

IN THE INCOME TAX APPELLATE TRIBUNAL

"H" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.699/Mum./2023
(Assessment Year : 2011-12)

ITA no.700/Mum./2023
(Assessment Year : 2012-13)

ITA no.701/Mum./2023
(Assessment Year : 2013-14)

ITA no.702/Mum./2023
(Assessment Year : 2014-15)

ITA no.703/Mum./2023
(Assessment Year : 2015-16)

Hasmukhbhai B. Patel (HUF)
C/o Bharat Textile Industries
Plot no.161, Forth Lane, Darukhana
Mumbai 400 010 PAN – AABHH5224A

..... Appellant

v/s

Income Tax Officer
Ward-20(1)(5), Mumbai

..... Respondent

Assessee by : Shri Neelkanth a/w
Shri Gagan Khandelwal
Revenue by : Shri Rajesh Meshram

Date of Hearing – 31/05/2023

Date of Order – 28/08/2023

ORDER

PER BENCH

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 06/02/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["*learned CIT(A)*"], for the assessment years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

2. Since the present batch of appeals involve common issues, therefore, as a matter of convenience these appeals were heard together and are being disposed off by way of this consolidated order.

ITA no.699/Mum./2023
Assessee's Appeal – A.Y. 2011-12

3. In this appeal, the assessee has raised the following grounds:-

"The following grounds of appeal are without prejudice to one another :

- 1. On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of A.O. in making additions in the appellant's case in the absence of any incriminating material found, as per the grounds stated in the order or otherwise.*
- 2. On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of Assessing Officer in treating the long term capital gains earned by the appellant as non-genuine and bogus transaction, as per the grounds stated in the order or otherwise.*
- 3. On the facts and circumstances and in law the Ld. CIT(A), erred in confirming the action of Assessing Officer in disallowing the claim u/s 10(38) of the Act being Long Term Capital Gain on sale of shares listed on Stock Exchange.*
- 4. On the facts and circumstances of the Appellant's case and in law, LD. CIT(A) erred in confirming the action of Assessing Officer in making an addition of Rs.8,98,43,280/- by invoking the provisions of Sec. 68 of the Income Tax Act, 1961, being the amount of sale value of shares without allowing the deduction in respect of the purchases cost amounting to Rs. 48,55,722/-as per the grounds stated in the order or otherwise.*
- 5. On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in making an addition of Rs.24,55,549/- as alleged commission @ 3% paid on bogus share transaction, as per the founds stated in the order or otherwise." 6. On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in not granting deduction of L.T.CAPITAL GAINS U/S 10(38) of the Income Tax Act, 1961 of Rs. 8,18,51,631/-;*
- 7. On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in not granting Cost of purchase of shares of Rs. 48,55,722/- as deduction from LT.C.GAINS, as per the calculations submitted;*
- 8. On the facts and circumstances of the Appellant's case and in law, Ld.CIT(A) erred in confirmation the action of the Assessing Officer in leaving Interest u/s 234B and 234C of Rs.2,23,14,285/- and Rs. 2,672/- respectively;*
- 9. On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in issuing notice u/s 271(1)(c) of the Income Tax Act, 1961"*

4. Ground no.1, raised in assessee's appeal, was not pressed during the hearing. Accordingly, the same is dismissed as not pressed.

5. The issue arising in grounds no.2-6, raised in assessee's appeal, is pertaining to the disallowance of exemption of long-term capital gains claimed under section 10(38) of the Act by treating the share transaction as non-genuine and making the addition under section 68 of the Act.

6. The brief facts of the case pertaining to this issue, as emanating from the record, are: For the year under consideration, the assessee filed its return of income on 31/03/2011, declaring a total income of Rs.6,80,380. The return filed by the assessee was selected for scrutiny and assessment proceedings under section 143(3) of the Act was completed on 23/10/2013, determining the total income at Rs.6,80,380. Subsequently, on the basis of the information received from the Directorate of Investigation that the assessee is a beneficiary of bogus entries of long-term capital gains in penny stocks proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 28/09/2016. During the reassessment proceedings, the assessee filed a letter intimating about the death of Mr. Has Mukhbhai B. Patel, on 15/07/2013, and the appointment of a legal heir, viz. Mr. Amit H. Patel, as the new Karta of the assessee HUF. During the reassessment proceedings, it was observed that the assessee has claimed an exemption of long-term capital gains of Rs.8,18,51,632, on the sale of shares of Comfort Intech Ltd and Splash Media under section 10(38) of the Act. Since the quantum of huge long-term capital gains was found suspicious, the assessee was asked to show cause as to why the said long-term capital gains be not disallowed and the entire sale consideration of Rs.8,67,07,353, on the sale of shares of Comfort Intech Ltd. and Splash Media, be not added to the total income of the assessee under section 68 of the Act. In response thereto, the assessee submitted that it purchased 5,00,000 shares of Comfort Intech Ltd for a total consideration of Rs.85,55,000, having a face value of Rs. 10 per share in May 2008. Subsequently, the company on 14/10/2009, split its share of the face value of Rs.10, to Re.1, due to which the assessee got 50,00,000 shares of Comfort Intech Ltd., and these shares were subsequently

dematerialised. Out of the aforesaid shareholding, the assessee sold 8,25,000 equity shares in the year under consideration and earned long-term capital gains of Rs.2,36,72,901. The assessee further submitted that the purchase consideration was duly paid through proper banking channels and thus the entire transaction is genuine. The sale was on the recognized stock exchange on various dates via recognised brokers and the sale consideration was also rooted through recognised stock exchange and Securities Transaction Tax ("STT") was duly paid on the same. As regards Splash Media, the assessee submitted that it purchased 30,000 shares for a consideration of Rs.21,34,516, from the recognised stock exchange, having a face value of Rs.10, per share in May 2008. Subsequently, the company issued 90,000 bonus shares on 30/12/2009. Thereafter, the company split its shares of face value of Rs.10, to Re.1, due to which the assessee got 12,00,000 equity shares of Splash Media. It was also submitted that the assessee purchased 35,000 equity shares of Splash Media on 21/03/2011, for a consideration of Rs.13,09,000, from the stock market and sold the same for a consideration of Rs.13,09,000. The assessee further submitted that during the year in total it sold 12,35,000 equity shares of Splash Media and earned long-term capital gains of Rs.5,81,79,330. It was further submitted that the entire transaction was through proper banking channels and the investment activity is not an isolated transaction made to allegedly convert the unaccounted income into genuine money. In order to substantiate the genuineness of the transaction, the assessee submitted various documentary evidence as noted on pages 23-25 of the assessment order. Accordingly, the assessee submitted that the sale proceeds credited in its bank accounts should not be treated as undisclosed income and exemption as claimed under section 10(38) of the Act be allowed.

7. The Assessing Officer ("AO") vide order dated 28/12/2017, passed under section 143(3) read with section 147 of the Act did not agree with the submissions of the assessee and held that the financials of the companies does not support that a prudent investor who is having knowledge of share investment will invest in such companies. It was further held that even though the net worth of the company and the business activity is negligible the share prices have been artificially rigged to unusual high. The AO held that the

assessee is having its Demat account with M/s Comfort Securities Ltd. The company Comfort Intech Ltd, M/s Comfort Securities Ltd, and Splash Media and Infra Ltd, all are controlled and managed by Mr. Anil Agarwal, who in his statement admitted that he has provided bogus long-term capital gain/short-term capital loss entry to the beneficiaries through M/s Comfort Securities Ltd. The AO further noted that out of 93 exit providers in the case of scrip of Splash Media, notices sent to 24 entities under section 133(6) of the Act were returned unserved with remarks unknown/left. Accordingly, the AO treated the share transaction by the assessee as bogus and added the entire sale consideration of Rs.8,67,07,353, to the total income of the assessee as unexplained cash credit under section 68 of the Act. The AO further made an addition on account of commission @ 3% to obtain the pre-arranged bogus long-term capital gains, which comes to Rs.24,55,549, under section 69C of the Act.

8. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the additions made by the AO. The learned CIT(A) held that the receipt on sale of shares has been correctly treated as unexplained credit under section 68 of the Act, as it has all the ingredients of attracting the rigours of the said section. The learned CIT(A) further held that there is no economic or financial justification for the rise in the price of the shares and the fantastic sale price realisation is not at all humanly probable, as there is no economic or financial basis that the share of the little-known company would jump so high. The learned CIT(A) further held that the assessee has manipulated the sale of shares within a short span of time in collusion with the brokers in order to earn a tax-free exempt long-term capital gain. Being aggrieved, the assessee is in appeal before us.

9. We have considered the submissions of both sides and perused the material available on record. The grievance of the assessee is against the addition made under section 68 of the Act on account of proceeds from the sale of shares by treating the scrips as penny stocks. In the present case, the assessee has transacted in the shares of Comfort Intech Ltd, and Splash Media. 5,00,000 shares of Comfort Intech Ltd were purchased by the assessee

in May 2008 via preferential allotment basis at a face value of Rs.10, for a total consideration of Rs.85,55,000, which subsequent to splitting the face value from Rs.10, to Re.1, by the company were increased to 50,00,000 shares. Out of the aforesaid shareholding, the assessee during the year under consideration between 05/04/2010 and 14/05/2010 sold 8,25,000 equity shares at an average rate of Rs.30.41, and earned long-term capital gains of Rs.2,36,72,901. Further, the assessee purchased 30,000 shares of Splash Media from the recognised stock exchange for a total consideration of Rs.21,34,516, in May 2008 at an average rate of Rs.71.15, per share. Further, the company issued 90,000 bonus shares on 30/12/2009, and the entire shareholding was increased to 12,00,000 equity shares since the face value was split from Rs.10, to Re.1. Thereafter, the assessee purchased 35,000 equity shares of Splash Media on 21/03/2011, for a consideration of Rs.13,09,000, from the stock market, which were sold for the same consideration. Out of the aforesaid shareholding, the assessee during the year under consideration between 08/12/2010 and 29/03/2011 sold 12,35,000 equity shares at an average rate of Rs.49.89, and earned long-term capital gains of Rs.5,81,79,330. The aforesaid facts are not disputed by the Revenue.

10. On the basis of a countrywide investigation carried out by the Directorate of Investigation, Kolkata, wherein the organised racket of generating bogus entries of long-term capital gains, which is exempt from tax, was alleged to have been unearthed, price fluctuation of the scrips in which assessee has transacted, statement of the director of the aforesaid companies accepting the provision of bogus long term capital gains, the AO treated these companies as paper entities and disallowed the claim of exemption under section 10(38) of the Act on long-term capital gains earned by the assessee. The AO has referred to the value of shares at a different point in time including the period during which the assessee was holding the shares. However, from the perusal of the assessment order, it is evident that in the findings of the Directorate of Investigation, Kolkata, as inter-alia mentioned on pages 3, 21, and 43 of the assessment order there is no mention of the name of the assessee being involved in the entire racket of availing bogus long term capital gains. Thus, these findings appear to be mere general findings of the

Investigation Wing without any adverse observation regarding the assessee. The price fluctuation of shares of the entities in which the assessee has transacted also does not support the case of the Revenue, as no material has been brought on record to show that the assessee was involved in such price manipulation.

11. In the assessment order on pages 39-40, the AO has reproduced the statement of Mr. Anil Agarwal recorded during the course of search proceedings by the Investigation Wing. The extracts of the aforesaid statement, as noted in the assessment order, are reproduced as under:-

"Q8 Please explain the modus operandi of the bogus LTCG/STCL entry obtained by the beneficiaries.

Ans. Sir, the bogus LTCG entry beneficiary approaches an entry operator who is having a listed company through some agent/mediator or directly. These listed companies are penny stock companies, having no actual business and having a closed share holding pattern. Thereafter, the beneficiary on instruction of the operator, purchases the shares of these penny stock companies at a very low price. The purchase is usually through the route of private placement i.e. preferential allotment. Once the preferential share allotment is complete, the operator rigs the price of the penny stock through circular transactions and thus the price of the penny stock is increased. Once a period of one year is over from the purchase of the shares (pre-requisite for claiming exempt LTCG) and the price of the stock reaches the desired level, the beneficiary is intimated by the operator/agent of the operator to provide cash, which can be routed to some other paper/bogus entities to buy these shares from the beneficiary. The entry operator then routes and layers back this cash so received into various paper entities which are controlled and managed by him. These paper entities, which have received layered money are then used as a dummy buyer for buying the rigged/artificially jagged up shares from the beneficiaries. When the buyers are ready, then the entry operator intimates the beneficiaries to sell specific number of shares at a specific price at a specific time. This ensures that the shares of only the beneficiaries are purchased by the dummy buyers. The transactions take place through the stock exchange and brokers and some nominal commission is charged in cash on the net pre-arranged bogus LTCG accruing to the beneficiary. This pre-arranged bogus Capital gain income so earned through rigging of shares is claimed as exempt in the books of the beneficiary. In the same price, book bogus Short term capital Loss by selling the shares when the prices fall.

Q9 Please explain in detail about your role in providing bogus LTCG to the beneficiaries of the scrips Radford Global Limited, First Financial Services Limited and Rutron International Limited.

Ans. Sir, I knew three persons, namely, Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain, of Mumbai, who are primarily involved in the business of providing entry of LTCG. I knew the directors of M/s Rutron International Limited and M/s First Financial Services limited and introduced them to Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain. I also came to know that M/s. Radford Global Limited is also one such penny stock company which was operated by Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain. Some clients contacted me for availing the entry of LTCG and I introduced them to Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain. Thereafter, as per the modus operandi, the beneficiaries invested in the penny stock of M/s Radford Global Limited, M/s Rutron International Limited and M/s First Financial Services Limited. The

shares of these companies were rigged and the price was increased to desired level over a desired period. Once the prices of the shares reached their peak price, the sale of the above mentioned scrips was arranged by Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain so as to provide entry of LTCG to the beneficiaries. In this process some of the entities were given entry of Short Term capital Loss also.

Q10 Please explain the role of M/s Comfort Securities Limited in providing LTCG to the beneficiaries of the scrips Radford Global Limited, First Financial Services Limited and Rutron International Limited.

Ans. Sir, Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain introduced some clients to Comfort Securities Limited. These entities became clients of comfort Securities Limited and traded in the shares of M/s Radford Global Limited, Rutron International Limited and First Financial Services Limited.

Q11 Were KYC verifications conducted in the case of these clients?

Ans. Sir, as these clients were introduced by Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain, we have obtained KYC documents of the clients and allowed them to trade through Comfort Securities Limited but we have not done any physical verification of the premises.

Q12 What is the income that you have earned from the transactions in the above mentioned scrips?

Ans. Sir, I have earned brokerage income from the transactions in the above mentioned scrips. Apart from the regular brokerage income in M/s Comfort Securities Limited, I have also earned roughly around Rs.20,00,000/- of the transactions in the above mentioned scrips as cash commission which I am offering as my undisclosed income over and above my regular source of income."

12. From the perusal of the aforesaid statement, it is evident that Mr. Anil Agarwal though agreed that he was engaged in providing bogus long-term capital gain/short-term capital loss, however neither there is any mention of any benefit being provided to the assessee nor Mr. Anil Agarwal stated that the bogus long-term capital gains has been provided to the beneficiaries of the scrips in which assessee has transacted, i.e., Comfort Intech Ltd and Splash Media. Therefore, even if it is assumed that Mr. Anil Agarwal was involved in rigging the price of certain scrips, no admission has been brought on record that he was involved in rigging the price of the scrips in which the assessee has transacted or the assessee is the beneficiary of such rigging.

13. Further, in para 9 on page 46 of the assessment order, the AO alleged that there are certain parties who have taken the name of the assessee, however, there are neither any findings nor any reproduction or reference to the statements of such person in the assessment order who alleged that assessee was beneficiary of the bogus long term capital gains or was involved

in this racket. From the perusal of the assessee's submission dated 19/12/2017, filed before the AO, forming part of the paper book from pages 217-240, we find that the assessee specifically requested the AO to provide the details of the brokers who have given a statement that the assessee has taken accommodation entries in the form of bogus long-term capital gains. Further, the assessee also requested for the statements recorded by the Revenue, which was alleged to have been provided in the pen drive as noted in the show cause notice reproduced from pages 2-21 of the assessment order. However, as evident from the record no such statement was furnished by the Revenue. Even during the hearing before us, the Revenue has not brought any such statement on record. Therefore, the nexus of any tainted investor/exit provider/entry provider with the assessee is not established by the Revenue in the present case.

14. In the assessment order at para 8.6, the AO held that in respect of the scrip of Splash Media, the assessee shares were purchased by 93 different entities/exit providers, and out of them notice under section 133(6) of the Act sent to 24 entities was returned unserved with a remark "unknown/left" by the postal authorities. Therefore, the AO held that paper companies were created in the form of exit providers to provide a route for the beneficiaries to exit when the price of the scrips is rigged at the desired level. As regards Splash Media, it is pertinent to note that the assessee purchased and sold the shares on the recognised stock exchange. Further, the mere fact that notice under section 133(6) of the Act is returned unserved in respect of 24 out of 93 entities cannot be the sole basis for assuming that the shares of Splash Media sold by the assessee were purchased by the paper companies to provide benefit to the assessee, without any other substantial evidence being available on record.

15. Further, the AO has not given any adverse comments or drawn adverse inferences against the documentary evidence submitted by the assessee. The finding of the learned CIT(A), vide impugned order, that the assessee has colluded with brokers for earning tax-free exempt long-term capital gains is also not supported by any evidence available on record. Thus in the present

case, the Revenue has failed to prove with any cogent evidence on record that the assessee was involved in converting its unaccounted money into long-term capital gains by conniving with any entry operator/exit operator, who was involved in artificial price rigging of shares. Thus this is the case wherein the AO merely on the basis of suspicion rejected the claim of the assessee, without establishing any link between the assessee with the entry operators/exit operators, who were allegedly involved in price rigging of shares. Therefore, in view of the above, we are unable to persuade ourselves to accept the conclusion reached by the Revenue on the basis of the findings recorded in the order passed by the lower authorities. Accordingly, we direct the AO to delete the impugned addition made under section 68 of the Act and accept the plea of the assessee in respect of long-term capital gains earned during the year. Since the main transaction has not been found to be bogus, the addition on account of commission @ 3% made by the AO and upheld by the learned CIT(A) is also deleted. As a result, grounds no.2-6, raised in assessee's appeal are allowed.

16. In view of our aforesaid findings ground no.7 is rendered academic and therefore needs no separate adjudication.

17. Ground no.8, raised in assessee's appeal, pertains to the levy of interest under sections 234B and 234C of the Act, which is consequential in nature. Therefore, ground no.8 is allowed for statistical purposes.

18. Ground no.9 pertains to the initiation of penalty proceedings, which is premature in nature and therefore is dismissed.

19. In the result, the appeal by the assessee is partly allowed.

ITA no.700/Mum./2023
Assessee's Appeal – A.Y. 2012-13

20. In this appeal, the assessee has raised the following grounds:-

"The following are the grounds of appeal, which are without prejudice to one other: -

1. *On the facts and circumstances of the Appellant's case and in law the Id. A.O. erred in reopening the assessment u/s 147 by issue of notice u/s 148 which is merely due to change of opinion and therefore the reopening is bad in law.*
 2. *On the facts and circumstances of the case and in law the Id. A.O. erred in reopening the assessment u/s 147 by issue of notice u/s 148 dated 26.03.2019 which is barred by limitation in view of the first proviso to section 147 of Income Tax Act, 1961.*
 3. *On the facts and circumstances of the Appellant's case and in law, Id. A.O. erred in holding that the transaction of purchase and subsequent sale of shares of M/s. Comfort Intech Limited as non-genuine and bogus for the reasons mentioned in the impugned order or otherwise and confirmed by the Honorable CIT(A);*
 4. *On the facts and circumstances of the Appellant's case and in law the Id. A.O. erred in disallowing the claim of short term capital loss of Rs. 24,18,648/- arising out of sale of shares of M/s. Comfort Intech Limited by treating the same as non-genuine for the reasons mentioned in the impugned order or otherwise and confirmed by the Honorable CIT(A);*
 5. *On the facts and circumstances of the Appellant's case and in law, Id. A.O. erred in making an addition of Rs. 1,11,78,257/- being sale proceeds on sale of shares of M/s. Comfort Intech Limited by provision of section 68 of the Act and and confirmed by the Honorable CIT(A);*
 6. *On the facts and circumstances of the Appellant's case and in law, Id. A.O. erred in holding that the transaction of purchase of shares of M/s. Rutron International Ltd is non-genuine and bogus for the reasons mentioned in the impugned order or otherwise and and confirmed by the Honorable CIT(A);*
 7. *On the facts and circumstances of the Appellant's case and in law, the Id. A.O. erred in making an addition of Rs. 1,10,00,000/- being the purchase amount for shares of M/s. Rutron International Ltd by invoking the provision of section 69 of the Act, even than these shares were acquired & held in Demat Account of your Appellant and and confirmed by the Honorable CIT(A);*
 8. *The Appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing.*
- The Appellant prays your Honour to delete the additions/disallowances made by the Assessing Officer in the impugned order."*

21. Grounds no.1 and 2, raised in assessee's appeal, challenging the reopening of assessment section 147 of the Act were not pressed during the hearing. Accordingly, the same are dismissed as not pressed.

22. The issue arising in grounds no.3-5, raised in assessee's appeal, is pertaining to the disallowance of exemption of long-term capital gains claimed under section 10(38) of the Act by treating the share transaction as non-genuine and making the addition under section 68 of the Act.

23. Similar to the assessment year 2011-12, this year the Revenue relied on similar material as was relied in the preceding assessment year to hold that short-term capital loss claimed as exempt by the assessee from the sale of shares in Comfort Intech Ltd is bogus. In this year also, the Revenue has failed to prove with any cogent evidence on record that the assessee was involved in converting its unaccounted money into short-term capital loss by conniving with any entry operator/exit operator, who was involved in artificial price rigging of shares. Therefore, our findings/conclusions as rendered in the assessment year 2011-12 are applicable *mutatis mutandis* to the present appeal. Accordingly, we direct the AO to delete the impugned addition made under section 68 of the Act and accept the plea of the assessee in respect of short-term capital loss. As a result, grounds no.3-5, raised in assessee's appeal are allowed.

24. The issue arising in grounds no.6 and 7, raised in assessee's appeal, is pertaining to the addition under section 69 of the Act in respect of the purchase of shares of M/s Rutron International Ltd.

25. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, information was received from DDIT (Investigation), Unit-5 (4), Mumbai that M/s Rutron International Ltd. is a penny stock company and the shares of this company were manipulated and rigged to provide entry of bogus long term capital gains/short-term capital loss to the beneficiaries. During the year under consideration, M/s Rutron International Ltd. allotted 98,50,000 equity shares of Rs.10, each on 05/12/2011, to 48 entities on a preferential basis. Further on 01/03/2012, M/s.Rutron International Ltd. allotted 77,10,000 equity shares of Rs.10, each on a preferential basis to 47 entities. As per the information price of the stock of M/s.Rutron International Ltd. was between Rs.5.15. to Rs.2.25. per share during the period when the preferential shares were issued. However, after the allotment, the price shot up to Rs.270. per share between 03/05/2012 to 22/03/2013. The assessee was allotted 11,00,000 shares of M/s Rutron International Ltd. on a preferential basis. Treating the transaction to be a sham, the AO vide assessment order dated 11/12/2019. passed under

section 143(3) read with section 147 of the Act made the addition of the entire consideration of Rs.1,10,00,000, under section 69 of the Act as unexplained investment. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Aggrieved, the assessee is in appeal before us.

26. We have considered the submissions of both sides and perused the material on record. It is undisputed that the assessee has only purchased the shares of M/s.Rutron International Ltd. and there was no sale of these shares during the year under consideration. It is evident from the record that the information which is relied upon by the Revenue pertains to manipulation and rigging of the prices of the shares for claiming bogus long-term capital gains and short-term capital loss exemptions. Since the assessee has not sold any shares of M/s.Rutron International Ltd., the question of long-term capital gains/short-term capital loss does not arise. Further, it is evident from the record that the assessee in order to substantiate the purchase transaction submitted that the sale consideration was paid through normal banking channel and the shares are held in the Demat account. It is pertinent to note that only when the investment is not recorded in the books of accounts or the explanation by the assessee regarding the nature and source of the investment is found to be not satisfactory, the value of the investment can be treated as an unexplained investment under section 69 of the Act. However, in the present case, no such allegation has been raised by the Revenue. Thus the addition made by treating the purchase consideration as unexplained investment under section 69 of the Act has no basis and accordingly is directed to be deleted. Accordingly, the impugned order on this issue is set aside and grounds no. 6-7 raised in assessee's appeal are allowed.

27. In the result, the appeal by the assessee is partly allowed.

ITA no.701/Mum./2023
Assessee's Appeal – A.Y. 2013-14

28. In this appeal, the assessee has raised the following grounds:–

"The following grounds of appeal are without prejudice to one another:

1. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of A.O. in making additions in the appellant's case in the absence of any incriminating material found as per the grounds stated in the order or otherwise.*
2. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of Assessing Officer in treating the long term capital gains earned by the appellant as non-genuine and bogus transaction, as per the grounds stated in the order or otherwise.*
3. *On the facts and circumstances and in law the Ld. CIT(A), erred in confirming the action of Assessing Officer in disallowing the claim u/s 10(38) of Rs. 93,41,134/- of the Act being Long Term Capital Gain on sale of shares listed on Stock Exchange.*
4. *On the facts and circumstances of the Appellant's case and in law, LD. CIT(A) erred in confirming the action of Assessing Officer in making an addition of Rs. 1,00,41,133/- by invoking the provisions of Sec. 68 of the Income Tax Act, 1961, being the amount of sale value of shares without allowing the deduction in respect of the purchases cost amounting to Rs. 7,00,000/- as per the grounds stated in the order or otherwise.*
5. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in making an addition of Rs. 2,80,234/- as alleged commission @ 3% paid on bogus share transaction, as per the founds stated in the order or otherwise.*
6. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in not granting deduction of L.T.CAPITAL GAINS U/S 10(38) of the Income Tax Act, 1961 of Rs. 93,41,134/-;*
7. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in not granting Cost of purchase of shares of Rs. 7,00,000/- as deduction from LTC GAINS, as per the calculations submitted;* 8. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in leaving Interest u/s 234B of Rs.18,17,901/-;*
9. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in issuing notice u/s 271(1)© of the Income Tax Act, 1961."*

29. Ground no.1, raised in assessee's appeal, was not pressed during the hearing. Accordingly, the same is dismissed as not pressed.

30. The issue arising in grounds no.2-6, raised in assessee's appeal, is pertaining to the disallowance of exemption of long-term capital gains claimed under section 10(38) of the Act by treating the share transaction as non-genuine and making the addition under section 68 of the Act.

31. We have considered the submissions of both sides and perused the material available on record. The assessee was allotted 3,75,000 shares of M/s

First Financial Services Ltd. for a total consideration of Rs.75 lakh having a face value of Rs.10, per share and a premium of Rs.10, per share on 05/12/2011, on a preferential allotment basis. In the year under consideration, the assessee sold 35,000 equity shares of M/s.First Financial Services Ltd. at an average rate of Rs.286.89. per equity share and earned long-term capital gains of Rs.93,41,133. The AO vide assessment order dated 28/12/2017, passed under section 143(3) read with section 147 of the Act treated the transaction as bogus and made the addition of the entire sale consideration of Rs.1,41,00,133, under section 68 by treating the same as unexplained cash credit on the basis that the net worth of this company is negligible as per its financials but the share price was rigged to an astronomical level. The AO also placed reliance upon the statement of Mr. Anil Agarwal who admitted that the scrips of this company were, inter-alia, used to provide bogus long-term capital gains to beneficiaries. The AO further made an addition on account of commission @ 3% to obtain the pre-arranged bogus long-term capital gains, which comes to Rs.2,80,234, under section 69C of the Act. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. The learned CIT(A) on page 51 of the impugned order also placed reliance upon the order dated 11/08/2015, passed by the Securities and Exchange Board of India ("SEBI") wherein it was held that share prices of M/s First Financial Services Ltd were manipulated.

32. We, at the outset, find that the SEBI conducted the investigation to look into the role of various entities in price manipulation of the scrip of M/s First Financial Services Ltd. Initially, upon the investigation, the SEBI found certain entities to be not in violation of provisions of the SEBI Act, 1992, and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, and accordingly, the initial directions issued against these entities were revoked. However, regarding the remaining entities, including the assessee, the SEBI continued its proceedings and did not revoke the prohibitory orders. We find that vide Adjudication Order dated 30/09/2022, the SEBI found that the assessee's connection with M/s. First Financial Services Ltd. is too far-fetched to say that it was involved in the manipulation of the price of scrips of M/s.First Financial Services Ltd. However,

the SEBI vide aforesaid Adjudication Order found various other entities, including Mr. Anil Agarwal, on whose statement the AO has placed reliance for treating the impugned transaction as bogus, to be involved in jacking up the price artificially of the scrip of M/s.First Financial Services Ltd. and accordingly found them to have violated the aforesaid SEBI Regulations and Act. Thus, it is evident that the transaction of the assessee in the scrips of M/s.First Financial Services Ltd. has been found to be not violative of the provisions of the relevant Act and Regulations by the SEBI upon necessary investigation and the assessee was held to be not involved in price rigging. Therefore, in view of the above, we find no basis in sustaining the impugned addition made by the AO by treating the said transaction to be for obtaining bogus long-term capital gains. Accordingly, we direct the AO to delete the impugned addition made under section 68 of the Act and accept the plea of the assessee in respect of long-term capital gains earned during the year. Since the main transaction has not been found to be bogus, the addition on account of commission @ 3% made by the AO and upheld by the learned CIT(A) is also deleted. As a result, grounds no.2-6, raised in assessee's appeal are allowed.

33. In view of our aforesaid findings ground no.7, is rendered academic and therefore needs no separate adjudication.

34. Ground no.8, raised in assessee's appeal, pertains to the levy of interest under sections 234B of the Act, which is consequential in nature. Therefore, ground no.8 is allowed for statistical purposes.

35. Ground no.9 pertains to the initiation of penalty proceedings, which is premature in nature and therefore is dismissed.

36. In the result, the appeal by the assessee is partly allowed.

ITAs no.702/Mum./2023 and 703/Mum./2023
Assessee's Appeal – A.Y. 2014-15 and 2015-16

37. In the appeal for the assessment year 2014-15, the assessee has raised the following grounds:–

"The following grounds of appeal are without prejudice to one another:

1. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of A.O. in making additions in the appellant's case in the absence of any incriminating material found. as per the grounds stated in the order or otherwise.*
2. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of Assessing Officer in treating the long term capital gains earned by the appellant as non-genuine and bogus transaction, as per the grounds stated in the order or otherwise.*
3. *On the facts and circumstances and in law the Ld. CIT(A), erred in confirming the action of Assessing Officer in disallowing the claim u/s 10(38) of the Act being Long Term Capital Gain on sale of shares listed on Stock Exchange.*
4. *On the facts and circumstances of the Appellant's case and in law, LD. CIT(A) erred in confirming the action of Assessing Officer in making an addition of Rs. 1,10,29,789/- by invoking the provisions of Sec. 68 of the Income Tax Act, 1961, being the amount of sale value of shares without allowing the deduction in respect of the purchases cost amounting to Rs. 28,31,000/- and other incidental charges of Rs.3,71,285/- as per the grounds stated in the order or otherwise.*
5. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in making an addition of Rs.2,40,687/- as alleged commission @ 3% paid on bogus share transaction, as per the grounds stated in the order or otherwise.* 6. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in not granting deduction of L.T. CAPITAL GAINS U/S 10(38) of the Income Tax Act, 1961 of Rs. 80,22,789/-;*
7. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in not granting Cost of purchase of shares of Rs. 28,31,000/- and other incidental charges of Rs.3,71,285/- as deduction from L.T.C.GAINS, as per the calculations submitted;*
8. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in leaving Interest u/s 234B of Rs.16,92,315/-;*
9. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in issuing notice u/s 271(1)© of the Income Tax Act, 1961."*

38. In the appeal for the assessment year 2015-16, the assessee has raised the following grounds:-

"The following grounds of appeal are without prejudice to one another:

1. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of A.O. in making additions in the appellant's case in the absence of any incriminating material found, as per the grounds stated in the order or otherwise.*
2. *On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of Assessing Officer in treating the long term capital gains earned by the appellant as non-genuine and bogus transaction, as per the grounds stated in the order or otherwise.*

3. On the facts and circumstances and in law the Ld. CIT(A), erred in confirming the action of Assessing Officer in disallowing the claim u/s 10(38) of the Act being Long Term Capital Gain on sale of shares listed on Stock Exchange.

4. On the facts and circumstances of the Appellant's case and in law, LD. CIT(A) erred in confirming the action of Assessing Officer in making an addition of Rs. 98,77,000/- by invoking the provisions of Sec. 68 of the Income Tax Act, 1961, being the amount of sale value of shares without allowing the deduction in respect of the purchases cost amounting to Rs. 23,00,000/- as per the grounds stated in the order or otherwise.

5. On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in making an addition of Rs. 2,27,310/- as alleged commission @ 3% paid on bogus share transaction, as per the founds stated in the order or otherwise.

6. On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in not granting deduction of L.T.CAPITAL GAINS U/S 10(38) of the Income Tax Act, 1961 of Rs. 75,77,000/-;

7. On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in not granting Cost of purchase of shares of Rs. 23,00,000/- as deduction from L.T.C.GAINS, as per the calculations submitted;

8. On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in leaving Interest u/s 234B and 234C of Rs.11,43,351/- and Rs. 6,471/- respectively;

9. On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirmation the action of the Assessing Officer in issuing notice u/s 271(1) of the Income Tax Act, 1961;"

39. Ground no.1, raised in both appeals, was not pressed during the hearing. Accordingly, the same is dismissed as not pressed.

40. In the assessment years 2014-15 and 2015-16, the AO disallowed the exemption of long-term capital gains claimed by the assessee under section 10(38) of the Act in respect of transactions in the scrips of M/s.First Financial Services Ltd. Since a similar addition has been deleted in assessee's appeal for the assessment year 2013-14, our findings/conclusions as rendered therein are applicable *mutatis mutandis* to the present appeals. Accordingly, we direct the AO to delete the impugned addition made under section 68 of the Act and accept the plea of the assessee in respect of long-term capital gains for the assessment years 2014-15 and 2015-16. Since the main transaction has not been found to be bogus, the addition on account of commission @ 3% made by the AO and upheld by the learned CIT(A) is also deleted in both appeals.

41. The issue pertaining to the levy of interest under sections 234B and 234C of the Act, in both appeals, is consequential in nature and therefore is allowed for statistical purposes.

42. The ground pertaining to the initiation of penalty proceedings is premature in nature and therefore the same is dismissed in both appeals.

43. In the result, appeals for the assessment years 2014-15 and 2015-16 are partly allowed for statistical purposes.

44. To sum up, all the appeals by the assessee are partly allowed.

Order pronounced in the open Court on 28/08/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 28/08/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai