

**IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI RAJ KUMAR CHAUHAN, JM**

**I.T.A. No. 1074/Mum/2025
(Assessment Year: 2018-19)**

Balram Chainrai, 304, Marine Chambers, New Marine Lines, Churchgate, Mumbai-400020. PAN: AFRPC7389E	Vs.	International Taxation, Ward-2(1)(1), Room No. 618C, 6 th Floor, Kautilya Bhavan, Bandra, C-41 to C-43, G Block, Bandra Kurla Complex, Mumbai-400051.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Ravikant S. Pathak, AR
Revenue / Respondent by : Shri Krishna Kumar, Sr. DR
Date of Hearing : 24.06.2025
Date of Pronouncement : 30.06.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the final order of assessment of the Income Tax Officer (International Circle)-2(1)(1), Mumbai [In short 'AO'] passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (the Act) dated 20.12.2024 for AY 2018-19. The assessee raised the following grounds of appeal:

“1.1. The assessment order dated 20/12/2024 passed u/s 147 r.w.s 143(3) r.ws. 144C of the Income Tax Act, 1961 (Act) by the Income Tax Officer, International Tax Ward -2(1)(1), Mumbai [hereinafter referred as AO] is

barred by the limitation provided u/s 153 r.w.s. 144C of the Act, hence, the same deserves to be quashed.

2.1 The AO and the Hon'ble Dispute Resolution Panel (hereinafter referred as DRP) erred in reopening the assessment of the Appellant by issuing notice u/s 148 of the Income Tax Act, 1961 (Act) and passing the order u/s 144B r.w.s. 147 of the Act without appreciating that there is no income chargeable to tax which has escaped the assessment within the meaning of section 147 of the Act.

The Appellant submits that reopening the assessment as well as passing of assessment order is contrary to the provision of the Act and ultra vires; hence, the notice issued to reopen the assessment as well as assessment order passed shall be quashed.

3.1 The AO erred and DRP erred in disallowing Rs. 73,05,006/- being Short Term Capital Loss incurred on sale of shares of M/s. Gini Silk Mills Limited by holding that the said loss has been incurred by way of prearranged transaction.

3.2 The AO and DRP erred in making an addition of Rs. 3,31,94,329/- under section 69A of the Act being sales consideration received on sale of shares of M/s. Gini Silk Mills Limited by treating the said consideration as alleged unexplained money.

The Appellant submits that he has bought and sold the shares of M/s. Gini Silk Mills Limited and incurred the loss in the normal course of making the investment. There is no prearranged transaction as alleged by the AO. Therefore, the disallowance /addition made by the AO shall be deleted.

4. The AO and DRP erred in charging the interest u/s 234B of the Act.

5. The AO and DRP erred in initiating penalty proceedings u/s 270A of the Act.”

2. The assessee is an individual and filed the return of income for AY 2018-19 declaring a total income of Rs. 16,61,20,490/-. Information is received by the AO that bogus Long Term / Short Term Capital Gain or Loss have been booked by trading in the shares of M/s Gini Silk Mills Ltd. The AO noticed that during the year under consideration the assessee has sold 82,309 shares of M/s Gini Silk Mills Ltd. on 06.12.2017 and has booked a Short Term Capital Loss (STCL) of Rs. 73,05,006/- which is set off against the Short Term Capital Gain (STCG) earned by the assessee

during the year. Accordingly, the AO reopened the assessment by issue of notice under section 148A(b) for the reason that the assessee is a beneficiary of bogus STCL and passed an order under section 148A(b). The AO subsequently issued a notice on 06.04.2022 under section 148 of the Act and the assessee filed the return of income in response to the notice declaring the same income as was declared in the original return of income. The AO called on the assessee to furnish various details pertaining to the transaction of M/s Gini Silk Mills Ltd. and the assessee filed various details such as contract notes, Demat statements, client broker ledger, bank statement, etc. from time to time. The assessee further submitted that he is a regular investor and that there is no material evidence to prove that the impugned transactions have been entered into with intention to book bogus Short Term Capital Loss (STCL). The AO did not accept the submissions of the assessee and held that the complete analysis report of the share price movement of M/s Gini Silk Mills Ltd. clearly indicates that the impugned transactions are pre-arranged and artificial to book bogus LTCG /STCL to the interested beneficiaries. The AO accordingly made an addition of the entire sale consideration of Rs. 3,31,94,329/- under section 69A of the Act and the STCL of Rs. 73,05,006/- was not allowed to be set off. The assessee raised further objections before the DRP against the draft assessment order passed by the AO. The DRP confirmed the addition made by the AO by holding that

“6.3.4 The applicant has asserted that there is no action/finding of any Agency against the Applicant and that he has maintained the relevant documentation of the transactions. So, Applicant cannot be said to be a manipulator in the scrip. In this regard, the Panel observes that there is no allegation of the AO that the applicant itself is the manipulator. The Applicant has undertaken trades in a manipulated scrip under complete awareness regarding the price-rigging, being a complicit member by way of private placement entry. The Applicant has harvested the bogus losses in a planned, passive manner. The Applicant is a beneficiary, and not the operator, who have been duly targeted by various enforcement / regulatory bodies. Thus, being a beneficiary and not the operator, the claims of the Applicant are not relevant. In view of the above discussion, the averments of the Applicant do not find favour with this Panel.”

3. The assessee is in appeal before the Tribunal against the final order of assessment passed by the AO pursuant to the directions of the DRP.

4. Ground No.1 & 2 raised by the assessee are with regard to the legal contention that the order of the AO is barred by limitation and with regard to the authority approving the re-opening. During the course of the hearing the ld. AR submitted that if ground no. 3.1 and 3.2 contending the issue on merits is allowed in favour of the assessee then the legal ground would become academic and may be left open accordingly. Therefore, we will first proceed to consider the issue on merits.

5. The ld. AR submitted that the assessee is a regular investor and in this regard took us through the value of investment held by the assessee for various years as tabulated below:

Summary of total investment held:

Sr. No.	Period	Total Cost –Rs.	Market Value – Rs.
1	31-03-2015	61,68,63,645	68,44,82,913
2	31-03-2016	53,23,17,616	85,59,48,626
3	31-03-2017	94,17,28,208	1,16,69,96,088
4	31-03-2018	43,22,58,710	44,66,23,886
5	31-03-2019	1,11,62,88,269	66,06,11,713
6	31-03-2020	1,19,07,38,641	47,45,57,147
7	31-03-2021	1,20,51,58,119	93,65,40,605

6. The ld. AR further submitted that the assessee is a non-resident Indian based in HongKong and for the year under consideration has declared huge amount of STCG and LTCG (page 2 of PB). The ld. AR also submitted that the assessee has purchased 3,59,500 shares of M/s Gini Silk Mills Ltd. on various dates and that during the year under consideration has sold only a portion of the holding to the tune 82,309 shares which resulted in STCL. The ld. AR argued that the assessee has furnished all the relevant documents pertaining to the sale of shares of M/s Gini Silk

Mills Ltd. and that the AO has not recorded any adverse finding with regard with regard to the documents submitted. The ld. AR further argued that the AO has not even recorded the findings that the documents have been examined by him. The ld. AR also argued that nothing has been brought on record by revenue incriminating the assessee that he has been part of price rigging and that mere trading in alleged penny stock cannot be held as non-genuine unless it is evidenced that the assessee is involved in price rigging. The ld. AR took the bench through the various documentary evidences submitted before the AO to substantiate the claim that the transactions entered into by the assessee is genuine and therefore no addition under section 69A could be made.

7. The ld. DR on the other hand submitted that the shares of M/s Gini Silk Mills Ltd. are found to be penny stock and the preponderance of probability would lead to the conclusion that assessee's transactions of trading in the said penny stock are non-genuine. The ld. DR in this regard placed reliance on the decision of the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj [2022] 139 taxmann.com 352. Accordingly, the ld. DR supported the order of the AO and direction of the DRP.

8. We heard the parties and perused the material on record. From the perusal of the computation of income we notice that for the year under consideration, the assessee has declared a total STCG after setting off of STCL to the tune of Rs. 4,18,85,821/-. The assessee has also declared LTCG of Rs. 65,74,86,896/-. We further notice that the assessee has made STCL from sale of various scrip and one of the scrip being M/s Gini Silk Mills Ltd. (page 12 of PB). We also notice that the assessee has bought the share of M/s Gini Silk Mills Ltd. in three tranches totalling to 3,59,500 shares and has sold a part of the share to the tune 83,309/- during the

year under consideration. On perusal of the STCL booked by the assessee on sale of shares of M/s Gini Silk Mills Ltd. we notice that the shares have been bought at an average rate of Rs. 492/- and that the same has sold at an average rate of Rs. 403.29 (page 12 of PB). The assessee before the AO has submitted various documents such as the contract note, Demat statement, broker's ledger a/c, bank statement highlighting the purchase and sale consideration etc. The only ground of the revenue to make the addition under section 69A is that the assessee has transacted in the alleged penny stock. It is relevant to mention here that the AO while making the addition has not recorded any adverse finding with regard to the various documentary evidences filed by the assessee but has merely held that the price movement of the shares of M/s Gini Silk Mills Ltd. reflects that it is manipulated and that the assessee has benefited by transacting in the said share. Even the DRP while upholding the addition made by the AO has not recorded any finding with regard to the documents submitted by the assessee or any finding as to whether the assessee is part of price rigging. Therefore we see merit in the contention of the Id. AR that merely transacting in the shares alleged to be penny stock would not amount to treating the entire transaction as bogus without appreciating the documentary evidences submitted to prove the genuineness of the transaction. From the facts as enumerated here in above it is also well established that the assessee is a regular investor and has declared substantial amount of STCG and LTCG during the year under consideration. We notice that the Co-ordinate Bench of the Tribunal in the case of DCIT vs. Jainam Investments (ITA No. 519/Mum/2025 dated 20.03.2025) has considered a similar issue where it has been held that

“8. We heard the rival submissions and considered the documents available in the record. On perusal of the documents, we find that the alleged 3 scrips, viz. Blue Circle, Shreenath & Chirawa which are treated by the revenue as penny stock and it is also fact on record that these scrips are categorized as penny stock as per the investigation wing, Kolkata reports and Ld. AO has heavily

relied on these reports and report of SEBI to come to the conclusion that the various scrips dealt with by the assessee are penny stock and he discussed various analysis made by the investigation wing of Kolkata and other agencies and relied on various submissions of various dealers in these scrips and proceeded to disallow the claim made by the assessee on the business loss. In the impugned assessment order Ld. AO discussed various analysis made by the investigating wing of Kolkata and SEBI. In none of the statements or reports of Investigation Wing or orders of SEBI the name of the assessee was mentioned for manipulation. We also notice from the record that assessee has submitted all the relevant documents of purchase and sale of these scrips in the recognized stock exchange and all the details were submitted before the Ld. AO including the payments were made through banking channels only. The assessee has incurred trading loss related to 67 stocks amount to Rs.49,40,19,090/- out of that the assessee incurred loss on 3 alleged shares only amount to Rs.3,12,55,526/-. So, this is a part of the entire trading of the assessee. The Id. CIT(A) acknowledged the documents filed by the assessee in both the stage which are demat account, contract notes, ledger and details of sales and purchases. None of the documents are duly rejected by the Ld.AO during the assessment proceedings and the veracity of the documents are never been challenged. Considering the order of the co-ordinate benches of ITAT, we find that the ITAT, Kolkata Bench and co-ordinate benches of ITAT, Mumbai Bench and ITAT-Chandigarh Bench have taken the view in favour of the assessee and which is already mentioned by the Ld.CIT(A) in appellate order. From the above discussion, it proves that the assessee is trading share regularly with huge volume and may be the assessee has dealt with suspicious scrips, merely on the basis of movement of share price and there is nothing on record to prove that the assessee has in no way involved in price rigging or in any irregularities. The assessee incurred total loss of Rs.49,40,19,090/- and only in respect of those 3 scrips, the assessee has incurred loss of Rs.3,12,55,526/-. Therefore, we do not find any reason to interfere in the findings of the Ld.CIT(A). Accordingly, ground raised by the revenue is dismissed.

9. In the result, the appeal of the revenue bearing ITA No 519/Mum/2025 is dismissed.

9. In the above case, the coordinate bench has upheld decision of the CIT(A) in deleting the addition on the ground that the assessee is a regular investor trading in various scrip and the alleged bogus transaction pertain to only one of the scrip which cannot be held as bonus. The coordinate bench has also considered the fact

that the revenue has not brought anything on record to prove that the assessee has in anyway involved in price rigging and that the assessee has submitted all relevant documents which have not been disputed by the revenue. Accordingly in our view the ratio in the above decision is applicable to assessee's case also since the facts are similar. Therefore considering the facts in assessee's case and the above judicial precedence we are of the view that the revenue is not correct in treating the sale of shares of M/s Gini Silk Mills Ltd. as non-genuine without appreciating that the assessee is a regular investor and without recording any adverse finding regarding the documentary evidences in support of the impugned transactions. We accordingly direct the AO to delete the addition made under section 69A and allow the STCL to be set off. Ground No. 3.1 & 3.2 are allowed.

10. Ground No.4 with regard to interest under section 234B and Ground No. 5 with regard to penalty under section 270A are consequential not warranting separate adjudication. Since we have allowed the issue considering the grounds raised on merits, the legal contentions of the assessee in Ground No. 1 & 2 have become academic and left open accordingly.

11. In result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30-06-2025.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai