

IN THE INCOME-TAX APPELLATE TRIBUNAL "D" BENCH,
MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.5842/MUM/2025
(A.Y. 2014-15)

Ranjanben Chunilal Gada, Flat No. 401, Chandan Niwas, Bajaj Road, Ville Parle(W), Mumbai - 400056, Maharashtra	v/s. बनाम	Income Tax Officer, Ward - 34(3)(2), Room No. 125, Kautilya Bhavan, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AHMPG4046M		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri B.V. Jhaveri,AR
Respondent by :	Shri Umashankar Prasad, (CIT DR)

Date of Hearing	04.12.2025
Date of Pronouncement	27.01.2026

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 28.07.2025 is preferred by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 147 r.w.s 144B of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 18.05.2023 for the Assessment Year [A.Y.] 2014-15.



2. The grounds of appeal are as under:

I. Validity of Reassessment Proceedings:

1. On the facts and circumstances of the case and in law, Honourable Commissioner (Appeals) has erred in passing the Order U/S 250 dated 28-07-2025 dismissing the Appeal U/S 246A against the Order U/S 147 r.w.s 1448 dated 18-05-2023 making addition of Rs.69,67,752/- U/S 69A and Rs.1,39,355/-U/S 69C on following grounds-

(i) The order U/S 148A (d) dated 29-07-2022 itself is passed without providing copies of information / documents / material evidences relating to alleged accommodation entry of Rs.70,11,750/-, violating the directions of Honorable Supreme Court in the case of Ashish Agrawal.

(ii) The only information provided is "Case Related Information Detail" sheet downloaded from INSIGHT Portal. Even that was suffering from various deficiencies.

(iii) The Assessing Officer has not done any Independent verification /investigation and he has simply used "Borrowed Information" supplied by the Investigation Wing of the Department.

Therefore, the Order U/S 250 dated 28-07-2025 is bad in law and needs to be deleted.

II. Addition of alleged Accommodation Entry of Rs.69,67,752/- U/S 69A and Commission of Rs.1,39,355/-U/S 69C:

On the facts and circumstances of the case and in law, Honourable Commissioner (Appeals) has erred in passing the Order U/S 250 dated 28-07-2025 dismissing the Appeal U/S 246A against the Order U/S 147 r.w.s 1448 dated 18-05-2023 making addition of Rs.69,67,752/- U/S 69A and Rs.1,39,355/- U/S 69C in spite of the fact that-



- (i) *The information received by the Assessing Officer from INSIGHT PORTAL is non-specific and general information lacking any specific information about the Assessee.*
- (ii) *The Assessing Officer has not proved any connection or exchange of cash between the Assessee and the so-called Entry Operator, Shri Naresh Jain.*
- (iii) *The Assessing Officer is not having any direct or conclusive evidence stating that the said transaction in question is bogus.*
- (iv) *Assessee has purchased the shares under question from Recognised Stock Exchange in Rolling Market, made payment through regular banking channel, Received the Delivery of the shares with SEBI Authorised Depository Participant, held the shares for more than one year, Sold the Shares on Recognised Stock Exchange and Paid STT on Sale of Shares. All Documentary Evidences in respect of the above are submitted to the Assessing Officer which are neither rebutted nor found to be false.*
- (v) *The transaction in question has been executed on the SEBI monitored Online Order Matching System of Bombay Stock Exchange which is internationally acclaimed.*
- (vi) *The transaction in question has been settled through SEBI and RBI monitored pay-in/pay-out mechanism of Bombay Stock Exchange, through regular Banking Channels as well as Securities Depository System.*

3. We take up **ground no.2** first relating to the merits of the additions made. Facts of the case are that the assessee filed her original return of income declaring total income of Rs. 7,74,400/-.The present appeal is filed against the order passed by the CIT(A) confirming the addition of Rs.69,67,752/ u/s. 69A of the Act, being the sale proceeds of



equity shares of **M/s. Ravinay Trading Co. Ltd. (now known as Nyssa Corp. Ltd.)** and the addition of Rs.1,39,355/-, being the alleged 2% commission paid on sale of shares which was added u/s.69C of the Act. The assessee purchased 4600 shares of above company of the face value of Rs.10/- each on 23.04.2012 at the Bombay Stock Exchange at the prevailing market price which were split by the company on 16.09.2013 to Re. 1/- per share and accordingly, the assessee was issued 46,000 shares in her demat account. These shares were sold by the assessee at the BSE in the months of January and February 2014 at the prevailing market price and earned the long-term capital gains which were claimed as exempt u/s.10(38) of the Act. A notice u/s. 148 of the Act was issued to the assessee based on certain the information received that a Search and Survey action was conducted on a syndicate of persons led by Shri Naresh Jain on 19-03-2019 by DDIT (Inv) Unit-7(1) & 7(3), Mumbai. Shri Naresh Jain and his associates were involved in providing accommodation entries in the form of Long-Term Capital Gains/Losses in several scripts to various beneficiaries across the country with a view to reduce tax liability and/or to bring in capital in the form of equity or debt or tax-exempt income or a combination of these. During the course of the search and seizure action, several incriminating documents, communications and digital data were found, which led to unearth the



operations of the syndicate, establishing clearly the modus operandi of various scripts on stock exchange for providing Bogus Long term capital gain (LTCG)/Loss and rigging the prices of various scripts on stock exchange for providing bogus LTCG)/Loss. These transactions were mostly in lieu of cash of equal amounts (and commission is charged over and above at certain fixed percentage for providing such accommodation entry). These accommodation entries were taken from operators/entry exit providers in order to claim exempt LTCG/STCL/Business Loss for the purpose of bringing unaccounted cash in the books of account or to create fictitious losses in the return of income to avoid paying due taxes on the income. As per the information received, the assessee Ranjan Chunilal Gada was one of the beneficiaries of the accommodation entries for a consideration of Rs.70.11.750/-.

3.2 The assessee in response to the queries in this regard by the filed detailed reply and various documents such as (i) contact notes of purchase and sale of shares. (ii) bank statements. (iii) Demat account statements. (iv) ledger account of the assessee in the books of the broker. etc. It was also stated that no information referred to in the reasons recorded had been provided to the assessee and she did not know and did not know Shri Naresh Jain and the assessee had not dealt with any person in this name or any other person for purchase and sale



of shares of M/s. Nyssa Corporation Ltd. It was submitted that the allegations of the A.O. that the assessee was one of the beneficiaries of the entry operations allegedly were based on assumptions and surmises as the AO. It was further submitted that the AO had not revealed to the assessee that the alleged information to treat the LTCG earned by the assessee as accommodation entry even though when the same were asked by the assessee in the course of the reassessment proceedings. Only one page information titled as “Case Related Information Detail” was provided to the assessee which did not contain any such information which would show any link between the assessee to Shri Naresh Jain & Associates. In fact, the A.O did not provide any information and/or evidence allegedly gathered in the search at the premises of Shri Naresh Jain who was the alleged operator or manipulator of shares of M/s. Nyssa Corporation Ltd. The AO went ahead and disallowed the claim of LTCG and treating the sale proceeds as unexplained income u/s 69A of the Act and also added certain commission allegedly paid by the assessee on such transaction u/s 69C of the Act. The ld.CIT(A) in the subsequent appeal, upheld the additions.

4. Before us, the ld.DR has placed reliance on the orders of the authorities below while the assessee has contested the additions claiming inter alia that the AO and the CIT(A) have failed to appreciate



the facts that the assessee on 23.04.2012 purchased 4,600 shares of M/s. Ravinay Trading Co. Ltd. (now known as Nyssa Corp. Ltd.) at Rs.150.25 per share at the terminal of the Bombay Stock Exchange through M/s. Latin Manharlal Securities Pvt. Ltd. registered share brokers as evident from the Contract Note. She The paid the purchase consideration of Rs.6,95,986/-to M/s. Latin Manharlal Securities Pvt. Ltd. on 25.04-2012.as evident from the copy of the relevant bank passbook. The assessee had the Demat Account with M/s. Latin Manharlal Securities Pvt Ltd. and accordingly the shares were recorded in the demat account of the assessee. The name of M/s. Ravinay Trading Company Ltd. was changed to M/s. Nyssa Corporation Ltd. on 12th December 2013 and the shares were split from Face Value of Rs.10/- per share to Re.1/-per share w.e.f. 16th September 2013. Accordingly, the 4,600 shares of M/s. Ravinay Trading Co. Ltd. became 46,000 shares of M/s. Nyssa Corporation Limited. The same is reflected in the Demat account of the assessee for the period 1” April, 2013 to 31 March, 2014.The assessee sold 46,000 shares in the months of January and February, 2014 at the terminal of the Bombay Stock Exchange as under:

- 8,000 shares @ Rs.167.50 per share on 21 January, 2014.
- 3,000 shares @ Rs.167.25 per share on 21” January, 2014.
- 10,000 shares @ Rs.164.50 per share on 29th January, 2014.
- 25,000 shares @ Rs.141.00 per share on 3rd February, 2014.

4.1 The assessee received the sale consideration on sale of 46,000 shares from M/s. Latin Manharlal Securities Pvt. Ltd. which was deposited into assessee’s bank account. Sale of shares by the assessee in the months of January and February, 2014 were recorded in the Demat Account.



4.2 It was further contended by the assessee that the AO had not adduced any evidence during the reassessment proceedings showing any connection between the assessee and the said Mr. Naresh Jain and/or his alleged associates. Secondly, the AO had also not adduced any evidence to show that the assessee had availed accommodation entries from Mr. Naresh Jain & his associates. Thirdly, the question of accommodation entry being taken by the assessee did not arise for the simple reason that the assessee purchased and sold shares at the BSE and earned long-term capital gains which were claimed as exempt u/s.10(38) of the Act. Fourthly, the AO had failed to show any connection between the search at the premises of Mr. Naresh Jain and the case of the assessee because no evidence of any nature was found regarding purchase and sale of shares of M/s. Nyssa Corporation Ltd. by the assessee from the premises of Mr. Naresh Jain. Fifthly, no evidence was found from Mr. Naresh Jain so as to say that general modus operandi discussed by the AO has any application to the case of the assessee inasmuch as no evidence of any alleged cash trial of the assessee or any evidence to show that the assessee was in touch or knew Mr. Naresh Jain or any of his associates.

4.3 It was argued that the AO had referred to the Search and Survey carried out by the DDIT (Inv) unit-7(1)&7(3) Mumbai at the



premises of Mr. Naresh Jain. However, the said investigation did not refer to the transactions of purchase and sales of shares of the assessee at the terminal of the BSE at the prevailing market price. Such general observations made by the Investigation Wing of the Department alone could not be relied upon to disbelieve the transactions of purchase and sale of shares at the terminal of the BSE at the prevailing market price which were carried out through the banking channel and reflected in the demat account of the assessee. The AO was not able to show any connection between the alleged operator and the assessee. As against the same, the assessee adduced complete evidence to prove that the purchase and sale of shares were affected at the prevailing market price at the terminal of Stock Exchange.

4.4 The Id.AR has placed reliance on various case laws in this regard wherein similar additions were deleted by the coordinate benches of ITAT. In the case of **ITO vs. Raichand Parasmal Chokshi (ITA Nos. 1486 & 3375/M/2024 for A.Y. 2017-18 dated 22nd April 2025)**, the assessee purchased shares of Shubhankar Vinimay Ltd. which was amalgamated with M/s. Monotype India Ltd. which were sold and the LTCG was claimed as exempt u/s.10(38) of the Act. Pursuant to the receipt information from DDIT (Inv.), Unit-7(1), Mumbai on the INSIGHT PORTAL about the search on **Mr. Naresh Jain & others** on



19-3-2019, notice u/s. 148 was issued to the assessee as Mr. Naresh Jain was found to be the director of M/s. Monotype India Ltd. The assessee had purchased shares and sold shares at the terminal of the Bombay Stock Exchange at the prevailing market price and paid purchase consideration and received sale consideration through the banking channel. The purchase and sale of shares were recorded in the demat account. The AO deliberated on the general modus operandi of such transactions as well as background of the investigation carried out by the Investigation wing without pinpointing anything specific towards the assessee in this regard. The CIT(A) after detailed examination and deliberated of facts delete the said addition which was affirmed by ITAT which in turn relied on certain jurisdictional High Court decisions i.e. **CIT vs. Jamnadevi Agrawal [2012] 20 taxmann.com 529 (Bom)**, wherein it was held that transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. Hon'ble High Court of Delhi in the case of **PCIT v. Krishna Devi [2021] 126 taxmann.com 80 (Del)** wherein the Hon'ble Court noticed that the reasoning given by the Assessing Officer to disbelieve the capital gain declared by the assessee, viz, astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures. **Pr.**



CIT v. Ziauddin A Siddique [Income-tax Appeal No. 2012 of 2017, dated 4-3-2022], PCIT vs. Indravadan Jain HUF [2023] 156 taxmann.com 605 (Bom) and CIT vs. Shyam R. Pawar [2015] 54 taxmann.com 108 (Bom).

4.5 The assessee also relied on the decision of the **Hon. Tribunal in the case of Pritin Nilesh Jain Daga v. ITO in ITA No.4507 & 4616/Mum/2024 dated 10-03-2025**, wherein also the impugned transactions involved the **same scrip of Ravinay Trading Co. Ltd. (now known as Nyssa Corporation Ltd.)** deleted similar additions. The assessee also relies on the decision of the **Hon. Tribunal in the case of ACIT v. Shri Kashyap Mahesh Vora in ITA No.4322/Mum/2024 dated 10-07-2025**

4.6 The assessee also relies on the decision of the Hon. Tribunal in the case of Manoj Mansukhlal Ruparel v. CIT(A), NFAC in ITA No. 4468/Mum/2023 dt.02-01-2025, **ITO v. Everfine Alloys Pvt. Ltd.** in ITA No.2185 & 2186 /Mum/2025 dated 10-09-2025 etc.

5. The ld.DR has placed reliance on the orders of authorities below. It is submitted that the addition has been rightly made based on the admission of Sri Naresh Jain who admitted price rigging. The assessee did not request for any cross examination during assessment



proceedings. Moreover, the assessment order was passed u/s 144 of the Act in ex parte manner.

5. We have carefully considered all relevant facts of the case. From the facts stated above, it is quite clear that the addition has been made by the AO treating the LTCG as bogus and liable to be treated as unexplained u/s 68 of the Act, without appreciating the contentions of the assessee and completely discarding the evidences as also replies submitted to prove the genuineness of the impugned transaction. The AO has not taken into consideration the fact that both the sales and purchases of the said scrip were made online on the BSE and based on the prevailing market process. The transactions were carried on through the brokers and the shares were duly accounted for in the Demat Account of the assessee. Moreover, all the transactions duly supported by contract notes were made through banking channels. Nothing has been brought on record to show that the impugned transactions were mere accommodation entry. The AO has given undue weightage to the statement of one Sri Naresh Jain though he utterly failed to establish any nexus of the assessee with the said person. We find that the same scrip has been duly considered in the coordinate bench decision in the case of **Priti Nilesh Jain Daga, Mumbai vs Income Tax Officer 19(2)(4), ITA No.4507 & 4616/Mum/2024 Mumbai on 10**



March, 2025 wherein the facts were identical. After taking due consideration of the relevant facts of the case, other coordinate bench decision as also jurisdictional High Court decisions, the Bench deleted similar addition. Relevant parts of the said order are reproduced as below for the sake of brevity:

“10. We have heard the counsels for both the parties and perused the material placed on record, judgements cited before us and the orders passed by the revenue authorities

11. From the records, we noticed that as per the facts of the present case, the assessee purchased 10,000 shares of M/s Ravinay Trading Company (RTC) (now known as Nyssa Corporation Ltd.) through registered stock broker and the payment for the same was made through banking channel. In this regard, copy of contract notes, statement of account has already been placed on record in the paper book.

12. The said registered broker i.e Hornick Investment Private Limited had also issued contract notes for purchase of shares and the assessee had also paid STT, service tax, stamp, duty, turnover, tax, SEBI turnover, tax and the payment of all these are reflected in purchase contract notice 13 It is pertinent to mention that all the 10,000 shares were received in Demat account maintained in Central Depository Services India Limited. The shares were sold by the assessee on the following dates.

11.07.2013 1000 shares @ 696.35 15.07.2013 1000 shares @ 770 25.07.2013 1000 shares @ 771.25 12.08.2013 500 shares @ 880 27.08.2013 1500 shares @ 1100 Priti Nilesh Jain Daga Total Shares 5000 shares

14. Thereafter the said script was split into 1:5 shares. Consequently the assessee received 50,000 shares, which were sold on different dates as mentioned below:

18.09.2013 1500 Shares @ 135.95 31.10.2013 8000 Shares @ 131.10 08.11.2013 1200 Shares @ 132 25.11.2013 4000 Shares @ 120 28.11.2013 11000 Shares @ 122.50

15.07.2013 1000 17.07.2013 1000 29.07.2013 1000 27.08.2013 1500 18.09.2013 5000

15. In this way, the Sales contract note clearly reveals about the sale of price per share, Quantity of Shares sold time of share sold. The assessee had paid Service Tax, Securities Transaction Tax, Stamp Duty, Turnover Tax and Sebi Turnover Tax, as required by the law.



16. However, AO was of the view that **NCL (Nyssa Corporation Ltd)** was a penny stock company as per the information received from the investigation wing and the shares were manipulated by broker to give bogus entries of LTCL/LTCL. Therefore assessee was considered to be one of the beneficiaries of the non-genuine LTCL.

17. From the records, we also noticed that during the course of assessment, the assessee was not provided with the statement of said Naresh Jain or any other material used by the AO against the assessee. Even in spite of specific request in this regard made by the assessee, which in our considered view is against the principles of natural justice as the assessee should have been provided fair chance to defend his case. Reliance in this regard is placed on the decision of Hon'ble Apex Court in the case of Tin Box Company 218 of 249 ITR wherein it was held that "assessment orders must be made after the assessee has been given a reasonable opportunity of setting out his case". And in the case title Dhananjay kumar Singh (402 ITR91) wherein the Hon'ble Patna High Court has held that:

" It is a cardinal principle of law that if relevant materials and objections are produced before a quasi-judicial authority, the quasi-judicial authority is duty- bound, under law, to advert to them, discuss them and then reject them by recording reasons."

18. The AO during the course of assessment also failed to give the assessee the opportunity to cross examine the witnesses, whose statements were relied upon by the revenue which resulted in 'breach of principles of natural justice'. In this regard, reliance has been placed on the decision of Hon'ble Supreme Court in the case of **Andaman Timber Industries Vs. CCE** reported in (2015) 281 CTR 241 (SC) wherein it has been held that 'failure to give the assessee the opportunity to cross examine witness, whose statements are relied upon, results in breach of principles of Natural Justice. It is a serious flaw which renders the order a nullity'.

19. In the case of **CIT Vs. Odeon Builders Pvt. ltd.** (418 ITR 315), it was held that the 'addition/disallowance made solely on third party information without subjecting it to further scrutiny and denying the opportunity of cross examination of the third party renders the addition/ disallowance bad in law'.

20. In the case of **H.R. Mehta v/s Assistant Commissioner of Income-tax, Mumbai 72 taxmann.com 110 (Bombay)** wherein it was held as under.

In the light of the fact that the money was advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the Assessing Officer should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against him in arriving before passing the order of assessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the assessment and, therefore, renders the orders passed by the Commissioner (Appeals) and the Tribunal vulnerable. The assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents whose statements were relied upon by him. Despite the request seeking an opportunity to cross examine



the deponents and furnish the assessee with copies of statements and disclose material, these were denied to him.

21. We also noticed that since A.O. did not supply the copy of any statement to assessee not even provided with the opportunity to cross examination the person whose statement were used against the assessee, therefore under these circumstances no additions could have been made.

22. Even nothing has been placed on record to show or point out that assessee was related in any manner whatsoever with the company or its director Naresh Jain. Even from the records, we noticed that no preferential shares of the company were granted, whereas the assessee had purchased the shares of M/s Ravinary Trading Corporation Ltd (Now known as Nyssa Corp Ltd) RTC through registered broker. Hence, it can safely be concluded that the assessee was a genuine and regular investor and the share transactions are genuine. Reliance in this regard is placed on the decision of the Supreme Court judgment in the case of "[Union of India & Ors. Vs Ashish Agarwal](#)" (Civil Appeal No. 3005/2022, dated 04.05.2022) wherein it was held that A mere mentioning of the name "Naresh Jain" does not suffice the material relied upon by the Revenue.

23. Even we further found that NLC (Nyssa Corporation Ltd) was listed in the exchange since long time, and it was regularly filing documents with ROC and Exchanges. Even SEBI or Exchange did not initiate any action against the said company. And Even as on today shares of the said company are regularly traded on Stock Exchange. Therefore from the above said factual data it is clear that NLC was neither penny or a shell company nor were the transactions fictitious, as the assessee had solely purchased the shares for the purpose of investment on the basis of fundamentals and valuation of the company. It was also brought to the notice of the AO that no Priti Nilesh Jain Daga "information" existed on which the assessment was reopened under [section 147](#) of the Act. Even No material has been placed on record to demonstrate that SEBI or any other regulatory authority had even passed any order against the assessee. But, even then the AO without considering the above facts had held that the profit arising out of sale of shares was not genuine and consequently made addition of Rs.1.07 crores to the income of the assessee.

24. In this regard, our attention was drawn to the quarterly financial results of M/s. Ravinay Trading Company (Now known as NYSSA Corporation Ltd) are as under:

Quarter	Revenue from	Net Profit	(in EPSOperatiOn (In	Lakhs)lakhs)
June 2012	1205.79	215.85	7.19	
Sep 2012	1123.43	167.99	5.60	
Dec 2012	532.24	69.01	2.30	
Mar 2013	307.97	-60.55	-2.02	



29. And the annual results of M/s. Ravinary Trading co. Ltd (Nyssa Corporation Ltd) are as under:

F.Y	Revenue from lakhs)	Net Profit (in Lakhs)	EPS OperatiOn (In Lakhs)	
2011-12	954.43	23.68	.79	39.08
2012-13	3253.90	366.23	12.21	51.30

From the financial it is quite noticeable that the company had an EPS of Rs. 0.79 on 31.03.2012 which improved to Rs. 12.21 as on 31.03.2013. Besides this the above company is constantly listed in BSE and was never delisted anytime and the daily average traded volume of the shares is more than 1 lac shares on the stock exchange as per the submissions made by the assessee.

26. We further appreciate that the shareholding pattern of the company is more than 73% public pattern on a continuous basis. The last Financial Year Low-High of M/s. Nyssa Corporation is Rs.3.62- 9.13 per share respectively of Rs. 1 paid up capital which means Rs. 36-91 of Rs. 10 paid up capital.

27. We would also place reliance on the decision of the Hon'ble Supreme Court in the case of **Principal Commissioner of Income-tax V/s. Kuntala Mohapatra [2024] 160 taxmann.com 608 (SC)** wherein the Hon'ble Court dismissed SLP filed by the department and held as under:

Section 10(38), read with **sections 68** and **69**, of the Income-tax Act, 1961 - Capital gains Income arising from transfer of long term securities (Illustrations) Assessment year 2014-15 Assessee filed its return for relevant year - Subsequently, pursuant to a survey assessee filed revised return and claimed exemption in respect of long-term capital gains on shares under **section 10(38)** - Assessing Officer rejected assessee's plea and made additions under **sections 68** and **69** by relying on statements from 'entry operators' - On appeal, Commissioner (Appeals) accepted assessee's claim, noting that shares were purchased via Account Payee Cheques, held in a Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax Tribunal upheld Commissioner (Appeal)'s decision, emphasizing assessee's right to correct mistakes and criticized Assessing Priti Nilesh Jain Daga Officer's reliance on statements from 'entry operators' to support additions under **sections 68** and **69** as those statements were recorded in unrelated proceedings before survey on assessee, and assessee was not afforded an opportunity to challenge or cross-examine providers of those statements On revenue's appeal, High Court confirmed order of Tribunal - Whether there was no reason to interfere with order passed



by High Court and therefore, SLP was to be dismissed Held, yes [Para 3] [In favour of assessee]

28. Further the Hon'ble jurisdictional high court in case of Principal Commissioner of Income-tax v/s. Indravadan Jain, HUF reported in [2023] 156 taxmann.com 605 (Bombay) held as under.

While allowing the appeal filed by respondent, the Commissioner (Appeals) deleted the addition made under [section 68](#). The Commissioner (Appeals) has observed that the Assessing Officer himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The Commissioner (Appeals) also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The Commissioner (Appeals) came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes-cum-bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's Priti Nilesh Jain Daga bank account. In view thereof, the Commissioner (Appeals) found there was no reason to add the capital gains as unexplained cash credit under [section 68](#). The Tribunal while dismissing the appeals filed by the revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The Tribunal therefore had rightly concluded that there was no merit in the appeal. [Para 4]

29. Hon'ble Bombay High Court in the case of Commissioner of Income-tax-13 V/s. Shyam R. Pawar reported in [2015] 54 taxmann.com 108 (Bombay) held as under .

[Section 68](#) of the Income-tax Act, 1961 Cash credit (Share dealings) Assessment years 2003-04 to 2006-07 - Assessee declared capital gain on sale of shares of two companies - Assessing Officer, observing that transaction was done through brokers at Calcutta and performance of concerned companies was not such as would justify increase in share prices, held said



transaction as bogus and having been done to convert unaccounted money of assessee to accounted income and, therefore, made addition under [section 68](#) - On appeal, Tribunal deleted addition observing that DMAT account and contract note showed credit/details of share transactions; and that revenue had stopped inquiry at particular point and did not carry forward it to discharge basic onus Whether on facts, transactions in shares were rightly held to be genuine and addition made by Assessing Officer was rightly deleted Held, yes [Para 7] [In favour of assessee]

30. In the case of [PCIT vs. Smt Krishna Devi](#) [2021] 126 taxmann.com 80, the Hon'ble Delhi High Court has noticed that the reasoning given by the AO to disbelieve the capital gains declared by the assessee, viz., astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere Priti Nilesh Jain Daga conjectures. Accordingly, the Hon'ble Delhi High Court affirmed the decision rendered by ITAT in deleting the addition of capital gains.

31. We further also like to place reliance on the decision of Hon'ble Gujrat High Court in the case of Principal Commissioner of Income-tax (Central) v/s. Affluence Commodities (P.) Ltd reported [2024] 161 taxmann.com 476 (Gujarat) whereas it was held as under.

[Section 28\(i\)](#) of the Income-Tax Act, 1961 Business loss/deduction Allowable as (Bogus purchases) - Assessment year 2015-16 Assessee was engaged in trading penny stocks, specifically shares of AIGL and KPL, during relevant period Assessing Officer alleged that purchases were made at artificially high prices and sold at significantly lower rates to create business losses, possibly to offset profits from commodities transactions Despite transactions occurring on recognized stock exchanges, Assessing Officer disallowed claimed losses However, both Commissioner (Appeals) and Tribunal overturned Assessing Officer's decision, concluding that assessee had demonstrated authenticity of transactions They found evidence on online trading platforms indicating that assessee had no control over share prices and had genuinely incurred losses, particularly with AIGL shares where only a portion were sold, and rest were held into subsequent assessment year Regarding shares of KPL, Tribunal reasoned that market rate being lower justified business loss, even though shares were not sold - Whether in view of above concurrent findings of fact, no questions of law much less any substantial question of law would arise and accordingly, appeal, being devoid of any merits, was to be dismissed - Held, yes [Paras 8 and 9] [In favour of assessee]

32. Hon'ble Gujrat High Court in case of Principal **Commissioner of Income-tax V/s. Sangitaben Jagdishkumar Shah** reported in [2023] 156 taxmann.com 147 (Gujarat) held as under.

[Section 28\(i\)](#) of the Income-tax Act, 1961 Business loss/deduction Allowable as (Bogus loss Sale of shares) - Assessment year 2011-12 - An information was received from Deputy Director (Inv.) wherein, it was intimated that VIL



was a pennystock which was used to provide accommodation entry of bogus LTCG/loss to beneficiaries It was further intimated that assessee was one of beneficiaries/member of this accommodation entry syndicate On basis of same, addition was made to income of assessee on account of bogus loss on sale of scrip of VIL by it - It was noted that Commissioner (Appeals) and Tribunal had observed that as per SEBI report, scrip VIL was not blacklisted and was not termed as pennystock - Assessee produced relevant documents such as contract note of transactions from stock broker, copy of trading bills - Assessee had also paid STT, and that all transaction were through banking channels - Moreover, Assessing Officer had not pointed out any discrepancy in evidences produced by assessee - Thus, Tribunal upheld order of Commissioner (Appeals) in deleting addition on account of bogus loss on sale of scrip of VIL - Whether there were concurrent findings of fact by Commissioner (Appeals) and Tribunal, and thus, no substantial question of law arose against same Held, yes [Para 4] [In favour of assessee]

33. Hon'ble Gujrat High Court in case of Principal Commissioner of **Income-tax V/s., Genuine Finance P. Ltd. reported in [2023] 152 taxmann.com 330 (Gujarat)** held as under.

Section 28(i) of the Income-tax Act, 1961 Business loss/deduction Allowable as (Bogus purchases) - Assessment year 2012-13 - Additions were made to income of assessee on account of bogus loss incurred in pennystock which were deleted by Tribunal Revenue submitted that order of Tribunal was ex-facie erroneous, illegal and perverse because Tribunal deleted additions without appreciating that transaction was pre-arranged as well as sham and was carried out through penny scrip company - However, Tribunal had observed in impugned order that assessee was continuously dealing in share trading of various shares/scrips and said fact was not disputed - Further, Tribunal had observed that scrip of VAS Priti Nilesh Jain Daga was not black listed by SEBI at relevant point of time Tribunal had also considered order passed by SEBI and nowhere in said order, scrip of VAS was blacklisted or was pennystock or sham and bogus scrips/shares Tribunal had also observed that entire transaction of purchase and sale of scrips was through Stock Exchanges, through authorized brokers and payments made to brokers were reflected in bank account - Tribunal had therefore opined that merely on conjecture and surmises, Assessing Officer could not make disallowance - Whether in view of above observations made by Tribunal, issue involved was purely a question of fact, and no question of law, much less, substantial question of law for consideration was found - Held, yes [Paras 5 to 7] [In favour of assessee]

34. In another decision of Hon'ble Gujrat High Court in case of Principal Commissioner of **Income-tax V/s. Mamta Rajivkumar Agarwal reported in [2023] 155 taxmann.com 549 (Gujarat)** whereas held as under.

Section 10(38) of the Income-tax Act, 1961 Capital gains - Income arising from transfer of long term securities (Share dealings) - Assessment year 2013-



14- Assessee had sold shares of SNCFL and earned long-term capital gains - Assessing Officer issued a show cause notice alleging that transaction was a pennystock deal aimed at illegitimately claiming long-term capital gain exemption under [section 10\(38\)](#) - Assessing Officer treated purchase as bogus and added it to total income Commissioner (Appeals) examined all relevant documents provided by assessee, including bills of purchases, broker account copies, bills for sales, and bank statements and held that purchases were made through a recognized broker via cheque, establishing their genuineness and, thus, he directed Assessing Officer to delete addition of LTCG claimed as exempt under [section 10\(38\)](#) Tribunal upheld Commissioner (Appeals) decision stating that there was no evidence implicating assessee or broker in any wrongdoing related to SNCFL script - Whether in view of concurrent findings of fact that there was no evidence available on record suggesting that assessee or his broker was involved in rigging up of price of script of SNCFL, addition on account of LTCG claimed as exempt under section 10(38) had rightly been deleted - Held, yes [Paras 4 and 5] [In favour of assessee]

35. Hon'ble Mumbai tribunal in case of **Ramprasad Agarwal reported in [2018] 100 taxmann.com 172 (Mumbai - Trib.)** whereas held as under.

[Section 68](#), read with [section 10\(38\)](#) of the Income-tax Act, 1961

- Cash credit (Share Transaction) - Assessment year 2014-15- On basis of information from DGIT (Inv.), Kolkata that some companies were engaged in business of issuing pennystocks for which there were large number of beneficiaries claiming bogus long-term capital gain/short-term capital loss/business loss/speculation loss, Assessing Officer found that assessee was one of beneficiaries of said racket and had earned profit on sale of investments in equity shares of a company, (Rutron) and claimed same as exempt under [section 10\(38\)](#) Assessee had produced relevant records to show allotment of shares by company on payment of consideration by cheque and he dematerialized shares in D-mat account which was also an independent material and said evidence could not be manipulated Further, Assessing Officer had not brought any material on record to show that assessee had paid over and above purchase consideration - Whether in absence of any evidence, it could not be held that assessee had introduced his own unaccounted money by way of bogus long-term capital gain

- Held, yes [Paras 9 and 10] [In favour of assessee]

36. In the case of **Pavankumar Bachhraj Chandan reported in [2024] 161 taxmann.com 674 (Mumbai Trib.)** held as under.

[Section 68](#), read with [section 10\(38\)](#), of the Income-Tax Act, 1961 - Cash credits (Share dealings) Assessment year 2014-15 Assessee had claimed long-term capital gain on sale of shares of STL - Assessing Officer observing that



financials of STL were weak and that shares of STL had been used for providing bogus accommodation entry in form of LTCG/STCG, disallowed claim of long-term capital gain and added entire sale proceed of shares under [section 68](#) Whether since all transactions were carried out through regular bank accounts of assessee, Priti Nilesh Jain Daga allotment of shares and then holding of shares were proved by demat statement and sale of shares was made through BSE after remitting STT, assessee had discharged burden to prove purchase and sale of shares Held, yes Whether therefore, addition made by Assessing Officer was to be deleted and exemption claimed by assessee under [section 10\(38\)](#) was to be allowed - Held, yes [Paras 7 and 15] [In favour of assessee]

37 In the case of Sheriar Jehani reported in [2024] 159 taxmann.com 9 (Mumbai Trib.) held as under.

[Section 68](#) of the Income-tax Act, 1961 Cash credit (Bogus LTCG on sale of shares) - Assessment year 2014-15 Assessee had sold shares of a company held by it and claimed exemption under [section 10\(38\)](#) on account of long-term capital gain (LTCG) arose on such sale of shares Assessing Officer, being of view that said trading transactions of purchase and sale of shares were not been effected for commercial purpose but to create artificial gains with a view to evade taxes, made an addition under [section 68](#) It was observed that assessee had purchased shares from open market, D-mated scrips and subsequently sold same in stock exchange Further, there was no discrepancies in documents filed by assessee claiming deductions under [section 10\(38\)](#) and revenue had not brought on record any materials linking assessee in any dubious transactions relating to entry, price rigging or exit providers Even in SEBI report, there was no mention or reference to involvement of assessee Whether, therefore, impugned addition was to be deleted - Held, yes [Para 16] [In favour of assessee]

38. In the case of **Gopal Nihchaldas Pariani reported in [2023] 152 taxmann.com 252 (Mumbai - Trib.)** held as under.

[Section 68](#), read with [section 10\(38\)](#), of the Income-tax Act, 1961 - Cash credits (Share transactions) Assessment years 2014-15 and 2015-16 Assessee had sold shares of 'P'ltd and earned a Long Term Capital Gain therein which was claimed as exempt in relevant assessment years - Assessing Officer noted that statement of some persons were recorded by DDIT, Kolkata to show that 'P' ltd was a company engaged in providing bogus Priti Nilesh Jain Daga accommodation entries Assessing Officer held that long term capital Gain earned by assessee was bogus for reason that there was an unusual rise in price of script and further investigation wing had investigated trading of this company and found that accommodation entry providers were rigging price -



Accordingly, he made addition under [section 68](#) Whether since assessee had submitted details of purchase of shares, payment for purchase of shares through banking channel, and had produced order of SEBI where assessee along with others had been exonerated in any manipulation, it clearly proved genuineness of transaction Held, yes Whether further since Assessing Officer had not made any inquiry about genuineness of these transaction on documents submitted by assessee and relied only on evidences collected by DDIT Kolkata which were good only for reopening of assessment and for making an addition holding that transaction were bogus, Assessing Officer should have made inquiries on documents submitted by assessee - Held, yes - Whether thus, in view of categorical finding of regulator SEBI exonerating assessee, and absence of any inquiry by Assessing Officer, impugned addition deserved to be deleted - Held, yes [Paras 33, 34 and 36] [In favour of assessee]

39. It is important to mention here that assessee had relied upon the decision of Coordinate Bench of ITAT in [Ltd Vs. ITO](#), wherein the 'same script' has been considered and dealt with and ultimately additions were deleted. The operative portion of the coordinate Bench in the above mentioned case is reproduced herein below:

11. We heard the parties and perused the record. We notice that the AO has made addition of Rs. 1.32 crores as bogus Long Term Capital Gain generated by the assessee, by rejecting the exemption [u/s 10\(38\)](#) of the Act claimed by the assessee. It appears that the AO has taken the above said figure from the report given by the Investigation Wing. However, the details furnished by the assessee would show that the assessee has claimed exemption of Long Term Capital Gain [u/s. 10\(38\)](#) of the Act only to the extent of Rs. 1,30,46,297/-.

12. Be that as it may, we notice **that the assessee has purchased shares of M/s. Nyssa Corporation Ltd.** in the year 2003 and 2006 and sold the shares in June, 2014. Thus, we notice that the assessee has held these shares for a period ranging from 8 years to 11 years. The Ld.AR further submitted that M/s. Nyssa Corporation Ltd. is one of the group companies of the assessee. It was submitted that Mr Ravindra Kumar V Ruia was a major shareholder in M/s Ravinay Trading Co Ltd (now known as M/s Nyssa Corporation Ltd) in the years 2003 to 2006. He was also a major shareholder in the assessee company in the years 2014-15 and 2015-16. Thus, we notice that the assessee had held the shares of M/s Nyssa Corporation Ltd for quiet long period, which is not the modus Operandi adopted in generation of alleged bogus long term capital gains. The Ld.AR further submitted that the purchase and sale of shares is supported by proper evidences and bank transactions. We notice that the AO has simply placed reliance on the information received from the Investigation wing for rejecting the exemption claimed by the assessee. He has not conducted any independent enquiry with regard to the transactions carried out by the assessee. The AO also did not mention as to how the search conducted in the hands of Naresh Jain Group would implicate the assessee.



13. Under these set of facts, we find no reason for the AO/Ld.CIT(A) to disbelieve the exemption of Long Term Capital Gain claimed by the assessee. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and direct the AO to delete the impugned addition of Rs.1.32 crores made by the him rejecting the exemption claimed [u/s.10\(38\)](#) of the Act.

14. We noticed earlier that the assessee has raised various legal contentions challenging the validity of re-opening of assessment. Since we deleted the addition on merits, all those legal contentions are rendered academic in nature. Accordingly, we leave them open.

40. After having considered the entire facts and circumstances of the present case and also the legal propositions as discussed by us above, we are of the considered view that since the assessee has discharged his initial onus by placing on record all the relevant documentary evidences to prove the transactions in the script in question. It is undisputed fact that assessee had purchased the shares through registered broker from stock exchange and entire payment was made through banking channel, consequently shares were received in her Dmat account maintained in Central Depository Services India Ltd. All the contract notes regarding purchase of shares have been placed on record coupled with the fact that assessee had paid all the required taxes i.e STT, stamp duty, SEBI turnover tax and all the payments reflected in the purchase contract notes. Besides the fact that the company is listed in BSE and never delisted at any time. Moreover, the Coordinate Bench of ITAT in ITA No. 3697/Mum/2024 in the case of [RNR Trading Pvt Ltd Vs. ITO](#) (supra), wherein the 'same script' has been considered and dealt with and ultimately additions were deleted. However the revenue failed to rebut the said documentary evidences and to bring on record any evidence to prove that assessee was actively involved in manipulating the script in question, therefore adhering to the principles of judicial consistency and judicial discipline and also taking into consideration the totality of facts and circumstances as discussed in detail in the above paras, we direct the AO to delete the additions made [u/s 68](#) of the Act. Consequently the grounds raised by the assessee are allowed.”

5.1 In the light of above facts and the position of law emerging from the cited decision as above, we do not find any merit in both the additions made [u/ s 68](#) and [69C](#) of the Act and the subsequent appellate order upholding the additions. We set aside the appellate order and direct the AO to delete the additions made. Therefore, the **ground no.2** of appeal of the assessee is allowed.



6. Since the addition made is already deleted, we do not find any reason to adjudicate the **ground no.1** which is legal in nature. The ground is therefore, left open.

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

Order pronounced in the open court on 27/01/2026.

Sd/-

ANIKESH BANERJEE

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 27.01.2026

Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

