

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, (JUDICIAL MEMBER) &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**I.T.A. No. 5033/Mum/2025  
Assessment Year: 2014-15**

Mr.s Jigna Hiren Rambhai 5, Trupti Bungalow, Near Parimal CHS Ltd, Ghatkopar (E), Mumbai - 400077 <b>PAN: AADPS2769K</b>	Vs.	ITO, Ward 32(2)(4) Kautilya Bhavan Mumba
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri VD Parmar
<b>Respondent by</b>	Shri Vivek Perampurna, CIT DR

<b>Date of Hearing</b>	06.01.2026
<b>Date of Pronouncement</b>	22.01.2026

**ORDER**

**Per: SHRI. SANDEEP GOSAIN, J.M.:**

The present appeal has been filed by the assessee challenging the impugned order dt. 20.06.2025 passed under section 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2014-15. The assessee has raised the following rolls of appeal.

*(i)On facts and circumstances of the case and in law Ld CIT(A) erred in confirming the addition of Rs 75,46,047/- us 68 of the I T Act 1961*

*(ii) On facts and circumstances of the case and in law Ld CIT(A) is not justified in confirming the addition of Rs 75,46,047/- us 68 without appreciating the fact that same represents sale proceeds of listed shares supported by contract notes, Sale bills, Delivery by D-mat account and sale proceeds are received by account payee cheques duly reflected in bank statement.*

*i) On facts and circumstances of the case and in law Ld CIT(A) erred in confirming the addition of Rs 2,26,381/- us 69C of the I T Act 1961*

*(ii) On facts and circumstances of the case and in law Ld CIT(A) is not justified in confirming the addition of Rs 2,26,381/- us 69C without appreciating the fact that the said addition of commission is based on assumption and presumption The Appellant craves to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal*

2. All the grounds raised by the assessee are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in upholding the additions made by the AO u/s 68 and 69C of the Act. Therefore we have decided to adjudicate these grounds through the present consolidated order.

3. We have heard the counsels for both the parties, perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. From the records, we noticed that assessee claimed exempt long term capital gain u/s 10(38) of the Act on account of sale of shares of scrip of M/s SRK Industries Ltd.

4. However, the same was denied by the revenue authorities on the premise that the investigation wing of

Kolkata had examined the entire issue relating to the transactions in “**penny stock**” and provision of accommodation entries for availing exemption u/s 10(38) of the Act. During the course of survey, the investigation wing on the basis of evidences and after analysing financial statement of M/s. SRK Industries ltd., and after recording the statement of entry providers, concluded that the assessee is also one of the person who entered into transactions and is beneficiary who availed accommodation entries related to long term capital gain to evade tax.

5. Whereas on the contrary, Ld. AR reiterated the same arguments as were raised by him before the revenue authorities and submitted that assessee had purchased 10,000 shares of M/s. Transcend Commerce Ltd (Now amalgamated with SRK Industries) as per the scheme of merger u/s 391 to 394 of the Companies Act, 1956 and approved by High Court]. Payment for the purchase of shares of M/s. Transcend Commerce Ltd was made by the Appellant through account payee cheque and the shares were therefore transferred in the Demat Account of the assessee. The assessee has furnished following documents to the AO in support of purchase of shares of Transcend Commerce Ltd. during the assessment proceedings:

*1. Copy of Demat Account in the name of the Appellant issued by the Mangum Equity Broking Limited registered with NSDL showing holding of shares.*

*2. Copy of bank statements showing payments for purchase of shares of Transcend Commerce Limited made to the Island Media and Entertainment Ltd.*

3. *Copy of Contract Notes issued by Magnum Equity Broking Limited showing sale of 22,200 shares of SRK Industries Limited.*

On 14/10/2013 with permission from Chennai High court Amalgamation scheme put 222 shares for every 100 shares held of Transcend Commerce Ltd amalgamated with SRK Industries Ltd total 10,000 shares to 22,200 shares.

6. Further it was submitted that the Sale of shares of SRK Industries Ltd. had been proved beyond doubt by the Appellant by providing all the relevant documentary evidences which have not been disproved by AO at any stage during assessment proceedings or in the assessment order.

7. It was also submitted by Ld. AR that since the assessee had sold all shares of M/s. SRK Industries Ltd. during the year under consideration of the Stock Exchange and has furnished (a) *Share Broker's contract notes issued by M/s Magnum Equity Broking Limited (registered with BSE and SEBI) evidencing sales transactions, (b) Copy of Demat account (DP Id: IN 300484) evidencing debit (outward entries) of sold shares and (c) Copy of Bank Statement showing amounts received from the said Share Broker in respect of shares sold.*

8. It was also submitted that mere fact that the Department had treated the shares of a particular company as a "**Penny Stock**" based on input by the Investigation Wing of the Department, the Long Term

Capital Gain on sale of such shares cannot be treated as bogus. The AO had not at all disproved any of the documentary evidences produced by the assessee in support of the purchase and sale of the shares of Transcend Commerce Limited and SRK Industries Ltd respectively and hence the action of AO in treating sales consideration of sale of shares of SRK Industries Ltd. as bogus in absence of any corroborative material against the assessee is a wild guess and is based on suspicion, surmises and conjectures.

9. Furthermore, although the AO had doubted the genuineness of the transactions of shares of SRK Industries Ltd but he did not bring on record any material to show any specific infirmity or falsity in the documents produced by the assessee in support of purchases or sales. As per Ld. AR there had been no valid purchase and sale of shares by the assessee then it could not have been possible to find debit and credit entries for those shares in the demat account maintained with depository participant because neither the depository participant nor CSDL/NSDL were under control or influence of the assessee, Broker or the Company whose shares have been purchased by the assessee.

10. And in this regard also relied upon the decision of Hon'ble Supreme Court in the case of **Omar Salay Mohamed Sait reported in (1959) 37 ITR 151** wherein it was held that *no addition can be made on the basis of*

*surmises, suspicion and conjectures. In the case of **CIT (Central), Kolkata vs. Daulat Ram Rawatmull reported in 87 ITR 349**, the Hon'ble Supreme Court had held that, the onus to prove that the apparent is not the real is on the party who claims it to be so. The burden of proving a transaction to be bogus has to be strictly discharged by adducing legal evidences, which would directly prove the fact of bogusness or establish circumstance unerringly and reasonably raising interference to that effect. The Hon'ble Supreme Court in the case of **Umacharan Shaw & Bros. v. CIT 37 ITR 271** had held that suspicion however strong cannot take the place of evidence.*

11. Whereas the AO had relied upon various statements of people who have discussed the general modus operandi in providing bogus accommodation entries but the said statements are general and vague and the name of the assessee is not specified in their statements. Even the observations in these statements given by so called operators were very casual, non committal and lack authenticity. Further, on perusal of various decisions dealing with statement of operators in alleged penny stock companies it was noticed that many of the operators who had given hostile statements to the Investigation team behind the back of various genuine investors had not turned up for cross examination in ongoing cases when called by the Department for cross examination at the request of the concerned assessee's. It observed from such decisions that some of the operators had categorically

retracted the statements given before investigation wing on the ground that such statements were extracted by exerting undue influence and coercion. Thus the very foundation on which the department had rested its case had collapsed. There are umpteen numbers of decisions of Supreme Court wherein the court had categorically held that addition cannot be made merely on the basis of hostile statement of third party because such statement may be the starting point but cannot be a conclusion unless the AO being quasi judicial authority has carried out *independent enquiry* in the matter and record specific findings. In the present case as well, the AO had done nothing but had solely relied upon the input by the investigation without any cogent and corroborative evidence.

12. Even otherwise *Modus Operandi*, generalization, preponderance of human probabilities etc. cannot be the only basis for rejecting the claim of the assessee. Unless specific evidence is brought on record to controvert the validity and correctness of the documentary evidences produced, the same cannot be rejected by the AO. In the instant case the action of assessing officer had been guided by the report of the investigation wing prepared with respect to bogus capital gains transactions. However, the assessing officer had not brought out any part of the investigation wing report in which the assessee had been investigated and/or found to be a part of any arrangement for the purpose of generating bogus long term capital

gains. Nothing has been brought on record to show that the persons investigated, including entry operators or stock brokers, have named that the assessee was in collusion with them. Therefore in absence of such finding how is it possible to link their wrong doings with the assessee. In fact, the investigation wing is a separate department which had not been assigned assessment work and had been delegated the work of only making investigation. The Act had vested widest powers on this wing. Thus it is the duty of the investigation wing to conduct proper and detailed inquiry in any matter where there are allegation of tax evasion and after making proper inquiry and collecting proper evidences the matter should be sent to the assessment wing to assess the income as per law. In absence of any such finding specifically against the assessee in the investigation wing report, the assessee cannot be held to be guilty or linked to the wrong acts of the persons investigated. In our view the Assessing Officer at best could consider the investigation report as a starting point of investigation. The report of Investigation only informs the assessing officer that some persons may have misused the script for the purpose of collusive transaction. The Assessing Officer is therefore duty bound to make inquiry from all concerned parties relating to the transaction and then to collect evidences that the transaction entered into by the assessee was also a collusive transaction. However as per the facts of the present case, Assessing Officer had not brought on record

any evidence to prove that the transactions entered by the assessee which are otherwise supported by proper third party documents were collusive transactions.

13. The assessee, in this case had supported the transactions in Transcend Commerce Limited and SRK Industries Ltd. by submitting *copies of contract notes for purchase and sale of shares, bank statements showing payment of consideration for purchase of shares and receipt of consideration for sale of shares, copies of Demat Accounts etc.* These evidences have not been controverted or found to be false by the Assessing Officer. In fact, no contrary evidence to prove that these documents have no evidentiary value had been provided by the AO to the assessee

14. Ld. AR also relied upon the decision in the case **SHRI SHREYANS CHOPRA V. ACIT- ITA No. 661/Kol/2018** in which the assessee had also traded in the same scrip of SRK Industries Limited Kolkata. In which the coordinate Bench relied upon the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Teju R Kapadia order dated 04.05.2018 which upheld the following proposition of law laid down by the Hon'ble Gujrat High Court as under:

*"It can thus be seen that the appellate authority as well as the Tribunal came to transactions were also confirmed. There was no evidence to show that the amount supported by bills and payments were made by Account Payee cheque and the was recycled back to the assessee. Particularly, when it was found*

*that the assessee the trader had also shown sales out of purchases made which were also accepted by the Revenue, no question of law arises."*

*"Applying the proposition of law laid down to the facts of this case we are bound to consider and rely on the evidence produced by the assessee in support of its claim and base our decision on such evidence and not on suspicion or preponderance of probabilities. No material was brought on record by the AO to controvert the evidence furnished by the assessee. Under these circumstances, we accept the evidence filed by the assessee and allow the claim that the income in question is Long Term Capital Gain from sale of shares and hence exempt from income tax."*

*In the result, appeal of the assessee is allowed.*

15. Moreover Judicial Decisions of ITAT Kolkata and ITAT Mumbai wherein the Hon'ble Tribunal had held and directed the AO to allow the claim of LTCG of the assessee. It is worth noteworthy that the scrip under appeal in both the cases were same i.e. SRK Industries Ltd. and the scrip which is also the subject matter of the present appeal is also of SRK Industries Ltd.

16. In the case of **Aditya Vikram Surekha, Huf vs Ito - ITA No. 303/Kol/2019, SHRI SHREYANS CHOPRA V. ACIT- ITA No. 661/Kol/2018 dated 25.07.2018, SMT.GEETA KHARE, MUMBAI V. ACIT, CIRCLE-3, KALYAN - ITA No. 4267 & 694/Mum/2018** the respective assessee also traded in the same scrip of SRK Industries Limited Kolkata, Bench relied on the decision of the Kolkata ITAT in the case of **SHRI SHREYANS CHOPRA V. ACIT- ITA No. 661/Kol/2018 dated 25.07.2018** directed the AO to allow the claim of LTCG of the assessee.

17. After having heard the parties at length and after evaluation the records, we found that the claim of the assessee's long term capital gain on sale of shares of scrip M/s SRK Industries Ltd u/s 10(38) of the Act was denied by Ld. CIT(A) only on the ground that assessee had failed to discharge the onus of proving of genuineness of long term capital gain on account of unusual price rise of the scrip and had held that the gain claimed is not genuine. Whereas the Coordinate Bench of ITAT had already dealt in detail the genuineness of the transactions in shares of the **same scrip** M/s SRK Industries Ltd in detail and deleted the additions of same assessment year i.e 2014-15 in the cases of **Rekha Rajesh Jogani in ITR No. 2916/Mum/2023, Rakesh Shantilal Shah, in ITA No. 1775/Mum/2019 & Smt. Geeta Khare ITA No. 4267/Mum/2018.**

18. Therefore considering the totality of the facts and circumstances as discussed by us above and also taking into consideration the decision of the Coordinate Bench of ITAT where under the *identical circumstances* involving the *same scrip* decisions have been made in favour of assessee. Therefore, respectfully following the principles of judicial discipline and judicial consistency we also direct the AO to delete the additions and order accordingly. Therefore these grounds raised by the assessee stands allowed.

19. In the result, the appeal filed by the assessee stands allowed.

**Order pronounced in the open court on 22/01/2026**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai:

Dated: 22/01/2026

*KRK, Sr. PS*

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**