



**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1702/Mum/2021
(Assessment Year :2013-14)**

Smt. Veena Chaturvedi Premises No.1 & 2 4 th Floor, Shreepati Arcade, August Kranti Marg Nana Chowk Mumbai – 400 036	Vs.	DCIT(CC)-2(3) 8 th Floor, Room No.803 Old C.G.O. Building Pratishtha Bhawan M.K. Road Mumbai – 400 020
PAN/GIR No.ADCPC8995K		
(Appellant)	..	(Respondent)

Assessee by	Shri Suchek Anchaliya / Ms. Vanshika
Revenue by	Shri Lieder Panicker
Date of Hearing	16/07/2023
Date of Pronouncement	18/09/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against impugned order dated 19/07/2021 passed by PCIT-Appeals 48, Mumbai for the quantum of assessment passed u/s. 143(3) r.w.s. 147.

2. In various grounds of appeal assessee has challenged; *firstly*, validity of reopening u/s.147, *secondly*, addition of Rs.8,29,88,876/- made u/s.68 of the Act disallowing the claim of long term capital gain claimed as exempt by treating the amount received on sale of shares of M/s. Shreenath Commercial & Finance Ltd. as bogus and non-genuine; and *lastly*, addition of Rs.41,49,444/- on account of alleged unexplained expenditure in the form of commission for taking such bogus accommodation entry.

3. The brief facts and background of the case are that, the assessee is an individual and promoter of Shreepati Group Builders and Developers, who had filed her return of income for A.Y. 2013-14 at Rs.63,51,310/- on 28/03/2015. Later on assessee's case was reopened u/s.147 by issuance of notice u/s.148 dated 19/10/2016, on the ground that information has been received from Directorate of Investigation Wing of Kolkata that assessee availed LTCG by showing investment in penny stock company in the scrip of M/s. Shreenath Commercial & Finance Ltd. which was claimed as exempt by the assessee u/s. 10(38) amounting to Rs. 7,28,88,736/-. The relevant 'reasons' incorporated in the assessment order reads as under:-

"An information has been received from the Directorate of Investigation that an organized racket of generating bogus entries of LTCG in penny stock have been unearthed as a result of investigation carried out throughout the country. As a result of this investigation, 64811 beneficiaries who have taken bogus entries of LTCG amounting to Rs 38,000 crores have been identified. Smt. Veena Chaturvedi having PAN ADCPC8995K

who is assessed in this circle has also availed of such an entry of Rs 8,29,88,876/ The same is reflected in the return of Income for AY 2013-14 by way of claim of exemption amounting to Rs. 7,28,88,736/-under section 10(38) of the Income Tax Act, 1961.

The Directorate of Investigation has made available various confessional statements of entities involved in the transactions for generating such bogus claims of LTCG. After appraisal of these tangible material on record, there is enough reason to believe that not only the claim of exemption under section 10(38) by the assessee is prima facie bogus but by making such bogus claim, the assessee has clearly failed to disclose all material facts for determination of income.

In view of the above facts, I have reason to believe that income chargeable to tax of Rs.7,28,88,736/- has escaped assessment for A.Y. 2013-14 by reason of the failure on the part of the assessee to furnish the correct particulars of facts necessary for assessment within the meaning of section u/s147 of the IT Act, 1961. The case is therefore required to be reopened u/s. 147 and notice u/s.148 of the IT Act may be issued accordingly. The notice is being issued after seeking approval for re-opening from the Addl. CIT-Central, Range-2 Mumbai.”

4. In response to the notice, assessee stated that return filed earlier u/s.139 should be treated as return filed in response to show-cause notice u/s.148 and after receiving the reasons, assessee has raised objections for the reopening before the Id. AO, which has been rejected by him as per the observation made in para 3 of his order. The assessee had purchased 4,97,500 shares of Shreenath Commercial and Finance Limited at face value of Rs. 20/- per share from 10/03/2011 to 11/03/2011 in the open market on the Online Trading Portal of the Stock Exchange, through a registered Broker, M/s RBK Share Broking

Limited. There was a bonus issue in the ratio of 1:1 on 22/03/2011. The assessee thus held 9,95,000 shares of the said company in her Demat account. These 9,95,000 shares were sold after almost 2 years between 16/01/2013 to 21/01/2013 for an aggregate consideration of Rs. 8,29,88,876/-, on which assessee had earned a long-term capital gain of Rs. 7,29,88,736/- claimed as exempt u/s 10(38) of the Act in the return of income for the year under consideration.

5. Before the ld. AO in response to show-cause notice to prove the genuineness of the transaction, assessee had submitted following details and submissions which are summarized hereunder:-

- a. The shares were not acquired through any preferential allotment;
- b. Impugned shares were purchased and sold online on the Recognized Stock Exchange;
- c. The payment of purchase was made and consideration for sale was received through banking channels;
- d. The transaction of sale and purchase of shares was effected through a reputed Registered Broker;
- e. STT was duly paid on the impugned transactions
- f. The assessee or her family has no connection of whatsoever nature with the Promoters of the company, Shreenath Commercial and Finance Limited.

6. Besides this, assessee also submitted following evidences in support of the said transaction:-

- a. Copy of contract note for purchase and sale of shares of the company
- b. Copy of Demat Account reflecting receipt and transfer of shares of the company
- c. Extract of ledger account of Share Broker in assessee's books of accounts
- d. Bank Statement reflecting payment on purchase and receipt of consideration on sale of shares of the company.

7. The ld. AO after detailed discussion has treated the entire long term capital gain of Rs.8,29,88,876/- as bogus and added u/s. 68. First of all, he has referred to the information received from Investigation wing that assessee has taken accommodation entry in the form of bogus LTCG. The sale data as per AIR information about selling of the shares of M/s. Shreenath Commercial & Finance Ltd. mentions that assessee had sold 9,95,000 scrips between 16/01/2013 to 21/01/2013 for Rs. 8,29,88,876/- at a rate ranging between Rs.79/- to Rs.86/- per share. The assessee had purchased shares before the issue of bonus share on 22/03/2011 and the shares started rising from August 2012 to February 2013. According to the AO, this sudden rise of the scrip in a short period without any financial credibility itself shows that it was a penny stock. Thereafter, he has discussed some general outcome of the investigation carried out by the Kolkata Investigation Wing. He has also produced

statement of assessee's husband, Shri Rajendra Chaturvedi, who had bought and sold these shares on behalf of the assessee. The relevant statement has been incorporated in the impugned assessment order. In his statement, Shri Rajendra Chaturvedi have stated that he had purchased and sold shares online through a reputed broker for which already relevant documents have been furnished. He also admitted that he is regular investor but he had not done any due diligence before the purchase of shares of this Company or its performance in the market. He stated that he had purchased the shares on his own decision so as to give him profit and he was not involved with any of the person or entities which were alleged to be providing accommodation entry. Further, he has also stated that he was not aware of any purchase parties who had purchased the shares of M/s. Shree Nath Commercial & Finance Ltd from him and his family members, as the transaction was done through stock exchange.

7.1 The AO had also noted financials of the company M/s. Shree Nath Commercial & Finance Ltd. for the F.Y.2010-11 to 2014-15 and noted that sales turnover was ranging between Rs.14.26 Crores in F.Y.2011-12 and in F.Y.2010-11 it was Rs. 28.75 Crores and in 2012-13 it was Rs.7.66 Crores and the operating profit was in negative. He has also noted about raising of the funds by this Company by way of preferential allotments, etc. He also observed that the prices of the shares have seen phenomenal rise and was constantly traded near the circuit limit

so as to avail maximum price raise without hitting and triggering the circuit limit.

7.2 Another important point noted by the Id. AO that, certain enquiries were also done in the case of exit providers who had purchased the shares of M/s. Shree Nath Commercial & Finance Ltd from the Chaturvedi family. The details of these six entities have been reproduced in the assessment order and one such company which he has drawn adverse inference is with regard to Moryo Industries Ltd and other entities also and he noted that SEBI vide its Interim Order dated 04/12/2014 in the case of Moryo Industries Ltd has noted that M/s. Moryo group who had been providing funds to the various companies buying the shares from the allottees, related to one Shri Giriraj Kishore Agarwal who was the common promoter of various entities including M/s. Shree Nath Commercial & Finance Ltd. These entities have received funds from M/s. Moryo Industries Ltd in the form of investment on loans and advances and these funds have been transferred with other entities providing exchange to the allottees. One important fact which he has relied upon and gathered those information, rather his observations are flowing from the Interim order dated 04/12/2014 of the SEBI, who has banned these exit providers vide its Interim order in the case of M/s. Moryo Industries Ltd.

7.3 Thereafter, AO has again noted that certain share brokers were investigated by the Director of Investigation and few of them have admitted that, besides other scrips they have also provided

accommodation entry of bogus capital gain in the shares of M/s. Shree Nath Commercial & Finance Ltd. The details and the statements of these brokers have been discussed in detail by the AO. Finally, after detailed discussion he has treated the entire quantum of sale as bogus credit and added it as income under Section 68.

8. Apart from that he has also added alleged commission on estimate basis which assessee has given for getting the accommodation entry.

9. In sum and substance, the ld. AO has treated this as bogus transaction based on the following points:-

- The financials of M/s. Shree Nath Commercial & Finance Ltd. were very poor during the period when the shares were purchased by the beneficiaries.
- The business profile shows that the company was not engaged into any substantial activity.
- The business profile shows that the company was not having any future plans which could attract investors from all over India to invest in the company.
- The whole process of rigging value of the shares on the stock market was a prearranged and a managed process so as to for booking accommodation entry of bogus LTCG/STCG in the garb of sale proceeds on sale of shares.
- The shares were rigged on the stock exchange through manipulation of the stock market.

- Various share brokers whose statements have been recorded and have been discussed in the report have confirmed the fact that the shares of M/s. Shree Nath Commercial & Finance Ltd. have been used for providing entry of bogus LTCG/STCG/loss.
- Various Exit Providers have confirmed that they have purchased the shares of M/s. Shree Nath Commercial & Finance Ltd. to provide entry of bogus LTCG.
- **SEBI has passed an order where various exit providers, was held to be indulged in the dubious activity of manipulating the stock price for giving entries to beneficiaries of LTCG/Trading Loss.**
- Transactions of shares were not governed by market factors prevalent at relevant time in such trade, but same were product of design and mutual connivance on part of assessee and the operators.
- Therefore, it is found that the shares of M/s. Shree Nath Commercial & Finance Ltd were used to provide accommodation entry in terms of LTCG to the beneficiaries.

10. The Id. CIT (A) in his very detail order has confirmed the addition by and large incorporating same details and reasoning given by the Id. AO in the assessment order.

11. Before us Id. Counsel, first of all submitted that, this issue is squarely covered by the decision of the Co-ordinate Bench in the case of assessee's husband **Shri Rajendra Chaturvedi and M/s. Pallavi Pandey in ITA No.7124 & 7581/Mum/2019**. The

facts and circumstances of the assessee's case and the said case were identical, which has been stated to be as under:-

- a. In both the cases the issue under consideration was addition u/s 68 of the Act of sale proceeds of shares of Shreenath Commercial and Finance Limited, by alleging long term capital gain claimed as exempt u/s 10(38) of the Act on sale of said shares as bogus.
- b. The decision to purchase and sell the shares was taken by Mr. Rajendra Chaturvedi, husband of the assessee, on behalf of all the members of his family.
- c. The shares held by the Chaturvedi Family were purchased during March, 2011 and sold during period beginning from August, 2012 to February, 2013 on the recognised stock exchange through reputed brokers.
- d. In both the cases, the genuineness of the impugned transactions was substantiated by documentary evidences such as contract notes for purchase and sale of shares, Demat Account, extract of ledger account of share broker, bank statement etc.
- e. The contentions of the Ld. A.O. and consequent findings of the Ld. A.O. as well as Ld. CIT (A) were exactly similar in both the cases.

12. At the time of hearing we had asked the ld. Counsel to give point wise rebuttal of AO's allegation and contention vis-à-vis documents and the evidences furnished before the authorities

below and also before us. In this regard he had submitted following written submissions:-

“Assessee not acquainted with Share Market and Price movement of scrip not backed by financial performance

Ld. A.O.'s contention:

- In para 2.1 of the assessment order, the Ld. A.O. has alleged that there was no substantial trading activity or investment in shares of listed companies. The Ld. A.O. further alleged that neither did the assessee or any member of her family knew any details about alleged penny stock nor they tried to verify the financials of the company or obtain knowledge about vision of the company which is allegedly important for the growth of the business. (Page 10 of the Assessment Order)*
- In para 2.2 of the assessment order, the Ld. A.O. has discussed about the financial performance of Shreenath Commercial and Finance Limited which allegedly established that the price of the shares of the said company were manufactured to provide bogus long term capital gain to beneficiaries. (Pages 17 through 23 of the Assessment Order)*
- The Ld. A.O. had reproduced the profit and loss account, balance sheet, and position as per return of income of Shreenath Commercial and Finance Limited from the period beginning from F.Y. 2010-11 to FY 2014-15 (Pages 18 through 20 of the Assessment Order).*
- The Ld. A.O. has also reproduced certain graphs depicting the price movement of the shares of Shreenath Commercial and Finance Limited. The Ld. A.O. has also observed that the said company had raised funds by way of preferential allotment in two rounds and that the graphs, depict that phenomenal price rise has occurred in the shares of the said company after the date of preferential allotment (Pages 20 through 22 of the Assessment Order).*

- *The Ld. A.O. has further stated that the shares were issued on preferential basis on F-Y. 2010-11 and immediately they were split and prices were rigged from Rs. 25.4/- on 01.04.2011 to approximately Rs. 500/- (Page 21 of the Assessment Order)*
- *On the above basis the Ld. A.O. has alleged that the financials, business profile, trading volume and correlation with SENSEX on the stock exchange, did not justify the increase in the share price of the company and that the share prices were manipulated and rigged by the operators.*

[Ld. CIT(A)'s findings on this aspect, which are identical to those of Ld. A.O.'s, are contained in para 5.8 to para 5.13 on pages 23 through 29 of Ld. CIT(A)'s Order]

Assessee's Submission:

- *In his statement recorded u/s 131 of the Act on 04.05.2016 during the course of impugned assessment proceedings, Shri Rajendra Chaturvedi, husband of the appellant, in response to question no. 10 had stated that he had some knowledge about trading of shares and that he handled the trading/investment in shares/securities on behalf of his family members, including his wife, the appellant, as they have no knowledge about trading in shares (Page 10 of the Assessment Order).*
- *Accordingly, Shri Rajendra Chaturvedi, has made investments in almost 50+ scrips on behalf of himself and his family members.*
- *Therefore, the investment in shares of Shreenath Commercial and Finance Limited was made by the husband of the appellant on her behalf and this was a business decision as stated in response to question no. 17 by the husband of the appellant (Page 11 of the Assessment Order).*
- *In the present case, the assessee had purchased 4,97,500 equity shares of Shreenath Commercial and Finance Limited at an average rate of Rs. 20.02/- per share from 10.03.2011 to 11.03.2011 at prevailing market prices. These shares were purchased ONLINE on the Recognised Stock Exchange through*

reputed registered share broker i.e. RBK Share Broking Limited. These shares were purchased when the financial performance of the said company was good and the profits had substantially increased as compared to the previous year as shown in the table produced by the Ld. A.O. in the assessment order, depicting the returned income of the said company from A.Y. 2010- 11 to A.Y. 2015-16 (Page 20 of the Assessment Order).

- This was NOT a case of preferential allotment of shares where the fundamentals of the financials of the company, the future plans of the company, the relationship with the directors/promoters of the company play a vital role in making the investment decision.*
- Neither the assessee nor any member of her family had any connection, business or otherwise, with the Promoters of the company, Shreenath Commercial and Finance Limited. The shares were purchased in the regular course of investment strategy based on market movement and low risk involved, being a low-price share.*
- Thereafter, the assessee received bonus shares in the ration of 1:1 on 22.03.2011, increasing the number of impugned shares held by the assessee to 9,95,000/- shares. All the impugned shares were sold by the assessee on 16.01 2013, 18.01 2013 and 21.01.2013 at average rates of Rs. 86/-, Rs. 81 and Rs. 79 respectively. The shares were sold ONLINE on the Recognised Stock Exchange through reputed registered share broker i.e. RBK Share Broking Limited. (Para 4 on Page 33 of the Assessment Order)*
- In his statement recorded u/s 131 of the Act, in response to question no. 22, it was also submitted by Shri Rajendra Chaturvedi that the stock of the company was not monitored periodically either by him or by his family members, but it was only when funds were required that the price of the scrip was checked and the decision to sell the scrip was taken. (Page 11 to 12 of the Assessment Order)*
- Accordingly, the assessee's shares of Shreenath Commercial and Finance Limited were sold on 16.01.2013, 18.01.2013 and*

21.01.2013 at average rates of Rs. 86/-, Rs. 81 and Rs. 791- respectively through recognised stock exchange at prevailing market prices. The shares of Shreenath Commercial and Finance Limited held by other members of the assessee's family were also sold during a similar period

- Therefore, the decision of purchase and sale of shares of Shreenath Commercial and Finance Limited was purely a business decision for assessee and her family, based on factors such as price movement of the scrip, low risk involved, market information, etc, and not only on the basis of the financial performance of the said company
- Moreover, nowhere in his statement recorded u/s 131 of the Act, has Shri Rajendra Chaturvedi ever admitted to being involved in any alleged racket of rigging or manipulation of prices of any shares or providing/obtaining accommodation entries of bogus LTCG/Loss or any other nature,
- In the case of Swati Luthra vs. ITO [2020] 115 taxmann.com 167 (Delhi - Trib.). [Page 126 of the Legal Paperbook (part 2)] the following was observed by the Hon'ble ITAT, Delhi, "13. In the instant case, the Assessing Officer himself observed that the movement in price of shares of M/s Esteem Bio and M/s. Turbotech were without any backing of financial performance of the said companies. In our considered view, the above factor at best was a pointer or cause for careful scrutiny of the transaction by the Assessing Officer but from it cannot be concluded that transactions were sham. It is a matter of common knowledge that prices of shares in the share market depends upon innumerable factors and perception of the investor and not alone on the financial performance of the company"
- Moreover, as stated in Ld. A.O.'s contentions above, as per the Ld. A.O. the prices of the impugned shares were rigged and went upto Rs. 500/- per share. If it is hypothesized that the assessee or her family, were involved in any alleged racket of providing/obtaining accommodation entries of bogus LTCG/Loss or any other nature, then it would have been more beneficial to the assessee to sell the impugned shares at the price of Rs. 500/-. However, as stated above, the assessee had sold the impugned

shares at average rates of Rs. 86/-, Rs. 81 and Rs. 79/- during January, 2013, which were the rates prevailing in the market at that point of time. Therefore, by alleging that the prices of the impugned shares were rigged and reached upto Rs. 500/-, the Ld. A.O. is contradicting his own allegation of assessee's alleged involvement in racket of price manipulation and providing/obtaining accommodation entries thereof.

- Hence, the allegations of the Ld. A.O. that the impugned company's shares were operated and that the financial performance of the said company do not support price movement of the impugned shares has no bearing on the assessee.

B. Role of alleged exit providers to Chaturvedi family and SEBI Order

Ld. A.O.'s Contention

- In para 2.3 of the assessment order, the Ld. A.O. has discussed about the role of alleged exit providers for shares of Shreenath Commercial and Finance Limited to the assessee and her family. (Pages 23 through 26 of the Assessment Order)
- The Ld. A.O. has produced a table containing six entries with details of alleged exit providers who have mostly purchased shares of Shreenath Commercial and Finance Limited from the Chaturvedi Family (Pages 23 and 24 of the Assessment Order).
- The Ld. A.O. has further mentioned an order passed by SEBI on 04.12.2014 in the case of Moryo Industries Limited vide order no. WTM/RKA/140/ISD/2014, one of the six alleged exit providers of the impugned shares for the Chaturvedi family. On the basis of the said order, the Ld. A.O. has endeavoured to depict a nexus between Moryo Industries Limited, Essar India Limited, Rupak Developers Private Limited, Insight Multitrading Private Limited, (4 of the 6 alleged exit providers of the impugned shares for the Chaturvedi family) and Shreenath Commercial and Finance Limited, as all the concerns allegedly have a common promoter i.e. Mr. Giriraj Kishore Agarwal (Page 25 of the Assessment Order)

- *The Ld. A.O. had reiterated that on verification of trading details of the scrip M/s Shreenath Commercial and Finance Limited, it is seen that the 6 alleged exit providers (refer table on page 23 of the Assessment Order) have purchased shares from assessee and her family to provide accommodation entry in terms of LTCG and that the said alleged exit providers were banned in the order passed by SEBI on 04.12.2014 in the case of Moryo Industries Limited.*

Ld. CIT(A)'s findings on this aspect, which are identical to those of Ld. A.O.'s, are contained in para 5.14 to para 5.20 on pages 29 through 34 of Ld. CIT(A)'s Order]

Assessee's Submission:

- *The appellant had purchased and sold the impugned shares through the recognised stock exchange through reputed registered brokers, wherein the purchasers and sellers are not aware of the other's identities. Accordingly, there was no way for the appellant to know the persons/entities to whom the impugned shares of Shreenath Commercial and Finance Limited were sold.*
- *The Ld. A.O. has merely made a 'guess work regarding the identity of persons/entities who allegedly could have purchased the impugned shares sold by the appellant. Such conjectures and theories of the Ld. A.O. are not backed by any cogent reason or tangible material.*
- *The appellant or her family neither has any transactions nor any connection, business or otherwise, with the 6 alleged exit providers mentioned by the Ld. A.O. who had supposedly purchased the impugned shares sold by the appellant and her family to facilitate the passage of benefit of alleged bogus LTCG. The Ld. A.O. has not brought on record any material evidence or any cash trail to link the assessee with alleged exit providers.*
- *The SEBI order relied upon by the Ld. A.O in the case of Moryo Industries Limited, refers to the Interim Order dated 04.12.2014 vide Order No. WTM/RKA/140/ISD/2014, wherein a preliminary investigation was undertaken on the dealings in the scrip of Moryo Industries Limited on noticing huge rise in the traded volumes and*

price of the said scrip on the Bombay Stock Exchange from 15th January, 2013 to 31 August, 2014.

- In the above-mentioned Interim SEBI Order, a tenuous connection was drawn between 91 persons/entities comprising of Moryo Industries Limited, Promoters, Directors and Preferential Allottees of Moryo Industries Limited and alleged entities of Moryo Group and on this basis, the said 91 persons/entities were temporarily restrained from buying, selling or dealing in the securities market (Page 16 through 19 of Interim SEBI Order enclosed with the Assessment Order)*
- It is appellant's submission that the SEBI Order relied upon by the Ld. A.O., was in respect of scrip of Moryo Industries Limited and had no connection with the scrip of Shreenath Commercial and Finance Limited. The said list of 91 persons/entities do not contain the name of either Shreenath Commercial and Finance Limited or the appellant or any members of her family. the asses 0.2 & 3*
- Moreover, the said Interim SEBI Order dated 04.12.2014, has been later revoked vide Final Order dated 21 September, 2017 vide Order No. SEBI/WTM/MPB/EFD-1-DRA-IV/32/2017 by holding that there were no adverse findings against the impugned persons/entities with respect to their role in the price manipulation in the scrip of Moryo Industries Limited. [Pages 180 through 189 of the Legal Paperbook (Part 2)]*
- In this regard, it is the appellant's submission that the impugned assessment order was passed on 24.11.2017 i.e. after the above mentioned Final SEBI Order was passed on 21.09.2017 revoking the Interim SEBI Order on which the Ld. A.O. had placed reliance. However, the Ld. A.O. conveniently chose to ignore the same.*
- Further, there has been no enquiry either by the SEBI or by any other Government Agency in the case of the appellant, her family or Shreenath Commercial and Finance Limited.*

- *As stated in Ld. A.O.'s contention, he had also endeavoured to depict a connection between Shreenath Commercial and Finance Limited and alleged exit providers, through an alleged common promoter/director, Mr. Giriraj Kishore Agarwal. The appellant submits, that as per the data available on MCA, the above-mentioned person i.e. Mr. Giriraj Kishore Agarwal, had become the director of Shreenath Commercial and Finance Limited only on 10.11.2016 i.e. after the period when the assessee had undertaken impugned transactions of purchase and sale of the said company (from March, 2011 to January, 2013). Therefore, the alleged common-link i.e. Mr. Giriraj Kishore Agarwal was not a director of Shreenath Commercial and Finance Limited during the period when the trading in the impugned shares was done by the assessee.*
- *Further, the alleged common-link Mr. Giriraj Agarwal was discharged by the Final SEBI Order (supra), dated 21.09.2017. Therefore, tenuous connection made by the Ld. A.O. to link Shreenath Commercial and Finance Limited with Moryo Industries Limited and other alleged exit provider through Mr. Giriraj Agarwal fell flat and nothing has been brought on record to prove the role/involvement of any alleged exit provider.*
- *Therefore, it is abundantly clear that the Ld. A.O. has at best made some dubious connections between some random entities and Shreenath Commercial and Finance Limited, by placing reliance on a subsequently revoked SEBI Order investigating price manipulation in a scrip that had no connection with the appellant or her family, and on the said basis hypothesized a modus operandi allegedly adopted by said random entities to allegedly act as exit providers for the scrip of Shreenath Commercial and Finance Limited in connivance with alleged beneficiaries of alleged accommodation entries, including the appellant and members of her family. However, this is merely unfounded conjectures and theories of the Ld. A.O. not backed by any cogent reason or tangible evidence. Therefore, Ld. A.O. had failed to show how the appellant or her family members were involved in the concocted modus operandi of alleged exit providers to obtain alleged accommodation entry.*

C. Role of share brokers

Ld. A.O.'s Contention

- *In para 2.3 of the assessment order, the Ld. A.O. has discussed about the role of share brokers on whom survey actions were conducted by the DIT, Kolkata and who had allegedly accepted their role in the entire scheme of providing accommodation entry of bogus LTCG (Pages 26 through 32 of the Assessment Order)*
- *The Ld. A.O. had also reproduced the relevant extracts of the statements of 4 share brokers who had stated that they had facilitated various paper/bogus entities to trade in shares of Shreenath Commercial and Finance Limited for providing accommodation entry of bogus LTCG. These statements were provided to the assessee and also confronted to her husband Mr. Rajendra Chaturvedi*
- *The Ld. A.O. further stated that as per the statement of one Mr. Ritesh Jain, it is alleged that M/s. Manu Stock Broking is a broking house for some of the exit providers related to sale of shares by Chaturvedi Family (Page 30 of the Assessment Order).*

[Ld. CIT(A)'s findings on this aspect, which are identical to those of Ld. A.O.'s, are contained in para 5.21 on pages 34 through 40 of Ld. CIT(A)'s Order]

Assessee's Submission:

- *The assessee submits that the 4 alleged share brokers whose statements were provided to the assessee by the Ld, A.O., are not known to the assessee or her family respect o*
- *The assessee and her family have entered into transaction of purchase and sale of shares through the following reputed registered brokers*
- *Kotak Securities Limited*
- *Geojit BNP Paribas Limited*
- *RBK Share Broking Limited*

- Further, on perusal of the statements u/s 131 of the Act of the 4 brokers provided to the assessee, it is observed that 3 of the 4 brokers have simply admitted to trading in shares of Shreenath Commercial and Finance Limited. However, in the statement of Shri Ritesh Jain, who is alleged to be the broker of some exit providers related to sale of shares by Chaturvedi Family, there is no mention of scrip of Shreenath Commercial and Finance Limited itself. Copy of Statement of Ritesh Jain is annexed to the Assessment Order (Page No. 30 of the Assessment Order).
- Further, in the statements w/s 131 of the Act of all the 4 share brokers, the names of 6 exit providers, who had allegedly bought the shares of Shreenath Commercial and Finance Limited sold by the Chaturvedi Family, finds no mention when the said brokers were asked about the paper/bogus companies through which they have facilitated provision of accommodation entries of bogus LTCG.
- At the time of recording of his statement u/s 131 of the Act, Mr. Rajendra Chaturvedi was confronted with the statements u/s 131 of the Act of the 4 alleged share brokers. On perusal of the statement u/s 131 of the Act, it can be seen that nowhere in the said statement has it been admitted by Mr. Rajendra Chaturvedi that he or any member of his family has knowledge or any connection with any of the 4 alleged share brokers or any alleged activity of the 4 alleged share brokers. The Ld. A.O. has merely made a weak attempt to link random brokers to the assessee without any cogent proof.
- Moreover, there is no mention of the assessee or any member of her family in the statements rel upon by the Ld. A.O. None of the brokers have adversely commented about the assessee's family of M/s Shreenath Commercial and Finance Ltd specifically, Therefore, there is no specific material, statement or evidence, wherein the assessee or her family members have been alleged to be involved in any modus operandi of obtaining alleged bogus LTCG. The inferences drawn by the 1. A.O. are on the basis of general statements which is bad in law and has no evidentiary value.

D. Enquiries from other alleged exit providers

Ld. A.O. Contention

- *In para 4.10 and para 4.11 of the assessment order, the Ld. A.O. has discussed about enquiries carried out by issuing notices u/s 133(6) of the Act on other alleged exit providers, only a few whom have replied and submitted the requisite details. (Pages 39 through 40 of the Assessment Order)*
- *On verification of financial statements submitted by a few of the other alleged exit providers, the Ld. A.O. concluded that they have offered meagre income for taxation, have no substantial fixed or current assets, do not have a major employee base, and accordingly, these are paper/bogus entities which are not doing any real business and have been used for providing accommodation entries*

[Ld. CIT(A)'s findings on this aspect, which are identical to those of Ld. A.O.'s, are contained in para 5.25 and para 5.26 on pages 45 through 46 of the Ld. CIT(A)'s Order]

Assessee's Submission:

- *The persons/entities to whom notice u/s 133(6) of the Act were issued are not known to the assessee or members of her family. The assessee has not entered into any kind of transaction with the said parties. The Ld. A.O. himself has not been able to establish the nexus between the parties and the*
- *In the assessment order itself, the Ld. A.O. has admitted that most of the parties have replied that they DO NOT have any transaction with the assessee (Page 39 of the Assessment Order),*
- *The Ld. A.O. has analysed financial statements of persons who have replied to the notice u/s 133(6) of the Act and said basis alleged them to be paper/bogus entities used for providing accommodation entries. However, the Ld. A.O. has neither provided as to how these entities are connected to the scrip of Shreenath Commercial and Finance Limited nor shown how they are involved in the alleged modus operandi adopted to provide*

accommodation entry of bogus LTCG to alleged beneficiaries including the assessee and members of her family, ngs in

- *Accordingly, there are no adverse findings in respect of enquiries with alleged exit providers in relation to impugned transactions of the assessee.”*

13. Before us, the ld. DR after relying upon the orders of the ld. AO and ld. CIT (A) pointing out the various observations and the finding of the fact arrived by both the authorities also submitted a report of the ld. AO, which is more less observation and allegation made by the AO. The content of the report and the counter reply of the assessee which has been submitted before us, is as under:-

The assessee is in receipt of 3 Reports of the Ld. A.O. which were submitted by the Ld. DR to the Hon'ble Bench.

- *The first report, dated 02.11.2022, (Document ID: No ACIT-CC-8(2)/Factual Report/2022-23), wherein the facts of the assessee's case, enquiries carried out by Ld. A.O. during the course of assessment proceeding by issuing notices u/s 133(6) of the Act to various other alleged exit providers, statement of Mr. Rajendra Chaturvedi (husband of assessee) u/s 131 of the Act, Interim Order of SEBI, dated 04.12.2014, in the case of Moryo Industries Limited were discussed. All these aspects of the case had already been detailed in the impugned assessment order and the assessee's submissions regarding the same have been explained in part (II) of a assessee's submissions and contentions of this submission.*
- *The above report, the Order of the Coordinate Bench of Hon'ble ITAT, Mumbai, in the case of Rajendra Chaturvedi (husband of assessee) has also been mentioned. The assessee's submissions regarding this have been explained in part (1) of a assessee's submissions and contentions of this submission.*

- *The second report, dated 12.01.2023, (Document ID: No.Addl.CIT/CR-8/Factual Report/ITAT/2022-23) and third report, dated 11.01.2023, (Document ID No. DCIT-CC- 8(2)/Factual Report/VC/2022-23), discuss the same issue i.e. which entry provider sold the shares of Shreenath Commercial and Finance Limited to Veena Chaturvedi. Accordingly, in respect of this aspect, the second report is taken as the base for the purpose of this submission.*
- *The second report makes a reference to the hearing conducted on 14.12.2022, wherein the Hon'ble Bench had requested/directed the Ld. DR to submit a factual report based on evidences/documents available with the AO regarding any information called for from the BSE or other Stock Exchange to arrive at the conclusion that the assessee had purchased penny stock from entry providers and sold the same to exit providers to avail the benefit of bogus LTCG.*
- *In para 6 of the second report, names of 9 persons have been reproduced, who have allegedly sold shares of Shreenath Commercial and Finance Limited to Veena Chaturvedi on the basis of raw trading data of Shreenath Commercial and Finance Limited.*
- *In subsequent para 7 of the second report, it has been stated that the need for enquiries by Assessing Officer during the course of assessment proceedings did not arise, as the enquiries were already made with BSE regarding raw trading data of identified penny stocks by DIT, Kolkata and that the said findings have been elaborately discussed in the Assessment Order*
- *In this regard the assessee submits the following:*
 - a The impugned shares were purchased by the assessee ONLINE on Recognised Stock Exchange through reputed Registered Brokers. In this mechanism of trading, the buyers and sellers are not aware of each other's identities. Accordingly, the assessee is not aware of the identity of the person(s) from whom she has purchased the impugned shares*

b. The 9 names mentioned in the said second report were not known to the assessee or members of her family. Neither the assessee nor her family members, have any connection, business or otherwise, with the any of the 9 persons mentioned in the second report.

c. In the second report it has been stated that the findings of DIT, Kolkata regarding raw trading data of entry providers have been elaborately discussed in the Assessment Order. However, there is no such discussion in the Assessment Order. There is neither any discussion regarding entry providers nor any mention of the alleged 9 persons who have sold the impugned shares to the assessee.

d. Further, there is not a single mention of the said 9 persons in any of the material confronted to the assessee and being relied upon by the Ld. A.O. i.e Interim Order of SEBI dated 04.12.2014 in the case of Moryo Industries Limited, the statements of 4 shares brokers, etc.

e. Moreover, there is no allegation or enquiry on the said 9 persons of either being involved in the manipulation or rigging of prices of the impugned shares or being involved in racket of providing alleged accommodation entry of bogus LTCG.

f. The Ld. A.O. has merely made a bald statement that the assessee had purchased the impugned shares from the 9 persons without any shred of evidence.

g. Without prejudice to the above submissions, even it is accepted that the assessee had purchased the impugned shares from the 9 persons, the Ld. A.O. has not shown as to how this alleged finding of the Ld. A.O. could lead to the conclusion that the assessee is a beneficiary of accommodation entry of bogus LTCG, as there is neither any information nor any evidence of the involvement of the 9 persons in any scheme of providing such accommodation entries.

- In para 8 of the second report, the Ld. A.O. has made a reference to the decision of the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj [ITAT/6/2022]. The decision in the

said case takes a different view from that of the other High Courts. It casts the onus of proving the genuineness of the transaction on the assessee. However, with utmost respect it is submitted that the decision in the case of Swati Bajaj should not be followed for the following reasons:

a. There are several decisions of the Hon'ble Jurisdictional High Court of Bombay, which are in favour of the assessee in respect of the issue under consideration. It is a well settled position in law that the decision of the Hon'ble Jurisdictional High Court would have higher precedence value than the decision of the Hon'ble Non-Jurisdictional High Court on the Tribunal. Reliance is placed on the decision of the Hon'ble ITAT, Mumbai in the case of Smt. Priyanka Miglani and others (ITA No. 2531/Mum/2021). [Para 5.23 from Pages 167 to 168 of the Legal Paperbook (Part 2)]. The relevant operative extract is reproduced as under:

"5.23. We find that the Id. DR before us vehemently relied on the recent decision of Hon'ble Calcutta High Court in the case of PCIT vs Swati Bajaj reported in 139 taxmann.com 352 (Cal) which is an elaborate decision rendered after considering various decisions of various High Courts on the subject. In the said decision, it was held that assessee had to establish the genuineness of rise of price of shares within a short period of time that too when general market trend was recessive. But we find that when there are several decisions of Hon'ble Jurisdictional High Court as stated supra are already in favour of the assessee, the same would prevail over this tribunal and this tribunal need not take cognizance of the Hon'ble Non-Jurisdictional High Court. The law is very well settled by the Hon'ble Supreme Court in the case of Union of India vs Kamalakshi Finance Corporation Ltd reported in 55 ELT 43 (1991) that the decision of Hon'ble Jurisdictional High Court would have higher precedence value than the decision of Hon'ble Non-Jurisdictional High Court on the Tribunal."

b. The said decision has not noticed the decision of the Hon'ble Jurisdictional High Court of Bombay in Shyam Pawar 229 Taxmann 256 [Para 6 and 7 from Pages 3 to 4 of Legal Paperbook], as well as the decision of the Hon'ble High Court of Rajasthan in Sumitra Devi 49 Taxmann 37 [Para 11 and 12 from

Pages 8 to 9 of Legal Paperbook], which have dealt with the burden of proof on the assessee and the revenue and concluded that without establishing by way of cogent evidence as to how the assessee was in collusion with the alleged operators, transactions on recognised stock exchanges proved with third party documents could not be faulted.

c. The said decision calls upon the assess to establish the rationality of a steep rise or fall in the price of shares. Such a rise and fall is a function of a large number of factors over which the assessee neither has control nor is privy to. To expect an assessee to explain the cause for a rise and fall of shares is casting a burden which is virtually impossible to discharge.

d. Once the assessee through submission of documents establishes that the transaction is fully supported by third-party evidence, unless the revenue is able to bring on record some document or evidence to establish that the assessee is connected with any wrongdoing/ collusion, the documents submitted cannot be ignored on the basis of suspicion and surmises.

c. Reliance is also placed on the decision of Hon'ble ITAT, Mumbai in the case of Nishit Rameshchandra Shah (ITA No. 116/Mum/2022), wherein the decision in the case of Swati Bajaj (supra) has been distinguished. [Page 130 to 137 of the Legal Paperbook (Part 2)]

f Without prejudice to the above, reliance is also placed on a very recent decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs Indravadan Jain, HUF Income Tax Appeal No. 454 of 20181, wherein the deletion of capital gains on alleged penny stock u/s 68 of the Act was upheld by the Hon'ble Jurisdictional High Court. When there are conflicting judgements of various High Courts, the Hon'ble Supreme Court in the case of Vegetable Products 188 ITR 192 (SC), had held that the construction that is favourable to the assessee should be adopted. Hence, on the basis of this principle, it is our humble submission that the decision of the Hon'ble Calcutta High Court rendered against the assessee, may not be followed in view of the favourable decision of the Hon'ble Jurisdictional High Court of Bombay.

14. During the hearing we had inquired from the Ld. Counsel, *firstly*, the status of the company; *secondly*, whether the trading of the company was ever banned; and *lastly*; whether this company's share is still traded in stock exchange. Ld. Counsel first of all submitted that its trading was never banned in the stock exchange by the SEBI and also brought on record that it is still listed and is still being traded albeit in different name. The name of the company was later changed to, '**Proaim Enterprises Limited**', which was traded in the Bombay Stock Exchange till August 2020 and thereafter, on 29/07/2020, the Hon'ble National Company Law Tribunal ('the NCLT'), vide its order (Petition No. CP (CAA)/758/MB.II/2019 connected with CA(CAA)/1795/MB.II/2019) had approved the scheme of amalgamation of 'Proaim Enterprises (formerly Shreenath Commercial and Finance Limited), Axon Ventures Limited, Rockon Enterprises (the transferor companies)' Limited with '**Banas Finance Limited**' ('the transferee company') with appointed date fixed as 01/04/2018 and direction for dissolving the transferor companies without winding up. Further, as per Newspaper clipping in Financial Express (English Daily) on 26.08.2020, the notice was given to Shareholders of Proaim Enterprises Limited (formerly Shreenath Commercial and Finance Limited), that 4th September, 2020 is fixed as the Record Date, following the scheme of effectiveness of the Scheme, for the purpose of determining the shares of the company who shall be entitled to receive shares of Banas Finance Limited in

lieu of the shares of Proaim Enterprises Limited (formerly Shreenath Commercial and Finance Limited).

15. It was informed that, currently, Banas Finance Limited is listed on the Bombay Stock Exchange with security code 509053, and is actively traded on the said stock exchange. As per the data available on **www.besindia.com**, as on 02/08/2023, a total deliverable quantity of 56,032 shares of the said scrip, i.e., 'Banas Finance Limited', has been traded on the said date. Accordingly, it was submitted that the shares of are not only listed on the Bombay Stock Exchange but also actively traded.

16. Lastly, with regard to conclusion drawn by the ld. AO and the ld. CIT(A), he has given his submissions in the following manner:-

Conclusion of the AO and the ld. CIT(A)	Assessee's Submission
The financials of Shreenath Commercial & Finance Ltd were very poor during the period when the shares were purchased by the beneficiaries	<u>Assessee not acquainted with Sahrs Market and Price movement of scrip not backed by financial performance'</u> above, which are summarised as under:
The business profile shows that the company was not engaged in to any substantial activity	1. The shares were purchased in March, 2011 when financial performance of the company was good and profits had increased substantially as compared to previous year.
The business profile shows that the company was not	2. The shares held by the

<p>having any future plans which could attract investors from all over India to invest in the company</p>	<p>assessee were sold in January, 2013 when there was requirement of funds. The shares held by her family were sold during similar period.</p> <p>3. The decision to purchase and sell the impugned shares was taken by assessee's husband, on behalf of the entire family, which was a purely business decision, based on factors such as price movement of the scrip, low risk involved, market information, etc. and not only on the basis of the financial performance of the said company.</p> <p>4. The impugned shares were purchased from the market based on movement of the scrip. This is NOT a case of preferential allotment of shares where the future plans and relationship with promoters plays a vital role to decide the investment decision.</p>
<p>Various Share Brokers whose statements have been recorded and have been discussed in the report have confirmed the fact that the shares of Shreenath Commercial & Finance Ltd have been used for providing entry of bogus LTCG/STCG/Loss</p>	<p><u>Role of Share Brokers'</u> above, which are summarised as under:</p> <p>1. The assessee had effected the sale and purchase of impugned shares through RBK Share Broking Limited and not through share brokers mentioned in Assessment Order</p> <p>2. The assessee or her family have no connection with the</p>

	<p>mentioned share brokers</p> <p>3. None of the share brokers have mentioned the name of assessee or her any member of her family or alleged exit providers of Chaturvedi Family</p> <p>4. The share broker, Ritesh Jain, who was specifically alleged to be share broker of exit providers of Chaturvedi Family has not even admitted to dealing in scrip of Shreenath Commercial and Finance Limited.</p> <p>5. A generalised statement cannot be applied to the assessee without any evidence.</p>
<p>Various Exit Providers have confirmed that they have purchased the shares of Shreenath Commercial & Finance Limited to provide entry of bogus LTCG</p>	<p><u>Role of Alleged Exit providers to Chaturvedi Family and SEBI Order'</u> above, which are summarised as under:</p> <p>1. The shares were purchased and sold ONLINE on Recognised Stock Exchange at prevailing market prices through reputed registered brokers.</p> <p>2. The 6 alleged exit providers mentioned by the Ld. A.O. are not known the assessee or her family. None of the alleged exit providers have named either the assessee or her any member of her family.</p> <p>3. The Interim SEBI Order relied upon by the Ld. A.O. is in respect of some other scrip i.e. Moryo Industries Limited</p>
<p>SEBI has passed an order where various exit providers were held to be indulged in the dubious activity of manipulating the stock price for giving entries to beneficiaries of LTCG/Trading Loss</p>	

	<p>and not in respect of the scrip under consideration.</p> <p>4. There is no mention of the assessee or her family in the said Interim SEBI Order.</p> <p>5. The Interim SEBI Order relied upon the Ld. A.O. has been revoked.</p> <p>6. Even any wrong doing by the alleged exit providers on the shares of Shreenath Commercial and Finance Limited has no bearing on the assessee as the Ld. A.O. has not provided any corroborative evidence in the form of cash trail or specific statement naming the assessee.</p>
<p>The whole process of rigging value of shares on the stock market was a prearranged and a managed process for booking accommodation entry of bogus LTCG/STCG in garb of sale proceeds on sale of shares</p>	<p>1. There was no preferential allotment of shares in the assessee's case.</p> <p>2. The shares were purchased and sold on recognised stock exchange at prevailing market prices through reputed brokers.</p>
<p>The shares were rigged on the stock exchange through manipulation of the stock market</p>	<p>3. Payment for purchase and sale were made /received through banking channels</p>
<p>Transactions of shares were not governed by market factors prevalent at relevant time in such trade, but same were product of design and mutual connivance on part of assessee and operators</p>	<p>4. The assessee had provided all documentary evidences during course of assessment and appellate proceedings.</p> <p>5. There has been no enquiry by SEBI or any other agency on the assessee or her family members.</p>

	<p>6. The assessee or her family had no connection with either the share brokers or alleged exit providers mentioned by the Ld. A.O.</p> <p>7. There is no mention of assessee's name in any material or statements confronted by the Ld. A.O. to assessee.</p> <p>8. Neither the assessee nor her family members are aware of any alleged modus operandi adopted for rigging and manipulation of prices of impugned shares for purpose of providing accommodation entries of bogus LTCG/Loss.</p> <p>9. There is no allegation regarding involvement of the assessee in any alleged racket.</p>
--	--

17. Thereafter, Ld. Counsel relied upon the various judgments of the Tribunal as well as the judgments of the Hon'ble Bombay High /Court:-

Sr. No.	Case Name
1.	PCIT vs. Indravadan Jain, HUF Income Tax Appeal No. 454 of 2018
2	PCIT vs. Ziauddin A Siddique Income Tax Appeal No. 2012 of 2017
3	CIT vs Smt Jamnadevi Agarwal ITANos40to42of2010
4	CIT vs. Shyam Pawar 54 taxmann.com 108 (Bom)

DECISION

18. We have heard the rival submissions and perused the relevant finding given in the impugned orders as well as material referred to before us. It is an undisputed fact that assessee has purchased 4,97,500 shares of Shreenath Commercial and Finance Limited from 10/03/2011 to 11/03/2011 in the open market on the Online Trading Portal of the Stock Exchange through registered Broker, RBK Share Broking Limited. One important fact to be noted here that in so far as RBK Share Broking Ltd. is concerned, nothing adverse has been found nor there is an enquiry that the said broker has provided any kind of accommodation entry or was involved in any such dubious transaction. On 22/03/2011 bonus shares were issued at the ratio of 1:1 and accordingly, assessee had held that 9,95,000 shares were sold after almost 2 years from 16/01/2013 to 21/01/2013 for sums aggregating to Rs. 8,29,88,876/-, on which assessee had earned a long-term capital gain of Rs. 7,29,88,736/- which claimed as exempt. Apart from that, all the documentary evidences in the form of contract note for purchase and sale of shares; copy of Demat Account reflecting receipt and transfer of shares; ledger account of Share Broker in assessee's books of accounts and bank statement reflecting payment on purchase and receipt of consideration on sale of shares were filed. We have already noted the various contentions raised by the Assessing Officer and his observations and the counter submissions made by the assessee before the authorities below as well as before us. From the perusal of the statement of Shri

Rajendra Chaturvedi, husband of the assessee, it is noted that, he has stated that he had made investments in more than 50 scrips on behalf of himself and his family members and the investment in the shares of M/s. Shreenath Commercial & Finance Ltd. was made by him only on behalf his wife, the assessee. The average purchase rate of the shares was Rs.20/- per share and average sale rate was between Rs.79/- to Rs.86/- per share. He has also stated that the entire shares of purchases through stock exchange by online through registered broker and the shares were purchased when the financial condition of the said company was good and the profits were substantially increased including the turnover which was in several crores. He has also stated that the assessee nor any of the family member had any connection or business with the promoters of the company or any kind of alleged exit providers. Now in the case of her husband, Shri Rajendra Chaturvedi, the coordinate bench on exactly similar facts and reasoning of the AO and CIT (A) has deleted the said addition.

20. The AO has observed that the prices of the shares had reached upto 500/- per share to show assessee has gained multifold, however, assessee had sold the price changing price between Rs.79 to Rs.86/- per share which was quoted price in the Bombay Stock Exchange on which rate such shares were traded and had bought the shares at average price of Rs. 20/- per share. However, the main point which has been discussed at length by the ld. AO in his order that in the case of exit providers, there is the order of the SEBI dated 04/12/2014 in

the case of Moryo Industries Ltd., who was one of the six exit providers of the impugned shares of Chaturvedi family. On this ground, the Id. AO has endeavored to depict nexus between the exit providers and Shreenath Commercial & Finance Ltd., and all the concerns have common promoter Shri Giriraj Kishore Agarwal. Therefore there was whole nexus which was found by the SEBI and these exit providers were banned by the order of the SEBI on 04/12/2014. As per the Interim order of the SEBI dated 04/12/2014, wherein primary investigation was undertaken on the dealings in the scrip of Moryo Industries Limited on noticing huge rise in the traded volumes and price of the said scrip on the Bombay Stock Exchange from 15/01/2013 to 31/08/2014. In the said interim order, a tenuous connection was drawn between 91 persons/entities comprising of Moryo Industries Limited, Promoters, Directors and Preferential Allottees and they were temporarily restrained from buying, selling or dealing in the securities market. The said SEBI order is only in respect of scrip of Moryo Industries Ltd. and nowhere there is any whisper or mention about the scrip of M/s. Shreenath Commercial & Finance Ltd.; nor in the said list of 91 persons/entities, contain the name of either Shreenath Commercial and Finance Limited or the assessee or family members. Thus, *per se*, the said interim SEBI order does not impinge upon the assessee or the transaction of the scrip of Shreenath Commercial and Finance Limited in the Bombay stock exchange. Moreover, one very important fact which was brought on record before the authorities below that SEBI vide final order

dated 21/09/2017 had revoked the earlier interim order dated 04/12/2014 by categorically holding that there are no adverse findings against the said persons with respect to their role in the price manipulation in the scrip of Moryo Industries Limited. Thus, the entire basis and premise of the ld. AO to draw his adverse inference on the basis of interim SEBI order dated 04/12/2014 has no legs to stand. One of the major contentions of the ld. AO was that in the case of exit providers, SEBI has given an adverse remark and all the observation on preliminary investigation by SEBI has been referred and relied upon the AO, therefore, the inference drawn by the ld. AO about the purchase of the scrips by these entities from the assessee, which has now been found by SEBI in its final order that there was no such manipulation by the these entities. In any case, firstly, the said SEBI order has nothing to do with the scrip of M/s. Shreenath Commercial & Finance Ltd. and secondly, the revocation of this order by the SEBI in its final order dated 21/09/2017 itself demolishes the entire foundation of the AO's inference.

21. Apart from that, no enquiry either by the SEBI or any Government agencies has been done in the case of M/s. Shreenath Commercial & Finance Ltd. or the broker from whom assessee has purchased online or the assessee or the family member. In so far as one of his observations that one Shri. Giriraj Kishore Agarwal was the promoter, Director of various entities including M/s. Shreenath Commercial & Finance Ltd., he became the Director of this company on 10/11/2016. i.e.,

after more than 3 ½ years, when the assessee had sold shares through Bombay Stock Exchange. In any case, the adverse inference of common link of Shri Giriraj Kishore Agarwal was discharged by the final SEBI order dated 29/11/2017. Therefore, tenuous connection made by the ld. AO to link M/s. Shreenath Commercial & Finance Ltd. with Moryo Industries Limited and other alleged exit providers through Shri Giriraj Kishore Agarwal does not hold any ground.

22. In so far as general observation in respect of share brokers on whom survey action was conducted by Directorate of Investigation Wing of Kolkata who had allegedly accepted the role in providing accommodation entry of bogus/ long term capital gain first of all such a reference is wholly out of context because assessee has not dealt with any of these brokers. Two statements of such brokers were also provided to the assessee by the ld. AO but no way they were connected to the assessee nor assessee has dealt with them nor is assessee's name figuring anywhere. The assessee had made transaction of purchase and sale of shares through RBK Share Broking Limited against which there is no such enquiry or information that this broking entity was involved in any kind of accommodation entry. Although these brokers have given the list of various scrips in which they have done the trading in shares for providing accommodation entry and one of the scrip mentioned was M/s. Shreenath Commercial & Finance Ltd. As per the statement of Shri Ritesh Jain, it was also alleged that M/s. Manu Stock Broking is a broking house for some of the

exit providers related to sale of shares by Chaturvedi Family, however, in his statement there is no mention about the scrip and M/s. Shreenath Commercial & Finance Ltd. The said statement is part of the assessment order and nowhere in the said statement there is any whisper about the said credit or assessee or her family. When his statement was confronted to Mr. Rajendra Chaturvedi, then also in his statement he has not admitted that he had any connection with any of the four alleged share brokers nor there any mention in the statement of Shri Ritesh Jain. In so far as notices u/s. 133(6) issued by the ld. AO to the exit providers and only few of them had replied. The only conclusion which has been drawn by the ld. AO that they had offered a very meager income and do not have any substance. However, in none of the replies which AO has noted, that they have stated that they had any transaction with the assessee. Further, ld. AO has not provided and how these entities were connected with scrip of M/s. Shreenath Commercial & Finance Ltd. and how they were involved in the alleged modus operandi adopted by the accommodation entry provider for bogus capital gain including the assessee, at least there has to be some prima facie or some mention about the assessee or about the scrip from such enquiry so as to draw some kind of adverse inference.

23. In so far as various reports of the ld. AO and ld. CIT (A) by and large are same and ld. AO has stated that nothing new has been brought on record. Though there are decisions cited by both the parties and also assessee had cited various decisions of

the Hon'ble Bombay High Court as mentioned above wherein the Hon'ble Bombay High Court had held that where the transactions have been made both purchase and sales through online and there is no adverse material or information except with some brokers have stated in their statement that they have provided accommodation entry in various scrips in one such scrip involved, that does not lead to drawing any adverse inference to treat the share transactions as bogus done through stock exchange.

24. Be that as may be, we find that on exactly similar set of facts and identical finding, this Tribunal in the case of the assessee's husband Shri Rajendra Chaturvedi and Mrs. Pallavi Pandey supra, the Co-ordinate Bench has deleted the said addition after observing as under:-

“We have heard the rival submissions of both the parties and perused the material on record including the various case laws referred by the rival parties during the course of hearing. The undisputed facts are that the assessee has purchased 28 lakhs of shares of M/s. Shrinath Commercial and Finance Ltd. between 04.03.2011 to 15.03.2011 M/s. Shrinath Commercial and Finance Ltd thereafter Issued bonus shares in the ratio of 1:1 on 22.03.2011 and thus the assessee came to hold 56 lakh shares in the said company. We note that these shares were purchased through recognised stock exchange through registered broker and were credited in the D-mat account of the assessee. Similarly, the bonus shares were also credited in the said D-mat account held by the assessee. All these purchases of shares were supported by the contract notes issued by the authorised brokers of the stock exchange and the payments were made through banking channels. Thereafter, the assessee

sold these shares during the period commencing on 23.08.2012 to 08.02.2013 for a total consideration of Rs 41,48,39,241/- and was received through banking channel thereby making a long-term capital gain of Rs 35,44,38,501/- which was claimed as exempt under section 10(38) of the Act as long term capital gain on sale of shares. We notice that all these transactions were carried out on a recognised stock exchange by the assessee through registered brokers duly evidenced by the contract notes and entries in the D-mat account and the sale and purchase consideration reached through banking channels. The AO has also only relied on the Investigation carried out by the Investigation wing, Kolkata and Mumbai that assessee is a beneficiary of these bogus long term capital gain entries. Nowhere the AO has brought on record any other evidence than relying on the report of investigation wing that the assessee is beneficiary of this huge racket of taking bogus entries of long-term capital gain. The AO has disbelieved these documents by observing that these are sham and bogus documents without pointing out any specific defect or infirmity as these were issued as per the system of the recognised stock exchange through registered brokers. Similarly, the Ld. CIT(A) has upheld the order of AO by holding that the assessee is beneficiary of a big racket whereby the prices of the shares were rigged and manipulated to yield bogus gain to various entities/individuals of which assessee was one. Thus, we find merit in the arguments of the Ld AR that assessee has furnished all the information. details, documentary evidences before the AO but the AO has not done any further verification to find out the truth or done anything to prove the money trail of the funds as has been alleged in the order. Under these circumstances, we are not in a position to sustain the order of Ld. CIT(A) upholding the order of AO wherein the long-term capital gain has been held to be non-genuine and bogus."

25. Once on the same set of facts the Co-ordinate Bench have deleted the said addition, then in the case of the assessee, no different view can be taken. Respectfully following the same, addition made by the ld. AO is deleted including the addition of alleged commission made u/s.69C, which is deleted. Thus, on merits, appeal of the assessee is allowed.

26. However, in so far as validity of reopening is concerned, the same is left open and the same is purely academic and allow the appeal of the assessee on merits.

27. In the result, appeal of the assessee is allowed.

Order pronounced on 18th September, 2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai; Dated 18/09/2023
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai