR 563 and of Hon'ble Apex Court in the case of Baladin Ram 71 ITR 427 (SC). The Id. Counsel submitted that it had acquired 8000 shares on 30.08.2011 from M/s Economy Suppliers Private Limited and payment of Rs.2,40,000/- was made utilizing banking channel. A copy of Axis Bank, account statement evidencing the transactions has been placed on record through voluminous paper book. It was submitted that the said shares were placed in to the Demat Account on 02.09.2011. Subsequently, the assessee got created another 4000 bonus shares in its Demat Account. All the above 12000 shares were transferred to another Demat account of the assessee maintained with M/s Smart Equity Brokers Limited. Necessary evidences in support of its averments have been placed on record through a paper book. The Id. Counsel argued that there is no merit in the argument of the Id. AO of not providing confirmation from M/s Economy Suppliers since it had provided purchase bills, address of vendors, etc and that the Id. AO was at liberty to have conducted at his own independent enquiries. On the issue of off market transactions, the Id. AR placed reliance on the decision of Hon'ble Bombay High Court in the case of Jamuna Devi Agarwal 328 ITR 656 stating that Off market transaction alone would not deem a transaction as sham transaction. The Revenue Authorities are

required to see overall facts of the case like fair market value of shares purchased, utilization of banking channels, etc.

7. The ld. Counsel for the assessee further argued that the shares were held in the Demat account for more than 12 months. In support, the ld. AR referred to the decision of Hon'ble Apex Court in the case of Kuntala Mahapatra 160 taxmann.com 608. In the said case, Hon'ble Apex Court has upheld the decision of Hon'ble Orissa High Court that once shares were bought through account payee cheques, held in Demat account for more than 12 months and thereafter sold through Stock Exchange would entitle a tax payer claim of exemption u/s 10(38) of the Act. The ld. Counsel further argued that the reliance by ld. CIT(A) in the case of Rama Mittal (supra) is also correct and does not suffers from any deficiency.

8. We have also noted that a Co-ordinate Bench of ITAT Amritsar in the case of Rama Mittal (supra), considering transactions undertaken by the assessee qua M/s PMC Fincorp have ruled as under:-

*“10..... It is noted that the assessee has established its claim before the lower authorities, based upon the documents namely bank details, the purchase/sell documents, the details of the D-Mat Account etc. and that the appellant held the shares for a period of more than one year and sold them through recognized stock exchange and paid STT. Meaning thereby that the assessee has complied all the conditions of section 10(38) of Income Tax Act, 1961 to claim, long term capital gain of Rs. 65,01,278/- earned by the appellant was exempt as per provisions of section 10(38) of the Income Tax Act, 1961 and same has been duly declared in the income tax return of the assessee.*

*11. From the record, it is found that the addition made by the AO and upheld by the CIT(A) was solely based on the premise of alleged price rigging in the PMC Fin Corp script. However, this allegation is negated by the Securities Appellate Tribunal Mumbai, in its order*

*dated August 28, 2023, by explicitly dismissed these allegations. The tribunal's ruling stated that there is no supporting material on record to substantiate the accusation of the company's involvement in price inflation. Moreover, the order emphasized that purchasing shares from the stock exchange platform is not unlawful, and continuous buying of shares at increased prices does not contravene any provisions of SEBI laws, particularly the PFUTP Regulations. (APB, Pgs. 76-88).*

*12. The Hon'ble SUPREME COURT OF INDIA in the case of Pr. CIT v. Renu Aggarwal [2023] 153 taxmann.com 579/294 Taxman 521/456 ITR 249 (SC), dismissed the SLP filed by revenue filed against the Hon'ble high court where adjudicating the matter on Section 69A, read with section 10(38), of the Income-tax Act, 1961 - Unexplained moneys (Share dealings) - High Court by impugned order held that where Assessing Officer disallowed exemption claimed by assessee under section 10(38) and made additions, alleging involvement in penny stock which were being misused for providing bogus accomodation of LTCG, however, there was lack of adverse comments from stock exchange and officials of company involved in these transactions and no material relating to assessee was found in investigation wing report, additions made by Assessing Officer had rightly been deleted - Whether SLP filed by revenue against said impugned order was to be dismissed - Held, yes [Para 2] [In favour of assessee].*

*13. In the case of Pr. CIT v. Mamta Rajivkumar Agarwal [2023] 155 taxmann.com 549/295 Taxman 512 (Gujarat), the Hon'ble HIGH COURT OF GUJARAT has observed on exemption of capital gains under Section 10(38) of the Income-tax Act, 1961 as under- "Section 10(38) of the Income-tax Act, 1961 - Capital gains - Income arising from transfer of long term securities (Share dealings) - Assessment year 2013-14 - Assessee had sold shares of SNCFL and earned long-term capital gains - Assessing Officer issued a show cause notice alleging that transaction was a penny stock deal aimed at illegitimately claiming long-term capital gain exemption under section 10(38) - Assessing Officer treated purchase as bogus and added it to total income - Commissioner (Appeals) examined all relevant documents provided by assessee, including bills of purchases, broker account copies, bills for sales, and bank statements and held that purchases were made through a recognized broker via cheque, establishing their genuineness and, thus, he directed Assessing Officer to delete addition of LTCG claimed as exempt under section 10(38) - Tribunal upheld Commissioner (Appeals) decision stating that there was no evidence implicating assessee or broker in any wrongdoing related to SNCFL script - Whether in view of concurrent findings of fact that there was no evidence available on record suggesting that assessee or his broker was involved in rigging up of price of script of SNCFL, addition on account of LTCG claimed as exempt under section 10(38) had rightly been deleted - Held, yes [Paras 4 and 5] [In favour of assessee]"*

14. In another case of Pr. CIT v. Indravadan Jain, HUF [2023] 156 taxmann.com 605/[2024] 463 ITR 711 (Bombay), the Hon'ble HIGH COURT OF BOMBAY held as under- "Section 68, read with section 10(38), of the Income-tax Act, 1961 - Cash credit (Share transactions) - Assessment year 2005-06 - Assessee had claimed sale proceeds of shares as long-term capital gain JASPREET (LTCG) exemption - However, Assessing Officer held that scrip was a penny Stock and thus, he made an addition of same under section 68 - Commissioner (Appeals) observed that shares were purchased on floor of stock exchange and not from broker, payment was made through banking channel, deliveries were taken in DEMAT account where shares remained for more than one year, contract notes were issued and shares were also sold on stock exchange and, accordingly, held that there was no reason to add capital gains as unexplained cash credit under section 68 - Whether Tribunal had rightly concluded that there was no merit in appeal against Commissioner (Appeals) order - Held, yes [Para 4] [In favour of assessee]"

15. Recently, the Hon'ble Apex Court in the case of Pr. CIT v. Dipansu Mohapatra [2024] 160 taxmann.com 289/298 Taxman 194/463 ITR 681 (SC) dismissed against order of High Court that where assessee provided all details of purchase and sales of shares to AO along with contract notes for purchase and sale, demat account and bank statement and, furthermore no incriminating materials were found during survey conducted in premises of assessee, AO could not deny claim under section 10(38) merely by relying on statements of accommodation entry providers which were recorded much before date of survey.

16. The Judgement of Hon'ble Kolcutta High Court in the case Pr. CIT v. Swati Bajaj [2022] 139 taxmann.com 352/288 Taxman 403/446 ITR 56 (Calcutta), relied by the department is not applicable to the facts of the present case and same is distinguished as under: (a) In the case of Swati Bajaj, the Script was of that Surabhi Chemicals and Investment Limited for a duration of

17 months whereas in the present case the script was of PMC Fin Corp. Ltd. being for duration of 4 Years. (APB, Pg. 176, Para 7) (b) In the case of Swati Bajaj, Investigation report was Available in public domain and substantiate portion has been reproduced in the order whereas in this case it was neither available nor provided to the appellant. (c) In the case of Swati Bajaj, Survey was conducted on broking entities and the brokers admitted that accommodation entries were provided but in the present case, the assessee has purchased the shares from RELIGARE SECURITIES Ltd. and there was no such survey or admission by the broker. (d) Number of beneficiaries Identified but No such identification provided to assessee (APB, Pg.83 para 9.6) (e) Price Rigging was established that Surabhi Chemical scrip were involved in artificial rigging of price to provide bogus LTCG whereas in the instant case, the order of adjudicating authority of SEBI was challenged before Security Appellate Tribunal Mumbai and it has been held by the Tribunal that buying shares from

*stock exchange is not a crime and does not violate any provisions of SEBI (APB, Pg 85, para 14)*

*17. Considering the the factual matrix of the case and judicial precedents, we hold that the decision of the Ld. CIT(A) is infirm and perverse to the fact on record. We hold that there was no reason to add capital gains as unexplained cash credit under section 68 of the Act. Accordingly, the addition of Rs. 66,56,020/- is deleted.*

*18. In the result, the appeal filed by the assessee is allowed....”*

9. Thus, we have noted that the addition made by the Ld. AO is primarily based upon his conjectures and surmises qua financials of PMC Fincorp and it being branded as a penny stock company. The ld. AO has not brought on record any credible evidence through his independent enquiry, to allude any role of assessee in any price rigging. The shares have been bought and sold utilizing banking channels, due credits have been made in the Demat Account of the assessee. Consequently, we are of the considered view that no blame can be placed upon the assessee for indulging in any sham transaction. Accordingly, in view of peculiar facts of the case and also judicial precedents discussed hereinabove, we are of the view that there is no case for any intervention in the order of the ld. CIT(A) at this stage. Accordingly, the order of the ld. CIT(A) is confirmed and all the grounds of appeal are raised by the Revenue are dismissed.

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

Order pronounced in the open court on 27<sup>th</sup> October, 2025.

*Sd/-*  
**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**  
**Dated: 27.10.2025**

*Sd/-*  
**[AMITABH SHUKLA]**  
**ACCOUNTANT MEMBER**

*Shekhar*

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi,