

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4862/MUM/2014  
Assessment Year: 2005-06**

ITO-24(3)(1)  
C-11, 7<sup>th</sup> floor, B.K.C.  
Bandra (E)  
Mumbai-400051.

Vs.

M/s Arvind Kumar Jain HUF  
497/A, Pampa Co-Opt HSG  
Scoc. Gajanand Colony Road  
Goregaon West  
Mumbai-400062.

**PAN No. AAHH1007M**

**Appellant**

**Respondent**

Revenue by : Mr. M.C. Omi Ningshen, DR  
Assessee by : Mr. Naveen Kumar Mishra, AR

Date of Hearing : 21/06/2017  
Date of pronouncement : 18/09/2017

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the Revenue. The relevant assessment year is 2005-06. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-34, Mumbai and arises out of the assessment completed u/s 143(3) r.w.s 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue are against the deleting of the addition of Rs.44,43,680/- made by the Assessing Officer

(AO) by treating the Long Term Capital Gains (LTCG) as unexplained cash credit u/s 68 of the Act.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the AY 2005-06 on 16.02.2006 declaring total income of Rs.19,294/-. The AO received information from the Deputy Director of Income Tax (Inv.)-Unit-IV (4) that (i) the assessee had shown sale proceeds of shares in the scrip 'Ramkrishna Fincap Ltd.' as LTCG and claimed exemption, (ii) the assessee had claimed to have purchased that scrip at Rs.3.12 per share in the year 2003 and sold the same at Rs.165.83 per share in the year 2005, (iii) those scrips were penny-stock and the capital gain declared was only accommodation entries, (iv) the broker M/s Basant Periwal & Co. through whom the transactions were effected had appeared as 'DRI probing evasion by firms *via* jama kharchi', who indulged in market manipulation and price manipulation through synchronized and cross deal in scrip of Ramkrishna Fincap Ltd., (v) SEBI had passed an order dated 09.07.2009 regarding the irregularities and synchronized trades carried out in the scrip of Ramkrishna Fincap Ltd. by the broker M/s Basant Periwal & Co.

In view of the above, the AO reopened the assessment by issuing notice u/s 148. After going through the submission of the assessee, the AO held that the scrip of Ramkrishna Fincap Ltd. is nothing but a penny stock. The assessee had done transactions with M/s Basant Periwal & Co. in only one transaction i.e. 'Ramkrishna Fincap Ltd.', that too in the particular period for which SEBI had given a specific finding.

Considering the above facts, the AO brought to tax the LTCG of Rs.44,24,385/- shown by the assessee as unexplained cash credit u/s 68.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) relied on the decision by the Hon'ble Delhi High Court in the case of *M/s Rajat Export Import India Pvt. Ltd. vs. ITO* 341 ITR 135 (Del) and held the reopening by the AO as valid.

4.1 Regarding the merit of the case, the AR of the assessee submitted before the Ld. CIT(A) that:

1. That no opportunity to cross examination has been given
2. Shares have been purchased, demated and sold for which necessary bills have been issued.
3. Shares have been sold through demat a/c and against the sale payment has been received by a/c payee cheque etc.
4. STT shares have been sold on recognized stock exchange on which STT have been paid.

4.2 The Ld. CIT(A) having gone through the copy of bank pass book, broker's bills for purchase and sale of shares, contract note, demat account, statement of STT , held that the AO did not have any material on record to show that the sale of shares were bogus. The Ld. CIT(A) relied on the order of the Tribunal mentioned at para 3.6 of the appellate order and also the decision in the case of *CIT vs. Arun Kumar Agarwal (HUF)* (2012) 26 taxmann.com 113 (Jharkhand) and deleted the addition of Rs.44,24,385/- made by the AO.

5. Before us, the Ld. DR submits that the assessee had done only one transaction in the whole year through the broker M/s Basant Periwal & Co. in the scrip of Ramkrishna Fincap Ltd. and the broker was situated in Kolkata whereas the assessee was located in Mumbai and all other security transactions were carried out by the assessee through brokers in Mumbai. The broker M/s Basan Periwal & Co. had indulged in synchronized trading in the scrip of Ramkrishna Fincap Ltd. and had artificially inflated the price of the shares and were only issuing bogus bills/accommodation entries. SEBI had conducted enquiries and found that the broker M/s Basan Periwal & Co. had indulged in market manipulation and inflated the price of the scrip. As per the order dated 31.08.2010 passed by SEBI Ramkrishna Fincap Ltd. had no net worth for such price hike of the shares from Rs.3.12 per share to Rs.165.83 per share. The Ld. DR further submits that the Calcutta Stock Exchange Ltd. had imposed penalty on M/s Basant Periwal & Co. for issuance of false contract notes to its members and this fact clearly shows that the transactions were not genuine.

6. *Per contra* the Ld. counsel of the assessee files a Paper Book (P/B) enclosing a copy of decision in the case of *Smt. Bharti Arvind Jain vs. ITO* (ITA No.6102/Mum/2016) – ITAT ‘SMC’ Bench, Mumbai, *CIT vs. Shyam R. Pawar* (2015) 54 taxmann.com 108 (Bom.), *ITO vs. M/s Indravadan Jain HUF* (ITA No. 4861/Mum/2014) – ITAT ‘I’ Bench, Mumbai, *Arun Kumar Agarwal (supra)*, *Chandrakant Babulal Shah vs. The Assessing Officer, Ward-16(2)(4)* (ITA No. 6108/Mum/2009) – ITAT ‘C’ Bench, Mumbai, *Mayur M. Shah (HUF) vs. ITO* (ITA No. 2390/Mum/2013) –

ITAT 'SMC' Bench, Mumbai, *Asst. Commissioner of I.T. 14(3) vs. Shri Ravindrakumar Toshniwal* (ITA No.5302/Mum/2008) – ITAT 'D' Bench, Mumbai and *Smt. Durgadevi Mundra vs. ITO* (ITA No.1175/Mum/2012) – ITAT 'SMC' Bench Mumbai.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below:

Exactly a similar issue arose before the ITAT 'I' Bench, Mumbai in the case of *M/s Indravadan Jain HUF (supra)*. In that case also the assessee had shown sale proceeds of shares in the scrip 'Ramkrishna Fincap Ltd.' as LTCG and claimed exemption under the Act. Further the assessee had claimed to have purchased the scrip at Rs.3.12 per share in the year 2003 and sold the same in the year 2005 for Rs.155.04 per share. Also the AO held that these scrips were found to be penny stock and the capital gains declared was held to be only accommodation entries. Further, the broker M/s Basant Periwal and Co. through whom the transactions were effected had appeared as "DRI probing evasion by firms *via* jama kharchi" who indulged in price manipulation through synchronized and cross deal in scrip of 'Ramkrishna Fincap P. Ltd.' Furthermore, it was also communicated that SEBI had passed an order dated 09.07.2009 regarding the irregularities and synchronized trades carried out in scrip of 'Ramkrishna Fincap Ltd.' by the broker M/s Basant Periwal & Co. The AO did not accept the assessee's claim of LTCG and made an addition of it as unexplained cash credit u/s 68. In appeal, the Ld. CIT(A) deleted the addition and allowed the appeal of the

assessee. The Revenue filed appeal against the order of the Ld. CIT(A) before the ITAT. The Tribunal held as under:

“8. We have considered rival contentions and carefully gone through the orders of authorities below and found from the record that the AO has treated the share transaction as bogus on the plea that SEBI has initiated investigation in respect of Ramkrishna Fincap Pvt. Ltd. The AO further stated that investigation revealed that transaction through M/s Periwal and Co. on the floor of stock exchange was more than 83%. We found that as far as initiation of investigation of broker is concerned, the assessee is no way concerned with the activity of the broker. Detailed finding has been recorded by CIT(A) to the effect that assessee has made investment in shares which was purchased on the floor of stock exchange and not from M/s Basant Periwal and Co. Against purchases payment has been made by account payee cheque, delivery of shares were taken, contract of sale was also complete as per the Contract Act, therefore, the assessee is not concerned with any way of the broker. Nowhere the AO has alleged that the transaction by the assessee with these particular broker or share was bogus, merely because the investigation was done by SEBI against broker or his activity, assessee cannot be said to have entered into ingenuine transaction, insofar as assessee is not concerned with the activity of the broker and have no control over the same. We found that M/s Basant Periwal and Co. never stated any of the authority that transaction in M/s Ramkrishna Fincap Pvt. Ltd. on the floor of the stock exchange are ingenuine or mere accommodation entries. The CIT(A) after relying on the various decision of the coordinate bench, wherein on similar facts and circumstances, issue was decided in favour of the assessee, came to the conclusion that transaction entered by the assessee was genuine. Detailed finding recorded by CIT(A) at para 3 to 5 has not been controverted by the department by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the findings of CIT(A). Moreover, issue is

also covered by the decision of jurisdictional High Court in the case of Shyam R. Pawar (supra), wherein under similar facts and circumstances, transactions in shares were held to be genuine and addition made by AO was deleted. Respectfully following the same vis-à-vis findings recorded by CIT(A) which are as per material on record, we do not find any reason to interfere in the order of CIT(A).”

In *Shyam R. Pawar (supra)*, it has been held by the Hon’ble Bombay High Court that where DMAT account and contract note showed details of share transaction, and Assessing Officer had not proved said transaction as bogus, capital gain earned on said transaction could not be treated as unaccounted income u/s 68.

In the case of *Arun Kumar Agarwal (HUF) (supra)*, the Hon’ble Jharkhand High Court has held that where assessee’s broker share transaction was bone fide in all respect, merely because share broker was tainted violating SEBI regulations, would not make assessee’s share transactions bogus.

The ratio of the above decisions is applicable to the instant case.

7.1 Facts being similar, we follow the order of the Co-ordinate Bench in *M/s Indravadan Jain HUF (supra)* and uphold the order of the Ld. CIT(A).

8. In the result, the appeal is dismissed.

**Order pronounced in the open Court on 18/09/2017.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 18/09/2017

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**