

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JM
&
SHRI ARUN KHODPIA, AM

I.T.A. No. 4220/Mum/2025
(Assessment Year: 2015-16)

Rajesh M Jain (HUF) 413 Tiranga Building, Kamathipura 3 rd Lane Mumbai Central, Mumbai- 400008 PAN: AANHR8391G	Vs.	ITO Ward 20(3)(1), Room No. 307, Piramal Chambers, Lower Parel, Mumbai- 400013
Assessee -अपीलार्थी / Appellant	:	Revenue - प्रत्यर्थी / Respondent

Assessee by : Shri Amit Jhaveri & Shri Dharmil Jhaveri
Revenue by : Shri Annavarani Kosuri, Sr. AR
Date of Hearing : 22.12.2025
Date of Pronouncement : 30.12.2025

ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee, against the order of Commissioner of income tax appeals (for short “Id. CIT(A)”), NFAC, New Delhi dated 11.02.2025, for the assessment year (AY) 2015-16, which in turn arises from the assessment order dated 07.12.2018, passed by Income Tax

Officer, Ward 20(3)(1), Mumbai (for short “Ld. AO”) under section 144 r.w.s. 147 of the Income Tax Act, 1961 (for Short “The Act”).

2. The grounds of appeal raised by the assessee in the present appeal reads as under:

“GOA No.1 Opportunity of Hearing :

- ❖ The Ld. CIT(A), NFAC not given proper opportunity of hearing before dismissing the said appeal.*
- ❖ The said appeal was filed on 05/02/2019 vide Form 35 bearing acknowledgment no 417473511050219.*
- ❖ No physical notices have been served upon the assessee.*
- ❖ Thereafter the first notice of hearing was issued on the Portal on 07/02/2023 and second notice on 07/02/2024 and final one on 20/11/2024. All these notices were issued on the portal. The assessee is a HUF having no taxable income since A.Y. 2017-18 and hence no ITR is filed post that period. Hence theses notices were missed by the assessee*

GOA No.2 Disallowance of LTCG:

- ❖ The Ld. CIT(A), NFAC not considered the facts that holding of shares in demate accounts are for more than 12 (Twelve) months of the Assessee.*

- ❖ *The Ld. CIT(A), NFAC not justified in accepting the disallowance of L.T.C.G on the basis of general information received from Kolkata Investigation Directorate. There is no mention of assessee's transaction in the information. There is no information/ evidence / statement of directors of M/s Maharem Ltd.*
- ❖ *The Ld. CIT(A), NFAC not accepted / considered the statement on oath of the assessee. Also the Ld. CIT(A), NFAC not considered the fact that the Ld. ITO WARD 20(3)(1) had not given specific reasons for not accepting the reply to show cause notice.*
- ❖ *The Ld. CIT(A), NFAC not considered the fact that no cash trail in specific is provided to prove the L.T.C.G of the assessee is bogus.*
- ❖ *The Ld. CIT(A), NFAC not considered the fact that the Ld. ITO WARD 20(3)(1) disallowed the L.T.C.G of the assesses on the basis of general information and on the basis of his own imagination estimation, presumption assumptions, suspicion, conjecture which is unjustified and unwarranted.*
- ❖ *The Ld. CIT(A), NFAC not considered the fact that not considered the fact that prices of any particular share is not in control of the assessee/genuine investor.*

- ❖ *The Ld. CIT(A), NFAC not considered the fact that not considered the facts that purchases & sale parties are in existence on the date of transactions. The preferential issue of the said company was duly approved by SEBI. Purchase consideration was paid by account payee cheques. The sale consideration also received through account payee cheques.*

- ❖ *The Ld. CIT(A), NFAC not considered the fact that not considered the facts that sale of shares are on-line. Assessee doesn't have direct nexus with buyer. All sales are through BSE. The sale of shares was subject to levy of S.T.T.*

- ❖ *The Ld. CIT(A), NFAC not considered the fact that not considered the facts that prices of shares are neither controlled by assessee nor have any relation with actual working of the company in many case & fluctuation in prices mainly on the basis of rumors & news in media in connection with the future prospect of the company.*

- ❖ *We relied on following judgment of higher forum:*
 - *Shri Deepak Walji Karia vs. Income Tax Officer 28(1)(3) ITA No. 259/Mum/2021*

Tribunal's Findings

The ITAT observed that the AO had relied heavily on third-party statements without providing the assessee an opportunity to cross-examine these individuals. Citing the Supreme Court's decision in Andaman Timber Industries v. CCE, the Tribunal emphasized that not allowing cross-examination of witnesses whose statements form the basis of an assessment violates principles of natural justice.

Furthermore, the Tribunal noted that the SEBI report did not establish any wrongdoing by the assessee's family members and that the AO's findings were based on conjecture without concrete evidence.

Conclusion

The ITAT concluded that the assessment order passed under Section 143(3) of the Income Tax Act was invalid due to the denial of cross-examination and reliance on unsubstantiated third-party statements. Consequently, the Tribunal quashed the assessment order and allowed the appeal in favor of the assessee

➤ *Amit Sajjankumar Gupta vs. DCIT-8(2)(1) ITA No. 1378/Mum/2024*

Tribunal Findings:

Assessee provided robust evidence (invoices, bank statements, demat statements, contract notes, STT proof), confirming genuine purchase and sale through BSE.

AO's reliance on investigation report was flawed; no inquiry implicated the assessee, and cross-examination was denied.

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Jurisdictional Bombay High Court and Supreme Court precedents (e.g., Pr. CIT vs. Indravadan Jain HUF, Pr. CIT vs. Kuntala Mohapatra) supported LTCG exemption for documented transactions.

Revenue's reliance on Calcutta High Court's Swati Bajaj was overruled by jurisdictional rulings.

Conclusion:

ITAT allowed the appeal, set aside CIT(A)'s order, and directed deletion of the Rs. 1,49,14,697 addition, upholding the LTCG exemption under Section 10(38).

➤ *CIT v/s Mukesh Ratilal Marolia (Bombay High Court)*

S.10(38)/69: Fact that a small amount invested in "penny" stocks gave rise to huge capital gains in a short period does not mean that the transaction is "bogus" if the documentation and evidences cannot be faulted.

➤ *Farrah Marker v/s ITO (ITAT Mumbai)*

S.10(38)/68: 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.

➤ *ITAT Mumbai, ITO-24(3)(1) V/s Mr. Indravadan Jain (HUF)*

GOA No.3 Cost of Purchase & transfer disallowed.

❖ *The Ld. ITO WARD 20(3)(1) had made addition of entire sale consideration of shares & fail to give deduction on account of cost of purchase as well as cost of transfer of shares. The Ld. CIT(A) not justified in confirming the above addition made by the Ld. ITO WARD 20(3)(1).*

GOA No 4 Cost of Purchase disallowed against STCG

❖ *The Ld. ITO WARD 20(3)(1) had made addition of entire sale consideration of shares & fail to give deduction on account of cost of purchase of shares. The Ld. CIT(A) not justified in confirming the above addition made by the Ld. ITO WARD 20(3)(1).*

GOA No.5: Deduction u/c VI-A disallowed:

❖ *The Ld. CIT(A) erred in disallowing the claim of the assessee for investment made and eligible u/c 80C (u/c VI-A).*

GOA No.5 Interest U/s. 234A,234B, 234C

3.1 The Ld. ITO WARD 20(3)(1) has levied interest U/s 234A, 234B, 234C of Income Tax Act 1961 on taxes.”

3. At the outset, it is submitted that the present appeal is barred by the limitation, being filed with a delay of 72 days. To explain the delay in filing of appeal, it is submitted that the delay was occasioned due to unavoidable and bonafide reasons. The Karta of assessee HUF through the condonation petition explained that due to sick health of his aged parent, he had to travel to hometown in Rajasthan and therefore was unable to forward the impugned order to Chartered Accountant for filing of appeal in time. It is further submitted that the delay is neither intentional nor deliberate and attributed to

reasons beyond the control of assessee. In support of aforesaid request for condonation, an affidavit duly signed by the assessee was also furnished. Considering the facts of case and explanation in the condonation petition since nothing is emanating as to show that there was any intentional delay by the assessee. In absence of any objection by the revenue the delay in filing of appeal for 72 days has been condoned.

4. Briefly stated, the assessee HUF, as per information received from investigation wing, was indulged in trading of certain penny stock scrips, namely M/s. Mahavir Advance Remedies Limited in Calcutta stock exchange. The assessee disclosed exempt long term capital gain for a sum of Rs. 1,53,68,936/- from the said scrip. It is observed by the revenue that such scrip was subjected to improper trading by sum unscrupulous brokers. The case of assessee was reopened u/s.148 by issuing notice 27.03.2018. The return of income was filed by the assessee dated 11.12.2017 declaring total income of Rs. 13,20,660/-, but against the notice u/s. 148 assessee did not file any fresh return. During the course of reassessment proceedings also towards the notice u/s. 142(1), the assessee failed to comply. Finally, the assessment order came to be completed u/s.144 of the Act on 07.12.2018, wherein the assessed income of assessee was determined at Rs. 2,01,53,522/-.

5. Aggrieved with the aforesaid assessment order, the assessee HUF preferred an appeal before the Ld. CIT(A), wherein the grounds related to sale proceeds from penny stock amount to Rs. 1,59,57,402/- added to the income of assessee treating the as unexplained cash credit, have been dismissed, whereas the grounds pertaining to claim of assessee *qua* the short-term capital gain were set aside before the AO to look into the same afresh with the opportunity of being heard to the assessee.

6. Being dissatisfied with the aforesaid decision of Ld. CIT(A) the assessee filed the present appeal for our consideration.

7. At the outset, the Ld. AR representing the assessee (in short “ld. AR”) submitted that the assessee was not permitted with proper opportunity of hearing before dismissing the appeal by Ld. CIT(A). It is submitted that the notices were not served upon the assessee as per prescribed guidelines, the assessee has enough material to show that the transactions pertaining to exemption claimed for long term capital gain u/s. 10(38), which the assessee was unable to present before the authorities below. Therefore, while one issue is being restored back to the file of AO, the other should also be restored, so that the assessee may have the opportunity to furnished necessary submissions and evidences to the satisfaction of A.O to adjudicate the same afresh.

8. Per contra the Ld. Senior DR, though have supported the orders of revenue authorities, did not objected to the request of assessee to restore the ground of appeal relating to long term capital gain to the file of AO for fresh adjudication.

9. We have considered the rival contention and perused the material available on record. Admittedly, in present matter the assessee's conduct was found to be evasive and non-compliant before the Ld. AO. Further before Ld. CIT(A) the issues were discussed, and one of them regarding long term capital gain was decided against the assessee, to which, as stated before us vital evidence or submissions could not be furnished by the assessee, whereas another issue *qua* the short-term capital gain has been set aside the file of A.O. Since part of the grounds of appeals have already been restored back to the file of Ld.AO, the ground dismissed is contested before us is also requested to set aside for furnishing of necessary submissions and evidence to decide it under proper appreciation of facts. We find substance in the request of the assessee wishing to substantiate its case with additional information and evidence, which were never submitted before the revenue authorities but are relevant for justified adjudication of the issue. Further since certain grounds were set aside to the file of AO, in order to fairly decide the issue which was dismissed in absence of proper representation, in the interest of justice, one more opportunity can be granted to the assessee, so that the first ground of appeal regarding long

term capital gain would also be decided afresh after verification of the evidence, in accordance with the law. As requested by the assessee and conceded by the Ld. Sr. DR on behalf of the revenue, the matter is restored back to the file of AO for fresh adjudication.

10. In the result, the appeal of assessee is allowed for statistical purposes, in terms of our aforesaid observations.

Order pronounced in the open court on 30-12-2025.Sd/-

Sd/-
(AMIT SHUKLA)
Judicial Member

Mumbai, Dated : 30-12-2025.

Poonam Mirashi
Stenographer

Sd/-
(ARUN KHODPIA)
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