

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "A" BENCH : PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER &  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

I.T.A.No.2233/PUN/2024  
(Assessment Year 2014-2015)

|                         |     |  |
|-------------------------|-----|--|
| ITO, Ward-2(1), Nashik. |     | Ankit Naresh Tulsian,<br>Flat No.4, Sumangal Orchid,<br>Thatte Nagar Gangapur Road,<br>Nashik-422005, Maharashtra. |
|                         | vs. | PAN : ALGPT 8234 L   |
| (Appellant)             |     | (Respondent)   |

|                |                           |
|----------------|---------------------------|
| For Assessee : | Shri Pramod S Shingte, CA |
| For Revenue :  | Shri Uodol Raj Singh, DR  |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 11.11.2025 |
| Date of Pronouncement : | 28.11.2025 |

**ORDER**

**PER : MANISH BORAD, AM**

This appeal at the instance of the Revenue is directed against the order of National Faceless Appeal Centre (NFAC)/ Commissioner of Income Tax (Appeals), Delhi [**"CIT(A)"**], dated 04/09/2023 passed under section 250 of the Income Tax Act, 1961 (**"Act"**) which is arising out of assessment order passed u/s. 144 r.w.s. 147 of the Act, dated 28/09/2021 for the Assessment Year (**AY**) 2014-15.

2. Revenue has raised the following grounds of appeal:-

*"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)/NFAC has erred in deleting addition of*

21,00,08,500/ on account of long-term capital gains (LTCG) from the sale of 200,000 shares of MISHKAFIN as unexplained money under section 69A of the Income Tax Act, 1961, and taxing it under section 115BBE of the Income Tax Act, 1961.

2. Whether on the facts and circumstances of the case and in law, the Ed. CIT(A) has erred in not appreciating the findings unearthed during enquiries and an action under section 133A and section 132 of the Income Tax Act, 1961, by the DDIT(Inv.) Kolkata.

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating dated 30.03.2015. Shri Anil Kumar Khemka confessed to facilitating accommodation entries through the manipulation of scraps, including MISHKAFIN and outlined the modus operandi where beneficiaries were provided bogus Long Term Capital Gains (LTCG) entries by inflating share prices through synchronized trading. The assessee in this case is one such beneficiary who allegedly benefited from this operation by selling shares of MISHKAFIN for Rs. 1,00,53,500/-.

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in dismissing the findings from the investigation and ignoring the fact that the entire scheme was a manipulated setup to create bogus LTCG. The accommodation entry provider had confessed to this manipulation, which directly implicates the assessee as a beneficiary.

5. The appellant prays that the order of the National Faceless Appeal Centre (NFAC) Delhi may please be cancelled and the order of the Assessing Officer may please be restored.

6. The appellant prays leave to add, alter, clarify, amend and or withdraw any grounds of appeal as and when the occasion demands

7. Without prejudice to the above, the order of the Ld. CIT(A) may be vacated and that of the Assessing Officer may be restored.”

3. Brief facts of the case are that assessee is an individual, filed his return of income for A.Y. 2014-15 on 31/07/2014 declaring total income of Rs. 10,31,310/- and claimed exempt income u/s. 10(38) of the Act at Rs. 1,00,08,355/- from sale of 200000 equity shares of Mishkafin Finance and Trading Ltd. (MFTL). Ld.AO after issuing notice u/s. 148 of the Act carried

out re-assessment proceedings. Assessee challenged the notice u/s.148 of the Act on the ground that a detailed investigation has been carried out by the department issuing summons u/s.131 of the Act for verifying the exemption claimed u/s. 10(38) of the Act. Subsequently, the assessee was served notice u/s. 148 of the Act, dated 31/03/2019 and assessment u/s. 147 r.w.s. 143(3) of the Act has been framed on 28/11/2019 dropping the re-assessment proceedings. Assessee submitted that there being no other information available with the Ld.AO about the alleged allegation of bogus long term capital gains (LTCG) and also there being no failure on the part of the assessee to furnish material information with regard to alleged transaction, the issuance of notice u/s. 148 of the Act is invalid. However, Ld.AO after disposing of the objections raised by the assessee carried out re-assessment proceedings and taking note of the report of the Securities and Exchange Board of India (SEBI), dated 17/04/2021 restraining trading of equity shares of MFTL along with other 128 entities from accessing the securities market and also observing steep increase in the share price of the equity share of MFTL not commensurate with the profitability and other financial criteria, concluded that LTCG claimed by the assessee u/s. 10(38) of the Act is bogus and made addition on account of unexplained money u/s. 69A of

the Act at Rs. 1,00,08,500/- and assessed the income at Rs. 1,10,39,810/-

4. Aggrieved by the order of Ld.AO, assessee preferred appeal before Ld.CIT(A) challenging the validity of notice u/s. 148 as well as validity of re-assessment proceedings, and on merits, it claimed that all the conditions required for claiming exemption u/s. 10(38) of the Act has been fulfilled by the assessee and reference made to judicial precedents wherein the Hon'ble Courts as well as Co-ordinate Benches have decided the issue in favour of the assessee holding that long term capital gains from sale of equity share of MFTL is genuine. Ld.CIT(A) after detailed examination of facts and judicial precedents, allowed the assessee's appeal. Aggrieved by the order of Ld.CIT(A), now Revenue is in appeal before this Tribunal.

5. Ld. Departmental Representative (DR) vehemently argued supporting the order of the Ld.AO.

6. On the other hand, learned counsel for the assessee referring to the written submissions stated that assessee has made a claim of LTCG u/s. 10(38) of the Act for the capital gain earned on sale of equity shares of MFTL. After filing of the return on 31/07/2014, assessee was served with summons u/s. 131 of the Act, dated 09/04/2015, to which reply was filed and again two more notices u/s. 131 were

issued dated 02/06/2015 & 07/08/2015, which were also duly replied and there was no further action from the Revenue's side against the assessee for the alleged transaction. Subsequently, assessee was again served with notice u/s. 148 of the Act, dated 31/03/2019 and assessee made proper compliance to the same and in the assessment order framed on 28/11/2019 u/s. 143(3) r.w.s 147 of the Act, proceedings initiated u/s. 148 of the Act, were dropped. He further submitted that on the very same reasons, alleged re-assessment proceedings have been initiated by issuing another notice u/s. 148 of the Act on 20/03/2020. Though, assessee has duly made compliance to all the notices issued by the Revenue authorities, it is claimed that in view of the judgment of Hon'ble Supreme Court in the case of *CIT v. Kelvinator of India Ltd.* (2010) 320 ITR 561(SC), re-assessment proceedings carried out vide notice u/s. 148, dated 20/03/2020 deserves to be quashed as they are initiated for the issue, which has already been dealt with by the Department in the previous assessment proceedings and the same amounts to tantamount to mere change of opinion, which is not permissible in the eyes of law.

7. So far as merits of the case are concerned, it is submitted that equity shares in question have been purchased by payment through banking channel and were held in the Demat account. Further, after keeping the equity shares in the

Demat account, they have been sold through registered stock exchange and payment has been received through banking channel after due payment of applicable security transaction tax (STT), thereby fulfilling all the conditions provided u/s. 10(38) of the Act. Reference was further made to the judgment of Hon'ble Gujarat High Court in the case of *PCIT vs. M.S. Gokuldharm Enterprise LLP* in R/Tax Appeal No. 427 of 2023, dated 28/08/2023 wherein also similar issue regarding the genuineness of LTCG from sale of equity shares of MFTL came for adjudication and the Hon'ble High Court held it to be a genuine LTCG observing that *"the final report of SEBI had absolved the scrip (MFTL) of all charges and there was no independent finding on any other aspect casting doubts to show that share prices were manipulated at an unreasonable price when sold"*. The decisions relied on by the learned counsel for the assessee are as under:-

| Sr. No. | Name of the Case                                       | Citation    | Court Details                 | Script Involved   |
|---------|--|-------------|-------------------------------|---|
| 1       | PCIT vs Kalawati Sharma                                | 57/2021     | Highcourt-Rajasthan-Jaipur    | Mishka Finance and Trading Limited  |
| 2       | PCIT vs. M. S. Gokuldharm Enterprise Llp               | 427/2023    | Highcourt-Gujarat-Ahmedabad   | Mishka Finance and Trading Limited (MFTL for Short)   |
| 3       | PCIT vs Neelu Mahansaria                               | 683/2024    | Highcourt-Gujrat              | Mishka Finance and Trading Limited  |
| 4       | Bril Bhushan Singal vs. ACIT                           | 1412/2018   | ITAT-Delhi                    | MFTL, M/s Pine Animation Ltd., M/s First Financial Services Ltd., M/s Radford Global Ltd.             |
| 5       | Dy. CIT Vs. Smt Kalawati Sharma                        | 781/2019    | ITAT-Jaipur                   | Mishka Finance and Trading Limited  |
| 6       | M. S. Gokuldharm Enterprise Llp                        | 675/2018    | ITAT-Ahmedabad                | MFTL/Pyramid Trading and Finance Ltd.   |
| 7       | Gateway Financial Services Ltd vs. ACIT                | 982/2018    | ITAT-Kolkata                  | M/s Radford Global Ltd.   |
| 8       | Mahendra Prakash Vs. ACIT                              | 1566/2023   | ITAT-Mumbai                   | Mishka Finance and Trading Limited  |
| 9       | Natwarlal Daga vs. CIT(A)                              | 396/2021    | ITAT-Mumbai                   | Rander Corporation Ltd., Mishka Finance and Trading Ltd., Dhenu Buildcon Ltd.                         |
| 10      | Neelu Mahansaria Vs. ITO                               | 197/2023    | ITAT-Surat                    | MFTL/Pyramid Trading and Finance Ltd.   |
| 11      | Chirag Tejprakash Dangi Vs. ITO                        | 3256/2022   | ITAT-Mumbai                   | M/s Radford Global Ltd.; MFTL/Pyramid Trading and Finance Ltd.; Surbhi Chemicals and Investments Ltd. |
| 12      | Bhavana Lalit Jain                                     | 1120/2024   | ITAT-Mumbai                   | LFC Securities P Ltd.   |
| 13      | Securities Appellant Tribunal Order (SEBI FINAL ORDER) | 28265/23-24 | Securities Appellate Tribunal |   |
| 14      | SEBI ORDER - Roongta Rising final Order                | 72 of 2021  | SEBI                          | Mishka Finance and Trading Limited  |
| 15      | Indravadan Jain (HUF)                                  | 454/2018    | High court-Mumbai             | RFL   |

8. We have heard rival contentions and perused the records placed before us. The Revenue is aggrieved with the finding of Ld.CIT(A) deleting the addition made by the Ld.AO u/s. 69A of the Act at Rs. 1,00,08,500/-. Alleged sum has been shown by assessee as LTCG from sale of 200000 equity shares of a company, namely MFTL and claimed exemption u/s. 10(38) of the Act. We observe that assessee challenged the validity of the notice issued u/s. 148 of the Act, dated 28/03/2020 and also the validity of re-assessment proceedings carried out which concluded on 28/09/2021 on the ground that assessee had already been subject to examination by Investigation Wing on the very same issue by serving the assessee with notice u/s. 131 of the Act. We note that assessee had already gone through one round of reassessment proceedings initiated, for the same information and after due consideration of the details filed by the assessee, such proceedings were dropped. It has been claimed that there being no independent enquiry made by the Ld.AO and no other fresh material was available with the Ld.AO prior to issue of alleged notice u/s. 148 of the Act, dated 20/03/2020 and, therefore, the alleged reassessment proceedings have been carried out on a mere change of opinion, which is not permissible in the eyes of law as per the ratio laid down by the Hon'ble Apex Court in the case of *Kelvinator of India Ltd.* (supra). We note that Ld.CIT(A)

has dealt with this legal issue placing reliance on plethora of decisions and his finding reads as under:-

*“6.1 I have gone through the order of AO and submission made by the appellant. The Ld. AO has treated share dealing made by the appellant as bogus and thereby added back exempted capital gain to taxable income. The Ld. AO also added back the commission as well. Aggrieved by the order of Ld. AO, the appellant has raised multiple grounds of appeal and the same are disposed off collectively as under.*

*6.2 The appellant had purchased shares of Mishkafin Finance Ltd and subsequently these shares were sold for sum of Rs. 1,00,23,500/- The resultant capital gains of Rs.1,00,08,355/- was claimed exempted u/s 10(38). The Ld. AO treated entire capital gain as bogus and add to total income as unexplained money u/s 69A of the Income Tax Act.*

*6.3 The Ld. 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 Mishkafin Finance Ltd*
- 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*

*6.4 The appellant claimed the transaction to be genuine and filed following documents before Ld. 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*

Further, the appellant also asked for cross examination of the material being used against her to claim such capital gain as bogus.

6.5 The appellant also contested that trading was done through online portal wherein she was not aware of the counter party to the transaction and price fluctuation to stock was beyond her control.

6.6 The Ld. 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 LING

6.7 The Ld. 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. Moreover, the Ld. AO has also not provided opportunity of cross examination.

6.8 The Ld. 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.

6.9 The above issue has been dealt and adjudicated by many courts as under:

*In the case of PCIT Vs. Parasbenkasturchand Kochar, [2021] 130 taxmann.com 177 (SC) AUGUST 2, 2021, SLP dismissed against impugned order of High Court holding that where assessee-individual engaged in trading of shares had discharged his onus of establishing long term capital gains arising out of sale of different shares as fair and transparent by submitting records of purchase bills, sale bills, demat statement etc., same not being earned from bogus companies was eligible for exemption under section 10(38).*

**PCIT Vs Indravadan Jain, HUF Income tax ax Appeal No. 454 of 2018 (Bombay HC) -date of order - 12-07-2023**

*In the aforesaid case, the Hon'ble Bombay High Court upheld the decision of Hon'ble Mumbai Tribunal, wherein the Tribunal had held that since the shares were purchased on the floor of stock exchange and not from broker, payment was made through banking channel, deliverables were taken in DEMAT account where the shares remained for more than one year, contract notes were issued and the shares were also sold on stock exchange, the long-term capital gains claimed as exempt cannot be treated as accommodation entry.*

**Sri Chand Chatrumal HUF vs ACIT [I.T.A. No.6537/Mum/2018]**

*"the assessee have filed the best evidence to prove the transaction in question vi z. bills, contract notes, demat*

Statement and the bank account statements to prove the genuineness of the transaction relating in the purchase of Mis. Panchshul Marketing Ltd and thereafter sale of shares (after amalgamation] of M/s KAFL which resulted in LTCG claim of Rs.19,51,000/-. Therefore, by applying the test of preponderance of probability, the LTCG cannot be disallowed without AO pointing out any infirmities in the evidences produced by assessee, which III1fortwlately AO could not point out. So the assessee's claim of LTCG need to be allowed."

**Manish Kumar Baid Vs ACIT [ITA 1237/Kol/2017]**

"The enquiry by the Investigation Wing and/or the statements of several persons recorded by the Investigation Wing in connection with the alleged bogus transactions in the shares of KAFL also did not implicate the assessee and/or his broker. It is also a matter of record that the assessee furnished all evidences in the form of bills, contract notes, demat statements and the bank accounts to prove the genuineness of the transactions relating to purchase and sale of shares resulting in LTCG. These evidences were neither found by the Id AD to be false or fabricated. The facts of the case and the evidences in support of the assessee's case clearly support the claim of the assessee that the transactions of the assessee were bonafide and genuine and therefore the id AD was not justified in disallowing the assessee's claim of exemption under section 10(38) of !.he Act."

**Kiran Kothari Vs ITO [ITA 443/Kol/2017]**

"we note that the assessee had furnished all relevant evidence in the form of bills, contract notes, demat statement and bank account to prove the genuineness of the transactions. relevant to the purchase and sale of shares resulting in long term capital gain. Neither these evidences were found by the AO nor by the Id. CIT(A) to be false or fictitious or bogus. The facts of the case and the evidence in support of the evidence clearly support the claim of the assessee that the transactions of the assessee were genuine and the authorities below was not justified in rejecting the claim of the assessee exempted u/s 10(38) of the Act on the basis of suspicion, surmises and conjectures. It is to be kept in mind that suspicion how so ever strong, cannot partake the character of legal evidence"

**M/s. ANDAMAN TIMBER INDUSTRIES V/s CCE CIVIL APPEAL NO. 4228 OF 2006**

Not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected

***CIT vs. Mukesh Ratilal Marolia (Bombay High Court)  
INCOME TAX APPEAL NO. 456 OF 200 7 7th September  
2011***

*Long-term capital gains on sale of "penny" stocks cannot be treated as bogus & unexplained cash credit if the documentation is in order & there is no allegation of manipulation by SEBI or the BSE. Denial of right of cross-examination is a fatal flaw which renders the assessment order a nullity INCOME TAX DEPARTMENT*

***Kamla Devi S. Doshi V/s. The Income Tax Officer Ward  
16(3) (1), I.T.A. No.1957/Mum/2015 Assessment Year:  
2006-07***

*Bogus penny stocks capital gain: The s. 131 statement implicating the assessee is not sufficient to draw an adverse inference against the assessee when the documentary evidence in the form of contract notes, bank statements, STT payments etc prove genuine purchase and sale of the penny stock. Failure to provide cross-examination is a fatal error*

***Shri Sunil Prakash V/s. ACIT -15(2) I.T.A./6494/Mum/  
2014, Assessment Year: 2005-06***

*If the AO relies upon the statement of a third party to make the addition, he is duty bound to provide a copy of the statement to the assessee and afford the opportunity of cross-examination. Failure to do so vitiates the assessment proceedings A transaction evidenced by payment/receipt of share transaction value through banking channels, transfer of shares in and from the Demat account, etc cannot be treated as a bogus transaction so as to attract s. 68.*

*6.10 In view of the facts and circumstances of the case and having regard to varied judicial pronouncements including jurisdictional High Court and ITAT, I am of the considerate view that the appellant had submitted all the relevant documents before the AO to establish genuineness of purchase and sale of shares*

*A perusal of assessment order reveals that not a single piece of evidence - direct or circumstantial has been brought on record by the AO which can establish that the appellant or even his broker had indulged in arrangement of accommodation or bogus LTCG or they were in any way involved in price manipulations in any manner. There is no reference to any material whatsoever in the order of assessment in relation to the case of appellant or its broker supporting the allegations levelled by the AO against the appellant. There is no confessional statement referred by the AO either given by the appellant or the broker which may indicate that the aforesaid transaction was undertaken to shift alleged artificial gains to the appellant.*

*I find that the assessee has filed all the evidences comprising summary of sale and purchase of shares, contract notes/broker notes, of Demat account/transaction statement, copies of purchase/sale bills, evidences of payment through banking channels along with bank statements etc. which substantiates the genuineness of the transaction.*

*Further, there is no evidence on record to establish any cash trail or otherwise which can lead to a conclusion that the appellant colluded with its brokers, companies, its promoters, exit providers to arrange bogus LTCG*

*Further, the Ld. AO has not carried out investigation of the fact of the case which are specific to the appellant and has also not provided opportunity for cross examination which is against principle of natural justice. The AO has relied on the information given by the Directorate of Income-tax (Investigation) without appreciating that the same cannot be used against the appellant without providing statements and investigation reports and therefore such documents cannot be used against the appellant. In the present case, the Ld. AO has failed to provide the appellant with the materials and statements allegedly used by him to hold the transactions as sham. Thus, the AO has failed to comply with section 142(3) of the Act as well as the principles of audi alteram partem thereby resulting in gross violation of principles of natural justice.*

*I also find that the AO in this case has not conducted any independent inquiry to establish the veracity of information received by him from the DDIT and he has mechanically issued the notice u/s. 148 of the Act. The Hon'ble High Court of Bombay in the case of Principal Commissioner of Income-tax-5 v. Shodiman Investments (P.) Ltd. reported in 422 ITR337 holding that reopening notice on the basis of intimation from DDIT (Investigation) about a particular entity entering into suspicious transactions, was clearly in breach of the settled position of law that reopening notice has to be issued by the Assessing Officer on his own satisfaction and not on borrowed satisfaction*

*It is also a common knowledge that when the shares are purchased/sold through online mode, the seller and purchaser are unknown to each other and there is no system through which the seller could decide to whom the shares be transferred. The AO has also not conducted any enquiry as to who is the seller/ purchaser of shares and whether any of them have been held to be engaged in price rigging.*

*The Ld. AO has also not provided any short coming in the documentation filed by the appellant neither the Ld.AO has provided any finding that there is round tripping of cash in the underlined capital gain.*

*It is also a settled position of law that addition cannot be made merely on the basis of suspicion, conjectures and surmises. It*

*is a settled position of law that mere suspicion, howsoever strong, cannot take the place of legal proof. Thus, addition made on the basis of mere suspicion and conjecture is bad in law and deserves to be quashed.*

*Therefore, the additions made by the Ld. AO for sum of Rs. 1,00,08,355/- on account of bogus capital gain are deleted.*

*Accordingly, the appeal made by the appellant is allowed.”*

9. From going through the above findings of the Ld.CIT(A) and the decisions referred therein and also taking note of the facts brought on record before us by the learned counsel for the assessee, we note that assessee while filing return of income, has mentioned the particulars giving rise to LTCG u/s. 10(38) of the Act at Rs. 1,00,08,500/-. Further, the assessee has been issued summons u/s. 131 of the Act, dated 09/04/2015 by the Investigation Wing. The assessee has given reply on two occasions and again certain more information was called for vide letters dated 02/06/2015 and 07/08/2015 to which also assessee has duly replied along with furnishing documents which includes the broker note for sale and purchase of shares, bank statement depicting the payments made for purchase of shares Demat statement showing holding of equity shares in question, statements issued by CDSL confirming the sale of shares and final bank statement depicting the receipt of money. The Investigating Wing called for these informations based on the information received from SEBI about certain companies where the

transactions were found to be doubtful on account of price rigging.

10. Further, we observe that after a span of four years, the assessee had again been served notice u/s. 148 of the Act, dated 31/03/2019 regarding the very same reason about the alleged bogus claim of LTCG from sale of equity shares of MFTL. The assessee again furnished all the informations, based on which the Ld.AO found that the claim of the assessee for LTCG is genuine and he dropped the proceedings vide order dated 28/11/2019 u/s. 143(3) r.w.s. 147 of the Act.

11. Surprisingly, on the very same information again a fresh notice u/s. 148 of the Act has been issued on 20/03/2020, the validity of which has been challenged before the Ld.CIT(A). After examining the present set of facts and in the light of judgment of Hon'ble Apex Court in the case of *Kelwinator of India Ltd.* (supra), we find that it is a clear case of carrying-out re-assessment proceedings on "mere change of opinion" because on the very same set of facts and the information available with the Ld.AO which had already been confronted to the assessee and after finding, the claim of LTCG was genuine, proceedings have been dropped. At the time of issuing notice u/s. 148 of the Act, dated 20/03/2020 neither there is any new information available with the Ld.AO nor any independent enquiry has been carried out by the Ld.AO to establish the

veracity of information received by him from Director of Income Tax (Inv.). Since, Ld.AO has not conducted any enquiry as to who is the seller/purchaser of the alleged equity shares and whether any of them have been held to be in price rigging, such initiation of re-assessment proceedings in the given case is merely based on change of opinion which is not permissible in the light of settled judicial precedents referred (supra). Therefore, the finding of the Ld.CIT(A) quashing the notice issued u/s. 148 of the Act, dated 20/03/2020 and quashing the assessment order u/s. 147 r.w.s. 144B of the Act dated 28/09/2021 needs no interference.

12. So far as merits of the case are concerned, we observe that in order to claim exemption u/s. 10(38) of the Act, the assessee is required to fulfill the conditions provided under section 10(38) of the Act, which are that the capital asset being equity shares or a company or a units of equity oriented fund is held by the assessee for more than a one year, the transaction of sale of equity shares is carried out on a recognized stock exchange and such transaction is chargeable to STT. The assessee in the instant case has fulfilled all the relevant conditions as provided u/s. 10(38) of the Act. Ld.AO has held the claim of LTCG is bogus based on his observation about steep increase in the prices of equity shares and poor financial of the company and mainly referring to report of the SEBI restraining trading of the equity shares of MFTL on the

stock exchange. Before us, learned counsel for the assessee has referred to plethora of judgments in assessee's favour where the genuineness of claim of LTCG from sale of equity shares of MFTL has come up for adjudication.

13. We, however, take note of the recent judgment of Hon'ble Gujarat High Court in the case of *M.S. Gokuldharm Enterprise LLP* (supra) where substantial question of law before the Hon'ble Court was "*Whether on the fact and circumstances of the case and in law, the Hon'ble ITAT has erred in deleting the addition made by the Ld.AO on account of disallowance of exemption of Rs. 8,90,28,838/- claimed by the assessee u/s. 10(38) of the IT Act?*". We note that the said claim of LTCG was from sale of 1805700 equity shares of MFTL (the same scrip is in question in the instant appeal before us).

14. We further observe that the Hon'ble High Court has adjudicated the issue of bogus LTCG and observed as follows:-

*“3.1 The assessee had filed return of income for the assessment year 2014-15 by declaring income of Rs. NIL. An assessment order was passed making addition on account of long term capital gain. The appeal was partly allowed deleting the addition made by the Assessing Officer. The Tribunal dismissed the appeal of the department.*

*3.2 The facts relating to the long term capital gain of Rs.8,90,25,838/- earned by the assessee are that they related to 1805700 shares of one Mishka Finance and Trading Limited ('MFTL' for short) sold by the assessee during the year for a value of Rs.9,12,18,266/-.*

*3.3 The SEBI had passed an interim order in relation to this scrip by 'MFTL' holding that preferential allottees and promoters related entities had, with the aid of exit providers, misused the exchange mechanism to exit at a higher price in order to book illegitimate gains with no payment of tax as long*

term capital gain, as long term capital gain is exempt under section 10(38) of the Act.

3.4 The Principal CIT (A) and the Tribunal found that the SEBI report based on which the Assessing Officer had made additions was an interim report and in the final report there was no adverse finding. The SEBI in the final report had not made any adverse findings.

4. While reversing the order of the Assessing Officer, the CIT(A) observed as under:

*“The final report of SEBI has come out on 05.10.2017 wherein it has clearly stated in Para 7 of their report that:*

*“Upon completion of investigation by SEBI, it is noted that there are no adverse findings against the 104 entities mentioned at S.No. 1-104 in Table No. 2 with respect to their role in the price manipulation/prima facie violations for which Interim Order dated April 17, 2015 was passed and subsequently confirmed in the scrip of Mishka.”*

*A copy of this report was sent to AO as per Rule 46A and remand report dated 22.11.2017 has been received. In para-3 of remand report, the AO has simply mentioned that the share transaction has been skillfully manipulated to claim the exemption u/s. 10(38). In this connection, it is verified that the payment for purchase of shares was made through banking channel, shares were in demat account of the appellant for more than 12 months before they were sold through BOLT of BSE and the proceeds have been received through banking channel, STT has been paid. The main stand of the AO which was picked up from SEBI interim report has also been decimated by the final report of the SEBI itself. The relevant portion of para 8 of SEBI report dated 05.10.2017 is reproduced as under::*

*“8. Considering the fact that there are no adverse findings against the 104 entities mentioned at S.No.1104 in Table No.2 with respect to their role in the price manipulation/ prima facie violations for which interim Order dated April 17, 2015 was passed and subsequently confirmed in the scrip of Mishka warranting continuation of action under section 11B and 11(4) of the SEBI Act, I am of the considered view that the directions issued against them vide interim order dated April 17, 2015 which were confirmed vide Orders dated October 12, 2015, October 21, 2015, April 13, 2016, July 05, 2016 and August 26, 2016, are liable to be revoked.”*

*The perusal of list of entities mentioned therein indicates appellant's name at Sr.No.20, hence the appellant has*

*been absolved of any wrong doing. Consequently, the argument of the AO has fallen flat and there is no other independent finding to fasten the tax liability on the appellant.”*

*5. Confirming this view of the CIT(A), the Tribunal observed that having gone through the assessment order it was evident that it was based on the interim report. The final report of SEBI had absolved the scrip of all charges. Moreover, there was no independent finding on any other aspect casting doubts to show that share prices were manipulated at an unreasonable price when sold.*

*6. In view of the concurrent findings of the fact recorded by the Principal CIT and confirmed by the Tribunal, no substantial question of law arises. Appeal is accordingly dismissed with no order as to costs.”*

15. On duly examining the facts of the instant case in the light of the above judgment and also going through the other judicial precedents referred by the assessee in the legal compilation, we find that the finding of the Hon'ble Gujarat High Court in the case of *M.S. Gokuldharm Enterprise LLP* (supra) is squarely applicable on the facts of the instant case. Therefore, since the assessee has duly fulfilled the conditions prescribed in section 10(38) of the Act for claiming LTCG and further SEBI which previously gave interim report based on which Ld.AO made the addition but in final report the SEBI absolved the scrip namely, Mishkafin Finance and Trading Company from all charges. This shows that the additions made by the Ld.AO were merely based on preponderance of probability, but thereafter the SEBI has exonerated the scrip from all charges. Therefore, there remains no ground for doubting genuineness of LTCG claimed by the assessee u/s.

10(38) of the Act on sale of equity shares of MFTL. Thus, even on merits of the case, Revenue fails to succeed. Effective grounds of appeal raised by the Revenue are dismissed.

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

Order pronounced in the open Court on 28.11.2025.

Sd/-  
[VINAY BHAMORE]  
JUDICIAL MEMBER

Sd/-  
[MANISH BORAD]  
ACCOUNTANT MEMBER

Pune, Dated 28<sup>th</sup> November, 2025

vr/-

Copy to

|    |                             |
|----|-----------------------------|
| 1. | The appellant               |
| 2. | The respondent              |
| 3. | The CIT(A), Pune concerned. |
| 4. | D.R. ITAT, "A" Bench, Pune. |
| 5. | Guard File.                 |

//True Copy //

By Order

Assistant Registrar,  
ITAT, Pune.