

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA
BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND
SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

आयकर अपील सं/ITA No.2029/KOL/2024

(निर्धारण वर्ष / Assessment Year : 2013-2014)

ACIT, Central Circle-1(2), Kolkata	Vs	Chandu Somani, 143/1/1, Cotton Street, Burra Bazar, Kolkata-700007
PAN No. : AXEPS 3622 D		

AND

Cross Objection No.65/KOL/2025

(Arising out of ITA Nos.2029/Kol/2024)

(निर्धारण वर्ष / Assessment Year : 2013-2014)

Chandu Somani, 143/1/1, Cotton Street, Burra Bazar, Kolkata-700007	Vs	DCIT, Central Circle-3(2)
PAN No. : AXEPS 3622 D		

AND

आयकर अपील सं/ITA No.2503/KOL/2024

(निर्धारण वर्ष / Assessment Year : 2013-2014)

ACIT, Central Circle-1(2), Kolkata	Vs	Shanti Devi Somani, 143/1/1, Cotton Street, Burra Bazar, Kolkata-700007
PAN No. : ALOPS 2029 Q		

AND

Cross Objection No.63/KOL/2025

(Arising out of ITA Nos.2503/Kol/2024)

(निर्धारण वर्ष / Assessment Year : 2013-2014)

Shanti Devi Somani, 143/1/1, Cotton Street, Burra Bazar, Kolkata-700007	Vs	DCIT, Central Circle-3(2)
PAN No. : ALOPS 2029 Q		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Rakesh Jain, FCA
राजस्व की ओर से /Revenue by	:	Shri Santanu Ghosh, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	21/01/2026
घोषणा की तारीख/Date of Pronouncement	:	26/02/2026

आदेश / ORDER**Per Rajesh Kumar, AM:**

The revenue has filed two appeals against two different assessees arising out of the orders both dated 26.07.2024 passed by the Id. CIT(A), Kolkata-20, for the assessment year 2013-2014.

2. Both the assessees have also filed cross objections arising out of the both the appeals of revenue. CO No.65/KOL/2025 is delayed by 324 days and CO No.63/KOL/2025 is delayed by 243 days. In this regard, the both the assessees have filed condonation petition supported with affidavit in their respective appeals. The reasons stated in the condonation petition filed in both the appeals by both the assessees are found sufficient for delay in filing the cross objection before the Tribunal. Accordingly, we condon the delay and the cross objections of both the assessee are admitted to be heard along with appeals of the revenue.

3. Since the issues involved in both the appeals are identical except difference in figures, therefore, both the appeals of the revenue are taken together and disposed off by this consolidated order. We shall consider the facts and grounds raised in appeal of the Revenue in ITA No.2029/KOL/2025 to decide the appeal and outcome of the same shall be applicable, mutatis mutandis, to the other appeal of the revenue also.

4. The revenue has challenged the deletion of addition of Rs.1,67,78,383/- by the Id.CIT(A) as made by the Assessing Officer on account of bogus long term capital gain u/s.68 of the Act by denying genuine claim of exemption u/s.10(38) of the Act.

5. Facts in brief are that in the case of assessee-Chandu Somani return of income was filed on 22.07.2013 declaring total income at Rs.5,86,460/-. The case of the assessee was reopened u/s.147 of the Act by issuing notice u/s.148 of the Act on 07.01.2021 by the Assessing Officer after receiving information of DDIT(Inv.), Unit1(2), Kolkata that the assessee has taken bogus capital gain accommodation entries in the scrip of Bakra Pratisthan Ltd. The Assessing Officer after referring to the modus operandi of entry operators , made the addition to the income of the assessee of Rs.1,67,78,383/- u/s.68 of the Act as unexplained cash credit.

6. In the appellate proceedings Id. CIT(A) allowed the appeal of the assessee by holding that the Assessing Officer has made the addition only on suspicion and presumption basis that scam has happened in the penny stocks. The Id.CIT(A) noted that the denial of exemption to the assessee by the Assessing Officer is only based upon suspicion and, thus, deleted the addition of Rs.1,67,78,383/- by directing the Assessing Officer accordingly. The Id.CIT(A) noted that the denial of claim of long term capital gain u/s.10(38) of the Act based on the report of the investigation wing of the department has come to be examined by various Hon'ble High Courts and it was held that the addition cannot be made only on the basis of the fact that price manipulation of the trading of shares of those companies that too on the basis of alleged entry operators. The Id. CIT(A) relied on the series of decisions while deleting the additions .

6. After hearing the rival contentions of the parties and perusing the material available on record, we find that the undisputed facts are that the assessee earned long term capital gain on sale of shares of Bakra Pratisthan Ltd. to the tune of Rs.1,67,78,383/-. The Assessing Officer upon receiving of the information from the DDIT(Inv.), Unit-1(2), Kolkata reopened the case of the assessee and called for the necessary details and evidences which were duly filed by the assessee before the Assessing Officer. The Assessing Officer noted that the trading in the said shares were suspended by the SEBI. We note that the share of Bakra Pratisthan Ltd. is not contained in the list of 84 penny stocks as brought out by the investigation wing and, therefore, this cannot be held to be penny stock on the basis of investigation report alone. The case of the assessee squarely covered by the decision of the coordinate bench in the case of Subhra Dugar Vs ITO, passed in ITA No.318/Kol/2024, dated 20.11.2024, wherein the coordinate bench of the Tribunal has decided the similar issue which involved the sale of shares in the case of Bakra Pratisthan Ltd. in favour of the assessee. The operating part of the Tribunal reads as under :-

5. After hearing the rival contentions and perusing the material on record, we find that the case was reopened for the reason that the assessee had sold shares of M/s Bakra pratisthan Ltd. a penny stock company and capital gain of Rs. 1,32,40,990/- was declared from the sale of 37500 equity shares which was claimed as exempt u/s 10(38) of the Act. The Ld. Counsel of the assessee referred to the reasons recorded u/s 148(2) of the Act a copy of which is filed at page 7 of PB which states that the assessee has traded in scrip which is a penny stock as per the report of the Investigation Wing. However, we find that the said company did not appear in the list of 84 stocks the details wherein is furnished in the PB from page 60 to 62. We find that in this case no adverse view drawn was drawn by

the SEBI even nonetheless the stock remained suspended for some time through SEBI order but ultimately no adverse view was taken by SEBI and the trading on the stock exchange was restored. The Id. Counsel for the assessee relied on the decisions of Hon'ble Calcutta High Court in the case of PCIT vs. Deepa Agarwal in ITAT/47/2022, IA NO. GA/2/2022 dated 07.11.2022 and PCIT vs. Shri Abhay Kr. Jain in ITAT/63/2022 IA No. GA/2/2022 dated 10.11.2022 which have been perused and we find that the assessee case is squarely covered by these decisions. We also note that these decisions of the Hon'ble High Court after the PCIT Vs Swati Bajaj ITA No. GA/2/2022 in ITAT/6/2022 & others dated 14.6.2022.

6. Further we find merit in the contentions of Ld. A.R that the list of penny stocks did not contain this share, therefore, we are not in a position to sustain the orders of authorities below which has not done anything to find out whether the assessee has routed his own money by trading in the said stock. In our opinion, the AO is not free to generalize any inference from the report of Investigation Wing that the stock is a penny stock by ignoring the fact that stock does not even figure in the list of 84 penny stock which has been discussed by the Hon'ble Calcutta High Court (supra). We observe that the Id AO has only relied on the investigation wing report and has not done any enquiry to bring any substantive material on record. In view of the facts, we are inclined to hold that the reopening of assessment by the AO is not as per the provisions of Act and is in fact based on the borrowed satisfaction and also done without any application of mind

7. Since the issue involved is squarely covered in the case of the assessee by the above decision of the coordinate bench , we are inclined to uphold the order of the Id. CIT(A) by dismissing the appeal of the revenue in the case of assessee Chandu Somani. Thus, ITA No.2029/KOL/2024 is dismissed.

8. The issue in the appeal of revenue in ITA No.2503/KOL/2024 in the case of the assessee Shanti Devi Somani is identical to the appeal of the revenue decided by us in ITA No.2029/KOL/2024. Therefore, our decision/observation made therein shall be applied, *mutatis mutandis*, to

this appeal also. Thus, appeal of revenue in ITA No.2503/KOL/2024 is dismissed.

9. With regard to the cross objections filed by both the assessee wherein they have challenged the reopening of the assessment u/s.147 of the Act, which has not been raised during the course of hearing, therefore, the cross objections filed by both the assessees are dismissed.

10. In the result, both appeals of revenue as well as cross objections of both the assessees are dismissed.

Order pronounced in the open court on 26/02/2026.

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

Sd/-
(RAJESH KUMAR)
लेखा सदस्य/ ACCOUNTANT MEMBER

कोलकाता Kolkata; दिनांक Dated 26/02/2026

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Kolkata