

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 1309/Mum/2025  
(Assessment Year: 2011-12)**

<b>Amit Kumar Bajaj</b> A-3001, Omkar, Off Dr. Annie Besant Road, Near Neelam Centre, Hanuman Nagar, Worli, Maharashtra – 400 030	Vs.	<b>DCIT-24(1),</b> Piramal Chambers, Lalbaug, Mumbai- 400 012
PAN/GIR No. AFRPB3442B		
(Applicant)		(Respondent)

Assessee by	Shri Ravi Ganatra, Ld. AR
Revenue by	Shri Surendra Mohan, Ld. DR

Date of Hearing	21.01.2026
Date of Pronouncement	29.01.2026

आदेश / ORDER

**PER MAKARAND VASANT MAHADEOKAR, AM:**

This appeal is filed by the assessee against the order dated 01.08.2024 passed by the Commissioner of Income-tax (Appeals)-47, Mumbai [hereinafter referred to as “CIT(A)”] under section 250 of the Income-tax Act, 1961 [hereinafter referred to as “the Act”], for Assessment Year 2011–12, arising out of the reassessment order dated 29.12.2017 passed by the Assistant Commissioner of

Income-tax, Circle 24(1), Mumbai [hereinafter referred to as “Assessing Officer”], under section 143(3) read with section 147 of the Act.

### **Facts of the Case**

2. The assessee filed his return of income for A.Y. 2011–12 on 31.07.2011, declaring total income of Rs. 58,71,450/-. Subsequently, the assessment was reopened under section 147 on the basis of information received from the Investigation Wing, Kolkata, alleging that the assessee had availed accommodation entries in the form of exempt Long Term Capital Gain on sale of penny stock shares. Accordingly, notice under section 148 was issued.

3. In response to the notice under section 148, the assessee requested that the original return of income filed earlier be treated as the return filed in response to such notice. Reasons recorded for reopening were furnished to the assessee. The assessee filed objections, which were disposed of by the Assessing Officer. Thereafter, notice under section 143(2) was issued and reassessment proceedings were carried out.

4. During the reassessment proceedings, the Assessing Officer noted that the assessee had claimed exemption under section 10(38) in respect of Long-Term Capital Gain arising from sale of shares of M/s. Nouveau Global Ventures Ltd. The details recorded by the Assessing Officer indicate that the assessee had purchased 35,360 shares of the said company on 21.01.2010 for

a consideration of Rs. 17,56,070/-, and sold the same on 27.01.2011 for Rs. 70,08,034/-, thereby claiming exempt Long Term Capital Gain.

5. The Assessing Officer, relying heavily on the investigation report, analysis of price movement of the scrip, financials of the company, statements of certain brokers and entry operators, and applying the test of human probabilities, came to the conclusion that the transaction was a pre-arranged and sham transaction, entered into with a view to convert unaccounted money into exempt Long Term Capital Gain. While doing so the Assessing Officer observed following:

- i. Income of the assessee does not substantial trading activity or investment in shares of listed companies, therefore the decision to acquire shares of M/s. Nouveau Global Ventures Ltd. was predetermined
- ii. The decision to purchase the impugned share, that too in large quantity, when the company had no proven financial results was predetermined.

6. The Assessing Officer examined the persons with whom the assessee traded, described as exit entry providers, in relation to the sale of shares of M/s. Nouveau Global Infra Ltd. The AO identified the following entities as the counterparties who purchased the shares sold by the assessee during the relevant period:

- i. Pushpanjali Commotrade Pvt. Ltd.
- ii. Conquest Commodeal Pvt. Ltd.
- iii. Chaturbhuj Marketing Pvt. Ltd.

7. The AO noted that these entities purchased the shares on 27.01.2011 and 28.01.2011, with specific quantities, trade values, and PAN details recorded in the assessment order.

8. To verify the genuineness of these counterparties and the transactions, the Assessing Officer issued notices under section 133(6) of the Income-tax Act to all such buyers / alleged exit entry providers. However, no replies were received in response to the said notices. Based on the non-compliance to notices under section 133(6), the AO recorded an adverse inference that these buyers were either dummy persons created for the purpose of providing accommodation entries, or persons who intended to obtain artificial Long Term Capital Gain through such pre-arranged transactions. For the alleged cash trail and role of involved broker, the Assessing Officer relied on the report of Investigation Wing, Kolkata.

9. The Assessing Officer issued show cause notice to the assessee and in reply to the said notice, the assessee submitted that –

- The shares were purchased on the platform of BSE through an approved / SEBI-registered broker, namely M/s. Eureka Stock & Share Broking Services Ltd.
- The payments for purchase of shares were made through proper banking channels.
- The assessee stated that entire 35,360 shares were purchased in dematerialised form and were duly credited to the Demat account maintained by the assessee.

- It was submitted that all relevant documents relating to acquisition of shares, Demat account statements and confirmations had already been furnished.
- The assessee further stated that the shares were sold through the Demat account and a SEBI-registered broker on the floor of the stock exchange, and that sale consideration was received by account-payee cheque through proper banking channel.
- The assessee claimed that contract notes / bills for sale of shares and evidence of payment of STT in respect of shares sold on a recognised stock exchange had already been submitted.
- With respect to non-appearance pursuant to summons, the assessee explained that his statement under section 131 was not recorded as he could not attend before the Assessing Officer due to medical reasons relating to his mother.

10. The Assessing Officer, after considering the reply dated 27.12.2017, recorded a categorical finding that the submission of the assessee was not found to be tenable. The Assessing Officer rebutted the assessee's explanation on the following grounds:

- i. Mere filing of contract notes and proof of payment of STT, according to the Assessing Officer, cannot be the sole ground to establish genuineness of the transactions.
- ii. Though the assessee claimed to have furnished confirmations from the broker M/s. Eureka Stock & Share Broking Services Ltd., the Assessing Officer specifically noted that the broker confirmation was unsigned, thereby diminishing its evidentiary value.
- iii. The Assessing Officer recorded that despite opportunities, the assessee did not file any cogent reply supported by

- independent documentary evidence to rebut the findings of the Investigation Wing.
- iv. Notices under section 133(6) were issued to the purchasers / exit provider companies who had purchased the shares from the assessee. In most cases, no replies were received.
  - v. From verification of available records, the Assessing Officer observed that the financial status of such purchaser companies showed meagre profits, and that funds received by them in the form of share premium or unsecured loans were utilised for investment in penny stock shares.
  - vi. It was further noted that the exit provider companies either sold the shares at a loss or continued to hold them as investments, which, according to the Assessing Officer, indicated that such companies were paper companies formed solely for providing accommodation entries.
  - vii. The Assessing Officer emphasised that the assessee had sold shares at an exorbitant price of approximately Rs. 196/- per share, whereas the same shares were purchased at around Rs. 50/- per share, and that no economic or financial basis was furnished by the assessee to justify such abnormal price rise.
  - viii. The Assessing Officer concluded that the fantastic rise in share price was not supported by commercial principles or market fundamentals, and that the assessee failed to tender any cogent evidence explaining such price movement.
  - ix. Relying upon the findings of the Investigation Wing, SEBI observations, and judicial precedents relating to penny stock cases, the Assessing Officer held that the transactions were not governed by market forces, but were the result of design, mutual connivance, and pre-conceived arrangement.
  - x. The Assessing Officer finally concluded that the assessee had entered into sham and arranged transactions, in consultation with entry operators, to bring unaccounted money into the books in the guise of exempt Long Term Capital Gain.

11. On the basis of the above rebuttal, the Assessing Officer rejected the assessee's reply and proceeded to treat the alleged Long Term Capital Gain as bogus and treated the sale proceeds of shares amounting to Rs. 52,51,464/- as unexplained cash credit under section 68 of the Act and further made an addition of Rs. 1,57,543/- under section 69C towards alleged commission paid at 3 percent for obtaining the accommodation entry. The reassessment was completed determining total income at Rs. 1,12,80,460/-. Penalty proceedings under section 271(1)(c) were also initiated.

12. Aggrieved by the reassessment order, the assessee preferred an appeal before the CIT(A). The CIT(A) issued several notices under section 250 during the appellate proceedings. As recorded in the appellate order, despite issuance of multiple notices, there was no effective appearance or further explanation from the assessee during the appellate proceedings. The CIT(A), therefore, proceeded to decide the appeal on the basis of material available on record. The CIT(A) took note of the assessment proceedings, the investigation wing report, the modus operandi alleged in penny stock cases, the abnormal price rise of the scrip of M/s. Nouveau Global Ventures Ltd., and the findings recorded by the Assessing Officer. The CIT(A) observed that the assessee failed to substantiate the genuineness of the transaction beyond producing routine documents, failed to explain the unusual rise in the price of the shares with reference to financial fundamentals of the company, and failed to discharge the onus cast upon him.

The CIT(A) also referred to various judicial precedents and investigation findings relating to penny stock transactions and held that the transaction entered into by the assessee was not governed by normal market forces but was a pre-arranged transaction intended to generate bogus exempt capital gains. The CIT(A) accordingly confirmed the addition of Rs. 52,51,464/- under section 68 and Rs. 1,57,543/- under section 69C, and dismissed the appeal filed by the assessee.

13. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. *On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the reopening of assessment u/s 147 by issue of notice u/s 148 dated 13.09.2016 by the Assessing Officer, which is not as per provisions of law, clearly outside the sanction of law, illegal, bad-in-law, barred by limitation, unsustainable, in gross violation of the principles of natural justice or otherwise void for want of jurisdiction.*
2. *On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the Assessing Officer's action in making addition of Rs. 52,51,464/- u/s 68 on account of sale proceeds on sale of shares of Nouveau Global Ventures Ltd. which was based on generic findings of investigation wing, without there being any specific finding against the bona-fide investment and sale by the appellant through online platform of recognized stock exchange through the SEBI registered stock broker.*
3. *On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the addition u/s 69C of Rs. 1,57,543/- on account of commission allegedly paid @ 3% on prearranged bogus long term capital gain.*
4. *On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the addition made u/s 68 and 69C of the Income Tax Act,*

1961 despite the fact that all ingredients such as identity, creditworthiness, genuineness have been satisfactorily explained with cogent evidence thereby fully discharging the onus and especially when no adverse inferences have been drawn on the all possible evidences as provided and placed on record of the Assessing Officer by the appellant during the reassessment proceedings to shift the onus back on the appellant.

5. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the Assessing Officer's action in invoking the provisions of section 68 for making an addition of Rs. 52,51,464/- and section 69C for making an addition of Rs. 1,57,543/- despite the fact that evidence relating to the contract notes, relating to online sales through recognized stock exchanges and SEBI registered broker and payments made through banking channel was very much submitted before the Assessing Officer and was also forming part of statement of facts (SOF) filed before the Ld. Commissioner of Income Tax (Appeals), who, while ignoring all facts already on record conveniently chose the reason for non-compliance to the hearing notice/s issued.
6. On the facts and the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in not affording reasonable opportunity of being heard and ignoring the material already available on record that was in violation of principles of natural justice.
7. The appellant craves leave to add to, alter, amend, modify and /or delete all or any of the foregoing grounds of appeal.

#### *Prayer*

*The appellant prays before the Hon'ble Income Tax Appellate Tribunal, Mumbai to delete the additions made by the AO and confirmed by the Ld. CIT (A) and /or any other relief as the Hon'ble Tribunal may deem fit.*

14. During the course of hearing before us, the learned Authorised Representative (AR) of the assessee placed strong reliance on the decision of the co-ordinate Bench of the Tribunal in the case of **Suresh Kumar Agarwal v. ACIT**, reported in

**[2020] 117 taxmann.com 678 / 183 ITD 463 (Delhi – Trib.),** a copy of which was furnished before us. It was submitted that in the said decision, the co-ordinate Bench was dealing with identical assessment year, identical nature of addition under section 68, and the very same scrip, namely, shares of M/s. Nouveau Global Ventures Ltd., arising out of alleged penny stock transactions. The learned AR pointed out that in that case also, the Assessing Officer had relied upon investigation wing reports, statements of entry operators, abnormal price movement, and the theory of accommodation entries to treat the Long-Term Capital Gain as bogus.

15. It was further submitted that the co-ordinate Bench, on an exhaustive appreciation of facts, held that where the assessee had purchased and sold shares through a recognised stock exchange, through online trading platform, held the shares in Demat account, paid Securities Transaction Tax, and received sale consideration through banking channels, the addition made under section 68 was not sustainable in the absence of any direct evidence establishing a live link between the assessee and the alleged entry operators or exit providers. The learned AR emphasised that the co-ordinate Bench categorically held that mere reliance on general investigation reports, without carrying out transaction-specific verification such as examination of brokers, stock exchange data, time-stamped trades, Demat trail, or identification of counter-parties, was insufficient to dislodge documentary evidences produced by the assessee.

16. It was contended that the factual matrix in the present case is indistinguishable, inasmuch as the assessee has also purchased and sold shares of the same company through recognised stock exchange mechanism, maintained the shares in Demat form, paid STT, and received consideration through proper banking channels, and that no independent investigation has been carried out by the Assessing Officer to controvert these evidences. It was, therefore, submitted that in the absence of any distinguishing feature brought on record by the Revenue, and following the principle of judicial discipline and consistency, the relief granted by the co-ordinate Bench in the case of Suresh Kumar Agarwal ought to be extended to the assessee.

17. In support of the above contention, the learned AR further drew our attention to a compilation of judicial precedents placed in the Legal Paper Book, forming part of the record of the lower authorities, wherein relief has been granted to assessees in similar penny stock cases on analogous facts.

18. It was submitted that the consistent judicial view emerging from the aforesaid decisions is that additions under section 68 cannot be sustained merely on the basis of suspicion, human probabilities, or generalised investigation reports, when the assessee has discharged the initial onus by producing primary evidences and the Revenue has failed to rebut the same by cogent material. It was, therefore, contended that in the absence of any distinguishing feature or contrary binding precedent brought on record by the Revenue, the additions sustained by the authorities

below deserve to be deleted by following the principle of judicial discipline and consistency.

19. Per contra, the learned Departmental Representative supported the orders of the Assessing Officer and the CIT(A).

20. We have considered the rival submissions, perused the orders of the lower authorities and examined the material available on record. The addition has been made by the Assessing Officer by treating the Long-Term Capital Gain arising from sale of shares of **M/s. Nouveau Global Ventures Ltd.** as non-genuine, mainly on the basis of investigation wing reports, abnormal price rise, alleged role of exit providers and application of human probabilities.

21. At the outset, it is not in dispute that the assessee:

- i. purchased the shares through a recognised stock exchange through a SEBI-registered broker;
- ii. held the shares in Demat account for more than twelve months;
- iii. sold the shares through the stock exchange mechanism;
- iv. paid Securities Transaction Tax; and
- v. received the sale consideration through banking channels.

These foundational facts stand admitted and are supported by contract notes, Demat statements and bank statements.

22. The Assessing Officer has drawn an adverse inference on the ground that the assessee was not regularly trading in shares and, therefore, the decision to invest in the impugned scrip was pre-

determined. In our considered view, this reasoning is legally untenable. An assessee is not required to be a habitual investor in shares in order to make a lawful investment. The Act does not prescribe that only persons engaged in frequent share trading can earn capital gains. An inference of pre-determination merely from the absence of past share trading activity is speculative and does not constitute evidence of a sham transaction.

23. The Assessing Officer has rejected the transaction mainly on the premise that the rise in share price was “fantastic” and not supported by financial fundamentals of the company. It is well settled that the Income-tax Authorities cannot sit in judgment over commercial wisdom of an investor or substitute market behaviour with their own perception of what the share price ought to be. Market prices are determined by multiple factors beyond financial statements. Unless it is shown by cogent material that the assessee himself was a participant in price manipulation, abnormal price movement by itself cannot lead to the conclusion that the transaction is bogus.

24. The Assessing Officer has heavily relied upon the report of the Investigation Wing, Kolkata, and general modus operandi of penny stock cases. However, no material has been brought on record to establish any direct nexus between the assessee and the alleged entry operators or price riggers. The statements of third parties relied upon by the Assessing Officer were neither confronted to the assessee nor subjected to cross-examination. Such statements, recorded in proceedings relating to other

persons, cannot be used against the assessee without affording opportunity of cross-examination, particularly when the assessee has denied any connection with such persons.

25. The Assessing Officer has drawn adverse inference from the fact that the alleged exit provider companies did not respond to notices issued under section 133(6). This circumstance, by itself, cannot discredit the assessee's transaction. The trades were executed through the stock exchange mechanism and not by way of direct off-market transfers. Once the transaction is routed through recognised stock exchange and supported by Demat trail and bank trail, non-response by counter-parties cannot shift the burden back on the assessee to prove the source of funds of the buyers.

26. The Assessing Officer has noted that the broker confirmation was unsigned and therefore unreliable. However, the genuineness of the transaction is not founded solely on broker confirmation but is independently supported by contract notes, Demat statements and bank records. These contemporaneous documents emanate from independent third-party systems such as depositories and banks and carry higher evidentiary value than a broker's letter.

27. The Assessing Officer has observed that the assessee did not rebut the findings of the Investigation Wing by "independent evidence". In our view, the assessee discharged the primary onus by producing primary documentary evidence of purchase and

sale through stock exchange mechanism. Once such primary evidences are placed on record, the burden shifts on the Revenue to disprove them by bringing transaction-specific material. Generalised reports and modus operandi cannot override direct documentary evidence.

28. The Assessing Officer has analysed the financial statements of purchaser companies and concluded that they were paper entities. However, in stock exchange transactions, the assessee does not choose the counter-party. The identity and creditworthiness of the ultimate buyer is not within the control of the seller in screen-based trading. Therefore, alleged weakness in financials of such companies cannot be used to invalidate the assessee's transaction.

29. The Assessing Officer has alleged existence of a cash trail and role of broker based on investigation wing inputs. However, no evidence has been brought on record to show that any cash was paid by the assessee or received by any broker on his behalf. No bank account of the assessee reflecting such cash movement has been identified. In the absence of any demonstrable cash trail linked to the assessee, such allegation remains unsubstantiated.

30. The Assessing Officer has applied the test of human probabilities to hold the transaction to be pre-arranged. While the doctrine of human probability is a valid tool of appreciation of evidence, it cannot be applied in isolation ignoring direct documentary evidence. When documentary evidence of stock

exchange-based transactions exists and remains uncontroverted, the theory of human probabilities cannot be invoked merely because the transaction has resulted in high gains.

31. Thus, the entire edifice of the addition rests on suspicion, general investigation reports and assumptions about market behaviour, without establishing any live link between the assessee and the alleged accommodation entry mechanism.

32. The above view is fortified by the consistent judicial position laid down in similar fact situations. The co-ordinate Bench in the case of **Suresh Kumar Agarwal v. ACIT** [2020] 117 taxmann.com 678 / 183 ITD 463 (Delhi – Trib.), dealing with **the very same scrip, namely, shares of M/s. Nouveau Global Ventures Ltd.**, held that merely on the basis of investigation wing reports and abnormal price movement, the Long Term Capital Gain could not be treated as bogus when the transactions were supported by Demat records, contract notes and banking channels. The principle laid down by the co-ordinate Bench squarely applies to the facts of the present case, as the assessee herein has also transacted in the same scrip through recognised stock exchange mechanism and no material has been brought on record to establish his involvement in any manipulation or entry-providing arrangement. Further, the Hon'ble Supreme Court in **Principal Commissioner of Income-tax v. Kuntala Mohapatra** [2024] 160 taxmann.com 608 (SC), while affirming the decision of the Hon'ble High Court and the Tribunal, has approved the approach that where the assessee establishes the purchase and sale of

shares through recognised stock exchange, holding in Demat account and receipt of sale consideration through banking channels, the addition cannot be sustained merely on the basis of statements of entry operators and general investigation reports.

33. It is further noted that the Revenue has not been able to point out any distinguishing feature or bring on record any contradictory factual or legal position so as to differentiate the present case from the judicial precedents relied upon by the assessee. No material variation in facts has been demonstrated by the Revenue to warrant a departure from the ratio laid down in the decisions cited.

34. In view of the foregoing factual and legal position, and respectfully following the decision of the co-ordinate Bench in *Suresh Kumar Agarwal v. ACIT* [2020] 117 taxmann.com 678 (Delhi – Trib.) and the principle affirmed by the Hon'ble Supreme Court in *Principal Commissioner of Income-tax v. Kuntala Mohapatra* [2024] 160 taxmann.com 608 (SC), and in the absence of any distinguishing feature brought on record by the Revenue, we hold that the Long-Term Capital Gain declared by the assessee on sale of shares of M/s. Nouveau Global Ventures Ltd. cannot be treated as non-genuine. Accordingly, the addition made by the Assessing Officer under section 68 of the Act, is directed to be deleted. Consequentially, the addition made under section 69C on account of alleged commission is also deleted.

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

Order pronounced in the open court on 29.01.2026.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND VASANT MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 29/01/2026  
Dhananjay, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai