

**IN THE INCOME TAX APPELLATE TRIBUNAL
'K(SMC)' BENCH, MUMBAI**

श्रीमती बीना पिल्लई , माननीय न्यायिक सदस्य एवं
श्री ओम्कारेश्वर चिदरा, माननीय लेखा सदस्य

**SMT.BEENA PILLAI, HON'BLE JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.4188/MUM/2024
(निर्धारणवर्ष/ **Assessment Year: 2014-15**)

Vipul J.Modi HUF Mumbai PAN: AAAHV0890H	Vs.	ITO, Ward 20(3)(1) Mumbai
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Paresh Saparia, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Bhagirat Ramawat, Sr.DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	04/11/2025
घोषणा की तारीख/ Date of Pronouncement	:	30/01/2026

ORDER

PER OMKARESHWAR CHIDARA, AM:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax(Appeals) ["Ld.CIT(A)"], National Faceless Appeal Centre ("NFAC") in DIN & Order No.ITBA/NFAC/S/250/2024-25/1066492727(1) dated 08.07.2024.

2. In the above cited assessee's appeal for the A.Y.2014-15, the appellant Shri Vipul J.Modi, HUF had a grievance that the Ld.AO and the Ld.CIT(A) have denied the claim of exemption u/s 10(38) of the Income Tax Act, 1961 ("the Act") relating to long term capital gains ("LTCG") of Rs.22,96,044/-. The appellant claims that the sale of shares is genuine and the claim u/s 10(38) of the Act should be allowed as claimed in the return of income.

3. The brief facts in this case are as follows :

(a) The appellant held shares of ICVL Chemicals Ltd., which were sold through a registered broker. The appellant claims that he sold 15,47,600 shares of ICVL Chemicals Ltd. on 26.12.2023 and received sale consideration of Rs.38,67,404/-. It was submitted that the cost of purchase of shares as on 01.04.2011 was Rs.15,71,360/- and made a profit of Rs.22,96,044/-. This amount was claimed as exempt LTCG u/s 10(38) of the Act.

(b) The Ld.AO did not believe the transaction to be genuine one and based on the Kolkata Investigation Wing report has denied the benefit claimed by the appellant and treated the profit as taxable income u/s 68 of the Act. The addition made by the Ld.AO was confirmed by the Ld.CIT(A).

4. Aggrieved by the denial of benefit u/s 10(38) of the Act, this appeal was filed before the ITAT.

a) The appellant claims that the share of M/s ICVL Chemicals Ltd. was not a penny stock when the shares were sold. It was only post take over, the name of the company ICVL Chemicals Ltd. was changed to Ram Minerals & Chemicals Ltd. on 11.07.2014. During the hearing proceedings before the ITAT, the Ld.AR of the appellant filed a chronology of events, which shows that they were holding shares of Intellivate Capital Ventures Ltd. ("ICVL") from 2010 and the purchase consideration was paid by way of account payee cheques. Subsequently, there was a scheme of demerger, which is approved by the High Court of Bombay in 2014, whereby allotment of ICVL Chemicals Ltd shares was made in the proportion of 11:1. Thus, the appellant's total holding of the ICVL as on 16.12.2011 became 1,54,760 shares and the cost of the same is Rs.15,71,360/-. On 01.10.2013, shares of ICVL were split in the ration of 1:10 and hence, the holding of the appellant of 1,54,760 shares became 15,47,600. After the split of the shares, the Ld.AR of the appellant has claimed that all the shares of 15,47,660 were sold at an average rate of Rs.2.50 per share through a recognized stock exchange and received sale

consideration of Rs.38,67,604/- after paying the related STT. The Ld.AR of the appellant claims that their company was acquired by others and the name was changed to Ram Alloy Castings Pvt. Ltd., who made a public announcement under SEBI Regulations. The acquirer company made open offer to the public @Rs.6.20/- per share and the same was approved by the SEBI. On 18.06.2014, the appellant Mr.Vipul J.Modi has resigned as Director of the company and filed resignation letter with ROC, then the new Directors and the new management has taken over the company and changed the name of ICVL Chemicals Ltd. to Ram Minerals & Chemicals Ltd. Then, the share price had a steep increase, from Rs.6.20 in Mar 2014 to Rs.295 in August 2015. In 2019, the Ld.AR of the appellant has stated that there was an inquiry by SEBI, which investigated the shares of Ram Minerals, where, it was mentioned that the share price rose from Rs.12 to Rs.183.85 during the period 05.05.2014 to 27.11.2014. The appellant claims the shares were sold at an average price of Rs.2.50, which is less than the price approved by the SEBI for takeover by the acquirer @Rs.6.20 at that relevant point and hence, the same cannot be treated as a penny stock. It was also submitted that the shares of ICVL Chemicals at the relevant point of sale by the appellant as promoter of the company were not penny stock and only after the

post take over by Ram Alloy Castings Pvt.Ltd., the prices were rigged and as per SEBI order, Ram Minerals was found to be indulging in price rigging and consequently identified as penny stock.

(b) The Ld.AR of the appellant has also submitted that in the cases of their family members, Mrs. Leena V.Modi, wife of appellant, the income tax department has allowed the exemption u/s 10(38) of the Act on the LTCG claimed by selling the same share, as genuine. Since the facts are identical, following the rule of consistency, the assessee's case also should get relief. Similarly in the case of Vipul J Modi, individual also, the department allowed exemption u/s 10(38) of the Act by holding that the sale of shares is genuine. As the facts are identical to that of the appellant, in his case also, benefit u/s 10(38) should be allowed to him. During the hearing proceedings before the ITAT, the Ld.AR of the appellant has emphasized that whatever the price rigging of the shares, which has happened is after selling the shares by the appellant and hence, the findings of SEBI are not relevant as far as the fictitious nature is concerned.

5. Per contra, the Ld.DR has also filed written submissions on 12.11.2025, in which, it was stated that the SEBI Investigation covers

the period from 13.12.2013 to 31.07.2015 and the appellant sold the shares on 26.12.2013 and since the date of sale falls in the above period, the claim of the appellant u/s 10(38) should be denied. It is also stated in the above written submissions that SEBI Investigator also found patches in which, the prices were manipulated and the tabular form give the details of high volume of purchases in share from 2013 to 2015. The Ld.DR has stated that in para 100, the SEBI Adjudicator concluded that the notices to the investigation indulged in trades resulted in price manipulations. It was also argued that the important point to be noted is about the persons and entities, who were acting as operators, who artificially inflate the share price. In the SEBI report, the Adjudicator has clearly mentioned the manipulation of shares by the operators as per modus operandi brought out by the AO. The purpose of above reproductions is not to bring out the exact parties, who provided an entry to the assessee, but only to demonstrate that at the time, the assessee disposed of these shares, the scrip price was actively being manipulated. The price was manipulated to such an extent that the share value goes up by almost 50 times in a span of two years and hence, it should not be treated as genuine transaction. The Ld.DR has also referred to the financials of the company by stating that the total business receipts of the assessee were just Rs.1.5 lakh, which is described as commission account for consultancy fee received. Out of

this Rs.1.5 lakh, the appellant claims that their company has paid Rs.2.23 lakh as employee expenses, which indicates that there is no business activity at all in this company, at the relevant point of time.

For this purpose, the Ld.DR relied on the following cases :

(a) Hon'ble Bombay High Court in the case of Sanjay Bimalchand Jain Vs. PCIT-1, Nagpur [reported in (2018) 89 Taxmann.com 196]

(b) Hon'ble Delhi High Court in the case of Suman Poddar Vs. ITO [reported in (2019) 112 Taxmann.com 329], which was later affirmed by SC in (2019) 112 Taxmann.com 330

(c) Hon'ble Delhi High Court in Sanjay Kaul Vs. PCIT in ITA No.203/2020 dated 29.07.2020

(d) Hon'ble Calcutta High Court in case of Pr.CIT, Kolkata Vs. Swati Bajaj in ITAT No.06/2022

6. The above judgements of Hon'ble Courts have held that where there is no financial worth when the price goes up and a group of assessee claim huge capital gains, then the income tax department had an adequate case on the standard of proof of preponderance of probabilities. Then the Ld.DR has focused on the operators, who are involved in this case, like Mr.Ashok Kumar Kayan. Mr.Ashok Kumar Kayan is the key person in arranging the accommodation entries and in this regard, the Ld.DR drew the attention of the Bench to the case of Hon'ble Ahmedabad Bench of ITAT in the case of Chimanbhai

Chhaganbhai, wherein, the scrips controlled by Ashok Kumar Kayan were held to be penny stocks. Similarly, reliance was placed on Hon'ble Madras High Court in the case of CIT Vs. Manish D.Jain, wherein, the dispute in respect of LTCG was resolved in favour of the revenue, because the scrip was controlled by Mr.Ashok Kumar Kayan. In view of the above, the Ld.DR has submitted that the addition made by the Ld.AO, which was subsequently confirmed by the Ld.CIT(A) should be upheld.

7. Heard both sides. The pains taken by Ld.DR is well appreciated as he searched the website of SEBI to find out the price manipulations done by operators in the scrip and submitted well-articulated note in this case. But, there are certain strong points in the submissions made by Ld.AR of appellant. The Bench is of the view that certainly there are manipulations in jacking up the price artificially. But, at the time of prices of scrip was manipulated, i.e., it skyrocketed to Rs.265/- and the real beneficiaries would be the persons who sold at such astronomical prices and not the impugned assessee. The purchase price of shares is one rupee and the same were sold at an average rate of Rs.2.50 after holding the share for almost 2 years, which is a possible raise. The Ld.DR's argument that the price was manipulated from 13.12.2013 to 31.07.2015 and the shares were offloaded by assessee on 26.12.13

shows the price manipulations might not started yet just at that time. The very fact that the share price went upto Rs.265/- and it was holding at Rs.150 plus for a long period, but appellant sold at Rs.2.50 only shows that appellant is not a beneficiary of manipulation of share price rise. There is also some force in the argument of Ld.AR of appellant that subsequent to sale of shares by appellant, there was a public offer @Rs.6 which was approved by SEBI and the management has completely changed after appellant sold the shares, which also demonstrates that appellant is not a real beneficiary of artificial price rise. Various cases-law were quoted by the Ld.AO and Ld.AR of appellant and similarly reliance was placed by the Ld.DR on some cases-law during the hearing proceedings. There is some force in the arguments of Ld.DR and on cases relied on by him, but in those cases, appellant is the beneficiary of artificial price rise, whereas in the impugned case, it is not so. As far as the “penny stocks” and claim u/s 10(38) is concerned, facts are more important than cases-law and each case has to be analysed separately. In the impugned case, no doubt, the manipulations were done by using this particular share, but they were done after the appellant offloaded the shares and hence he cant be termed as beneficiary of manipulation of share price. Hence, the addition made by Ld.AO u/s 68 is deleted and the claim u/s 10(38) is held as valid in this case.

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8. In the result, appeal of the appellant is allowed.

Order pronounced in the open court on 30th January, 2026.

Sd/- (बीना पिल्लई) (BEENA PILLAI) न्यायिक सदस्य/JUDICIAL MEMBER	Sd/- (ओम्कारेश्वर चिदरा) (OMKARESHWAR CHIDARA) लेखा सदस्य/ACCOUNTANT MEMBER
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Visakhapatnam,
 Dated 30.01.2026
 L.Rama/SPS

आदेश की प्रतिलिपि ँ ग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Vipul J.Modi, HUF, 66/1 HANSA VILLA, BHAUDAJI CROSS ROAD MATUNGA (C.R), MUMBAI 400019 ,Maharashtra
2.	राजस्व/ The Revenue	:	The ITO, Ward 20(3)(1), Mumbai
3.	The Principal Commissioner of Income Tax		
4.	प्रिभागीय प्रतिनिधि, आयकर ँ पीलीय ँ धिकरण / DR,ITAT.		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

True Copy
 By order

(Asstt. Registrar)
ITAT, Mumbai