

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER
ITA No. 3769/MUM/2025 (AY: 2011-12)
(Physical hearing)

DCIT(CC) – 8(3), Mumbai Room No. 661, 6 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400020.	Vs	Girraj Kishor Agrawal 1601/1602 Green Acre, Lokhandwala Complex, Andheri (West), Mumbai-400053. [PAN: AABPA4928N]
Appellant / Revenue		Respondent / Assessee

C.O. No. 215/MUM/2025 (AY: 2011-12)
(Arising out of ITA No. 3769/Mum/2025)

Girraj Kishor Agrawal 1601/1602 Green Acre, Likhandwala Complex, Andheri (West), Mumbai-400053. [PAN: AABPA4928N]	Vs	DCIT (CC) – 8(3), Mumbai Room No. 661, 6 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400020.
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri Prakash Jhunjhunwala, CA
Revenue by	Shri Swapnil Choudhary, Sr-DR
Date of hearing	25.09.2025
Date of pronouncement	10.11.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by revenue and cross-objection therein by assessee are directed against the order of Id. CIT(A) – 50, Mumbai dated 20.03.2025.

The revenue has raised following grounds of appeal:

"1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not appreciating the fact that the AO rightly made addition of Rs. 8,79,33,975/- on account of unexplained cash credits u/s 68 of the Act?"

2 "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the AO rightly made addition of Rs. 26,39,019 being commission income a 3% of Rs. 8,79,33,975/-.

3 "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the AO in relation to the alleged manipulation of share prices of M/s Shreenath Commercial And finance lad., despite the statement recorded during the course of investigation proceedings, which indicates the appellant's involvement The CIT(A) failed to appreciate that statements recorded during the search proceedings are credible and were supported by circumstantial incriminating evidence suggesting irregular financial activities.

4. "Whether on the facts and in the circumstances of the case and in law, the Ed. CITA has placed undue reliance on SEBI's finding and disregarded the AO's observation of circumstantial and financial irregularities, which justify an addition under the Act. This reliance neglects the fact that SEBI's scope does not extend to identifying undisclosed income or assessing tax liabilities under the Income Tax Act.

5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

2. On service of memorandum of appeal, the assessee filed its cross-objection raising following grounds of appeal:

"On facts and circumstances of the case and in law, the re-assessment order passed u/s 143(3) r.w.s. 147 is bad in law, since the sanction u/s 151 has not been obtained from correct approving authority viz. Pr. CIT, instead had been obtained from the JCIT, Range – 13(1), Mumbai.

The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing."

3. Brief facts of the case are that assessee is individual and filed his return of income for A.Y. 2011-12 on 31.10.2011 declaring in income of Rs. 8,92,321/-. Initially, return was processed under section 143(1). The case of assessee was reopened on the basis of information that assessee has availed accommodation entry of long term capital gain on share of Shreenath Commercial and Finance Limited (Shreenath). The assessing

officer issued notice under section 148 dated 22.09.2026. The assessee filed reply dated 13.10.2016 and stated that return filed on 31.10.2011 may be treated as return in response to notice under section 148. The assessing officer after serving reasons recorded proceeded for the reassessment. During reassessment, the assessing officer recorded that assessee has claimed long term capital gain of Rs. 8.79 crores on sale of share of Shreenath. The assessee was asked to substantiate such claim of long term capital gain. The assessee furnished purchase bills, bank statement and other details to substantiate the claim of long term capital gain. The assessing officer recorded the report of Investigation Wing in para 3 and 4 of his order. In para 5 of assessment order, the assessing officer recorded that assessee purchased 29000 share of Shreenath @ Rs.65.50/- per share when there was no good financial result of said company. The assessing officer recorded the fluctuation of share on different dates and in para 5.4 of his order recorded that shares were sold @ Rs. 65.50/- per share earned huge percentage of profit which is not genuine. The assessing officer in para 5.6 of assessment order recorded that the assessee sold shares to various person, total numbers of such parties are 28 as recorded in such para. The assessing officer issued notice under section 133(6) to the purchaser of the share. The assessing officer recorded that biggest purchaser of shares was Handful Investrade Private Limited wherein family members of assessee are directors. There are certain other directors in other companies who have purchased such shares. On the basis of aforesaid observation, the assessing officer issued

fresh show cause notice dated 26.12.2017. The assessee filed his reply vide reply dated 27.12.2017, the contents of reply furnished by assessee are recorded on page no. 12 to 16 of assessment order. In the reply, the assessee stated that he has furnished complete supporting evidence regarding the transaction that is source of investment, contract note, detail of sale, bank statement and receipts of sale proceeds in Demat statement and ledger account of his broker. The assessee submitted that transaction is genuine. The show cause notice contend third party statement and general information. The show cause notice contained the reference of statement of Vipul Vidhur Bhatt; copy of such statement is not provided nor is his cross-examination allowed. The allotment of equity shares were made with the prior approval of Bombay Stock Exchange. The assessee was a director in NCL Research & Finance Ltd. for third party Essar India Ltd. Such sale of shares and purchase were carried out through Bombay Stock Exchange. About the notice under section 133(6) dated 26.12.2017, the assessee stated that no such notice was received. The share of Shreenath was sold through Bombay Stock Exchange platform through registered broker. The reply of assessee was not accepted by assessing officer. The assessing officer made addition on the basis of information available with him by treating the long term capital gain of Rs. 8.79 Crore as bogus capital gain and added as unexplained cash credit. The assessing officer also added 3% of Rs. 8.79 i.e. Rs. 26,38,019/- as commission.

4. Aggrieved by the additions in the assessment order, the assessee filed appeal before Id. CIT(A). Before Id. CIT(A), the assessee challenged the

reopening under section 147 and issuance of notice under section 148. The assessee also challenged addition on merit. Against the validity of notice under section 148, the assessee stated that reasons recorded do not disclose any tangible material on the basis of which notice under section 148 was issued. The reasons recorded are based on general information received from DDIT (Inv.) Unit – 2(3), Kolkata. The assessing officer had not independently applied his mind and issued notice solely on the basis of borrowed satisfaction. There is no live link and nexus to the alleged escapement of income. The assessee at the time of filing return of income made complete and full disclosure of all material fact on record. At the time, executing transaction reported all transactions to the Income Tax Department. Mere receipt of information from DDIT (Inv.) cannot be treated as tangible material. The recorded reasons do not disclose any evidence of assessee's fulfilment in any non-genuine transaction. There is no specific material to assessee which could prove the alleged escapement of income. The assessee relied on a number of decisions to support his submission.

5. The Id. CIT(A) on considering the submission of assessee rejected the objection of assessee. The Id. CIT(A) while rejecting such contention of assessee relied on decision of Hon'ble Supreme Court in Claggett Brachi Co. Ltd. vs CIT 177 ITR 409 (SC) wherein it was held that any fresh information received by Id. AO can entitled him to issue notice under section 148 on the basis of such information he has prima facie reasons. In Raymond Woollen Mills Ltd. vs 236 ITR 34, 35 (SC) also held that for

determining whether initiation of reassessment proceeding was valid, it has only to be seen that whether there was some prima facie material on the basis of such department could reopen the case. The sufficiency or correctness of the material is not a then to be considered at that stage.

6. On merit, the assessee also made detail written submission and relied on various case laws. The assessee stated that assessee made share purchase agreement dated 31.08.2009 wherein the assessee made purchases of share of 5000 from Anoop Agarwal, 5000 from Aparajita Agarwal, 5000 from Samarth Agarwal, 7000 from Om Prakash Agarwal, 7000 from Usha Devi Agarwal. The assessee made payment of share through RTGS or account payee cheque. Demat account of assessee was also furnished. In all such evidences, the assessing officer has not point out any defect. The assessee discharged his primary onus with exhaustive evidence. The period of holding was more than 16 month. The shares were received in Demat account. The period of holding was not disputed. The assessee sold the share on making payment of STT. All the investments were disclosed in the balance sheet. The assessee sold such share @ Rs. 75.57/- per share which is in consonance with the actual price traded in Bombay Stock Exchange. The shares were purchases at the average price of Rs. 65.50/- per share before bonus and stock split which was prevailing price at the relevant point of time. To support of his submissions, the assessee also relied on various case laws on the ration of the decision that when iota of evidence was not doubted and the assessee is not related to entry provider or operator and he has not contrary over the price of listed

company, no addition can be made. SEBI has not passed any order against the assessee or his broker. The Id. CIT(A) while considering the submission of assessee recorded that during the appeal proceedings, the assessee furnished following documents:

- "1. Copy of the share purchase agreement dated 21.08.2009, showing the purchase of 29,000 shares of Shreenath enath @ Rs.65.5 per share for Rs. 18,99,500/-.
2. Statement of the bank account with HDFC Bank showing payment of Rs. 18,99,500/- for the purchase of shares.
3. Copy of the Demat account showing the credit of these shares in the Demat account on 31.08.2009.
4. Copy of Form A as a declaration made before SEBI for the purchase of shares.
5. Copy of the balance sheet as on 31.03.2010 showing the investment made in the shares.
6. Copy of broker's notes from the broker India Infoline Ltd. showing the sale of shares through the stock exchange.
7. Copy of the ledger account of the broker in the books of the appellant
8. Copy of the bank statement with HDFC bank showing receipt on account of the sale of shares.
9. Copy of the Demat statement showing the sale of shares.
10. Copy of Form D as a declaration made before SEBI for the sale of shares.
11. Copy of adjudication order of SEBI dated 08.05.2017."

7. The Id CIT(A) further noted that all such evidences were furnished before assessing officer. The Id. CIT(A) on considering the financial statement and balance sheet of previous and subsequent years recorded that assessee has invested in a number of scripts ranging from 26 to 47 F.Y. 2008-09 to 2012-13 and has shown short term capital gain and long term capital gain in various years. Thus, the assessee is a regular investor in share market.

The Id. CIT(A) also noted that SEBI has not found any manipulation in price rigging of SHREENATH. There is no allegation in price rigging against the assessee. There is no allegation that assessee is directly or indirectly involved in any irregularities or activities relating to manipulation of alleged share. Even the entry operator Vipul Vidur Bhatt has not stated in anything that assessee is involved in any activities of price rigging or providing accommodation entry. The Id. CIT(A) by referring certain decision of Tribunal wherein scrip of Shreenath was in disputed and those assessee was allowed held that case of assessee are similar to the facts of such cases as recorded on page no. 29 to 41 of his order and deleted the addition of unexplained credit. Once the unexplained credit was deleted the addition on account of alleged cash payment was also deleted. Aggrieved by the order of Id. CIT(A), the revenue has filed present appeal before Tribunal.

8. We have heard the learned Commissioner of Income Tax – Departmental Representative (CIT-DR) for the revenue and the learned Authorised Representative (Id. AR) of the assessee. The Id. CIT-DR for the revenue submits that assessee is a beneficiary of penny scrip shares. The assessee indulged in sale and purchase of scrip of Shreenath which is proved a penny stock company by the investigation carried out by the Investigation Wing of department. The assessing officer has given detail background of penny scrip companies' modus operandi and method of price rigging. The assessee has shown abnormal benefit on sale of share Shreenath. The Id. CIT(A) allowed relief to the assessee on the basis of written submission

furnished by the assessee. The evidence furnished by assessee in the form of contract note Demat account, share purchase agreement to give a colour of non-genuine transaction as a genuine transaction. The benefit shown by assessee in the form of long term capital gain is unusual which is not possible in ordinary circumstances. To support his submission, the Id. AR of the assessee relied upon the decision of Calcutta High Court in case of Swati Bajaj and Suman Poddar (2022) 446 ITR 56 (Cal) and NRA Iron Steel Company.

9. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). While explaining the facts of the case, the Id. AR of the assessee submits that assessee purchased 29000 shares of Shreenath on 21.08.2009 at a total cost of Rs. 18,99,500/- that is @ Rs. 65.50/- per shares. Further, 87,000 bonus shares were also issued to the assessee, thus, total shares with the assessee became 116000. Thereafter, shares were split into ratio of 1:10. The purchase cost of shares was paid by assessee through account payee cheque. The assessee sold entire stock of share on 27.01.2011 to 01.02.2011 @ Rs. 75.57 per share. The shares were sold on public platform this is on Bombay Stock Exchange through registered broker. The entire sale consideration was received through RTGS from 01.02.2011 to 04.02.2011 from India Infoline Ltd. The periods of holding were 16 to 18 months. The shares were kept in Demat account. The bonus share and sales were made through Demat account. To substantiate the transaction, the assessee furnished contract note cum sale bills, ledger account of stock broker, bank statement, Demat

statement and detail of rate as per publication of BSE. With regard to purchase of shares, the assessee furnished share purchase agreement, bank statement, Demat statement account, disclosure to BSE by company for acquisition of share by assessee and balance sheet for earlier years. There is no allegation from SEBI either against the assessee or against the broker of assessee. The assessee has discharged his primary onus to prove the transaction. The assessing officer has not given any finding on various evidences furnished by assessee. The assessing officer merely relied on third party information without providing copy of such information to the assessee. The Hon'ble Gujarat High Court in PCIT vs Sanjay kumar Damjibhai Gangani (2025) 178 taxmann.com 276 (Gujarat) held that where the assessee claimed long term capital gain under section 10(38) arising on sale of shares of 'S' company and furnished complete evidence including contract note, Demat detail, details of bonus shares and no adverse evidence were brought against said evidences, the assessing officer was not justified in making addition under section 68 merely on allegation that assessee was beneficiary of penny stock scrip. The Id. AR further submits that on similar scrip that is on sale of Shreenath share the Hon'ble Gujarat High Court in PCIT vs Mamta Rajivkumar Agarwal (2023) 155 taxmann.com 549 (Gujarat) also held that where assessee has sold share of Shreenath and earned long term capital gain and the assessing officer alleged that transaction was a penny stock duly aimed at illegitimately claimed long term capital gain exemption under section 10(38), as there was no evidence available on record suggesting that

assessee or his broker was involved in rigging up of price scrip of Shreenath addition on account of long term capital gain claimed as exempt had rightly been deleted by Tribunal.

10. The Id. AR of the assessee submits that by following the aforesaid both the decision of Gujarat High Court, Mumbai Tribunal in Vinod Hirachand Sanghvi vs ACIT in ITA No. 4340/M/2023 dated 27.05.2025 allowed similar relief to that assessee. There is series of other decision wherein similar addition on similar allegation was deleted by Tribunal. The jurisdictional High Court in case of PCIT vs Indravadan Jain, HUF in Tax Appeal No. 454 of 2018 dated 12.07.2023 also held that when assessing officer alleged that transaction made by assessee with a particular broker or share broker was bogus merely from investigation was carried out by SEBI against such broker or its activity, the assessee cannot be said to have entered into non genuine transaction. The case of assessee is on better footing as there is no allegation either against the assessee or against the broker in price rigging of share. The assessee made transaction on public platform. The Id. CIT(A) while allowing relief to the assessee has considered all such facts clearly held that there is no adverse finding of SEBI against the assessee or the company. The assessee furnished complete details before Id. AO as well as before Id. CIT(A). The assessee is a regular investor and not beneficiary of sole transaction of Shreenath rather in various financial year, the assessee furnished the details of number of scrips in which the assessee made transaction which are varying from 26 to 47 scrips right

from the financial year 2008-09 to 2012-13. All such facts were appreciated by Id. CIT(A) before allowing relief to the assessee.

11. The Id. AR submits that he has raised various grounds of appeal in his cross objection; in case the assessee succeeded on merit, his C.O. may be treated as infructuous, otherwise he has good case on validity of reopening. The Id AR of the assessee also argued in support of grounds raised in his C.O.

12. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that the assessing officer treated the capital as unexplained credit only on the basis of report of investigation wing. The assessing officer has not considered the facts independently. In para 5.4 of his order the assessing officer straightway held that the assessee purchased shares of Shreenath @ Rs. 65.50/- per shares and sold in FY 2009-10 and earned profit @ 4639%, which is unusual. No adverse evidence was brought by assessing officer against the evidences furnished by the assessee to substantiate the transaction of shares of Shreenath. We find that Id CIT(A) allowed relief to the assessee on independent examining of entire facts. We find that Id CIT(A) in his order has recorded that all evidences which were furnished before him was also furnished assessing officer. We further find that the Id. CIT(A) on considering the financial statement and balance sheet of previous and subsequent years recorded that assessee has invested in a number of scripts ranging from 26 to 47 F.Y. 2008-09 to 2012-13 and has shown short term capital gain and long term capital gain in various years.

It was held that the assessee is a regular investor in share market. The Id. CIT(A) also noted that SEBI has not found any manipulation in price rigging of Shreenath and there is no allegation in price rigging against the assessee. It was also held that there is no allegation that assessee is directly or indirectly involved in any irregularities or activities relating to manipulation of alleged share. Even the entry operator Vipul Vidur Bhatt has not stated in anything that assessee is involved in any activities of price rigging or providing accommodation entry. We find that while allowing relief to the assessee, the Id. CIT(A) followed certain decision of Tribunal wherein script of Shreenath was in disputed and those assessee was allowed relief.

13. We have independently examined the facts and find that in fact the assessee purchased 29000 shares of Shreenath on 21.08.2009 at a total cost of Rs. 18,99,500/- that is @ Rs. 65.50/- per shares. 87,000 bonus shares were also issued to the assessee, thus, total shares with the assessee became 116000. Thereafter, shares were split into ratio of 1:10. The purchase cost of shares was paid by assessee through account payee cheque. The assessee sold entire stock of share on 27.01.2011 to 01.02.2011 @ Rs. 75.57 per share. The shares were sold on public platform this is on Bombay Stock Exchange through registered broker. The entire sale consideration was received through RTGS from 01.02.2011 to 04.02.2011 from India Infoline Ltd. The periods of holding were 16 to 18 months. The shares were kept in Demat account. The bonus share and

sales were made through Demat account. There is no allegation of price rigging against the assessee or his share broker.

14. We find that Hon'ble Gujarat High Court in PCIT Vs Mamta Rajivkumar Agarwal (supra) while considering the question of law in appeal by the revenue on allowing relief to the assessee by Ahmadabad Tribunal held that when there was no evidence available on record suggesting that the assessee or his broker were involved in rigging up the scrips of Shreenath Commercial & Finance Ltd. The assessee acted in good faith and confirmed the order of Tribunal. We further find that Hon'ble Gujarat High Court in the case of Himani M. Vakil (2014) 41 taxmann.com 425 (Guj) held that where assessee duly proved genuineness of sale transaction by bringing on record contract notes of 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. Gujarat High Court in the case of Parasben Kasturchand Kocher(2021) 130 taxmann.com 176 (Guj), also held that when assessee discharged his onus by establishing that transactions were fair and transparent and all relevant details with regard to transfer furnished to Income Tax Authority and the Tribunal have also took the notice of fact that the shares remained in the account of assessee, the assessee also furnished demat account and details of bank transaction about the sale and purchase of shares, the addition was deleted.

15. Further, we find of Hon'ble Jurisdictional High Court in the case of PCIT Vs. Indravadan Jain, HUF in Income Tax Appeal No.454 of 2018 dated 12.07.2023 also held that when Assessing Officer nowhere alleged that transactions made by assessee with a particular broker or share broker was bogus, merely because investigation was done by SEBI against the broker or its activities, the assessee cannot be said to have entered into ingenuine transaction. We find that assessee made sale of shares through BSE and paid security transaction tax and there is no allegation against the share broker through whom assessee has made sales that they were indulging any price manipulation.
16. The Id Sr DR for the revenue while making his submissions strongly relied on the decisions of Kolkata High Court in Swati Bajaj (supra), which is non-jurisdictional High Court, though there are contrary decisions of Jurisdictional High Court as referred above, favouring assessee. Hon'ble Apex Court in Union of India Kamalakshi Finance Corporation Ltd (1991) (55) ELT 443-SC held that decision of jurisdictional High Court would have higher precedence value on the Tribunal than the decision of non-jurisdictional High Court. Therefore, we do not find any reason to interfere with the order of Id CIT(A), which we affirm with our additional observation. In the result, the grounds of appeal raised by the revenue are dismissed.
17. In the result, the appeal filed by the revenue is dismissed.

C.O. No. 215/Mum/2025 by assessee

18. Considering the facts that we have dismissed the appeal of revenue, therefore specific adjudication on the legal issued raised by assessee in his CO has become infructuous and dismissed as such.

19. In the result, the appeal of revenue is dismissed and the C.O. filed by the assessee are also dismissed as infructuous.

Order was pronounced in the open Court on 10/11/2025.

Sd/-

**RENU JAUHRI
ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

MUMBAI, Dated: 10/11/2025
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai