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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 454 OF 2018

Principal Commissioner of Income
Tax – 31, Mumbai

....Appellant

V/s.
Indravadan Jain, HUF

...Respondent

Ms. Sushma Nagraj a/w Ms. Sakshi Kapadia for Appellant.
None for Respondent.

**CORAM : K.R. SHRIRAM &
FIRDOSH P POONIWALLA, JJ.
DATED : 12th JULY 2023**

P.C. :

1. This appeal is impugning an order dated 27th May 2016 passed by the Income Tax Appellate Tribunal (ITAT) rejecting two appeals that Revenue had filed against the order of Commissioner of Income Tax (Appeals) (CIT[A]) for Assessment Year 2005-06 in the matter of order passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (the Act) against Respondent. Respondent though served is not present before us. Affidavit of service is also filed.

2. It was the case of Revenue before the ITAT that the CIT[A] was wrong in deleting the addition made by the Assessing Officer (A.O.) in respect of long term capital gain treated by A.O. as unexplained cash credit under Section 68 of the Act.

3. Respondent had shown sale proceeds of shares in scrip Ramkrishna Fincap Ltd. (RFL) as long term capital gain and claimed exemption under the Act. Respondent had claimed to have purchased this 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. It was A.O.'s case that investigation has revealed that the scrip was a penny stock and the capital gain declared was held to be accommodation entries. A broker Basant Periwal & Co. (the said broker) through whom these transactions have been effected had appeared and it was evident that the broker had indulged in price manipulation through synchronized and cross deal in scrip of RFL. SEBI had also passed an order regarding irregularities and synchronized trades carried out in the scrip of RFL by the said broker. In view thereof, respondent's case was re-opened under Section 148 of the Act.

4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only

one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT[A] found there was no reason to add the capital gains as unexplained cash credit under Section 68 of the Act. The tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal.

5. We also find no infirmity in the order passed by the ITAT and no substantial questions of law as proposed in the appeal arises.

6. Appeal dismissed.

(FIRDOSH P POONIWALLA, J.)

(K.R. SHRIRAM, J.)