IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 23.07.2025
DELIVERED ON:01.08.2025

CORAM:

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

ITAT/88/2025

(IA NO: GA/2/2025)

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL- 2, KOLKATA

VERSUS

M/S. ZULU MERCHANDISE PRIVATE LIMITED

Appearance:-
Mr. Vipul Kundalia, Sr. Adv.
Mr. Prithu Dudheria, Sr. Standing Counsel.

.....For the Appellant.

Mr. Agnibesh Sengupta, Adv.
Mr. Dwip Raj Basu, Adv.
Mr. Avijit Kar, Adv.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated September 23, 2024 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (tribunal) in ITA No. 553/Kol/2024 for the assessment year 2014-2015. The revenue has raised the following substantial questions of law for consideration:-

> *(a) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in deleting the disallowance of Rs. 51,33,870/- on account of share trading, without considering the facts that the assessee failed to prove the genuineness of the whole transaction?*
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> *(b) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in deleting the disallowance of Rest. 51,33,870/- on account of share trading, without considering the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT (Cen)-1 Kolkata Vs. NRA Iron and Steel Pvt. Ltd. (412 ITR 161) reported in (2020) 117 taxmann.com 752(SC) and by Hon'ble Calcutta High Court in the case of Pr. CIT (Cen)-2, Kolkata Vs. M/s. BST Infratech Ltd. in ITAT/67/2024 dated 23.04.2024 reported in (2024) 161 taxman.comk 668 (Calcutta)?*
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> *(c) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in coming to the conclusion that the assessee had discharged the initial onus which lay upon him in terms of Section 68 of the Act?*

(d) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law to provide the verdict in favour of the assessee based on the tax effect of Rs. 16,27,963/- i.e. below the prescribed limit as determined by Board's Circular 09/2024 dated 17th September, 2024, since there is presence of exceptional clause in this instant case as per the para 3.1(h) of CBDT Circular No. 05/2024 dated 15th March, 2024 on account of unexplained cash credit Under Section 68?

2. We have heard Mr. Vipul Kundalia, Learned Senior Advocate assisted by Mr. Prithu Dudheria, learned Senior Standing Counsel appearing for the appellant revenue and learned Advocate Mr. Agnibesh Sengupta assisted by Mr. Dwip Raj Basu and Mr. Avijit Kar, learned advocates appearing for the respondent assessee.

3. The assesseee is a non banking financial company (NBFC) engaged in money lending and trading of shares and securities. The assessee filed its return of income for the assessment year under consideration, A.Y. 2014-2015, on 27.09.2014 disclosing total income of Rs. 1,34,616/-. The case was selected for scrutiny and notice dated 01.09.2015 under Section 143(2) of the Act was issued and thereafter notice under Section 142(1) was issued on 06.04.2016 along with a questionnaire calling upon the assessee to file details/documents relating to the case. In compliance of the above notices, the assessee company appeared through their authorized representative and furnished details. As the assessee was engaged in trading of shares and securities as well as in money lending as they were called upon to submit particulars of trading in shares. On perusal of the details submitted by the

assessee, it was seen that the assessee had incurred a loss of Rs. 51,33,870/- on account of trading in shares of *Radford Global Limited* and *Shreenath Commercial*. Further the assessing officer found that the assessee had earned interest income of Rs. 32,43,618/- which was set off by the assessee with the trading loss of the abovementioned scripts. As the loss is stated to have been incurred by the assessee was substantial, the assessing officer took up the issue for detail scrutiny with all available tools such as through internet and in other search engines and also took note of the investigation report of the Directorate of Income Tax (Investigation), Kolkata and other agencies. Upon detail scrutiny the assessing officer found that the companies had no worth and they were not engaged in any proper business and therefore it was opined that there are strong reasons to believe that no prudent businessmen will buy such huge number of shares of the aforementioned companies. Furthermore, the assessing officer noted that the particular scripts which were purchased by the assessee were listed in the list of "bogus capital loss claims". The information which the assessing officer was able to ascertain was informed to the assessee more particularly, the details of the investigation report and the allegations made therein. Subsequently, two showcause notices were issued dated 05.10.2016 and 31.10.2016 calling upon the assessee to explain as to why the claim of the abovementioned scripts should not be disallowed and added to the total income. In response thereto, the reply was submitted by the assessee, among other things, contending that they have purchased and sold shares in the companies in the normal course of their business through share brokers in Demat Form in recognized stock exchanges and the payment was

made through proper banking channels. Further the assessee stated that they are regular traders/investors in shares and securities and they had purchased the shares of the two companies in anticipation of profit and at times, the justification of the investment in some shares fail due to reasons beyond their control. The assessing officer upon examination of the reply opined it to be usual and a routine type of reply lacking in any cogent reasoning. Further the assessing officer opined that merely stating that the transactions have been made through registered brokers in recognized stock exchanges in listed securities does not justify the rise and fall of stock price in the allegedly tainted shares not does it make this stage manage transactions genuine.

4. Further the assessing officer noted that the contracts to buy and sell were being offered at or about the same time by a fixed cartel of brokers involving in a circular manner whereby equal quantity of shares of sale were matched by the equal quantity of shares by person buying at the same consistent price. Furthermore, the assessing officer found that the price of the shares in a real market driven by the forces of demand and supply of legitimate buyers and sellers demonstrates volatility of an intra-day and intra year basis and such principle was surprisingly absent in the case of the two companies. Furthermore, the assessing officer noted that the report of the investigation department is thorough and exhaustive and they go to prove that the transactions done by the assessee was sham and fabricated. The assessing officer found that the two companies have no business at all and there is no significant indicator to justify the steep escalation in shares

price. The assessing officer made a comparative analysis of the balance sheet and negative figures of reserves for the last five years and has reproduced the same in the assessment order dated 26.12.2016. The trading pattern has already been explained by way of several graphs. Upon analysis of the entire data the assessing officer held that there is no genuine business activity in the company, the thin trading volume, the low net profit, the low EPS, and meagre income are some characteristics of these types of stocks and these facts in no way commensurate with the steep rise and fall in the price of stock. With regard to the stand taken by the assessee that the transactions were made through registered share brokers and are supported by contract notes the shares moved through Demat account and payment was made through proper banking channel etc., the assessing officer found that the investigation report depicts a totally different picture and it was found that everything was pre-arranged and desired goals were achieved through circular trading in which common persons/entities were found to be involved.

5. Further it was ensured by the operators that the shares are not available for purchase or sell to any person outside the syndicate and as many as 84 listed companies and 5000 paper companies and 25 entry operators were involved in the racket. The report takes note of the statements of the entry operators where they accepted rigging the price of the shares and managing the market to bring desirable results which suited their client and they accepted to do the same with a commission of 50 paisa to Rs. 1 per Rs. 100. Furthermore, it was found that the scripts of the two

companies also follow the uneven pattern of rise and fall. Thus, the assessing officer concluded that the facts clearly show that the transactions were sham and were done through stock exchanges to provide a proper veil and the genuineness could validly be tested on the ground of principle of pre-ponderance of human probabilities which could form a valid ground or a parameter for determining the genuineness. In support of such conclusion, reliance was placed on the decision of the Hon'ble Supreme Court in ***Sumati Dayal Versus Commissioner of Income Tax, Bangalore*** [1]. Further the assessing officer on analysis of the facts found that the purchase of the shares of companies is done considering the future prospects of the companies and goodwill in the market which was conspicuously absent in respect of the two companies where the assessee traded in shares. Accordingly, the loss reported in the stock trading of Rs. 51,33,870/- in the two companies was disallowed and added back to the total income of the assessee. Aggrieved by the said assessment order dated 26.12.2016, the assessee filed appeal before the National Faceless Appeal Centre (NFAC), Delhi.

6. Before the appellate authority, the assessee contended that the assessing officer erred in law as well as on facts by not providing the copy of the information to the assessee pertaining to the two companies received from the investigation wing and therefore it is in violation of the principles of natural justice. Furthermore, the assessee contended that the copy of the statements which were recorded behind their back were not provided to the

[1] (1995) 214 ITR 801 (SC)

assessee. In paragraph 4 of the order passed by the appellate authority dated 23.01.2024, a tabulated statement has been shown giving the various dates on which the appeal was listed for hearing and it is to be noted that the assessee did not participate in the hearing. The appellate authority examined the reasons set out by the assessing officer for making the addition and dealt with the grounds raised by the assessee. It was pointed out that it is incorrect to state that the information received from the investigation wing was not provided to the assessee as in the assessment order it is clearly stated that information was provided and thereafter show cause notices were issued. Therefore, it was held that there is no violation of principles of natural justice. Secondly, it was held that that assessee could not justify the transaction in such penny stocks and that the assessee has not produce any prove that it sought for cross examination of any person before the assessing officer. Several decisions of the Hon'ble Supreme Court and the High Courts were referred to, to support the conclusion that right to cross examination is not an absolute right in an income tax proceeding.

7. The appellate authority had in extenso referred to the decisions of this court in the case of ***Principal Commissioner of Income Tax Versus Swati Bajaj*** [2] and had quoted the relevant paragraphs of the said decision. It was thus held that the contention of the assessee alleging violation of principles of natural justice is not acceptable. Thereafter the appellate authority proceeded to consider the matter on merits, discussed about two companies, the modus operandi, the order passed by the Security and Exchange Board

[2] (2022) 446 ITR 56 (Cal)

of India (SEBI) which was affirmed by the Security Appellate Tribunal (SAT) against *Runicha Merchants Private Limited* for manipulations in shares of *Radford Global*. In the said order, it has been held that various entities including *Runicha Merchants* indulged in intra group trading with a manipulative intent to increase the share price of *Radford Global* and violated the provisions of SEBI Regulations and the SEBI Act, 1992. Further the appellate authority also took note of the financial strength of *Shreenath Commercial* and found that there is no justification for the assessee for having purchased the shares of the company in 2013. The appellate authority referred to the decisions of the Hon'ble Supreme Court in ***Suman Poddar Versus Income Tax Officer*** [3] wherein the order passed by the tribunal was upheld holding that the claim of the assessee therein for exemption under Section 10(38) of the Act should not be allowed because share transactions were bogus as Company "C" whose shares were allegedly purchased was a penny stock. With the above reasoning, the appeal was dismissed.

8. The assessee filed appeal before the tribunal. The only argument which appears to have been made before the learned tribunal by the assessee is by placing reliance on the decision of the Coordinate Bench of the tribunal in the case of ***Namokar Builders Private Limited Versus Principal Commissioner of Income Tax, Central – 1, Kolkata*** in ***ITA No. 762/Kol/2022*** dated 09.05.2024 wherein the tribunal held that the loss incurred in the sale and purchase of equity shares were in the ordinary

[3] (2020) 420 ITR (St) 7 (SC)

course of business and the loss resulting from penny stocks are eligible to be set off against the income earned by the assessee during the year. The revenue resisted the prayer made by the assessee by contending that the stocks were part of the list of 84 penny stocks and the loss generated from dealing in the equity share was apparently accommodation entries and therefore rightly rejected by the authority. In support of their contention, reliance was placed on the decision of this Court in ***Swati Bajaj.*** The learned Tribunal did not examine the facts of the assessee's case but proceeded to quote the entire decision in the case of ***Namokar Builders*** and in the last paragraph, of the impugned order, para 8, the tribunals holds that the facts in the assesseee's case are substantially similar and therefore they are following the decision of the Coordinate Bench and accordingly set aside the order passed by the appellate authority and directed the assessing officer to allow the set off loss on equity shares against interest income. Aggrieved by the same, the revenue has preferred the present appeal.

9. A preliminary objection was raised by the learned advocate appearing for the respondent assessee by contending that the tax effect in the instant case is only Rs. 16,27,963/- which is below the prescribed limit as determined by Board Circular 9/2024 dated 17.09.2024 and therefore the revenue cannot prosecute this appeal. The substantial questions of law no.(d) relates to this issue. The learned Senior Advocate appearing on behalf of the appellant revenue submitted that the Board has issued a recent Circular in Circular No.5 of 2024 dated 15.03.2024 which is in supersession of the communications issued by the Board in respect of departmental

appeals to be filed before the tribunal, the High Courts and the Hon'ble Supreme Court. Para 3.1 of the circular states the monetary limits given with regard to the filing appeal/SLP shall be applicable to all cases including those relating to TDS/TCS under the Act. With the exceptions set out therein, where the decision to file appeal/SLP shall be taken on merits, without regard to the tax effect and the monetary limits. The revenue seeks to bring the case on hand under Exception (h) in para 3.1 of the Circular which deals with cases involving organized tax evasion including cases of bogus capital gains/loss through penny stocks and case of accommodation entries. It is submitted by the learned advocate appearing for the respondent that there is nothing to indicate that the assessee was involved in an organized tax evasion and therefore the revenue cannot seek to maintain this appeal by referring to the exception in para 3.1 (h) of the Circular No. 5 of the 2024.

10. In the preceding paragraphs of this judgment, we have extensively referred to the finding recorded by the assessing officer in the assessment order dated 26.12.2016. The assessing officer upon examination of the details which were furnished by the assessee and upon thorough examination of the facts and attendant circumstances noticed that the two companies had no worth and they had no proper business activities. Therefore, the assessing officer opined that no prudent businessmen will buy such huge number of shares in the abovementioned two companies. Furthermore, the particular scripts which were dealt with by the assessee were mentioned in the list of bogus capital loss claims. The investigation

report was referred to, the details were apprised to the assessee and thereafter the show cause notices were issued on 05.10.2016 and 31.10.2016 calling upon the assessee to explain as to why the claim on the scripts of the abovementioned two companies should not be disallowed and added to the total income. The reply given by the assessee is absolutely vague except to state that they had sold the shares in the normal course of business through shares brokers in Demat Form in recognized stock exchanges and payment were made through banking channel.

11. Identical issue was considered in the case of ***Swati Bajaj*** where the investigation report was taken note of which stated that in the whole project a total 84 Bombay Stocks Exchanges listed penny stocks have been identified after which several search and survey operations were conducted in the office premises of more than 32 share broking entities who had accepted that they were actively involved in bogus LTCG/STCL fraud.

12. The trade pattern of the shares followed a "bell shaped", the company which had hardly any business activities, splitting of share took place after which price of the shares on the exchange went down automatically in proportion with the ratio of split up and one did not see anything adverse happening in the scripts. Further the shares of the company were thinly traded and gradually the value was hicked up to a desired level in a period of about one year so as to provide the desired amount to selected beneficiaries. The court took note of the concept called "working backwards" by commencing investigation not from the individual who traded in the penny stocks but targeting individuals who dealt with those penny stocks.

Thus, the facts of the case on hand would clearly reveal that it is those two companies in whose shares were traded by the assessee are in the list of bogus capital loss claim companies and it is undoubtedly the case involving organized tax evasion. Therefore, the revenue are entitled to maintain this appeal by referring to the exception as provided in para 3.1 (h) of the Circular No. 5 of 2024 dated 15.03.2024. Accordingly, substantial questions of law (e) is answered in favour of the revenue.

13. As observed earlier, the learned tribunal did not examine the merits of the matter, did not go into the facts of the case, did not touch upon the correctness of the reasoning given by the CIT(A) or that of the assessing officer but referred to the decision of the Coordinate Bench of the tribunal in the case of ***Namokar Builders Private Limited***, extracted the entire judgment running to be more than 15 pages and in the last paragraph, the tribunal states that the facts of the case of the assessee are also "substantially" similar and therefore the appeal was allowed. There is nothing to indicate as to how the tribunal found that the facts of the assessee's case were identical to the facts in ***Namokar Builders Private Limited***. The expression "substantially similar" used in paragraph 8 of the impugned order would show that the facts are not identically similar. In any event, the tribunal ought to have examined the merits of the matter and noted the facts and should have recorded the reasons as to how the decision in ***Namokar Builders*** would apply to the case on hand. That apart, the order passed in the case of ***Namokar Builders*** was challenged by the revenue before this Court by filing an appeal in ITAT No. 14 of 2025 wherein

the assessee ***Namokar Builders Private Limited*** took a stand that they wish to avail the provisions of the Direct Tax Vivaad Se Vishwas Scheme and accordingly the appeal was disposed of by order dated 05.03.2025 directing the assessee to file the application under the scheme and the department to process the application in accordance with law. Therefore, this court has to take a decision independent of the finding rendered by the tribunal in ***Namokar Builders Private Limited*** by taking note of the facts and circumstances.

14. The assessee though preferred appeal before the appellate authority did not appear for hearing despite several opportunities. Therefore, the appellate authority rightly proceeded to take decision on the merits and rejected the arguments of the assessee that there has been violation of principles of natural justice. As we have noted earlier, the entire information contained in the investigation report was apprised to the assessee by the assessing officer and thereafter the show cause notices dated 05.10.2016 and 31.10.2016 was issued for which the asseesse's submitted their reply and in the reply they did not raise any issue that they were unaware about the investigation report but made a vague and unsubstantiated statement stating that the transaction was in the normal course of business. Therefore, the appellate authority was fully right in holding that there is no violation of principles of natural justice. That apart, the assessee did not seek for any cross examination of the person from whom statement was recorded by the department. This issue was considered by this Court in the case on ***Swati Bajaj*** wherein the assessee contended that the copy of the investigation

report was not furnished to them and therefore, there was violation of principles of natural justice and also the persons from whom statement were recorded were not made available for cross examination. The Court held as follows:-

> 1. *The investigation report states that the investigation has not commenced from the individuals but it has commenced who had dealt with the penny stocks, concept of working backwards. This is a very significant factor to be remembered. Therefore, there has been absolute anonymity of the assessee in the process of investigation. The endeavour of the department is to examine the "modus operandi" adopted and in that process now seek to identify the assessees who have benefited on account of such "modus operandi". Therefore, considering the factual scenario no prejudice has been established to the assessee by not furnishing the investigation report in its entirety nor making the persons available for cross examination as admitted by the department in substantial number of cases the assessees have not been specifically indicted by those persons from whom statements have been recorded.*
> 2. *We are conscious of the fact that there may be exceptions however nothing has been brought before us to show that there was an exception in any of these appeals heard by us. In a few cases the assessee has been made known of the statement of the Director of the penny stock company or the stock broker, entry operator despite which those assessees could not make any headway. While on this issue, we need to consider as to whether and under what circumstances the right of cross examination can be demanded as a vested right. In **Kishanlal Agarwalla**, the Hon'ble Division Bench of this Court pointed out that no natural justice requires that there should be a kind of formal cross*

examination as it is a procedural justice, governed by the rules and regulations. Further it was held that so long as the party charged has a fair and reasonable opportunity would receive, comment and criticize the evidence, statements or records on which the charges is being against him, the demand and tests of natural justice are satisfied.

3. *Having noted the above legal position, it goes without saying there is no vested right for the assessee to cross examine the persons who have not deposed anything against the assessee. The investigation report proceeds on a different perspective commencing from a different point and this has led to the enquiry being conducted by the assessing officer calling upon the assessee to prove the genuineness of the claim of LTCG.*
4. *Thus, the report submitted by the investigation department cannot be thrown out on the grounds urged on behalf of the assessees. The assesses have not been shown to be prejudiced on account of non-furnishing of the investigation report or non-production of the persons for cross examination as the assessee has not specifically indicated as to how he was prejudiced, coupled with the fact as admitted by the revenue, the statements do not indict the assessee. That apart, we have noted that the investigation has commenced targeting the individuals who dealt with the penny stocks and after examining the modus seeing the cash trail the report has been submitted recommending the same to be placed before the DGIT (investigation) of all the states of the country. It is thereafter the concerned assessing officers have been informed to consider as to the bonafideness and genuineness of the claims of LTCG/LTCL of the respective assessees qua the findings which emanated during the investigation conducted on the individuals who dealt with the penny stocks. Therefore, the assessments have commenced by the assessing officers calling upon the assessee to explain the genuineness of the claim of LTCG/ LTCL made by them. In all the assessment orders, substantial*

portion of the investigation report has been noted in full. A careful reading of the some would show that the assessee has not been named in the report. If such be the case, unless and until the assessee shows and proves that she/he was prejudiced on account of such report / statement mere mentioning that non-furnishing of the report or non-availability of the person for cross examination cannot vitiate the proceedings. The assessees have miserably failed to prove the test of prejudice or that the test of fair hearing has not been satisfied in their individual cases. In all the cases, the assessees have been issued notices under Sections 143(2) and 142(1) of the Act they have been directed to furnish the documents, the assessee have complied with the directions, appeared before the assessing officer and in many cases represented by Advocates/Chartered Accountants, elaborate legal submissions have been made both oral and in writing and thereafter the assessments have been completed. Nothing prevented the assessee from mentioning that unless and until the report is furnished and the statements are provided, they would not in a position to take part in the inquiry which is being conducted by the assessing officer in scrutiny assessment under Section 143(3) of the Act. The assessee were conscious of the fact that they have not been named in the report, therefore made a vague and bold statement that the non-furnishing of report would vitiate the proceedings. Therefore, merely by mentioning that statements have not been furnished can in no manner advance the case of the assessee. If the report was available in the public domain as has been downloaded and produced before us by the learned standing counsel for the revenue, nothing prevented the assesses who are ably defended by Chartered Accountants and Advocates to download such reports and examine the same and thereafter put up their defence. Therefore, the based on such general statements of violation of

principles of natural justice the assessees have not made out any case.

5. *In the cases on hand, undoubtedly the report contains information about various penny stocks companies about the directors of the companies and also the stock brokers, entry operators and others who have been named in the report. It is an admitted case that the names of the assessees do not figure in the report. Therefore, non-furnishing of the report has in no manner prejudiced the rights of the assessees to discharge the onus cast upon them in terms of Section 68 of the Act.*

Thus, the legal principle which can be culled out from the above decision is that to prove the allegations, against the assessee, can be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled and when direct evidence is not available, it is the duty of the Court to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded so as to reach a reasonable conclusion and the test would be what inferential process that a reasonable/prudent man would apply to arrive at a conclusion. Further proximity and time and prior meeting of minds is also a very important factor especially when the income tax department has been able to point out that there has been a unnatural rise in the price of the scrips of very little known companies.

15. The appellate authority has not only considered the investigation report but examined the facts relarting to the two companies in which the assessee had transacted and has noted the transactions done by the assessee in paragraph 6.2.3 of the order dated 23.01.2024. On analysis of the data, the appellate authority found that the pattern of purchases of *Radford Global* shows that the assessee purchased the shares at a high

price of Rs. 79.85 and Rs. 79.95 per share on the same date, i.e. 18.04.2013 from two persons Dilip Chotalal Morzaria and Sureshkumar Sukalchand Lodha and sold the same on 30.10.2013 within about six months at a price of Rs. 14 per share to *Runicha Merchants Private Limited* about 10 shares sold to *Sidhiman Vyapar Private Limited* on the same day. So far as the *Runicha Merchants Private Limited* are concerned, the SEBI has passed an order against them for manipulation in shares of *Radford Global*, this order has been affirmed by the appellate tribunal and in the order passed by the learned tribunal, it has been held that the fund transactions and off market transaction between two entities are conclusive evidentiary proof which established direct connection between such entities and in certain cases, direct connections between counter parties/entitles may not have been established finding direct connections between entities may not be possible at all times.

16. Further it was found that the trades were executed among parties connected to each other directly or indirectly which resulted in manipulations of the price of the scripts of *Radford Global* and these entities contributed significantly to the market volume by trading among themselves and created false and misleading appearance of trading in the scripts. Further, the rise in the market volume of the scripts on *Radford Global* was not substantiated by underlying changes in *Radford Global Economical Fundamental*, corporate announcements, financial reports etc. In so far as the *Sreenath Commercial*, the appellate authority noted that the assessing officer has brought out in his order that the total assets of *Sreenath*

Commercial till March 2011 was Rs. 11.28 crores which increase to Rs. 14.12 crores in March 2012 and Rs. 31.95 crores in the March 2013. The capital work in progress during those years was NIL, the reserves were negatives figures till March 2012 and Rs. 17.3 crores in March 2013. The said company *Sreenath Commercial* had turnover of Rs. 1.23 crores in March 2010, Rs. 28.75 crores and Rs. 14.26 crores in March 2011, March 2012 respectively which plummeted down to Rs. 7.66 crores in March 2013. The profit before tax in March 2010 was a negative figure as also for March 2012 and subsequent years and the earnings per share in March 2012 was (-) Rs. 0.04 crores which went down to (-) Rs. 7 lakhs in March 2013. Upon analysis of this data the appellate authority that there is no justification for the assessee for having purchased the shares of *Sreenath Commercial* in 2013. As pointed out by the Hon'ble Supreme Court in ***Sumati Dayal***, the surrounding circumstances are to be taken note of that and the test of human probabilities has to be applied and if such tests are applied in the assessee's case, the irrestible conclusion would be that the claim of long term capital loss was a bogus claim. The decision of this court in the case of ***Principal Commissioner of Income Tax-9, Kolkata Versus P L Goenka HUF*** in ***ITAT 241 of 2024*** dated May 06, 2025 would also support the case of the appellant revenue.

17. The learned advocate appearing for the respondent assessee placed reliance on the decision in the case of ***Principal Commissioner of Income Tax Versus Smt. Krishna Devi*** [4] to support the contention that when it is

[4] (2021) 126 Taxman.com 80 (Del)

not disputed that the shares were purchased through stock exchanges and were routed through Demat Account and considerations was received through banking channels addition could not have been made by the assessing officer under Section 68 of the Act treating such long terms capital gains as bogus. This decision was rendered on January 15, 2021 prior to the decision in ***Swati Bajaj*** which was delivered on 14.06.2022 wherein several decisions of the Hon'ble Supreme Court were considered and in-depth analysis was made as regards the impact of the investigation report.

18. In ***Smt. Krishna Devi***, the court found that the assessing officer did not make a deep enquiry into the allegations of infusion of unaccounted money and the notice issued under Section 133(6)/131 did not yield any result and notice issued to the entity which effected payment was returned unserved and the assessing officer did not take the matter any further. In any event, the decision cannot be binding on us and at best can be referred to persuade the court to follow the decision. However, the decision in ***Swati Bajaj*** has dealt with in detail about this aspect and therefore we hold that the said decision in ***Swati Bajaj*** would apply to the facts and circumstances of this case. That apart, the appeal filed by the revenue in ***Smt. Krishna Devi*** was dismissed on the ground that no question of law much less substantial question of law arises for consideration. Reliance was placed on the decision in ***Principal Commissioner of Income Tax Versus Dipansu Mohapatra*** [5] the said appeal filed by the revenue was dismissed as no substantial questions of law arises for consideration. The decision of this

[5] [2023] 149 Taxman.com 99 (orissa)

court in ***Swati Bajaj*** appears to have not been placed before the Hon'ble Court when it dealt with the matter in ***Dipansu Mohapatra*** and apart from that the court upheld the order of the tribunal which held that there was violation of principles of natural justice, which issue we have decided otherwise, holding the same in favour of the revenue. Therefore, the said decision cannot be applied to the facts and circumstances of the case on hand.

19. The decision in ***Principal Commissioner of Income Tax Versus Indravadan Jain, HUF*** [6] would also not assist the respondent assessee as in the said case, the appellate authority did not find anything wrong with the respondent therein doing only one transaction with the said broker in the scripts of company called *Ramakrishna Fincap Limited (RFL)*. In the case on hand, the appellate authority has exhaustively examined the factual details and has demonstrated as to how the price of the scripts were rigged and who were involved in the matter. The assessing officer on his part has done an elaborate exercise after providing the adequate opportunity to the assessee to furnish details and also to submit reply to the show cause notice. The pattern of the rise in the price of share and the fall and the subsequent fall of price has been analyzed and a pictorial representation has also been given in the assessment order. Therefore, the decision in ***Dipansu Mohapatra*** is distinguishable on facts.

20. The learned advocate appearing for the respondent assessee placed reliance on the decision in ***Chief Commissioner of Income Tax (OSD)***

[6] [2023] 156 Taxman.com 605 (Bom)

Versus Nilesh Jain (HUF) [7]**,** in the said decision, the decision of the High Court of Delhi in the case of ***Smt. Krishna Devi*** has been followed and the appeal was dismissed as no substantial question of law arises for consideration. On facts in the said case the court found that the investigation report was not provided to the assessee whereas the facts in the case on hand is entirely different and as the assessee was made known of all the material particulars in the investigation report made known/apprise the investigation report and thereafter the show cause notice was issued for which the assessee submitted a reply and did not seek for any further details of the investigation report. Therefore, the decision in ***Nilesh Jain (HUF)*** would not advance the case of the respondent assessee.

21. The learned advocate appearing for the respondent referred to the decision of this court in ***Principal Commercial of Income Tax Versus Brightstar Vincom Private Limited*** [8] and submitted that one of the substantial questions of law raised in this appeal is identical to the substantial questions of law raised in the case of ***Brightstar*** and the said appeal was disposed of on the ground of low tax effect. We find from the said order that no objection appears to have been taken by the department to bring case under any one of the exceptions which have been curbed out in Circular No. 5 of 2024 dated 15.03.2024. In the preceding paragraphs, we have dealt with this issue in detail and recorded our conclusions that the case on hand would fall within the exception as contained in paragraph

[7] [2024] 163 Taxmann.com 229 (Madhya Pradesh)

[8] [2024] 168 Taxmann.com 11 (Calcutta)

3.1(h) of the Circular No. 5 of 2024. Therefore, the decision in ***Brightstar Vincom Private Limited*** cannot be applied to the assessee's case.

22. For all the above reasons, we hold that the learned tribunal committed a serious error of law and fact in allowing the asseess's appeal and setting aside the order passed by the appellate authority and the assessing officer.

23. For all the above reasons, the appeal is allowed the order passed by the learned tribunal is set aside and the assessment order dated 26.12.2016 as affirmed by the appellate authority by order 23.01.2024 are restored. Accordingly, the substantial questions of law are answered in favour of the appellant revenue.

(T.S. SIVAGNANAM, CJ.)

I Agree.

[CHAITALI CHATTERJEE (DAS), J.]

(P.A.- SACHIN)

High Court
सत्यमेव जयते
Calcutta