

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

**BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)  
&  
SHRI GIRISH AGRAWAL (ACCOUNTANT MEMBER)**

**I.T.A. No. 2124/Mum/2024  
Assessment Year: 2014-15**

<b>Income Tax Officer, Mumbai</b>	<b>Vs.</b>	<b>Sunita Chaudhary</b> 34, Quay Street New Darukhana, Byculla Maharashtra – 400010 <b>[PAN: ACLPC7278D]</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	Mr. C.V. Jain, A/R
<b>Revenue by</b>	Shri Swapnil Choudhary, Sr. DR

<b>Date of Hearing</b>	06.01.2026
<b>Date of Pronouncement</b>	19.01.2026

**ORDER**

**Per Smt. Beena Pillai, JM:**

Present appeal filed by assessee arises out of order dated 23/02/2024 passed by NFAC, Delhi [hereinafter “the Ld.CIT(A)’] for AY 2014-15, on following grounds of appeal:-

“1. ” *Whether on the facts and the circumstances of the case and in law the Ld. CIT(A) has erred in reversing the findings of the Assessing office for A.Y. 2014-15 by relying upon decision of Hon’ble ITAT for A.Y. 2013-14, which is not accepted by the Revenue and has filed appeal u/s 260A of the Act, before the Hon’ble High Court?*”

2. *“Whether on the facts and the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the entire addition of Rs. 2,92, 12,400/-, being the bogus LTCG claimed by the assessee was treated as unexplained investment and added to the total income u/s 68 of the Act?”*

3. *“Whether on the facts and the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.78,931/-, being commission paid to entry provider/Brokers @ 0.25% for providing accommodation entry which has been added to the total income u/s 69C of the Act ?’*

4. "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in Ignoring the fact that action of Assessing Office was based on credible information received from office of DGIT (investigation) Mumbai, which is a premier Investigation Authority of Income-Tax Department and has published the discreet report with a list of penny stocks/ scripts and the assessee has transacted in one of the penny stock te.in M/s. First Financial Services Ltd (Script Code - 51136) and allegedly used this stock for accommodation entry purposes in the grab of Long Term Short Term Capital Gain or Loss?"

5. Whether on the facts and the circumstances of the case and in law the Ld. CIT(A) has erred in ignoring the fact that the assessee has traded in shares of M/s. First Financial Services Ltd, a penny stock scrip in the disguise of exempt income to reduce taxable income and the transactions carried out were not genuine which was a predetermined move which has a sole aim to bring unaccounted money through bogus LTCG/ STCL ?"

6. "Whether on the facts and the circumstances of the case and in law the Ld. CIT (A) has erred in deleting the addition of Rs. 2,92, 12,400/-, being the bogus LTCG claimed by the assessee, without considering the fact that the Net Worth and the business activity of M/s. First Financial Services Ltd, a penny stock company were negligible and the share prices have been artificially rigged by the Exit Operators during the financial year under consideration to accommodate beneficiaries seeking LTCG? "

7. "Whether on the facts and the circumstances of the case and in law the Ld. CIT (A) has erred in acknowledging the fact that the SEBI had investigated the dealings of the M/s. First Financial Services Ltd (FFSL) stock as it observed abnormal movement in the price and found that M/s. First Financial Services Ltd (FFSL) has violated the norms and rules under SEBI Act, 1992, Securities Contracts (Regulations) Act, 1956, FUTP Regulations SEBI (Substantial Acquisition of shares & Takeovers) Regulations, 1997 and listing Agreement, which compelled SEBI to suspend the trading volume of M/s. First Financial Services Ltd (FFSL) from 15 May 2012 to 31 March 2014"

8. "Whether on the facts and the circumstances of the case and in law the Ld. CIT (A) has erred in acknowledging the fact that the SEBI vide its adjudication order dated 30.09.2022, has found that the penny stock M/s. First Financial Services Ltd and the brokers/ other entities were involved in price manipulation in this scrip and then confirming the Investigation done by the Investigation Wing of Income-Tax Department bound on which the case was re-opened u/s 147 of the I.T.Act ?"

9. "Whether on the facts and the circumstances of the case and in law the Ld. CIT (A) has erred in holding that since the SEBI vide order dated 06.09.2017 has revoked the earlier direction/restriction issued in the case of scrip M/s. First Financial Services Ltd and continued its investigation and vide adjudication order dated. 30.09.2022 held that the company and

*the broker/ other entities were involved price manipulation in the scrip M/s. First Financial Services Ltd?"*

*10. "Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the additions made of Rs. 2,92,12,100/-, being the bogus LTCG claimed by the assessee without considering the fact that Assessing Office relying on the report of office of DGIT (Investigation) Mumbai, which is credible authority of Income - Tax Department and in such transactions the onus is on the assessee to establish the genuineness of the price hike and also has to prove that the price of the share was not manipulated. Reliance is placed on Calcutta High Court decision in the case of Pr.CIT Vs. Swati Bajaj (LA. No. GA/2/2022 in ITAT No. 6 of 2022 dated 14.06.2022"*

*11. "Whether on the facts and circumstances of the case and in law the order of the CIT(A) ignored the direct and circumstantial evidences in view of the decisions in Durga Prasad More(1971) 82 ITR 540(SC) and Sumati Dayal (1995) 80 Taxmann 89(SC)/ | 1995) 2014 ITR 801(SC) / | 1995) 125 CR 124 (SC) , rendered by the Hon'ble Supreme Court, where under it was held that the Court and Tribunal have to judge the evidence before it by applying the test of human probabilities, the surrounding circumstances which exercise had been done by the Assessing Officer?*

*12. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary?"*

## **2. Brief facts of the case are as under:-**

The assessee is an individual, a Director of certain Private Limited Companies, and is engaged in trading as well as investment in shares and securities. During the year under consideration, the assessee sold shares of M/s. First Financial Services Ltd. at Rs. 3,15,72,400/-, that has been purchased in earlier years and were held in assessee's Demat Account. The shares were sold in small tranches on the Bombay Stock Exchange through assessee's regular share broker M/s. Anand Rathi Shares and Stock Brokers Ltd., with delivery effected from assessee's regular Demat Account.

**2.1.** The Ld.AO raised doubts regarding genuineness of the transactions based on the investigation report, the share prices had increased manifold on the stock exchange. The reassessment

proceedings u/s 147 were thus initiated by the Ld. AO on the belief that income of the assessee escaped assessment. The Ld. AO thus treated the Long Term Capital Gain (LTCG) of Rs. 2,92,12,400/- as unexplained investment/income from other sources and assessment order was passed u/s 143(3) r.w.s. 147 of the Act.

Aggrieved by the order of Ld.AO, assessee preferred appeal before Ld.CIT(A).

**3.** Before Ld.CIT(A), assessee submitted that, she was genuine investor in shares and she invested in the shares of M/s. First Financial Services Ltd., in her regular course of investment and had earned the long term capital gain by holding shares for more than one year. It was thus submitted that, the doubts raised by Ld.AO is regarding long term capital gain earned by assessee to be bogus is baseless. Assessee submitted that, she has been a regular investor and earned dividend of Rs. 2,12,938/- during the year under consideration. Assessee submitted the capital gains working for the preceding 12 assessment years before Ld.CIT(A) along with audited accounts. Ld.CIT(A) thereafter considered the claim of assessee by observing as under:-

***“5. Analysis of the Facts, Submissions of the Assessee and Decision***

*I have perused the Assessment Order, the Grounds of Appeal, the Statement of Facts and the order of the Hon'ble Income Tax Appellate Tribunal, “G” Bench, Mumbai in ITA No. 143/Mum/2022 in the assessee's own case for Assessment Year 2013-14, submitted by the Ld. Authorised Representative (A/R). My observations and findings are as under:*

**5.1** *The present appeal arises out of an addition of Rs. 2,92,12,400/- on account of Long Term Capital Gain (LTCG) and Rs. 78,931/- on account of alleged commission u/s 68 and 69C of the Income-tax Act, 1961. The assessee filed her return of income for Assessment Year 2014-15 declaring a total income of Rs. 18,80,748/-, which was processed u/s 143(1) of the*

Act. Subsequently, information was received from the Directorate of Investigation alleging an organised racket of generating bogus LTCG in penny stocks, and on that basis the assessment was reopened u/s 147 of the Act.

During the year, the assessee claimed exemption u/s 10(38) in respect of LTCG of Rs. 2,92,12,400/- arising from sale of shares. On examination of share transactions, the Assessing Officer noticed that the assessee had sold 1,18,000 shares of M/s. First Financial Services Ltd. for a total consideration of Rs. 3,15,72,400/-. As per the computation of income, LTCG claimed u/s 10(38) amounted to Rs. 3,14,93,298/-; however, based on AIR data, the total sale consideration of Rs. 3,15,72,400/- was considered. The Assessing Officer alleged that various methods were adopted to make the transaction appear genuine by routing the same through stock exchange and banking channels.

Name of Company	Sale Price (Rs.)	Purchase Price (Rs.)	Transfer Expenses	Exempt u/s 10(38) (Rs.)
M/s. First Financial Services Ltd.	3,15,72,400	23,60,000	–	2,92,12,400

The Assessing Officer further observed that the scrip of M/s. First Financial Services Ltd. was included in the list of suspicious transactions and one of the reasons for scrutiny selection was to examine penny stock transactions. In a lengthy assessment order running into 63 pages, the Assessing Officer concluded that the assessee had sold the shares at predetermined prices and times to predetermined parties allegedly seeking losses for set-off, with the involvement of operators, brokers and sub-brokers.

### 5.2 Some of the main submissions of the Ld. A/R are reproduced below:

“It was explained to the Ld. AO that the Securities and Exchange Board of India (SEBI), vide ad-interim ex-parte orders dated 19/12/2014 and 11/08/2015, had restrained the assessee and other entities from accessing the securities market pending investigation in the scrip of First Financial Services Ltd. However, upon completion of investigation, SEBI revoked the said restraints vide order dated 06/09/2017, holding that no violation of the SEBI Act, 1992 or PFUTP Regulations, 2003 was observed in respect of the assessee.”

The prohibitory orders as well as the revocation order were placed before the Assessing Officer. It was submitted that after thorough investigation, SEBI had granted a clean chit to the assessee and held the transactions to be genuine. Despite this, the Assessing Officer failed to consider these crucial facts while disposing of the objections raised against reopening and while passing the assessment order.

**5.3** The Ld. A/R further submitted that on identical facts, in the immediately preceding Assessment Year 2013-14, the Hon'ble ITAT, "G" Bench, Mumbai had deleted the entire addition made on account of alleged bogus LTCG and commission in respect of the same scrip of First Financial Services Ltd.

The assessee, in support of her grounds of appeal, also relied upon the findings of the Hon'ble ITAT in her own case for the immediately preceding year, wherein it was held as under:

*"We find that despite the interim order dated 06/09/2017 passed by SEBI being specifically brought to the notice of the Assessing Officer as well as the learned CIT(A), the impugned addition was sustained. Since the very transaction of the assessee in the scrip of First Financial Services Ltd. has been found not to be violative of the provisions of the relevant Act and Rules by SEBI upon necessary investigation, and even the initial restraint order was revoked, there is no basis for sustaining the impugned addition by treating the transaction as a penny stock transaction resulting in bogus long-term capital gains. Accordingly, we direct the Assessing Officer to delete the addition of Rs. 84,45,050/- . The consequential addition of Rs. 22,712/- is also directed to be deleted."*

**5.4** In view of the above discussion, it is evident that the transaction of the assessee in the scrip of First Financial Services Ltd., resulting in long-term capital gains, has been found to be genuine and not in violation of the provisions of the relevant laws by SEBI after detailed investigation. Consequently, there is no justification for sustaining the addition made by the Assessing Officer by treating the transaction as a penny stock transaction.

Accordingly, following the judgment of the Hon'ble ITAT, "G" Bench, Mumbai in the assessee's own case for Assessment Year 2013-14, the appeal of the assessee for deletion of the addition of Rs. 2,92,12,400/- is allowed. The addition of Rs. 78,931/- on account of alleged commission, being consequential, is also directed to be deleted.

***In the result, the appeal filed by the assessee is ALLOWED."***

Aggrieved by the order of Ld.CIT(A), revenue is in appeal before this Tribunal.

**4.** The Ld.DR vehemently opposed the view taken by Ld.CIT(A) and relied on the orders passed by Ld.AO. He also placed reliance on the latest order dated 30/09/2022 passed by SEBI, wherein

M/s. First Financial Services Ltd. and M/s Comfort Securities Ltd. were treated among the others to be involved in fraudulent and unfair trade practices as per SEBI Act, based on which, penalties were levied. The Ld.DR submitted that, M/s Comfort Securities Ltd. is a company where assessee is a Director and, therefore, the observations of Ld.AO cannot be found fault with.

**4.1.** On the contrary, Ld.AR submitted that, there is no findings by Ld.AO regarding any connection of assessee with the alleged M/s Comfort Securities Ltd. and, therefore, the argument of Ld.DR does not have any supportive or corroborative evidence. He submitted that in the order relied on by the Ld.DR passed by SEBI dated 30/09/2022, assessee has not been penalised for the alleged fraudulent trade practices by various parties therein. He submitted that, name of assessee is not appearing and, therefore, the order dated 30/09/2022 does not have any relevance to the present facts of the case.

**4.1.** Ld.AR on the contrary relied on the order passed by Coordinate Bench of this *Tribunal* in assessee's own case for AY 2013-14 in *ITA No. 143/Mum/2022 vide order dated 13/10/2022*, wherein identical issue was analysed in respect of shares purchased by the assessee of M/s. First Financial Services Ltd. He submitted that, SEBI passed *ex-parte* interim order on 19/12/2021 restraining assessee from accessing the securities market or dealing in securities in any manner whatsoever until further directions. The said order is placed at page 25 to 26 of the paperbook.

**4.2.** He submitted that, thereafter SEBI passed another order on 25/08/2016 sustaining the said restriction till further orders. The relevant pages of the order concerning assessee is at pages 134-135 and 139 of the paperbook. Thereafter on 06/09/2017 after carrying out investigation, SEBI passed order u/s 11, 11(4) and 11B of the SEBI Act observing that no *prima facie* fraudulent and unfair trade practice has been observed against the assessee before us. SEBI vide order dated 06/09/2017 thus revoked the earlier orders dated 19/12/2014 and 25/08/2016.

**4.3.** Ld.AR thus, submitted that, assessee exonerated from the allegation that were alleged based on investigations carried out by SEBI. Referring to the order relied by Ld.DR dated 30/09/2022, he submitted that in respect of those against whom SEBI held the unfair trade practice being carried out, penalty was levied for carrying out such illegal activities and assessee's name is not mentioned in the order dated 30/09/2022. Ld.AR heavily placed reliance on the order passed by Co-ordinate Bench of this *Tribunal* in assessee's own case (*supra*).

We have perused the submissions advance by both sides in light of the record placed before us.

**5.** For the year under consideration, assessee sold 32,000 shares of M/s. First Financial Services Ltd. through M/s. Anand Rathi Shares and Stock Brokers Ltd., against which she earned long term capital gain of Rs. 2,92,12,400/- and that was claimed as exempt u/s 10(38) as exempt. The entire premise of reopening is based on the investigation that was carried out regarding organized racket of

generating bogus entries of long term capital gains in penny stock.

**5.1.** We note that, on similar facts, this *Tribunal* in assessee's own case in preceding assessment year, decided the issued by observing as under:-

*"11. We find that SEBI vide interim order dated 19/12/2014 and 11/08/2015, inter-alia, restrained 154 entities, including the assessee, from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner, till further directions, pending investigation in the script of in case of First Financial Services Ltd. The directions issued vide aforesaid interim orders were, inter-alia, confirmed vide subsequent orders passed by SEBI. Subsequent to the interim orders, SEBI carried out an investigation to look into the role of debar entities in price manipulation in scrips of First Financial Services Ltd. Vide interim order dated 06/09/2017, the earlier interim orders were modified by SEBI and 91 entities including the assessee against whom directions were issued vide aforesaid interim orders were found to be not in violation of provisions of SEBI Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities) Market Regulations, 2003. Accordingly, SEBI vide aforesaid interim order dated 06/09/2017, revoked the directions issued vide earlier interim orders in exercise of powers conferred under section 19 of SEBI Act, 1992 read with section 11, 11(4) and 11B thereof, with immediate effect. The interim order dated 06/09/2017 also forms part of the paper book at page 295 - 302.*

*12. We find that despite the aforesaid interim order dated 06/09/2017 passed by SEBI being specifically mentioned by the assessee in her objections before the AO as well as in her submission before the learned CIT(A), the impugned addition was sustained. Since, the very transaction of the assessee in the scrips of First Financial Services Ltd, which resulted in long term capital gains to the assessee, has been found to be not violative of provisions of relevant Act and Rules by the SEBI upon necessary investigation and even the initial restraint order was revoked vide interim order dated 06/09/2017, therefore, we find no basis in sustaining the impugned addition made by the AO by treating the said transaction to be a penny stock transaction resulting in bogus long term capital gains. Accordingly, we direct the AO to delete the impugned addition of Rs.84,45,050. Further, since the other addition of Rs.22,712 by AO is also consequent to the aforesaid impugned addition, therefore, the said addition is also directed to be deleted.*

*13. As, relief has granted to the assessee on the merits itself, therefore, the grounds pertaining to invocation of reassessment proceedings under section 147 of the Act are rendered academic in nature in the present case.*

*14. In the result, appeal by the assessee is allowed."*

**5.2.** The subsequent order referred by Ld.DR dated 30/09/2022 also does not support the observation of Ld.AO as assessee has not been alleged to be one among the fraudulent players as per the investigation carried out by SEBI. As no new facts have been brought on record by Ld.DR, we do not find any reason to deviate from the view taken by Ld.CIT(A). Respectfully following the view taken by Co-ordinate Bench of this *Tribunal* in assessee's own case, for AY 2013-14 (*supra*), we uphold the observations of Ld.CIT(A).

**Accordingly, grounds raised by revenue stand dismissed.**

**In the result, appeal filed by revenue stands dismissed.**

**Order pronounced in the open court on 19/01/2026**

**Sd/-**

**(GIRISH AGRAWAL)  
Accountant Member**

**Sd/-**

**(BEENAPILLAI)  
Judicial Member**

Mumbai  
Dated: 19/01/2026  
sc Sr. P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order

(Asstt. Registrar)  
**ITAT, Mumbai**