INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCHES, MUMBAI

BENCH: E

BEFORE SANDEEP GOSAIN, JUDICIAL MEMBER
AND GIRISH AGRAWAL, ACCOUNTANT MEMBER

<table>
<tr><td colspan="3">ITA 4020/MUM/2025
निर्धारण वर्ष/Assessment Year: 2013-14)</td></tr>
<tr><td>KANTABEN BHOGILAL KUBADIA
801, 8TH FLR, SUNSHINE HEIGHTS, 243 P L KALE GURUJI MARG, DADAR WEST, MUMBAI-400028, MAHARASHTRA</td><td rowspan="2">Vs.</td><td>INCOME TAX OFFICER WARD 22(2)(1), MUMBAI
INCOME TAX OFFICER WARD 22(2)(1), PIRAMAL CHAMBERS, LALBAUG, MUMBAI MUMBAI-400012, MAHARASHTRA</td></tr>
<tr><td>अपीलार्थी Appellant</td><td>प्रत्यर्थी Respondent</td></tr>
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<tr><td colspan="2">Permanent Account Number of Assessee:</td><td>AADPK8166G</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td colspan="2">अपीलार्थी द्वारा/Appellant represented by:</td><td>Shri Satyaprakash Singh</td></tr>
<tr><td colspan="2">प्रत्यर्थी द्वारा/Respondent represented by:</td><td>Shri Hemanshu Joshi, SR DR</td></tr>
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सुनवाई की तारीख / Date of conclusion of hearing:	**06-Apr-2026**
घोषणा की तारीख / Date of pronouncement:	**02-Jul-2026**

आदेश / ORDER

PER SANDEEP GOSAIN, JUDICIAL MEMBER:

This appeal is filed by the Assessee against the order of Ld. CIT(A) NFAC DELHI vide DIN: ITBA/NFAC/S/250/2025-26/1076512058(1) dated 29-May-2025 for the Assessment Year 2013-14. The Assessee has raised the following grounds of appeal:

1. The order dated 28/05/2025 bearing No. ITBA/NFAC/S/250/2025-26/1076512058(1) by the CIT[A], National Faceless Appeal Centre, Delhi is arbitrary, against natural justice, *unlawful, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.*

2. On facts and in the circumstances of the case and in law the C.I.T.(Appeals) has erred in confirming the addition made u/s.68 of the Income Tax Act, 1961 amounting to Rs.80,35,770/- on account of Long Term Capital Gain claimed as exempt under section 10[38] of the Income Tax Act, 1961 by the appellant.

3. On facts and in the circumstances of the case and in law the C.I.T(Appeals) has erred in confirming addition made u/s. 68 of the Income Tax Act, 1961 amounting to Rs.6,42,862/- being commission paid @ 8% of the Long-Term Capital Gain

4. The appellant craves to alter, add, delete, substitute, or modify and other grounds of appeal.

2. **Ground Nos. 1 and 2** raised by the assessee are interrelated and interconnected and relate to challenging the order of the Ld. CIT(A) in confirming the addition made by the AO under Section 68 of the Act. Therefore, we have decided to adjudicate these grounds through the present consolidated order.

3. From the record, we noticed that the assessee, being an individual, filed her return of income.

4. Subsequently, the assessment was reopened on the basis of information that the LTCG claimed by the assessee as exempt under Section 10(38) on long-term capital gains arising from the sale of shares of NCL Research and Financial Services Ltd. was treated as unexplained cash credit, and accordingly, additions were made under Section 68 of the Act.

5. We have heard the counsels for both parties, perused the material placed on record, the judgments cited before us, and the orders passed by the Revenue Authorities. From the records, we noticed that during the course of

the assessment proceedings, the AO observed that the assessee had shown the purchase of 20,000 preferential shares of NCL Research and Financial Services Ltd., which were allotted for Rs. 35 lakhs.

6. It was observed that the Director of Investigation had carried out a countrywide investigation in order to unearth the organized racket generating LTCG which is exempt from Income Tax. A detailed investigation was conducted, and the investigation report was sent to all the AOs who were assessing such cases. Therefore, on the basis of the said investigation carried out by the Investigation Wing, Kolkata, the case of the assessee was reopened. During the course of the assessment proceedings, the AO concluded that the LTCG claimed by the assessee was pre-arranged and bogus and, therefore, rejected the entire capital gain received on the sale of shares and added the same as taxable income under Section 68 of the Act without allowing the exemption under Section 10(38) of the Act.

7. On the contrary, it was submitted that the assessee had purchased 20,000 preferential shares and, in this regard, had relied upon the following documents:

i] Copy of Purchase Bill
ii] Copy of Bank Statements
iii] Copy of Balance Sheet of the assessee as on 31.03.2012
iv] Copy of Demat Account

8. The assessee sold 6,200 shares of M/s. NCL Research & Financial Services Ltd. during the year under consideration on the Bombay Stock Exchange through the broker M/s. MNS Securities Ltd. In support of the

sale, the assessee furnished the following details before the Assessing Officer during the course of the assessment proceedings:

i] Copy of Contract Notes
ii] Copy of Bank Statements
iii] Copy of Demat Account

9. However, the claim of the assessee was rejected on the basis of the investigation conducted by the Investigation Wing, Kolkata, after recording the statements of various operators and brokers and noticing an unusual trend in the market price of the shares. Accordingly, M/s. NCL Research & Financial Services Ltd. was held to be a penny stock. Whereas, it was submitted that there was neither any circumstantial nor any direct evidence against the assessee to prove that the LTCG shown by the assessee was not genuine but was an arranged transaction.

10. In this regard, the ld. AR invited our attention to the statement on oath of Gautam Bose recorded on 27/05/2015, which is partly reproduced in the Assessment Order. Question No. 13 reads as under:

> ***Q.13.*** *It appears from the trade details of NCL Research that the following persons have taken LTCG by selling the shares of this scrip. Please offer your comments.*

Sr.No.	Name	PAN	Amount
1	Brij Bhushan Agarwal	ACGPA0365A	43380001
2	Brij Bhushan Agarwal & Sons	AADHB1459B	36782500
3	Sumitra Devi Agarwal	AFRPA7934F	30738200
4	Mittu Agarwal	ADAPA2795B	30290000
5	Shubham Agarwal	AKDPA9431A	25922000
6	Sheetij Agarwal	AKDPA9469N	30157500
7	Bajranglal Agarwal & Sons	AAHB6224N	38461000
8	Sanjay Kumar Agarwal	AJHPA0837H	38078901
9	Pooja Agarwal	ABTPG1574B	34122800
10	Bina Devi Agarwal	ACWPA0310K	33333028
11	Bajrang lal Agarwal	ACWPA3142	26758540
		Total	368024470

> ***Ans.*** *Sir, I have seen the list. These are beneficiaries of bogus long-term capital gains. Mr. Manish Baid is the person who takes cash from these beneficiaries who wanted to book*

bogus long-term capital gains. These persons belong to the Shyam Sell & Power Group. They have provided cash to Mr. Manish Baid, and the same was routed through shell/jamakharchi companies controlled by Mr. Manish Baid. Finally, such paper companies purchased shares from such individuals and issued cheques towards LTCG.

11. After having considered the above details, we find that the name of the assessee does not appear in the above list. Thus, the said statement cannot be used as evidence against the appellant. Hence, the addition made by the Assessing Officer is arbitrary and unjustified.

12. The fact that these shares have appreciated in value to a great extent does not mean that the capital gain earned is bogus. We find that the purchase transactions have taken place through banking channels, the shares are held in dematerialized form, and the sale transactions have taken place on a recognized stock exchange and have been subjected to Securities Transaction Tax (STT). Thus, considering the totality of the facts, the market price of an equity share on the stock exchange cannot be controlled by an individual, and market prices keep fluctuating depending upon various factors. Therefore, there is no question of the capital gain being bogus.

13. Although the AO, while rejecting the claim of the assessee, relied upon the following decisions:

A) Sumati Dayal vs. CIT [(1995) 214 ITR 801 (SC)]

B) Durga Prasad More vs. CIT

C) CIT vs. P. Mohankala

D) ITO vs. Usha Chandresh Shah [ITA No. 6858/Mum/2011]

E) Ratnakar M. Pujari vs. ITO [ITA No. 995/Mum/2012]

14. After going through the decisions relied upon by the Revenue Authorities, we find that the facts involved therein are clearly distinguishable from the facts of the present case. In all the above cases, the source of purchase or the genuineness of the purchase transactions was not proved, and hence the capital gain so earned was treated as bogus. However, in the present case, the source of purchase and the genuineness of the transactions stand duly proved, and the same has not been controverted by the AO.

15. We further noticed that, despite a specific request, an opportunity to cross-examine the deponent was not afforded to the assessee, in violation of the principle laid down by the Hon'ble Supreme Court in *Andaman Timber Industries* [62 taxmann.com 3 (SC)].

16. We also noticed that, in order to prove the genuineness of the transactions, the assessee has placed the following documents on record:

i) Contract notes issued by the broker, which are system-generated and clearly mention the following details:

a) Details of the broker

b) DP ID

c) Client ID

d) Contract number, trade date, order number, order time, and trade number

e) Scrip name

f) Quantity of shares sold, rate at which sold, brokerage, and sale consideration

g) Amount of STT charged and service tax levied

ii) Bank statement showing the sale consideration received from the broker.

iii) Demat statement showing the holding of shares for more than 12 months.

iv) Purchase bill, letter confirming the purchase, and bank statement highlighting the payment made for acquisition of the shares.

v) Demat statement showing the dematerialization of the shares.

vi) Balance Sheets for the relevant years reflecting the shares as investments.

17. Reliance in this regard is being placed upon the following decisions:

I] High Court of Gujarat in case of Commissioner of Income-tax-I Vs. Maheshchandra G. Vakil [2013]40 taxmann.com 326 (Gujarat) *held that Where assessee proved genuineness of share transactions by contract notes for sale and purchase, bank statement of broker, demat account showing transfer in and out of shares, as also abstract of transactions furnished by stock exchange, Assessing Officer was not justified in treating capital gain arising from sale of shares as unexplained cash credit.*

II] High Court of Gujarat in case of Commissioner of Income-tax-1 Vs. Himani M Vakil [2013]10 taxmann.com 326 (Gujarat) *held that where assessee duly proved genuineness of share transactions by bringing on record contract notes for sale and purchase, bank statement of broker and demat account showing transfer in and out of shares, Assessing Officer was not justified in bringing to tax capital* *gain arising from sale of shares as unexplained cash credit. 1] High Court of Gujarat in case of Commissioner of Income-tax-I Vs. Maheshchandra G. Vakil [2013]40 taxmann.com 326 (Gujarat) held that Where assessee proved genuineness of share transactions by contract notes for sale and purchase, bank statement of broker, demat account showing transfer in and out of shares, as also abstract of transactions furnished by stock exchange, Assessing Officer was not justified in treating capital gain arising from sale of shares as unexplained cash credit.*

***III] Tribunal at Kolkata in case of DCIT vs Sunita Khema in ITA nos 714 to 718/kol/2011** has held that :-*

The AO cannot treat a transaction as bogus only on the basis of suspicion or surmise. He has to bring material on record to support his finding that there has been collusion/connivance between the broker and the assessee for the introduction of its unaccounted money. A transaction of purchase and sale of shares, supported by Contract Notes and demat statements and Account Payee Cheques cannot be treated as bogus.

***IV] Tribunal at Mumbai in case of Tekchand Rambhiya HUF in ITA nos 930/Mum/2012 has held that the Hon'ble High Court, in the case of CIT vs. Jamnadevi (328 ITR 656)** has observed in paragraphs 11 & 12 as under:*

"11. We see no merit in the above contentions. The fact that the assessees in the group have purchased and sold shares of similar companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence was produced to establish the genuineness of the claim.

12. From the documents produced before us, which were also in the possession of the Assessing Officer, it is seen that the shares in question were in fact purchased by the assessees on the respective dates and the company has confirmed to have handed over the shares purchased by the assessees. Similarly, the sale of the shares to the respective buyers is also established by producing documentary evidence. It is true that some of the transactions were off-market transactions However, the purchase and sale price of the shares declared by the assessees were in conformity *with the market rates prevailing on the respective dates as is seen from the documents furnished by the assessees. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as trade transactions as a sham transaction.*

V] High Court of Rajasthan at Jodhpur in case of CIT Vs. Smt Sumitra Devi in ITA 54/2012 *has held that:-*

True it is that several suspicious circumstances were indicated by the AO but then, the findings as ultimately recorded by him had been based more on presumptions rather than on cogent proof. As found concurrently by the CIT(A) and the ITAT, the AO had failed to show that the material documents placed on record by the assessee like broker's note, contract note, relevant extract of cash book, copies of share certificate, de-mat statement etc. were false, fabricated or fictitious. The appellate authorities have rightly observed that the facts as noticed by the AO, like the notice under Section 136 to the company having been returned unserved; delayed payment to the brokers; and de-materialisation of shares just before the sale would lead to suspicion and call for detailed examination and verification but then, for these facts alone. the transaction could not be rejected altogether, particularly in absence of any cogent evidence to the contrary.

VI] High Court of Allahabad in case of CIT Vs. Udit Narain Agarwal in ITA 560 of 2009 *has held that:-*

The Tribunal has upheld the finding. It had held that the assess was in possession of the shares in question and had sold the said shares in course of ordinary transaction of sale of shares at stock exchange and if the broker did not file any evidence since the same were seized by the Revenue Department, there is no fault with the assessee. From the aforesaid facts it is clear that the shares in question were allotted to the assessee in the public issue which were held in demat a/c of Stock Holding Corporation of India Ltd. The shares were transferred to Abhipra Capital Ltd. The sale consideration was received by demand draft. Therefore, the transaction in question cannot be said to be fake and is a genuine transaction. The Tribunal has not committee any error in upholding the order of CIT(Appeals) on this point.

18. High Court of Gujarat in case of Commissioner of Income-tax-1 Vs. Himani M Vakil [2013]10 taxmann.com 326 (Gujarat) held that where assessee duly proved genuineness of share transactions by bringing on record contract notes for sale and purchase, bank statement of broker and demat account showing transfer in and out of shares, Assessing Officer was not justified in bringing to tax capital gain arising from sale of shares as unexplained cash credit.

19. We noticed that the assessee placed on record all the necessary documents in order to prove the identity, creditworthiness, and genuineness of the share transactions. However, the AO could not point out any defect in the documentary evidence placed on record and relied upon by the assessee.

20. Moreover, the Coordinate Bench of the ITAT, in the case of ***Minu Gupta* in ITA No. 731/Kol/2018**, has dealt with the said scrip and deleted the addition based on the same scrip and the operative portion of the same is reproduced herein below:

> *22. We note that the coordinate bench of this Tribunal in the case of Prakash Chand Bhutoria ITA No. 2394/Kol/2017 dated 27.06.2018 upheld the assessee's claim of LTCG on sale of shares of M/s. Unno Industries Ltd. for AY 2014-15, as in the instant case before us so respectfully following the decision and also taking note of the documents filed before us (paper book page 19 to 31) from which we note that assessee has discharged its onus to prove the genuineness of the transaction of the purchase of shares by filing the share certificate along with share transfer advice of Pinnacle Vintrade Ltd (pages 19 to 21PB) and the purchases having taken place through bank transaction (page 23 PB) and later bonus share allotment letter (page 25PB) and bonus share certificate (page 24 PB) and thereafter by virtue of Amalgamation scheme allotment letter of M/s Unno Industries Ltd (page 26 PB) which were sold through registered broker of Bombay Stock Exchange (M/s. Anand Rathi Securities Ltd). and sale of scrips is evidence by contract note of sale (page 27*

PB) and transaction happened through banking transaction (page 28 of paper book). Since AO/Ld. CIT(A) could not find any fault or specific adverse materials against the assessee/broker/ or scrips of M/s. NCL, the addition u/s. 68 cannot be sustained. The addition based on a common/general report of DIT (Inv.) and there is nothing in the report specifically against the assessee, cannot be the basis for making the addition or draw adverse inference against the assessee. So the action of AO/Ld. CIT(A) cannot be sustained and therefore, the claim of exempt income on LTCG on sale of scrips of M/s. NCL has to be allowed and, therefore, the addition on this issue is directed to be deleted.

21. Thus, considering the totality of the facts and circumstances, and also keeping in view the ***doctrine of binding precedents*** and ***maintaining judicial consistency***, we set aside the order passed by the ld. CIT(A) and direct the AO to delete the impugned additions.

22. Since we have already deleted the additions while adjudicating Ground Nos. 1 and 2, **Ground No. 3** raised by the assessee becomes consequential in nature and, therefore, does not require separate adjudication.

23. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 02.07.2026.

Sd/-	**Sd/-**
GIRISH AGRAWAL	**SANDEEP GOSAIN**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai
Dated: 02.07.2026

RY-SrPS

Copy to:

1	**KANTABEN BHOGILAL KUBADIA, 801, 8TH FLR, SUNSHINE HEIGHTS, 243 P L KALE GURUJI MARG, DADAR WEST, MUMBAI-400028, MAHARASHTRA**
2	**INCOME TAX OFFICER WARD 22(2)(1), MUMBAI, INCOME TAX OFFICER WARD 22(2)(1), PIRAMAL CHAMBERS, LALBAUG, MUMBAI, MUMBAI-400012, MAHARASHTRA**
3	THE PCIT / CIT,
4	THE D.R., ITAT, MUMBAI BENCH
5	GUARD FILE

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