

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "B" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)

A N D

Shri Prabhash Shankar (AM)

ITA No. 5859/MUM/2024
(Assessment Year : 2015-16)

Smt. Neelam Sanjay Mehta 2/78-80, Gora Gandhi Building, C.P. Tank Road Mumbai-400 004.	Vs.	ITO, Ward 19(2)(4), Mumbai/ NFAC, Delhi
PAN : AYZPM8574E		
Appellant		Respondent

Assessee by	:	Shri Vimal Punmiya, Ld. CA
Revenue by	:	Shri Layaqat Ali Aafaqui, Ld. Sr. DR
Date of Hearing	:	01/10/2025
Date of pronouncement	:	17/12/2025

O R D E R

Per Narender Kumar Choudhry (JM) :-

This appeal has been preferred by the assessee against the order dated **20.9.2024** impugned herein passed by the Learned Commissioner of Income Tax/NFAC, Delhi (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'Act') for A.Y. **2015-16**.

2. In the instant case, the assessee being an individual deriving income from salary, house property, capital gain and other sources had declared her total income at **Rs. 4,63,750/-** by filing her Return of Income on dated 1.9.2015 for the assessment year under consideration. Subsequently, case of the assessee was reopened under section 147 of the Act, with the reason that the assessee is one of the beneficiaries, who has made sale of shares, wherein trading quantity is higher than 'Buy Trades Quantity' of the scrip M/s. Toyam Industries Ltd. to the tune of **Rs. 1,99,12,777/-** and

accordingly, statutory notices were issued to the assessee. In response to which, the Assessee filed relevant details and the documents, such as purchase documents, sale contract note, bank statement etc. qua purchase and sale of shares of scrip namely M/s. Toyam Industries Ltd. .

3. The Assessing Officer though not commented on the details and documents filed qua claim of exemption of Rs. **1,99,12,777/-** under section 10(38) of the Act, however examining the financials of the scrip/company, made the following observations: -

- a) Gross sales do not commensurate with the share price year-wise.*
- b) The share attained its peak value in 2014 Rs. 600/- while the gross sales remain zero in that year. Further the price remained as low as Rs. 2 in the year where the company was bit of operational.*
- c) The share price does not commensurate with the book value of the scrip.*

4. The Assessing Officer thus on the aforesaid observations, ultimately treated the amount of Rs. 1,99,12,777/- as unexplained cash credit under section 68 of the Act and accordingly taxed the same under section 155BBE of the Act.

5. The assessee being aggrieved, challenged the said disallowance/addition by filing first appeal before Ld. Commissioner, however, of no avail, as the Ld. Commissioner on the similar footing, as of the Assessing Officer, dismissed the appeal of the Assessee, sustaining the addition on account of disallowance made by the Assessing Officer.

6. Thus, the assessee being aggrieved, has preferred the instant appeal.

7. Heard the parties and perused the material available on record. The assessee in support of its case has claimed that she has duly provided all relevant documents in order to discharge her prima facie onus cast under section 68 of the Act and the Revenue-Department/any of the authorities

below have not doubted the documents, submitted by the assessee and therefore the claim of the Assessee is liable to be allowed.

8. On the contrary, Ld. DR refuted the claim of the assessee by submitting that the burden is upon the assessee to discharge as per provision of section 68 of the Act. In the instant case, by considering suspicious trading pattern, the Assessee's involvement, the sudden spikes in trading volume followed by sharp price declining, the assessee's failure to discharge onus cast under section 68 of the Act and judicial precedents specifically in the case of Sumati Dayal Vs. CIT (1995) 80 Taxman 89 (SC) and Swati Bajaj case titled as PCIT Vs. Swati Bajaj decided on 14.6.2022 by Hon'ble Kolkata High Court, the addition is liable to be sustained.

9. Heard both the parties and perused the material available on record. The assessee in the instant case had purchased **35000** shares at value of Rs. 10 per share on **10.5.2013** through banking channel, which were subsequently got dematerialized in the month of **August 2014** and thereafter sold during the period **29.10.2014 to 13.1.2015** through SEBI registered stock broker M/s. Inventure Growth & securities Ltd. on online stock exchange platform. The payment of **Rs. 1,99,12,777/-** has been received on such sale of shares through banking channel and consequently assessee claimed long term capital gains of Rs. **1,94,31,627/-** arose from the sale of shares of Toyam Industries Ltd., on which STT was also paid and such LTCG was claimed as exempt under section 10(38) of the Act. Admittedly the assessee before the authorities below has filed relevant evidences/documents such as contract note for purchase and sale, ledger account and the bank statement etc., to prove the genuineness of the transaction. However, without controverting the documents filed by the assessee, the authorities below doubted the transaction of sale, mainly on the reason that there was sharp increase and decrease in the share value and no dividend was paid by the scrip company in the year from 2013-14 to 2015-16, the assessee sold the shares during period 29.10.2014 to

13.1.2015, the gross sales of scrip do not commensurate with the share price year-wise and the shares attained its peak value in 2014 at Rs. 600/- while gross sales remain zero in that year. Further the price remains, as low as Rs. 2 in the year, when the company was bit of operational and the share price does not commensurate with the peak value of the scrip.

10. Admittedly the assessee purchased and sold said scrip through banking channel and retained the shares under consideration for more than one year in her account and sold subsequently through on-line stock exchange platform and consequently also paid STT. Further the assessee in order to discharge its onus cast u/s 68 of the Act and in support of its claim qua purchase and sale of shares as genuine, has also filed the relevant following documents .

- a) copy of capital gains statement
- (b) copy of corresponding shares certificate dated 10.5.2013
- (c) copy of receipt cum delivery note cum delivery advice
- (d) copy of receipt for dematerialized of share from broker
- (e) copy of transaction statement from 1.4.2014 to 31.3.2015 (DP account statement)
- (f) copy of ledger copy with broker
- (g) copy of investment report and annual profit and loss summary
- (h) copy of contract note
- (i) copy of confirmation of accounts with broker
- (j) copy of global profit and loss account statement of equity and global detail statement of equity receipt from broker
- (k) copy of bank statement- Bank of Baroda
- (l) copy master data on MCA portal of Toyam Sports Ltd. showing computation status of scrip/company as on 1.8.2025.

Admittedly, the Assessee by filing relevant documents has discharged her prima facie onus cast under section 68 of the Act and authorities below have not doubted any of the documents and also not rebutted the same and no allegations have ever been levelled or proved against the assessee, qua rigging of shares and/or manipulating the transaction for earning such long term capital gains and therefore on this count itself, the addition is unsustainable.

11. We further observe that identical addition qua same scrip as involved in this case, has also been dealt with by Hon'ble Coordinate Bench of the Tribunal in the case of **Meena Hasmukh Savla Vs. ITO- 27(2)(1) (60) ITA No. 2910/Mum/2024 decided on 18.2.2025**, who ultimately deleted the same on the basis of identical facts and circumstances as involved in this case and thus on this count also, the addition of liable to be deleted.

12. The Hon'ble Jurisdictional High Court in the case of **Principal Commissioner of Income-tax vs. Indravadan Jain, HUF [2023] 156 taxmann.com 605 (Bombay)/[2024] 463 ITR 711 (Bombay)[12-07-2023]**, has also dealt with identical issue and has held as under:-

“1. This appeal is impugning an order dated 27th May 2016 passed by the Income Tax Appellate Tribunal (ITAT) rejecting two appeals that Revenue had filed against the order of Commissioner of Income Tax (Appeals) (CIT[A]) for Assessment Year 2005-06 in the matter of order passed under section 143(3) read with section 147 of the Income Tax Act, 1961 (the Act) against Respondent. Respondent though served is not present before us. Affidavit of service is also filed.

2. It was the case of Revenue before the ITAT that the CIT[A] was wrong in deleting the addition made by the Assessing Officer (A.O.) in respect of long term capital gain treated by A.O. as unexplained cash credit under section 68 of the Act.

3. Respondent had shown sale proceeds of shares in scrip Ramkrishna Fincap Ltd. (RFL) as long term capital gain and claimed exemption under the Act. Respondent had claimed to have purchased this scrip at Rs.3.12/- per share in the year 2003 and sold the same in the year 2005 for Rs.155.04/- per share. It was A.O.'s case that investigation has revealed that the scrip was a penny stock and the capital gain declared was held to be accommodation entries. A broker Basant Periwal & Co. (the said broker) through whom these transactions have been effected had appeared and it was evident that the broker had indulged in price manipulation through synchronized and cross deal in scrip of RFL. SEBI had also passed an order regarding irregularities and synchronized

trades carried out in the scrip of RFL by the said broker. In view thereof, respondent's case was reopened under section 148 of the Act.

4. *The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata 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 Kolkata 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 instructions slip and also received payment from Kolkata 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.*

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

6. *Appeal dismissed.”*

Thus, on the aforesaid analyzations and respectfully following the judgments referred to above, the addition made by the AO and affirmed by the Ld. Commissioner, is liable to be deleted. Resultantly, the addition under consideration stands deleted.

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

Order pronounced in the open Court on 17/12/2025.

Sd/-
(Prabhash Shankar)
ACCOUNTANT MEMBER

Sd/-
(Narender Kumar Choudhry)
JUDICIAL MEMBER

PRATIMA {PS}

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Asstt. Registrar) ITAT, Mumbai