

INCOME-TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAIBEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBERI.T.A No.6689/Mum/2025
(Assessment Year: 2014-15)

| | | |
|--|-----------|---|
| Ketan Harilal Mehta Flat No.B-1101, Siddhi Vinayak Tower, Padmanagar Road PAN: AFHPM0792B | vs | Assistant Commissioner of Income-tax-32(2), Mumbai C-11, Room No.102, Kautilya Bhavan, BKC, Mumbai-400 051 |
| APPELLANT | | RESPONDENT |

| | |
|----------------------|---------------------------|
| Present for Assessee | Shri Nishit Gandhi |
| Present for Revenue | Shri Ritesh Misra, CIT-DR |

| | |
|-----------------------|------------|
| Date of hearing | 23/12/2025 |
| Date of pronouncement | 06/01/2026 |

ORDER**Per: Shri Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter called, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment Year 2014-15, date of order 22/08/2025. The impugned order emanated from the order of the Ld. Assistant Commissioner of Income-tax, Circle-32(2), Mumbai (hereinafter, 'Ld.AO') passed under section 143(3) read with section 147 of the Act, date of order 12/12/2017.

2. The brief facts of the case are that the assessee is regularly filed his return and during the impugned assessment year the assessee filed his ROI. He

had declared the income under the head capital gain and income from other sources. He acted as an investor and declared Long Term Capital Gain (LTCG) of Rs. 74,34,044/- U/s 10(38) of the Act as exempted income. The Ld. AO rejected the assessee's claim U/s 10(38) of the Act & treated the LTCG as bogus transaction. After claiming cost of purchase of Rs 99,900/- actual cost Rs 1,00,000/- against the sales consideration of Rs 75,33,944/-, the Ld. AO adopted sales consideration for addition under section 68 without granting deduction of cost for no reason whatsoever. He assumed expenses of three percent for transaction and added Rs 2,26,018/- under section 69C of the Act for this addition. Assessee purchased 10,000 shares of Transcend commerce Ltd, an unlisted company at a cost of Rs 1,00,000/- in June 2012 which was duly transferred to his demat account and after approved scheme of amalgamation he ultimately held 22,000 shares of SRK industries (in short "SRK") in his demat account for more than 18 months. The said shares were sold in a span of 3 months from June 13 to Sept 13 in screen based trading at the BSE stock exchange through registered broker with whom he is having regular account. During the course of assessment proceedings the assessee filed supporting evidences and documents right from the acquisition of shares to sales of shares. All transactions were through Banking channel. Shares were held in his own demat account for more than 18 months but none of the evidences was rejected or doubted as fake fabricated or bogus by the Ld. AO and no contrary, direct or cogent evidences brought on record. It is stated by the Ld.AO that claim of huge exempted capital gain found suspicious. The Ld.AO, therefore, made addition of Rs. 75,33,944/- being the claim of LTCG and the purchase price of the shares. The Ld.AO also made addition of Rs.2,26,018/- being the estimated commission @3% on the purchase of the shares. The aggrieved assessee carried the matter before the Ld.CIT(A). The

Ld. CIT(A) upheld the order of the Ld.AO. Further aggrieved, the assessee filed appeal before us.

3. The Ld.AR argued and filed a paper book containing pages 1 to 197, which is kept on record. The Ld. AR further argued that the Ld. AO failed to consider various reply in its true sense and perspective in respect of statement recorded under section 131 of the Act. In the market, many times rise in price has no relation to fundamentals because of speculative buying. The learned AO in the order categorically observed that all these transactions are done on the stock exchange and as the sale of shares are done after a holding period of one year they fall in the category of 'long term capital gain,' which is an exempt income as per the I T Act 1961 despite this observation. The Ld. AO doubted transaction as 'prearranged' merely on the basis of huge exempt LTCG. It is stated by the Ld.AO that the statement of persons and entity referred in order and showcause notice were made before the I T authority are direct evidence which proved that the claim of exemption by the assessee in respect of LTCG is not genuine but prearranged. It is a general statement rebutted on various counts in reply to show cause which is not considered in its real sense and perspective. As per the assessee, the Ld. AO failed to furnish copy of the said statements of various persons and entity referred and relied upon by him despite of the facts that it was brought to his notice There is nothing specific or direct in relation to your appellant The Parties of various category referred by the AO are not related in any manner to him It is stated by the AO that notices issued under sub section 6 of section 133 to various parties and entity but was returned unserved or were remained uncomplified with but nothing is disclosed to your appellant in relation to issue of notice or its result The conclusion of the Ld. AO based on above is not sufficient to reject

the claim of the assessee when no further inquiry was made to trace the party having PAN. The department is having sufficient power and legal authority to trace the party when the party is a corporate entity also registered with the regional ROC having DIN. There is no direct or specific evidence to show that unaccounted cash of assessee was moved or transferred to so called entry provider or operator. Assessee is a registered client of credential stock broker of Mumbai and his account is KYC complied he is dealing through the said account even in past. The assessee never approached to any such stockbroker or operator for LTCG and he never registered as a client to stock broker through such person trade pattern and various analysis mentioned in the order. It does not prove that the LTCG is arranged one. The sale and purchase of shares are on open platform of stock exchange and are always on commercial intent with risk taking factor. The allegation as regards to manipulation and rigging of price to benefit the beneficiary is baseless as much as independent authority of stock exchange and regulatory authority is having daily watch on movement of prices and are having due mechanism to control undesired and abnormal movement in any scrip. The trading carried on at stock exchange on open platform either for purchase or sales no details in respect of counter party as the case may is known either to broker or client Some persons got benefit as mentioned and on some entity SEBI took action in the alleged scrip could not establish that every transactions in the alleged scrip are prearranged The reply furnished in respect of commission payment is ignored and no cognizance is taken he denied having paid any commission. Since it was not arranged transaction but genuine transaction. The Ld. AO referred to various judgment but are materially distinct and difference hence not applicable. The assessee made substantial investment in share market from time to time as can be seen from record of demat. The Ld. AO in his order

stated erroneous and unrelated facts at various places shows non application of mind on his part. During investigation of SEBI there is no evidence that the assessee is involved in price rigging. So, the addition is itself uncalled for.

4. The Ld. AR submitted that, during the course of the assessment proceedings, the assessee duly complied with the notice issued under section 142(1) of the Act, and a copy of the reply dated 09/10/2017 was furnished before the Ld. AO. Subsequently, another reply dated 13/10/2017 was also filed before the Ld. AO, the copy of which is placed at **APB pages 113 to 197**. It was further submitted that the assessee had placed on record all relevant documentary evidence, including the share certificate, contract notes, demat account statements, and confirmations from the brokers, in support of the impugned transactions. The Ld. AR further contended that the very same issue stands adjudicated in favour of the assessee by the Coordinate Bench of the ITAT, Mumbai, E-Bench, in the case of **Ketan Harilal Mehta (HUF) vs. ITO** in **ITA No. 770/Mum/2023**, pronounced on **03/06/2024**, which is factually identical to the present case. In the said decision, the Coordinate Bench held that the transaction in respect of the alleged scrip, SRK could not be treated as a bogus transaction. The relevant findings contained in paragraphs 16 and 17 of the said order are reproduced hereunder:

“16. We considering the facts, circumstances, ratio of the judicial decisions and the information, find that the assessee has furnished the financials, details of price trend of shares at BSE to substantiate the listing/quote of shares, existence of the company to prove the genuineness of share transactions. The AO has doubted the purchase and sale of shares and observed that the price rise is not commensurate with the financials of the company. The assessee has substantiated with all details and information and the revenue could not make out a case that there is unaccounted money transactions tookplace in the hands of the assessee and the AO has relied on the investigation report and treated the long term capital

gains on sale of shares as not genuine. Further the A.O. has not made any enquiry or independent investigation and relied on the statements. The fact remains that the assessee is a regular investor in shares and has submitted the requisite details in respect of purchase and sale of shares and were not disproved. The transaction of sale of shares is through SEBI registered broker of BSE & NSE supported with the sale bills cum contract notes subjected to Securities Transaction Tax(STT) and the demat account statement reflecting debits on the sale of shares and the sale proceeds are received through banking channel. The A.O has not established that the assessee was involved in the price rigging of the shares and also any enquiry was conducted by the SEBI and BSE. Further as discussed in the above paragraphs, the Honble Tribunal dealt on the same scrip of share and for the same assessment year and has allowed the appeal. Accordingly, considering facts, circumstances, ratio of judicial decisions, submissions, evidences and rely on the judicial precedents as discussed above and set aside the order of the CIT(A) and direct the assessing officer to delete the additions u/sec68 &69C of the Act and we allow the grounds of appeal in favour of the assessee.

17. Since we have decided on the merits of the case, the grounds of appeal with respect to validity of assessment proceedings raised by the assessee becomes academic and is left open.”

5. The Ld. DR supported the orders passed by the revenue authorities and prayed for sustaining the impugned addition.

6. We have heard the rival submissions and perused the material available on record. The assessee had earned long-term capital gains (LTCG) amounting to Rs.74,34,044/-. However, the Ld. AO treated the entire transaction as a sham transaction and added back the total sale consideration to the total income of the assessee, including the alleged commission paid for earning the LTCG. During the year under consideration, the assessee had duly furnished all relevant documentary evidence before the Ld. AO as well as before the Ld. CIT(A). All such documents are placed on record in the assessee's paper book filed before the Bench. It is further noted that the assessee actively

participated in both the assessment as well as the appellate proceedings and complied with all requirements by submitting the necessary evidences. We further observe that transactions relating to the very same scrip, namely SRK, were also examined in the case of the assessee's HUF. The Coordinate Bench, after detailed examination, held that the said transactions were not bogus in nature and accordingly allowed the claim of exemption of LTCG under section 10(38) of the Act. Since the facts of the present case are identical to those considered by the Coordinate Bench in the case of **Ketan Harilal Mehta, HUF** (supra), we respectfully follow the said decision. Accordingly, the impugned appellate order is set aside, and the addition made by the Ld. AO is hereby deleted.

7. In the result, the appeal of the assessee bearing **ITA No.6689/Mum/2025** is allowed.

Order pronounced in the open court on 06/01/2026

Sd/-

(JAGADISH)
ACCOUNTANT MEMBER
Mumbai, Dt : 06/01/2026
Pk/-

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थ/The Appellant ,
2. ितवादी/ The Respondent.
3. आयकरआयु CIT
4. िवभागीयतिनिध, आय.अपी.अिध., मुंबई/DR, ITAT, MUMBAI
5. गाडफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI