

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
&
SHRI GIRISH AGRAWAL (ACCOUNTANT MEMBER)

I.T.A. No. 4991/Mum/2025
Assessment Year: 2010-11

Zany Share Trading Pvt. Ltd. 5 th Floor, Matru Chayya 378/380, Narsi natha Street Masjid Bunder (West) Mumbai - 400009 [PAN: AAACZ2523J]	Vs.	Income Tax Officer, Ward-8(3)(4)
(Appellant)		(Respondent)

Assessee by	Shri Prakash Jhunjunwala, AR
Revenue by	Shri Swapnil Choudhary, Sr. DR

Date of Hearing	07.01.2026
Date of Pronouncement	19.01.2026

ORDER

Per Smt. Beena Pillai, JM:

Present appeal filed by assessee arises out of order dated 21/07/2025 passed by NFAC, Delhi [hereinafter “the Ld.CIT(A)”] for AY 2010-11, on following grounds of appeal:-

“The appellant prefers an appeal against an order passed u/s. 250 dated 21/07/2025 by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi on following amongst other grounds, each of which are without prejudice to any other: -

1.0 *On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the validity of notice u/s.148, issued in absence of tangible material, without independent application of mind and without having reason to believe of escapement of income;*

2.0 *On facts and circumstances of the case and in law, Ld. CIT(A), upon holding the transactions of purchase and sale of shares as non-genuine, erred in sustaining the addition u/s.68 of Short term capital loss on shares of Purti Sakhar Karkhana Ltd of Rs.70,84,000/- and Short term Capital gain on shares of Sperm Tracom Pvt Ltd of Rs.70,84,000/-;*

3.0 *The Ld. CIT(A), before confirming the addition u/s.68 of Short-term capital loss in shares of Purti Sakhar Karkhana Ltd of Rs.70,84,000/-, erred in not considering the under stated vital facts, being:*

- a) There is no sum credited in appellant's books of account corresponding to Short-term capital loss, rather such sum had been debited (on claiming short term loss) in the books of account;*
- b) The entire payments, corresponding to short term capital loss, had been made through banking channel by A/c payee cheques;*
- c) The correctness of documentary evidences filed on assessment record had not been disputed by the Ld. AO and Ld. CIT(A);*

4.0 *The Ld. CIT(A), upon holding the transactions of purchase and sale of shares as non-genuine, erred in sustaining the separate addition u/s.68 of short term capital loss of Rs.70,84,000/- and short term capital gain of Rs.70,84,000/- and ought to have estimated the income @ 2% on non-genuine short term capital gain/loss.*

The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing."

2. Brief facts of the case are as under:-

Assessee filed its return of income for year under consideration on 02/03/2011 declaring total income of Rs. 657/-. The return was processed u/s 143(1) of the Act. Subsequently, the assessment was reopened u/s. 147 by issuing notice u/s 148 of the Act dated 18/08/2014. Notice was issued based on information received from Investigation Wing of the Department, Vidarbha, Nagpur, that during the course of enquiries in the case of Purti Power and Sugar Ltd., Nagpur (PPSL) on 30/11/2009 it was noticed that 12 companies of Mehta Group, Nagpur, transferred 4.73 Cr. Shares of PPSL to 14 companies.

2.1. It was further noticed that these transfers did not take place directly but through five layers of companies and that, layers – 2, 3 & 4 had booked huge losses. The investigation wing further observed that at layer-3, other three companies of Mehta Group, Nagpur were

involved and it was found that the losses booked by them were set off against the profit on sale of lands/properties in the same year and to a large extent, these included the assessee. Accordingly, notice u/s 148 of the Act was issued to assessee.

2.2. From the details furnished in response to the notice, it was observed by the Ld.AO that assessee computed short-term capital gain of Rs. 70,84,000/- on sale of shares of Sperm Tracom Pvt Ltd., which was adjusted against the short term capital loss of equal amount on sale of shares of Purti Sugar Karkhana Ltd.

2.3. Upon analysis of the entire transactions, Ld.AO was of the view that assessee had benefitted from accommodation entries of various nature like bogus loans, advances or share capital. The Ld.AO thus, treated the short term capital losses and gain as bogus and made addition of Rs. 1,41,68,660/- u/s 68 of the Act.

Aggrieved by the order of Ld.AO, assessee preferred appeal before Ld.CIT(A).

3. The Ld.CIT(A) after considering various submissions of assessee observed and held as under:-

“8. The ground nos.2, 2.1,3,4 & 5 are raised against the action of the AO in making addition on short term capital loss and short-term capital gain.

8.1. Be that as may, have carefully considered the issue under dispute keeping in view of the facts of the case and the body of case laws relied by the appellant on this issue.

8.2. As per the details placed on record, prima facie it would appear that the appellant indulged in bogus transactions and had gained short-term capital gains, which was set off against the short-term capital loss of the same amount i.e., Rs.70,84,000/-. Therefore, the AO as elaborated in the assessment order disallowed short-term capital loss and added the same u/s. 68 of the Act. Further, the AO made addition of Rs.70,84,000/- which

was disclosed by the appellant as short-term capital gain, thereby determining the assessed income at Rs. 1,41,68,6571-.

Coming to the facts of the instant case, the appellant ought to have discharged the burden of proof by establishing the genuineness of the transactions with M/s Purti Sakhar Kharkana Ltd., & M/s Sperm Tracom Pvt. Ltd.,

8.3. Under the circumstances, I am of the considered opinion that the short term capital loss/gain introduced in the books of accounts by way of purchase/sale of shares through accommodation entry providers has not established as genuine or accounted funds/income of the persons in whose name it is credited in the books of the appellant within the meaning of section 68 of the Act. In this regard reliance is placed on the decision of Hon'ble ITAT "SMC" Bench, Mumbai in the case of J K Global, Mumbai vs Income Tax Officer 31(2)(2), Mumbai the Hon'ble ITAT that has held that the accommodation entries in the nature of accommodation entries are liable to be added as unexplained u/s 68 of the Act. The operative portion of the decision is reproduced here under:

"7. Considering the facts of the case in toto and in the light of the decisions of the coordinate bench (supra), we have no hesitation in confirming the addition made u/s 68 of the Act for the captioned Assessment years. The contention of the Id. counsel that the loans have been re-paid during the year under consideration therefore the set off of the same should also be given to the assessee does not hold any water as it has been established that the impugned loans were nothing but accommodation entries and the repayment is also nothing but return of accommodation entries therefore, the money which has been brought I.T.A. Nos. 3260, 3259 & 3258/Mum/2023 J. K Global in the garb of unsecured loan is nothing but the unaccounted money of the assessee and the repayment of the same does not make any sense.

8. In the light of the decision of the coordinate bench the additions are confirmed for all the assessment years under consideration since the loan amount has been treated as unaccounted money of the assessee for payment of interest of such loan amount claimed as unexplained and added by the AO is also confirmed."

In view of aforementioned factual matrix of the case and respectfully following the decision of hon'ble ITAT, Mumbai, I am of the considered opinion that, in the instant case, the appellant failed to establish the genuineness of the transactions to the extent of Rs. 1,41,68,000/- and therefore, the addition made by the AO is treating the same as unexplained cash credit is upheld. The appellant relied on numerous case laws in which the facts are different from the instant case. Thus, the ground nos. 2, 2.1, 3.4 & 5 raised on this issue are dismissed."

Aggrieved by the order of Ld.CIT(A), assessee is in appeal before this *Tribunal*.

4. At the outset, the Ld.AR on behalf of the assessee submitted that **Ground No. 1**, being a legal ground, is not pressed. The same is, therefore, dismissed as not pressed, without any adjudication on merits.

Accordingly, Ground No. 1 is dismissed as not pressed.

Ground Nos. 2-3

5. Ld.AR submitted that admittedly assessee is involved in the layered transactions and that assessee is a paper company that was as conduit or facilitator for providing accommodation entries. This is supported by the statements recorded u/s 133A of Mr. C.S. Sarda who was associated with Mehta group of companies and had admitted of having arranged the accommodation entries to assessee for disclosing non-genuine loan of Rs.70,84,000/- The Ld.AR submitted that, subsequently the statement of Mr. Sarda was retracted but after substantial lapse of time and without any corroboration. Therefore it lost its validity. He submitted that, upon earning all these losses, assessee was promised to be compensated by another company of Mehta Group i.e., Sperm Tracom Pvt.Ltd., by way of gains of equal amounts on purchase of shares of the said company. He submitted that thus, there was no surplus capital gain that was disclosed on this count by assessee.

5.1. At this juncture, assessee referred to the decision of this *Tribunal* in another case wherein similar transactions of a layered company was involved and analysed by this *Tribunal* in case of M/s.

Rishi Realcom Pvt. Ltd. vs. ITO in ITA No. 1152/Mum/2017 for AY 2010-11 vide order dated 14/03/2019. He submitted that, in the said decision, this *Tribunal* confirmed the disallowance of 2% of the gross transactions value as profit of assessee as was observed by Ld.CIT(A) in that case. The Ld.AR also submitted that, it is not the case of revenue that assessee had earned any commission in this kind of transactions. Ld.AR thus, submitted that, disallowance may be restricted to 2% of the gross transactions.

5.2. On the contrary, Ld.DR vehemently submitted before us that assessee admittedly indulged in accommodation entries which was proved beyond doubt during the course of survey conducted at the premises of Shri C.S. Sarda and statement recorded on 26.03.2013 of Shri C.S. Sarda has admitted to have arranged accommodation entries to assessee. The Ld. D.R. further submitted that the bogus loss disclosed by the assessee on purchase and sale of shares of M/s Purti Shakhar Kharkhana Pvt. Ltd. of Rs.70,84,000/-. Similarly, assessee disclosed bogus profit of purchase and sale of shares of M/s. Sperm Tracom Pvt. Ltd. of the equal amount which cannot be set off. He submitted that, the entire amount with the bogus loss thereby disclosing the nil income is not acceptable and the addition made by Ld.AO deserves to be upheld.

We have perused the submissions advanced by both sides in light of the records placed before us.

6. There is no dispute that the entire transaction was pre-arranged, and that the assessee acted as a conduit entity in a series of layered transactions. The assessee disclosed non-genuine short-term capital loss of ₹7,84,000/-, along with a corresponding non-genuine short-

term capital gain of an equal amount, arising from the purchase and sale of shares of M/s. Sperm Tracom Pvt. Ltd.

6.1. Having regard to the nature of the transaction and the role of the assessee therein, we find that the assessee functioned merely as a conduit in a pre-arranged and layered accommodation entry transaction. In such cases, it is a settled position emerging from a catena of decisions of the Co-ordinate Benches of this *Tribunal* that the assessee cannot be taxed on the entire value of the purchase and sale of shares, but only on the embedded commission or profit element earned for facilitating such transactions. This is for the reason that the principal amounts involved in the transactions do not partake the character of income in the hands of the conduit entity, but merely pass through it, with only the marginal commission retained representing real income.

6.2. In view of the foregoing discussion, while we concur with the finding of the Ld. CIT(A) that the transactions in shares of M/s. Purti Power and Sugar Ltd and M/s. Sperm Tracom Pvt. Ltd. were non-genuine and pre-arranged, we do not approve the action of taxing the entire value of the purchase and sale transactions. The record establishes that the admitted position that assessee functioned merely as a conduit in a layered accommodation entry arrangement, and that the principal amounts involved do not constitute real income in its hands.

6.3. Consistent with the judicial approach adopted in such cases, only the embedded commission element earned by the assessee for facilitating the said transactions is liable to be brought to tax. Having regard to the facts of the case, the nature of the transactions, and to

put the matter to rest, we consider it appropriate to estimate the commission income at 2% of the total value of the impugned purchase and sale transactions.

6.4. Adoption of a rate of 2% is considered reasonable in the facts of the present case, having regard to the structured and pre-arranged nature of the transactions, the active facilitation and layering involved, and the absence of complete and reliable evidence regarding the exact commission earned, which warrants a conservative yet realistic estimation to safeguard the interests of the Revenue.

6.5. Accordingly, the Ld.AO is directed to compute the addition by applying a rate of 2% on the aggregate value of the non-genuine share transactions in question. To this extent, the order of the Ld.CIT(A) stands modified

Accordingly, the grounds raised by the assessee stands partly allowed.

Order pronounced in the open court on 19/01/2026

Sd/-

**(GIRISH AGRAWAL)
Accountant Member**

Sd/-

**(BEENAPILLAI)
Judicial Member**

Mumbai
Dated: 19/01/2026
SC Sr. P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

(Asstt. Registrar)
ITAT, Mumbai