आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.384/RPR/2023
निर्धारण वर्ष / Assessment Year : 2013-14

Anju Parekh,
Prop. M/s. Kushal Investment, Near Petrol Pump,
Station Road, Dhamtari,
Chhattisgarh-493773
PAN No. AKEPP9283A

.....अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer, Ward-Dhamtari,
Chhattisgarh.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA.
Revenue by : Shri Ram Tiwari, CIT-DR

सुनवाई की तारीख / Date of Hearing : 18.11.2025
घोषणा की तारीख / Date of Pronouncement : 20.11.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHRUY, JM:

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 21.11.2023 for the assessment year 2013-14 as per the following grounds as per appeal memo:

> "1. That the Learned CIT Appeal has errored in upholding the addition made by assessing officer, by in denying exemption u/s.10(38) of Long Term capital gain of Rs.11,74,677/- and make addition of Rs.11,84,000/- u/s.68 of the Income Tax Act.
>
> 2. That the Learned CIT Appeal has errored in confirming the Addition made by learned Income Tax Officer of Rs.23,680/- on account of commission paid to broker.
>
> 3. That the all addition made by AO is arbitrary illegal and is not justified.
>
> 4: The appellant craves leave, to add, urge, alter modify or withdraw any grounds before or at the time of hearing."

2. Also, the assessee has raised additional grounds of appeal which reads as follows:

> "**Addl.Gr.No.1**
>
> "On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.11,84,000 on the count of sale proceeds of shares of `NCL Research' as unexplained cash credit u/s.68; assessee has discharged the onus casted upon her u/s.68 by submitting documents/evidence before the AO; the AO has not faulted/disproved the same; onus shifted to the revenue which has not been discharged by the revenue; addition u/s.68 is unsustainable in the eyes of law; is liable to be deleted; Adamine Construction P Ltd (2018) (SC); Parasben Kasturchand Kochar (2021) (SC); Divyaben Prafulchandra Parmar (2024) (Guj HC)."
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> **Addl.Gr.No.2**
>
> "On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.11,84,000 by observing

that it is a pre-arranged method employed by the assessee in connivance with operators to evade taxes; it is merely on surmises & conjectures; merely based on Report of Inv. Wing, Kolkata; without even making independent enquiry by the AO & without there being any material/evidence brought on record against the evidences submitted by the assessee; addition is unsustainable in the eyes of law; is liable to be deleted; relied on Adamine Construction P Ltd (2018) (SC); Ambalal Chimmanlal Patel (2024) (Guj HC); Neelu Mahansaria (2025) (Guj HC)."

Addl.Gr.No.3

"On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.11,84,000 on the basis that SEBI has suspended the shares of `NCL Research' and SEBI has passed-order where `NCL Research' is said to be indulging in to share manipulations, while revenue has not brought any evidence on record for involvement of assessee in the such alleged price rigging/manipulation on price of shares; in absence of such findings; addition is unsustainable in the eyes of law; is liable to be deleted; Renu Aggarwal (2023) (SC); Mamta Rajivkumar Agarwal (2023) (Guj HC); Ziauddin A Siddique (2022) (Bom. HC)."

Addl.Gr.No.4

"On the facts & circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.11,84,000 on the basis of various statements recorded of entry operators in some unrelated proceedings when no cross examination has been made by the revenue; addition is unsustainable in the eyes of law; is liable to be deleted; Kuntala Mohapatra (2024) (SC); Kishore Kumar Mohapatra (2024) (SC)."

3. Brief facts in this case are that during the year under consideration, the assessee had traded in the scrips of “NCL Research & Finance Services Pvt. Ltd.” and as per the report of the Investigation Wing, Kolkata, cracking down on penny stocks, one such scrip was that of “NCL Research & Finance Services Pvt. Ltd.”. Thereafter, the A.O has examined and explained in detail how the penny stock is channelized in providing bogus Long Term Capital

Gain (LTCG), wherein the shares of the penny stock companies are acquired by the beneficiaries of LTCG at very low prices through the route of preferential allotment (private placement) and off market transaction. Thereafter, the prices of the shares of the penny stock companies are rigged and raised through circular trading. These are done through the involvement of entry operator, share brokers etc. and they managed the bogus companies and used them for circular transactions to rig the price of shares. The report of Investigation Wing, Kolkata further reveals that in cases of these penny stock companies although shares are listed on the Exchange, however, they are always closely held and controlled by the promoter of the penny stock company and the entry operator who is arranging for the bogus LTCG/loss. Accordingly, in the entire assessment order, detailed analysis has been given regarding report of the Investigation Wing, Kolkata of the department as to how the beneficiaries obtains the benefit of bogus LTCG/loss through entry provider and operator by transacting into scrips of penny stock companies.

4. The fact further reveals that the assessee purchased shares of "NCL Research & Finance Services Pvt. Ltd." at a total cost price of Rs.4,000/- and subsequently, the assessee sold all shares during F.Y.2012-13 relevant to A.Y.2013-14 for a consideration of Rs.11,84,000/- which was added to the total income of the assessee u/s. 68 of the Act. The A.O further added an amount of Rs.23,680/- as unexplained expenditure in the hands of the

assessee and thereby, assessed total income at Rs.15,87,330/- against returned income of Rs.3,70,650/-.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld.CIT(Appeals)/NFAC who had upheld the addition made by the A.O in totality.

6. We have heard the submissions of the parties herein, carefully considered the documents on record and analyzed the facts and circumstances in this case. The assessee in this case had transacted into scrips of "NCL Research & Finance Services Pvt. Ltd." and after selling the said shares during F.Y.2012-13 relevant to A.Y.2013-14, received total sale consideration of Rs.11,84,000/-. The A.O had added the entire amount in the hands of the assessee observing that the said scrips of "NCL Research & Finance Services Pvt. Ltd." was rigged scrips which was used as *modus-oparandi* to provide bogus LTCG/loss to the beneficiaries through entry provider, share brokers, money launders in an organized racket to evade taxes.

7. That as per the report of the Investigation Wing, Kolkata regarding various penny stocks companies, one such penny stock scrip was "NCL Research & Finance Services Pvt. Ltd.", in which, the assessee had traded in. Facts further reveals that as emanating at Para 5.6 of the order of the Ld. CIT(Appeals)/NFAC that purchase and sale of shares were made through stock exchange and STT which was duly paid. Shares were reflected in

Demat account and payments were made through banking channels. However, it was further observed at the assessment stage that the assessee had no knowledge that it was a penny stock company or that the scrips of "NCL Research & Finance Services Pvt. Ltd." was rigged one and that the assessee was unaware about the financial position and business activities of the company and fundamentals. That further, the entire transaction has been disclosed by the assessee in her return of income. The Revenue, through the order of the A.O, has not brought any direct nexus as to the colourable device being adopted by the assessee knowingly that such scrips of "NCL Research & Finance Services Pvt. Ltd." was rigged one and that also no nexus has been established vis-à-vis transaction entered into by the assessee regarding the said scrips of "NCL Research & Finance Services Pvt. Ltd." so to suggest that it was conscious decision of the assessee to get the benefit of bogus LTCG through the transaction. There is no corroborating evidence placed either by the A.O or Ld. CIT(A)/NFAC regarding any transaction by the assessee with the entry provider or the broker. No direct evidence of conscious involvement has been placed against the assessee.

8. That in the entire assessment order, the focus of the A.O was on the report of the Investigation Wing, Kolkata, in which they had cracked the *modus-oparandi* involving penny stock companies, in which one of the scrips was the said "NCL Research & Finance Services Pvt. Ltd.". The Revenue has not brought out also whether it was an isolated transaction or the assessee was regularly purchasing and selling shares. Therefore, the Revenue

authorities have failed to bring out any direct nexus of the assessee in share rigging activities through "NCL Research & Finance Services Pvt. Ltd." and the malafide benefit that was alleged to have been received by the assessee. In fact, the assessee had submitted that she was not aware regarding the fact that such "NCL Research & Finance Services Pvt. Ltd." scrip was rigged one and the assessee was unaware of the financial position and business activities of the said company. The Revenue has also not disputed the claim of the assessee that the shares transacted were reflected in the Demat account and payments were made through banking channels.

9. The **Hon'ble High Court of Bombay** in the case of **Pr. CIT Vs. Ziauddin A Siddique, Income Tax Appeal No.2012 of 2017, dated 04.03.2022**, has held that the A.O had applied the concept of human probabilities and held that the said scrips to be a penny stock without bringing on record how the assessee is involved in any of the scrupulous activities or directly linked to one of the persons who had involved in manipulation/rigging of share prices, entry operator or exit provider. The relevant extract of the aforesaid decision reads as follows:

> "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."

10. Similarly, the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Smt. Krishna Devi, ITA No.125/2020, dated 15.01.2021** dismissed the appeal of the department finding no substantial reason to interfere with the findings of the Tribunal which had provided relief to the assessee since there was no evidence brought on record by the department for having any direct nexus regarding involvement of the assessee in this organized financial crime. Nothing was brought on record as evidence to prove the allegations that the assessee entered into any transaction with broker or any other person to convert unaccounted money in order to get benefit of LTCG as alleged.

11. In the case of **Pr. CIT Vs. Mamta Rajibkumar Agarwal (2023) 155 taxmann.com 549 (Guj.)**, the **Hon'ble High Court of Gujarat** affirming the order of the Tribunal observed and held in favour of the assessee that since there was no evidence implicating assessee or broker in any wrongdoing related to SNCFL script and that there is no evidence on record suggesting the assessee or his broker was involved in rigging up of price of script of SNCFL, addition on account of LTCG claimed as exempt u/s.10(38) had been rightly deleted.

12. Furthermore, the Co-ordinate Bench of the Tribunal, Mumbai in the case of **Farzad Sheriar Jehani Vs. ITO-17(1)(4), Mumbai, ITA No.2065 /MUM/2023, A.Y.2014-15, dated 22.12.2023** on the similar facts and circumstances has held and observed as follows:

> "16..... the revenue has not brought on record any materials linking the assessee in any dubious transactions relating to entry, price rigging or exit providers. Even in the SEBI report, there is no mention or reference to the involvement of the assessee. We can only presume that the assessee is one of the beneficiary in this transactions merely as unsuspecting investor, who has entered in investment fray to make quick profit. Even the assessing officer has applied the presumptions and concept of human probabilities to make the additions without their being any material against the assessee....."

13. Reverting to the facts of the present case, only reason for addition made by the Revenue was that the assessee had traded in the scrips of "NCL Research & Finance Services Pvt. Ltd." and "NCL Research & Finance Services Pvt. Ltd." has been rigged and declared as penny stock company as per the report of the Investigation Wing, Kolkata as well as by SEBI. But the department has failed to bring out any direct involvement of the assessee for obtaining alleged bogus LTCG. Neither the A.O nor the Ld. CIT(Appeals)/NFAC has brought on record any evidence to suggest that the assessee was part of organized financial crime or that the assessee willfully transacted with the brokers, entry provider in order to obtain the so called bogus LTCG as had been alleged by the department. The Revenue has not even brought out whether it is an isolated transaction or that the assessee was regularly entered into purchase and sale of shares. Furthermore, the

assessee had submitted at the time of assessment that the assessee was not aware about the fact that "NCL Research & Finance Services Pvt. Ltd." is rigged one and it was penny stock shares. That further, the entire transaction was reflected in the Demat account and payments were always made through banking channels. These facts remains undisputed even before the Department. That in absence of any direct evidence against the assessee, it can only be concluded that the assessee can be termed as unsuspecting investor who had entered into the said investment in shares. The A.O has applied presumption and concept of human probabilities to make addition without there being any material against the assessee.

14. In view thereof, as per the aforesaid examination of facts and circumstances and the legal principles enshrined in the aforesaid judicial pronouncements, addition made in the hands of the assessee of Rs.11,84,000/- is arbitrary, bad in law and hence, the same is deleted.

15. Similarly, the addition made on account of commission income as per ad-hoc 2% of Rs.11,84,000/- i.e. Rs.23,680/- for so called services used by the assessee, even without demonstrating such alleged services justifying alleged commission payments, this addition is also in the nature of being arbitrary, bad in law and hence, the same is deleted.

16. Thus, the **Additional Ground of appeal No.3** raised by the assessee stands allowed.

17. That since the Additional ground of appeal No.3 has been answered in affirmative in favour of the assesse and against the revenue, all other remaining grounds shall become academic only.

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

Order pronounced in open court on 20th day of November, 2025.

Sd/-
(**PARTHA SARATHI CHAUDHURY**)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 20th November, 2025.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.