

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 1666/KOL/2025
(Assessment Year: 2017-18)**

Asst. Commissioner of Income

Tax, Circle 32

O/o ACIT, cir-32, Kol, 2nd Floor,
Income Tax Office, 10B,
Middleton road, Kolkata-700071,
West Bengal

(Appellant)

Roselife Enclave LLP

12D, 46C, Chowringhee Road,
Maidan, Kolkata-700071,
West Bengal

(Respondent)

Vs.

PAN No. AAUFR5162N

Assessee by : Shri Akkal Duddhewala &
Ms. Vidhi Ladia, ARs
Revenue by : Shri Sanat Kumar Raha, DR

Date of hearing: 21.01.2026
Date of pronouncement: 10.02.2026

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the Revenue against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 04.06.2025 for the AY 2017-18.

2. The Revenue has challenged the order of Id. CIT (A) deleting the addition of Rs.8,75,30,700/- as made by the Ld. AO by denying the exemption claimed by the assessee u/s 10(38) of the Act on sale of listed shares of M/s Skipper Limited.
3. The facts in brief are that the assessee is a limited liability partnership firm. The assessee filed the return of income on 18.10.2017, declaring

total income of Rs.1,20,79,480/-. The case of the assessee was selected for scrutiny and statutory notice u/s 143(2) and notice u/s 142(1) of the Act were issued along with questionnaire to the assessee and were duly served. During the financial year 2016-17, the assessee had sold 7,06,000 nos. of listed equity shares of M/s Skipper Limited on the recognized stock exchange of BSE and NSE in several tranches for a total consideration of Rs.10,90,17,795/-, in respect of which, it had claimed exempt long term capital gains of Rs.9,48,97,795/- u/s 10(38) of the Act. Upon enquiry from the Id. AO, the assessee had submitted that, these shares were acquired by the assessee firm on 30.04.2014, i.e. during the FY 2014-15 from two sellers namely M/s Edessa Commercial Pvt Ltd & M/s Rebecca Suppliers Pvt Ltd at a price of Rs.20/- per share, which was subsequently dematized on 24.03.2015 and 25.03.2015 on the platform of BSE. The assessee accordingly worked out the total cost of acquisition at Rs. 1,41,20,000/- [7,06,000 x Rs.20/-]. After deducting the same from the total sales proceeds of Rs.10,90,17,795/-, the assessee claimed exemption u/s 10(38) of the Act in respect of long term capital gains of Rs.9,48,97,795/- [Rs.10,90,19,795 (-) Rs.1,41,20,000]. The Id. AO, in the course of assessment, had issued summons to the two sellers, M/s Edessa Commercial Pvt Ltd & M/s Rebecca Suppliers Pvt Ltd to verify the purchases, which remained non-complied. The Id. AO further enquired the rationale for the purchase price of Rs.20/per share, to which the assessee explained that the price was commensurate with the last traded price of Rs.20/- per share prevailing on the Calcutta Stock Exchange at that material time. According to the Id. AO ,however, the fact that the shares claimed to have been purchased on 30.04.2014 had been dematized only on 24.03.2015 and 25.03.2015, it was held that the assessee had acquired the shares on these dates.

The Id. AO thereafter extracted the prices prevailing in the stock exchange at the time of dematerialization, which was Rs.142.96 / 146.15 per share. The Id. AO adopted these prices to be the cost of acquisition as opposed to the price of Rs.20/- per share paid by the assessee. The Id. AO thus re-computed the cost of acquisition at a sum of Rs. 10,16,50,700/- [(Rs.4,80,000 x Rs. 142.96) + (Rs.2,26,000 x 146.15)] and accordingly re-worked the exempt long term capital gains at Rs.73,67,095/- [Rs.10,90,17,795 (-) Rs.10,16,50,700]. The Id. AO was of the view that the assessee was not entitled to exemption u/s 10(38) in respect of the balance LTCG of Rs. 8,75,30,702/- [Rs.9,48,97,795 (-) Rs.73,67,095] and added the same to the total income u/s 56(1) of the Act.

4. In the appellate proceedings, the Id. CIT (A) after taking into account the contentions and submissions of the assessee, allowed the appeal of the assessee and deleted the addition made by the Id. AO. Being aggrieved , the revenue has preferred this appeal.
5. The Id. DR primarily relied upon the order and findings of the Id. AO and vehemently contended that the market price prevailing at the time of transfer of shares to the demat account ought to be taken as the cost of acquisition. The Id. DR argued that the purchase consideration for the shares were paid by the assessee at the time of dematerialization and therefore, the cost price of shares ought to be adopted with reference to the market rates prevailing then as opposed to the actual cost price claimed to have been paid by the assessee.
6. Per contra, the Id. AR firstly pointed out that, the fact that the AO had ultimately allowed the exemption claimed by way of long term capital gains on sale of shares showed that the Id. AO has not disputed the date of purchase and that the limited issue in dispute was the purchase

price of the shares. Taking us through the documents placed in the paper book, the Id. AR pointed out that, the shares were purchased on 30.04.2014 i.e. FY 2014-15 and the sale transaction took place in the relevant AY 2017-18. It was brought to our notice that, the shares of M/s Skipper Limited was not listed on the platform of BSE at the time of purchase and thus the shares were purchased in physical form. In support, he invited our attention to the sale bills issued by the sellers. The Id. AR further showed us that, the case of the assessee was also selected for scrutiny in AY 2015-16 wherein one of the CASS reasons was investment in unlisted equities (including M/s Skipper Limited). He took us through the enquiries made by the AO's predecessor u/s 133(6) of the Act from these two sellers, whose replies were placed at Pages 20 & 21 of paper book and showed that the Id. AO's predecessor had accepted the veracity of purchases in the assessment order passed u/s 143(3) for AY 2015-16 on 18.04.2017 after making due enquiries. According to him therefore, the Revenue could not dispute the correctness of purchase price paid in AY 2015-16 in the year of sale i.e. AY 2017-18 so as to deny the benefit of exemption claimed u/s 10(38) of the Act. The Id. AR further took us through the relevant extracts of the audited financials of M/s Skipper Limited for the year ended 31.03.2014 to show that, the price of Rs. 20 per share, at which the shares of M/s Skipper Limited were acquired from the two sellers on 30.04.2014, was equivalent to the last traded price of Rs.20 per share of this scrip on the Calcutta Stock Exchange. The Id. AR further brought to our notice that, the shares of M/s Skipper Limited was listed on the platform of BSE only on 18.07.2014 and it was for that reason that the shares could not be dematerialized on 30.04.2014. It was also shown to us that the shares were listed in July 2014 at a price of Rs.35 per share and therefore, it was incorrect on the Id. AO's part to allege

that the shares had been acquired at a suppressed value. The Id. AR therefore vehemently argued that, the assessee had rightly taken the cost of acquisition of Rs.20 per share for working out the exemption u/s 10(38) of the Act and thus prayed that the order of the Ld. CIT(A) be upheld. The Id. AR, in the alternate, argued that, under any circumstance, the substitution of purchase price by the Id. AO could not result in taxation of the alleged suppressed value by way of income from other sources and that too in AY 2017-18. The Id. AR submitted that, there was no legal basis to tax the impugned sum u/s 56(1) of the Act.

7. After hearing the rival contentions and perusing the materials available on record, we find that the admitted fact is that, the assessee had sold listed shares of M/s Skipper Limited in several tranches resulting in aggregate sale consideration of Rs.10,90,17,795/-. It is not in dispute before us that, these shares held were long-term in nature and therefore the gain arising therefrom was exempt u/s 10(38) of the Act. The case of the Revenue before us relates to the determination of cost of acquisition of the shares of M/s Skipper Limited purchased in FY 2014-15. According to the Revenue, the shares were purchased on the date of dematerialization i.e. 24.03.2015 & 25.03.2015 at the prevailing market prices of Rs.142.96/- per share & Rs. 146.15/-share respectively, whereas the assessee has disclosed the shares to be purchased on 30.04.2014 at a price of Rs.20/share. It is seen that, the act of purchase of shares has not been disputed but it is the price paid for purchase which is in question before us. Be that as it may, it is not in dispute between the parties that the impugned shares were purchased in FY 2014-15. The question however is the relevant date of acquisition in FY 2014-15 and the price paid by the assessee. It is seen that, this was one of the issues for which the case of the assessee

was selected for scrutiny under CASS in AY 2015-16. The Id. AO's predecessor is found to have made enquiries from the respective sellers u/s 133(6) of the Act, and after examining the details filed by the assessee and the two sellers, the Id. AO had accepted the investment made by the assessee in shares of M/s Skipper Limited at Rs.20/share on 30.04.2014. The Revenue however is now claiming in the relevant AY 2017-18 that the assessee had purchased the shares on 24.03.2015 & 25.03.2015 for Rs.142.96/share & Rs. 146.15/share. We are in agreement with the principle contention of the Id. AR that, this claim sought to be raised by the Revenue is of no consequence in the income-tax assessment of AY 2017-18. It is well settled under the express terms of the charging provisions contained in Sections 3 & 4 of the Act, that the subject of charge is the income of the '*previous year*'. Each '*previous year*' is a distinct unit of time for the purposes of assessment and the profits made or the liabilities or losses incurred before or after the previous year is immaterial in assessing the income in a particular previous year. Useful reference in this regard may be made to the following observations of the Hon'ble Delhi High Court in the case of Vipin Kumar Khanna Vs CIT (251 ITR 782), which are as follows:-

"Assessment on the total income of each assessment year has to be made separately and on the basis of fact situation prevailing in the year in question. The Explanation refers to the computation of total income of the individual referred to in clause (i), of section 64(1). It is clearly stipulated in the Explanation that for the purpose of inclusion in terms of clause (i) the total income of the husband or wife whose total income after excluding the income referred to in clause (i) is greater shall be included. Total income of each year has to be assessed separately. It is total income of an assessment year which is to be assessed.

5. The expression '*total income*' is defined in section 2(45) of the Act in the following manner:

"total income' means the total amount of income referred to in section 5, computed in the manner laid down in this Act;"

Section 5 brings within its fold all income which is received or is deemed to be received in India or which accrues or arises or is deemed to accrue or arise in India to the assessee in any particular previous year."

7.1. In light of the above, we are of the considered view that, the Id. AO could have legally disputed the purchase cost in the hands of the assessee in the year in which the assessee had acquired the shares i.e. AY 2015-16 and not in the relevant AY 2017-18. It is not the case of the Revenue that the assessee had either acquired the shares or paid the purchase cost in the relevant AY 2017-18. On these facts therefore, we are thus unable to countenance the action of the Revenue disbelieving the cost of acquisition in the year of sale and substituting the same with the market price prevailing as on the date of dematerialization, when the cost of acquisition has been found to be verified, examined and accepted in the year of purchase i.e. AY 2015-16. We also find that there was no legal basis to tax the differential sum computed by the Id. AO by way of income u/s 56 of the Act in the relevant AY 2017-18. We further find that the Id. CIT(A) in its findings has discussed the documentary evidences filed by the assessee and the operative portion of the order of the Id. CIT(A) in allowing the appeal on merits is as under:

"5.4. I have considered the facts of the case, observations of the AO and submission of the appellant. The primary issue in dispute pertains to the disallowance of exemption claimed u/s 10(38) of the Act, amounting to Rs.8,75,30,700/-, arising from the alleged incorrect computation of LTCG by the AO. From the details available on record, it is observed that the appellant had purchased 4,80,000 equity shares of M/s Skipper Ltd. from M/s Edessa Commercial Pvt. Ltd. and 2,26,000 shares from M/s Rebecca Suppliers Pvt. Ltd. on 30/04/2014 at a price of Rs.20 per share, which was the last traded price on the Calcutta Stock Exchange as on the date of purchase. Thus, the total cost of acquisition of 7,06,000 shares was Rs.1,41,20,000/-. These transactions were carried out through proper banking channels and were supported by documentary evidence including purchase bills, contract notes, ledger accounts, and Demat statements reflecting the credit of shares to the appellant's Demat account during F.Y. 2014-15. The shares were held in the appellant's Demat account for more than 24 months and were subsequently sold during the F.Y. 2016-17 on various dates through recognized stock exchanges for a total consideration of Rs.10,90,17,795/-, after STT paid. Based on the actual cost of acquisition and sale consideration, the appellant computed LTCG of Rs.9,48,97,795/- and

claimed exemption u/s 10(38) of the Act, following the computation provisions of Section 48 of the Act. However, the AO disregarded the appellant's declared cost of acquisition and, without bringing any cogent evidence on record, adopted an inflated and arbitrary cost of Rs.10,16,50,700/- as the cost of acquisition, thereby reducing the LTCG to Rs.73,67,095/-. Accordingly, the AO restricted the exemption u/s 10(38) to Rs.73,67,095/- and disallowed the remaining claim of Rs.8,75,30,700/-, which was added to the total income of the appellant. Thus, the only matter of dispute was cost of acquisition of shares of M/s Skipper Ltd. From the records, I found that the appellant has duly purchased the 7,00,000 shares of M/s Skipper Ltd. from above said two companies on 30/04/2014 which is supported by purchase bills, contract notes, and ledger account. Subsequently, these shares were duly credited in appellant demand account in the F.Y. 2014-15 itself.

5.5. Further, upon examination of the case records as submitted by the appellant during appellate proceeding, I observed that the purchase of the said shares by the appellant during F.Y. 2014-15 was duly verified in the scrutiny assessment proceedings for A.Y. 2015-16. From the assessment record of the A.Y. 2015-16, the case was selected for scrutiny on the ground of substantial investment in unlisted equity shares. During the assessment proceedings, the AO had called for and verified information from the two selling entities M/s Edessa Commercial Pvt. Ltd. and M/s Rebecca Suppliers Pvt. Ltd. through notices issued u/s 133(6) of the Act. After examining the responses and evidences, the AO had accepted the transaction as genuine and no adverse inference was drawn regarding the purchase price or genuineness of the transaction. Further, in the subsequent assessment for A.Y. 2016-17, the AO verified the dividend income received from M/s Skipper Ltd. and accepted the appellant as a genuine shareholder, thereby acknowledging the continued ownership of shares by the appellant. It is important to note that the AO in the present proceedings has not brought on record any direct or conclusive evidence to establish that the purchase price declared by the appellant was fictitious or inflated or not in accordance with the actual transaction. The AO has also not disputed the fact of purchase or the holding period or the mode and timing of sale of shares through a recognized stock exchange with payment of STT. In such circumstances the unilateral substitution of the appellant's declared cost of acquisition with an artificially inflated figure without rebutting the documentary evidence submitted by the appellant is not legally sustainable. It is a settled position in law as upheld by various judicial authorities that when transactions involving purchase and sale of shares are supported by verifiable documents such as purchase bills, Demat statements, bank statements, contract notes and the sale is executed through recognized stock exchanges with STT duly paid then the resultant gains are eligible for exemption u/s 10(38) of the Act. The burden of disproving the genuineness of such claim lies with the Revenue and in the present case the AO has failed to discharge this onus by bringing any adverse material or evidence on record. Without prejudice to the above, it is also relevant to highlight that if the AO had any reservations or doubts regarding the genuineness of the purchase consideration then the proper course of action would have been to make an addition in the year of purchase which is A.Y. 2015-16. The appellant has also placed reliance on several judicial pronouncements in support of the claim wherein courts have consistently held that the AO cannot re-characterize or substitute the cost of acquisition without any credible basis or material evidence especially when the transactions have been accepted in earlier assessments and are duly supported by records as enumerated below for reference.

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5.6. Considering totality of facts and the legal position emerging from the judgements of the above Courts, I am of the considered opinion that the disallowance of exemption u/s 10(38) of the Act to the extent of Rs.8,75,30,700/- is not justified. The appellant has successfully demonstrated that the conditions prescribed under the Act for claiming exemption of Rs.9,48,97,795/- u/s 10(38) have been duly fulfilled. Accordingly, the addition of Rs.8,75,30,700/- made by the AO on this account is liable to be deleted. Therefore, Ground Nos. 1 to 8 raised by the appellant is hereby Allowed."

7.2. Keeping in view the above finding and discussion of the Id. CIT(A) and considering the documents filed by the assessee, we do not find any infirmity in the impugned order of the Id. CIT(A). Therefore, the Revenue has failed to establish its case and thus we do not see any reason to interfere with the findings of the Id. CIT(A) deleting the impugned addition and allowing the exemption claimed by the assessee u/s 10(38) of the Act. Accordingly, the grounds of appeal raised by the Revenue is hereby dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 10.02.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 10.02.2026

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata