

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.5439/Mum/2024
(Assessment Year: 2014-15)**

Shri Hareshkumar Mafatlal Shah, 18/9, 1 st Floor, Hariharwala Building, 10/11, S.V.P. Road, Mumbai-400 004 PAN: ANQPS5958J	vs	ACIT 19(1), Mumbai Room No. 203, 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai-400007
APPLICANT		RESPONDENT

Assessee by : Shri K Gopal a/w Shri Om Khandalkar
Respondent by : Shri Hemanshu Joshi, SR DR

Date of hearing : 19/11/2025
Date of pronouncement : 04/12/2025

ORDER

Per Shri Anikesh Banerjee, JM:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi (NFAC) (for brevity, 'Ld.CIT(A)'), order passed under section 250 of the Income-tax Act, 1961 (for brief, 'the Act') for Assessment year 2014-15, date of order 27/09/2024. The impugned order was emanated from the order of the Learned Assistant Commissioner of Income-tax, Circle-19(1), Mumbai

(for brevity the "Ld. AO"), passed under section 143(3) of the Act, date of order 28/12/2016.

2. The assessee has taken the following grounds:-

"GROUND 1: Addition of the sale proceeds of the share u/s 68 of the Act.

Learned Assessing Officer committed error of law and of facts in not appreciating that the Appellant had earned tax free long term capital gain u/s. 10(38) by selling his shares held for more than 1-2 years on Stock Exchange Platform and has duly paid STT levied by said Stock Exchange. Learned Assessing Officer generally relied upon the statements given by some Vipul Shatt and nowhere learned AO could prove that assessee was part of the modus operandi or he was in any way connected to Vipul Bhatt or to any other entity involved in this racket. Even Appellant's request for cross examination of Vipul Shatt was also grossly rejected thereby depriving appellant of natural justice. Further addition is made u/s 68 whereas Appellant has duly explained the whole capital gain and therefore the question of unexplained cash credit does not arise at all. Hence addition of Rs. 2,41,53,979/- deserves to be deleted.

GROUND 2: Addition on Account of Commission paid u/s 69C of the Act.

That the Ld. Assessing Officer has grossly erred in adding commission based on statement of some Vipul Bhatt with whom appellant had no relation and learned AO also could not provide any link between appellant and Vipul Bhatt. Appellant request for cross examination of Vipul Bhatt was grossly rejected thereby depriving appellant of natural justice and without justifying learned AO made said addition. That addition of Rs 9,66,159/- deserves to be deleted."

3. The brief facts of the case are that the assessee is an individual and has earned income from business, long term capital gain and income from other

sources. The assessee filed the return during impugned assessment year declaring total income of Rs. 37,53,200/-. During the assessment proceedings, the Ld.AO found that the assessee has made the share transaction and claimed exemption u/s 10(38), total amount to Rs.2,41,53,979/- related to long term capital gain (LTCG). The assessee submitted that the assessee has purchased 10,000 shares of Conart Traders Ltd on 12/09/2011 through off-market purchase from "M/s Santoshima Tradelink Pvt Ltd" at price of Rs.20 per share. Thereafter Conart Traders Ltd was amalgamated with Sunrise Asian Ltd (SAL) and 10,000 fresh shares of Sunrise Asian Ltd were issued to the assessee. The assessee sold the shares of SAL and Monarch Health Services Ltd (MHSL) through his broker, M/s Monarch Research & Brokerage Ltd. The details of purchases and sale of shares of Conart Traders Ltd were examined and it was found that the assessee has been allotted 10,000 shares of this company through preferential placement on 19/09/2011. The assessee has earned profit by selling of the scrip SAL amount to Rs. 47,52,907/- and (MHSL) amount to Rs. 1,94,01,072/- which comes total amount to Rs. 2,41,53,979/- and after deducting STT & other charges amount to Rs. 37,606/- the net amount was earned amount to Rs. 2,41,16,373/-during alleged assessment year. The Ld.AO treated the entire transactions as bogus transactions and assessed the total income of Rs.2,88,73,138/- by making addition amount to Rs.2,41,53,979/- on account of bogus transactions of unexplained cash credit u/s 68 of the Act and commission paid to entry provider amounting to Rs.9,66,159/- u/s 69C of the Act. The aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) upheld the impugned assessment order. Being aggrieved, assessee filed an appeal before us.

4. The Ld.AR argued and stated that the issue is squarely covered by the order of the ITAT, Mumbai Bench in the case of **Haresh Dilip Vora vs. ITO** bearing **ITA No.3646/Mum/2024**, date of pronouncement **10/09/2024** where the Bench considered that the said SAL scrip is not a sham transaction. During the assessment and appeal proceedings, the assessee filed the detailed submissions and filed evidence related to the transaction. The notice of the revenue including the compliances of assessee are submitted in APB before the bench. The details are reproduced as below: -

Sr.No.	Particulars	APB Page No.
1.	<i>Copy of the notice dated 03.10.2016 issued under section 142(1) of the Act</i>	1
2.	<i>Copy of the letter dated 19.10.2016 filed in response to the abovementioned notice along with the following annexures: a. Annexure II – Details of bank accounts maintained by the assessee b. Annexure III- Copy of ITR Acknowledgement along with computation of income, Capital account, Balance sheet, Profit and Loss Account for A.Y. 2014-15.</i>	2 3 4-26
3.	<i>Copy of the notice dated 19.12.2016 issued under section 142(1) of the Act.</i>	27-32
4.	<i>Copy of the letter dated 23.12.2016 filed in response to the abovementioned notice along with the following annexures: a. Annexure 2 – Copy of the prospectus of Monarch Health Services Limited alongwith certificate issued for change of name.</i>	33-37 38-40
5.	<i>Copy of the submissions dated 26.02.2021 filed before the NFAC alongwith the following details:- a. Annexure 1 – Copy of the Debit Note of Santoshima Tradelinks Ltd. With copy of Appellant's Bank statement and physical share certificate b. Annexure 2 – Copy of the Demat Statement c. Annexure 3 – Sample copies of Broker's Contract Notes</i>	41-40 50-56 57-61

	d. Annexure 4 – Copy of Broker Ledger along with copy of bank statement	62-92 93-104
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5. The Ld. DR argued vehemently and relied on the orders of the revenue, authorities. The Ld. DR invited our attention in impugned appellate order pages 11 & 12 which is reproduced as below:-

*“6.3.5 Reliance is placed on the **Hon'ble High Court, Delhi** in the case of **Udit Kalra vs- ITO, Ward-56(1), Delhi** (ITA 220/2019 & CM No. 10774 /2019) that has examined the penny stock case thoroughly and observed as under*

*"The main thrust of the assessee's argument is that he was denied the right to cross-examination of the two individuals whose statements led to the inquiry Page 9 of 13 and ultimate disallowance of the long term capital gain claim in the returns which are the subject matter of the present appeal. This court has considered the submissions of the parties. **Aside from the fact that the findings in this case are entirely concurrent A.O., CIT(A) and the ITAT have all consistently rendered adverse findings, what is intriguing is that the company (M/s Kappac Pharma Ltd.) had meagre resources and in fact reported consistent losses. In these circumstances, the astronomical growth of the value of company's shares naturally excited the suspicions of the Revenue. The company was even directed to be delisted from the stock exchange. Having regard to these circumstances and principally on the ground that the findings are entirely of fact, this court is of the opinion that no substantial question of law arises in the present appeal. This appeal is accordingly dismissed.....***

*6.4 In light of the discussions above, it is held that the Assessing Officer has made the addition after detailed analysis of the financials and the trading pattern of the scrips. He has also taken into account the surrounding circumstances after receiving the information that the said scrip is a penny stock and the appellant has traded in the same for booking bogus gains. Therefore, I do not find any infirmity in the addition made u/s 68 of the Act. **Therefore, the grounds of appeal related to the addition on account of transactions in the scrip of M/s Sunrise Asian Limited and M/s Monarch Health Services Limited are dismissed.***

*7. Through **Ground of Appeal No. 2.** the appellant challenges addition made on account of commission paid to entry provider under section 69C of the Act. The Assessing Officer held that on obtaining accommodation entries, it is an accepted fact that the commission of about 3-4%*

*of the transaction is paid to the broker who negotiates the deal. As the appellant had received gains amounting to Rs.2,41,53,979/- therefore, the Assessing Officer disallowed the amount of Rs.9,66,159/- @ 4%. The appellant submitted that there is no basis regarding the addition made by the Assessing Officer. Reliance can be placed on the decision of the **Hon'ble Mumbai Tribunal** in the case of **Arvind M. Kariya v. ACIT [IT Appeal No. 7024 (Mum.) of 2010, dated 30-1-2023]**, wherein it was held that when there is no doubt that such transactions involve certain money paid to the operators/arrangers of such fraudulent capital gains, the revenue authorities have reasonably calculated 5% of the sale consideration and accordingly such addition was upheld. In the present share through entry provider, stockbrokers in order to obtain fraudulent income by rigging transactions manipulated case also, admittedly the were share prices and selling them in order to justify the unaccounted income of the appellant and for all these activities the broker is making all the negotiations and arrangements and therefore, there is no doubt that such transactions involves money, paid to entry provider for such fraudulent capital gains and hence disallowance @ 4% is held to be reasonable and I do not find any infirmity with the findings of the Assessing Officer on this issue also. The order of the Assessing Officer is accordingly upheld on this issue as well.*

8. In the result, the appeal is dismissed.”

6. The Ld. AR, on the other hand, argued that the details of a list provided by the Securities and Exchange Board of India (SEBI), asserting that the final SEBI order did not mention the assessee's name. Therefore, the assessee was not implicated in any price rigging or other malpractices. Further, the Ld. AR contended that the revenue relied on orders that did not consider the judgment of the Hon'ble **High Court of Gujarat at Ahmedabad in PCIT-1 vs. Divyaben Prafulchandra Parmar** (R/Tax Appeal No. 812 of 2023, order dated 02/01/2024). Regarding the scrip of SAL, the Ld. AR highlighted the detailed judgment of the Hon'ble **High Court of Madhya Pradesh at Indore in CCIT (OSD)-1 v. Shri Nilesh Jain (HUF)** (ITA No. 56/2021, judgment dated 30/11/2024). In this case, the Hon'ble High Court held that "M/s Santoshima Leasing & Finance Pvt Ltd" was duly amalgamated with SAL, a listed company on the BSE. Consequently, transactions involving SAL could not be categorized as sham transactions.

The Ld. AR further respectfully relied on the order of the ITAT, Mumbai Bench "A," in **Lalitaben Praful Shah vs. CIT** (ITA No. 2008/Mum/2023, pronouncement dated 17/01/2024), where the co-ordinate bench referred to the judgment of the Hon'ble **Bombay High Court in CIT vs. Jamnadevi Agarwal** (20 taxmann.com 529). In that case, the High Court held that transactions relating to the purchase and sale of shares could not be considered bogus when supported by genuine documentary evidence furnished by the assessee.

7. We have heard the rival submissions and perused the material available on record. The issue in the present appeal pertains to the addition made concerning the assessee's claim of the LTCG arising from the sale of shares of SAL & MHSL.

The Ld. DR relied on decisions of the co-ordinate benches related to LTCG arising from the sale of shares, which are distinguishable on facts. In the present case, the assessee transacted in shares of SAL, which were also the subject of scrutiny by the Hon'ble Gujarat High Court in **Divyaben Prafulchandra Parmar** (supra) & Hon'ble High Court of Madhya Pradesh in **Shri Nilesh Jain (HUF)** (supra), where no irregularities were found. The Ld. CIT(A) relied on the order of the Hon'ble Delhi High Court in **Udit Kalra** (supra) which is dealt with the scrip "Kappac Pharma Ltd". So, said judgment is factually distinguishable.

For both the share script the assessee purchased the shares through the BSE, made payments via banking channels, and submitted contract notes, STT was paid and Demat account details evidencing delivery of shares. The assessee subsequently sold shares through the BSE, with delivery made from the same Demat account. The Ld. AO did not dispute the sale proceeds.

Having furnished the requisite documentary evidence, the onus shifted to the Ld. AO to establish the alleged non-genuine nature of the transaction. However, the Ld. AO failed to provide any corroborative evidence to substantiate the allegations. We are respectfully relied on the order of the Hon'ble **Bombay High Court** in the case of **CIT vs Shyam R Pawar 229 Taxman 256 (Bom)**. The relevant paragraph is reproduced as below: -

*"6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. the present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A two brokers were available and which gave details of the transactions. The contract note is a system gene and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was mere accommodation of cash and enabling it to be converted into accounted or regular payment-discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. Bi Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares bogus/sham. **The details received from Stock Exchange have been relied upon and for the purpose faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus; then such conclusion of the Tribunal cannot be termed as perverse.** The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either."*
(Emphasis supplied)

7. As/a result of the above discussion, we do not find any substance in the contention of Mr. Suresh kumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.”

Considering the discussion of the above paragraphs the respectful reliance in place on the ruling of the Hon’ble Bombay High Court in **Shyam R Pawar** (supra) and **Jamnadevi Agarwal** (supra), as followed by the co-ordinate bench in **Lalitaben Praful Shah** (supra). In our considered view, the addition of Rs. 2,88,73,138/- is unjustified. Accordingly, we set aside the impugned appeal order, and the addition is quashed.

8. In the result, appeal of the assessee **ITA No. 5439/Mum/2024** is allowed.

Order pronounced in the open court on 04th day of December, 2025.

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER
Mumbai,दिनांक/Dated: 04/12/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai