

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.6543/MUM/2025
(A.Y. 2014-15)

Chhaya Ketan Mehta A-202, Meera Apartment, Shankar Lane, Kandivali West, Mumbai - 400 067, Maharashtra	v/s. बनाम	Income Tax Officer, Ward - 33(1)(3), Mumbai, C-12/707, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ACLPM4811A		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Shri Nishit Gandhi, Adv.
Revenue by :	Shri Virabhadra Mahajan (Sr. DR)

Date of Hearing	21.01.2026
Date of Pronouncement	09.03.2026

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 20.05.2025 is filed 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. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 30.12.2016 for the Assessment Year [A.Y.] 2014-15.



2. The grounds of appeal are as under:

ON NATURAL JUSTICE:

1.1 *In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [the CIT(A) for short] erred in confirming the action of the Learned Income Tax Officer-33 (1) (3), Mumbai [“the AO” for short], in passing the assessment order w/s 143 (3) of the Income Tax Act, 1961 [“the Act for short] in gross violation of the principles of Natural Justice.*

1.2 *While doing so the Ld. CIT(A) failed to appreciate that:*

(a) *The Assessment Order is passed without affording any fair, reasonable and sufficient opportunity of being heard to the Appellant; and;*

(b) *The assessment was framed in gross violation of principles of Natural Justice and on the basis of certain material never confronted to the Appellant and the same deserves to be quashed,*

1.3 *It is therefore submitted that the order passed by the Ld.CIT(A) affirming the order of the Ld. AO deserves to be quashed.*

ON MERITS:

2.1 *In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in taxing an amount of Rs. 75,16,569/-/s 68 of the Act, simply on the basis of surmises and conjectures and thereby denying the claim for exemption u/s 10(38) of the Act on sale of SRK IndustriesLtd. through the Bombay Stock Exchange.*

2.2 *While doing so, the Ld. CIT(A) failed to appreciate that:*

(a) *The impugned order is passed by him simply relying upon and endorsing the order and findings of the AO without independently and impartially considering the submissions filed by the Appellant:*

(b) *The sale of shares was rightly claimed as exempt long term capital gains u/s 10(38) which was earned on sale of shares through Bombay Stock Exchange (BSE), a recognized stock exchange;*



- (c) *The sale as well as purchase of shares is evidenced by various documents including the broker notes from registered brokers, bank statements, demat account statements, etc.;*
- (d) *In any case, the entire addition is based simply on certain uncontroverted statements of some unrelated third parties before the Department and other Authorities in some unconnected proceedings and therefore unsustainable;*
- (e) *The Ld. AO has himself admitted that the Appellant had sought cross-examination of the parties on whose statement heavy reliance was placed by the Ld. AO and yet the said cross examination was not granted and therefore the entire assessment order stood vitiated;*
- (f) *Neither any investigation nor any proceedings whatsoever have ever been initiated by Securities and Exchange Board of India (SEBI) against the brokers or the Appellant as regards the impugned transactions; and;*
- (g) *The AO has himself accepted that majority of the transactions in the sale of the impugned scrips were genuine and a part of the same were termed as tainted in the said report and therefore there was no basis to assume that the transactions of the Appellant as ingenuine.*
- 3.3 *Without prejudice to the above, in the facts and circumstances of the case and in law, even otherwise no addition could have been made and be taxed unless a specific head is assigned to it as contemplated u/s 14 of the Act.*
- 3.4 *In view of the above, it is submitted that the addition so made by the AO and as confirmed by the Ld. CIT(A) be deleted.*

3. The main dispute in the instant appeal pertains to rejection of claim of assessee of Rs. 75,16,570/- u/s 10(38) of the Act by the AO in respect of Long term Capital gains arising out of transactions of alleged penny stock namely **SRK Industries Ltd. ('SRK')**. The AO made the



disallowance based on report on such penny stock companies by the Investigation wing of the Department in respect of such Kolkata Based sham companies. The AO observed that the purchase of shares was off market. Shri Rakeshchand Jain is a director of company from which assessee purchased shares off market. Besides, the company was running into losses had not earned any income from operations ever and still commanded such premium valuations. There was no transaction except of this alleged scrip as reflected in the Demat Account as well. The Id.CIT(A) upheld the action of the AO concluding that he AO doubted genuineness of said transactions but also established how the price of shares of the penny stock companies were rigged and were raised through circular trading. It was observed that the whole transaction was pre-conceived resulting in creation of bogus claim and, therefore, were sham. Accordingly, the alleged LTCG for sale of shares as bogus and not eligible to exemption u/s 10(38) of the Act and the addition of Rs.75,16,570/- by invoking provision of section 68 of the Act were confirmed.

4. Before us, the Id.AR has claimed that the assessee had submitted all relevant details to prove the genuineness of the said transaction. It is submitted that section 68 of the Act was wrongly



applied as, admittedly, the nature and source were duly explained in as much as the nature of the credit was the amount received on sale of shares and the source is through the broker from the Bombay Stock Exchange on account of such sale of shares after paying due securities transaction tax (STT) thereon. The addition made u/s 68 is wholly unsustainable because the purchase and sale of listed shares on a recognised stock exchange through a SEBI-registered broker. In fact, the assessee filed all the documentary evidences such as Bank Summary, Confirmation of Accounts, Transaction Statement, Contract Note, Long Term Capital Gain Statement, etc. However, none of the documents were rejected by the AO. The purchase is evidenced by copy of purchase bill, broker note, share certificates transferred in the name of the Appellant and copy of Demat Statement. The same was provided to the AO and has not been doubted. In fact, the AO has repeatedly admitted the fact of purchase. The sale is evidenced and explained by sale bills, broker notes and the amount on sale is reflected in the bank statements bank statements. STT was paid on the transactions. The AO has not found any fault with the documents furnished by the assessee. In such a scenario, without refuting the said evidences furnished, the addition cannot be made simply on the basis of an investigation report not even directly linked to the assessee. Assumption howsoever logical cannot



substitute fact and probability howsoever strong cannot substitute reality. It is pleaded that in the present case, on abare perusal of the entire order it is evident that the addition simply springs out of assumption and nothing more. Such an addition is unsustainable in law.

4.1 It is further contended that the AO has not at all produced any contrary evidence to refute the evidences and transactions of the assessee. This fact is not disputed by the AO as well as the Ld. CIT(A). The AO has not provided any evidence evenworth a name that assessee's own money has been routed back to him. There is no enquiry/investigation/adverse reporting by SEBI or BSE on the assessee or its broker or the Company SRK Industries Ltd. whose shares were sold. Reliance has been placed on the decision in the case of ITO v/s Indravadan Jain- ITA 4861/M/14 affirmed in PCIT v/s Indravadan Jain, HUF - ITXA No.454 of 2018 in Hon'ble Bombay High Court. Out of the total more than 4 to 8 crore shares traded, the assessee traded only in 22,200 shares amounting to approximately 0.025%. The assessee therefore, was not in a position to affect the prices at all. This fact is conveniently overlooked by both the authorities. Off market purchases are not prohibited and in any case the purchases are not doubted as per **ACIT v/s Ravinder Toshniwal - ITA 5302/M/08, Sudarshan Jalan, HUF Vs ITO-ITA 1664KOL/2018, Smt. Geeta Khare Vs ACIT-ITA**



4267/M/18.The addition in this case was made simply on the basis of statements of some third persons without linking the same to the assessee and hence not sustainable.

4.2 It is also pointed out that the present case is squarely covered by the order passed by this Hon'ble Tribunal in case of assessee's husband which is **Ketan H. Mehta v/s ACIT 32(2) I.T.A. 6689/Mum/2025** and in the case of **Ketan H. Mehta (HUF) v/s ITO-42(1)(1) ITA No. 770/MUM/2023** in which the assessee is a member (Karta's wife). Besides, the order could not be sustained also because the same was passed without providing him an opportunity to cross examine the parties whose statements are relied on despite specific requests. Even the statement of the assessee recorded by the AO was unreliable since the same was not provided to him for rebuttal. Further, no addition can be made simply because in the opinion of the AO at the time of sale the price of a stock increased unusually high. It is held that Capital Gains could not be treated as bogus merely on the ground that at the time of sale the prices of stocks has substantially / astronomically appreciated and the difference between the purchase price and sale price was unusually high.



4.3 It is stated that on similar facts the exemption u/s 10(38) claimed on gains earned on sale scrip SRK Industries has been upheld by the Hon'ble Tribunal in the case of **Shri. Rakesh Shantilal Shah Vs ITO, -ITA 1775/MUM/2019, Mr. Ramprasad Agarwal Vs ITO-ITA 1228/M18 and ITA 4843/M/18, Sudarshan Jalan, HUF VS ITO-ITA 1664KOL/2018, Smt. Geeta Khare Vs ACIT etc.**

5. The Id.DR on the other hand has placed reliance on the orders of authorities below claiming that the impugned transactions were premeditated and done in connivance was various entities to evade legitimate taxes. He placed reliance on in the case of Pankaj Agrawal wherein similar disallowance was upheld by ITAT, Chennai Bench.

6. We have carefully considered all the relevant facts of the case. It is evident that the AO made the addition u/s 68 of the Act without negating any of the evidences adduced by the assessee to demonstrate the genuineness of the impugned transaction. None of them have been controverted. The said transactions having been made on stock exchange platform through recognised broker and banking channels could not be rejected outrightly without bringing any record to prove its sham nature. We find that this scrip involving similar



transaction has been considered in a catena of cases by the coordinate benches of ITAT including Mumbai Tribunal and decided in favour of respective assessee on identical facts and the circumstances of the case. We may refer here the relevant extracts of the decision in the case of **Rekha Rajesh Jogani, Mumbai vs Ito 19(3)(1), Mumbai in ITA No.2961/Mum/2023** dated 28 March, 2025,

“6. We note that transactions for purchase were undertaken on BSE platform through the broker Monarch Research & Brokerage Pvt. Ltd. and so also the sale of the aforesaid shares were undertaken on the stock exchange platform through the SEBI registered broker on which STT was levied and the consideration was routed through normal banking channel. The entire flow of these transactions is corroborated by relevant documentary evidences placed on record. While making the addition, there are no discrepancies pointed out by the Assessing Officer in the documents and the details furnished by the assessee. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the assessee. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. At any stage of the present case, Revenue has not brought on record any material about participation of the assessee with any such dubious transactions relating to accommodation entry, price rigging or exit providers. To our mind, Ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details furnished in his office. Once the assessee has produced documentary evidence to establish the veracity of his claim, the burden would shift on the Revenue to establish its case.

7. On the perusal of records, it is discernible that ld. Assessing Officer had proceeded on the basis of analysis of the financials of the company. According to him, sharp movement in the share prices of the aforesaid scrip is not justified. He has relied upon the search and survey operations conducted by the investigation wing of the Department at various locations in respect of alleged penny stock which sets out the modus operandi adopted in the business of providing entries for bogus capital gains. The conclusion drawn by the ld. Assessing Officer of implicating the assessee is un-supported by any cogent material on record. The finding arrived at by the ld. Assessing Officer is thus purely an assumption based on conjectures and surmises. In our thoughtful considerations to the facts and circumstances of the case, it is not



in controversy that assessee has discharged her burden by submitting the relevant documents, details of which are already extracted above, forming part of the paper book.

7.1. For our observations and findings, we place reliance on the decision in the case of **CIT vs. Jamnadevi Agrawal [2012] 20 taxmann.com 529 (Bom)**, wherein it was held that transactions of Rekha Rajesh Jogani, AY 2014-15 purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. We also draw our force from the decision of 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.

7.2. Reliance placed by the Id. Assessing Officer on the report of investigation wing without further corroboration based on cogent material does not justify the conclusion that the impugned transaction is bogus, sham and part of racket of accommodation entries. It does not prove that the assessee has carried out the impugned transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of share prices. In absence of any such material, enquiry and examination, the addition made pertaining to receipt of sale consideration of the impugned transaction cannot be sustained. In our considered view, Id. Assessing Officer has not established that the assessee was involved in price rigging.

8. We note that Id. Assessing Officer has observed about the so-called purchasers of shares sold by the assessee who have not been identified even though notices were issued u/s.133(6) of the Act. In this context, it is worth noting that impugned share sale transactions undertaken by the assessee are on the online digital trading platform of stock exchange of BSE which is a regulated market under the aggies of a regulator viz. SEBI. There is nothing on record from the market regulator SEBI for the relevant period which establishes the 'tainted' status of the scrip involved in the present case, so as to hold the share sale transactions as bogus/accommodation entry as alleged by the Id. AO. It is also important to note that the operations and modus operandi of this regulated market does not in any way provide for any mechanism by which assessee can bring forth the identity of the buyers of his shares and their creditworthiness. Further, sale proceeds are received through the stock market process into the pre-identified bank account of the seller i.e., the assessee which cannot be tainted as 'unexplained or unaccounted or undisclosed' money for the addition made u/s. 68 by the Id. Assessing Officer.

9. For our observations and to arrive at the findings, we find force of binding nature from the decisions of Hon'ble High Court of Bombay being a jurisdictional High Court:



i) [Pr. CIT v. Ziauddin A Siddique \[Income-tax Appeal No. 2012 of 2017, dated 4-3-2022\]](#) held as under:-

"1. The following question of law is proposed:

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of Rs. 1,03,33,925/- made by AO [u/s 68](#) of the I.T. Act, 1961, ignoring the fact that the shares were bought/acquired from off market sources and thereafter the same was DMATed and registered in stock exchange and increase in share price of Ramkrishna Fincap Ltd. is not supported by the financials and, therefore, the amount of LTCG of Rs. 1,03,33,925/- claimed by the assessee is nothing but unaccounted income which was rightly added [u/s 68](#) of the I. T. Act, 1961?"

2. We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd. ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal."

4. Mr. Walve placed reliance on a judgment of the Apex Court in Principal Commissioner of Income-tax (Central)-1 v. NRA Iron & Steel (P.) Ltd. but that does not help the revenue in as much as the facts [in that case](#) were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

6. The appeal is devoid of merits and it is dismissed with no order as to costs."

ii) **PCIT vs. Indravadan Jain HUF [2023] 156 taxmann.com 605 (Bom)** wherein it was held:

"Where shares were purchased by assessee on floor of stock exchange and not from broker, payment was made through banking channel, deliveries were taken in DMAT account where shares remained for more than one year, contract notes were issued and shares were also sold on stock exchange, there was no reason to add capital gains as unexplained cash credit under [section 68](#)"



iii) CIT vs. Shyam R. Pawar [2015] 54 taxmann.com 108 (Bom) wherein it was held:

"Where DMAT account and contract note showed details of share transaction, and Assessing Officer had not proved said transaction as bogus, capital gain earned on said transaction could not be treated as unaccounted income under [section 68](#)"

9.1. We also take note of the decision of Coordinate Bench in the **case of Balkrisna Gajanan Thopte vs. DCIT, in ITA No.3380/Mum/2019**, dated 10.01.2024 for Assessment Year 2014-15 which also dealt with identical scrip of **SRK Industries Ltd.** deleting the addition made of similar account both [u/s.68](#) and [69C](#). There are several other decisions of Coordinate Benches which dealt with the same scrip of **SRK Industries Ltd.** holding in favour of the assessee on similar nature of transaction as undertaken by the assessee. The same are listed below:

a. Shri Rakesh Shantilal Shah vs. Ito [ITA 1775/Mum/2019] b. Smt. Geeta Khare vs. ACIT [ITA 4267/Mum/2018] c. Shri Narendra Kumar Saraogi vs. DCIT [ITA 46 & 47/ Kol/2018) d. Aditya Vikram Sureka HUF vs. L.T.O [ITA No. 1650/Kol/2018) e. Shree Shreyans Chopra vs. ACIT [ITA 661/Kol/2018) f. Smt. Amrita Baid vs. I.T.O. [ITA No. 2477/Kol/2017] g. Smt. Snehlata Chopra vs. I.T.O. [ITA No.1386/Kol/2018] h. Smt. Pushpa Devi Chopra vs. I.T.O. [ITA No.1388/Kol/2018] i. Smt. Sampat Devi Chopra vs. I.T.O. [ITA No. 1387/Kol/2018]

10. Considering the totality of facts and circumstances of the case, factual matrix and submissions of parties narrated as well as discussion and observations made herein above, we delete the addition made [u/s 68](#) towards proceeds of sale of listed shares of SRK Industries Ltd. which gave rise to Long Term Capital Gain on the said sale, claimed exempt by the assessee [u/s 10\(38\)](#). Accordingly, grounds taken by the assessee in this respect are allowed.

11. Addition made by the Id. Assessing Officer on estimate basis towards commission for arranging alleged artificial capital gains @ 2% amounting to Rs.90,432/- is consequential to the addition made Rekha Rajesh Jogani, AY 2014-15 towards receipt of sale proceeds of alleged penny stock. Since we have deleted the said addition towards sale proceeds of alleged penny stock in terms of above stated observations and findings, this consequential addition of commission has no foundation to stand. Accordingly, the same is deleted. Grounds taken by the assessee in this respect are allowed.

12. In the result, appeal of the assessee is allowed.”



6.1 In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the various judicial precedents relied upon hereinabove, we hold that the Id.CIT(A) was not justified in upholding the action of the AO in bringing the long term capital gains on sale of shares of SRK Industries Ltd as unexplained income of the assessee. The AO is directed to grant exemption **u/s 10(38)** of the Act as claimed to the assessee. **Accordingly, the ground nos.2 and 3 raised by the assessee on merits are allowed.**

7. Since we have already directed the addition to be delete, we do not find any reasons to adjudicate on other grounds of appeal.

8. In the result, the **appeal is allowed.**

Order pronounced in the open court on 09/03/2026.

Sd/-

NARENDER KUMAR CHOUDHRY

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 09.03.2026

Lubhna Shaikh / Steno

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



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2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
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