

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 22.06.2016

Appeal No. 390 of 2015

Dhvani Darshan Kothari
203B, Harmony,
Damodarwadi, A.C. Road,
Ashok Nagar,
Kandivali (East),
Mumbai- 400 101

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

WITH
Appeal No. 391 of 2015

Darshan J. Kothari
203B, Harmony,
Damodarwadi, A.C. Road,
Ashok Nagar,
Kandivali (East),
Mumbai- 400 101

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

Mr. S. K. Jain, Practicing Company Secretary for the Appellant in
Appeal Nos. 390 & 391 of 2015.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The
Law Point in Appeal Nos. 390 & 391 of 2015 for the Respondent.

WITH
Appeal No. 380 of 2015

Cholamandalam Securities Ltd.
Dare House, No. 2,
1st Floor, N.S.C. Bose Road,
Chennai- 600 001

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh and
Mr. Dhaval Kothari, Advocate i/b J. Sagar Associates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis and Ms. Bhavya
Bhandari, Advocates for the Respondent.

WITH
Appeal No. 381 of 2015

Dynamic Global Propfanchises Pvt. Ltd.
J-9/18, Rajouri Garden,
New Delhi- 110 027

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

WITH
Appeal No. 382 of 2015

Man Mohan Singh Dua
J-9/18, Rajouri Garden,
New Delhi- 110 027

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

WITH
Appeal No. 383 of 2015

Ajit Singh Dua
J-9/18, Rajouri Garden,
New Delhi- 110 027 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 ...Respondent

Mr. Sachin Mittal, Advocate in Appeal Nos. 381, 382 and 383 of 2015
for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis and Ms. Bhavya
Bhandari, Advocates in Appeal Nos. 381, 382 and 383 of 2015 for the
Respondent.

WITH
Appeal No. 366 of 2015

Shatanand Sharma Sons HUF
K- 202, Jasmine Block,
Niho Scottish Garden,
Mall Road, Indrapuram,
Ghaziabad,
Uttar Pradesh- 201 010 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 ...Respondent

Mr. Rohit Choudhary, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The
Law Point for the Respondent.

WITH
Appeal No. 367 of 2015

SMVD Financial Consultants
402, K.M. Trade Tower,
Hotel Radisson Blu Complex,
Kaushambi,
Ghaziabad- 201 010 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 ...Respondent

WITH
Appeal No. 368 of 2015

SMVD Securities Private Limited
402, K.M. Trade Tower,
Hotel Radisson Blu Complex,
Kaushambi,
Ghaziabad- 201 010

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

WITH
Appeal No. 369 of 2015

SMVD Infrastructure Pvt. Ltd.
402, K.M. Trade Tower,
Hotel Radisson Blu Complex,
Kaushambi,
Ghaziabad- 201 010

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

Mr. Rohit Choudhary, Advocate in Appeal Nos. 367, 368 & 369 of 2015
for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis and Ms. Bhavya
Bhandari, Advocates Appeal Nos. 367, 368 & 369 of 2015 for the
Respondent.

WITH
Appeal No. 388 of 2015

Jewel Garments Pvt. Ltd.
Plot No. 29,
DLF Industrial Area Phase II
Faridabad 121 003
Haryana

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

Mr. Vedant Singh, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for the Respondent.

**WITH
Appeal No. 372 of 2015**

Vijay Kapoor
House No. A-61, Inder Puri,
New Delhi- 110 012 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 ...Respondent

Mr. Nikhilesh Ramachandran, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis and Ms. Bhavya Bhandari, Advocates for the Respondent.

**WITH
Appeal No. 373 of 2015**

Brijesh Sharma
K- 202, Jasmine Block,
Niho Scottish Garden,
Mall Road, Indrapuram,
Ghaziabad,
Uttar Pradesh- 201 010 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 ...Respondent

Mr. Nikhilesh Ramachandran, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis and Ms. Bhavya Bhandari, Advocates for the Respondent.

WITH
Appeal No. 384 of 2015

Kamlesh Shantilal Jain
7A, Prince Apartments, 59,
Ormes Road,
Chennai 600 001

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

WITH
Appeal No. 385 of 2015

Atul Tomar
C-73 Vijay Ratan Vihar Sector-15,
Part II Gurgaon- 122 001

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

WITH
Appeal No. 386 of 2015

Mastermind Traxim Pvt. Ltd.
1221 Sector 21 D
Faridabad- 120 013
Haryana

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

Mr. Vedant Singh, Advocate in Appeal Nos. 384, 385 & 386 of 2015 for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point in Appeal Nos. 384, 385 & 386 of 2015 for the Respondent.

WITH
Appeal No. 387 of 2015

Sunvision Infotech Pvt. Ltd.
First Floor 44 Gali No. 3,
Kotla Mayur Vihar-1 Delhi

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

Mr. Vedant Singh, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The
Law Point for the Respondent.

WITH
Appeal No. 363 of 2015

Ishan Chadha
F-10, Rajouri Garden,
New Delhi- 110 027

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

WITH
Appeal No. 364 of 2015

Almondz Entertainment Pvt. Ltd.
No. 2A, H-Block, Dilshad Garden,
New Delhi- 110 095

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

WITH
Appeal No. 365 of 2015

Nitin Chadha
F-10, Rajouri Garden,
New Delhi- 110 027 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 ...Respondent

Mr. Sachin Mittal, Advocate for the Appellant in Appeal Nos. 363, 364 & 365 of 2015.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis and Ms. Bhavya Bhandari, Advocates for the Respondent in Appeal Nos. 363, 364 & 365 of 2015.

WITH
Appeal No. 370 of 2015

Ajay Kumar HUF
B-25, Lajpat Nagar II,
New Delhi- 110 024 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 ...Respondent

Mr. Nikhilesh Ramachandran, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for the Respondent.

WITH
Appeal No. 371 of 2015

Ajay Kumar Kapoor
E-25, Lajpat Nagar-3,
New Delhi- 110 024 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 ...Respondent

Mr. Nikhilesh Ramachandran, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for the Respondent.

**WITH
Appeal No. 389 of 2015**

Shri Rajeev Gupta
287, 2nd Floor,
Jagriti Enclave,
Delhi- 110 092

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

Mr. Prakash Shah, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for the Respondent.

**WITH
Appeal No. 412 of 2015**

Shri Govardhan Lal
B-27, Block-B, South Anarkali,
Delhi- 110 092

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

**WITH
Appeal No. 413 of 2015**

Mrs. Monika Gupta
287, 2nd Floor,
Jagriti Enclave,
Delhi- 110 092

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

AND
Appeal No. 414 of 2015

Smt. Rama Rani
B-27, Block-B, South Anarkali,
Delhi- 110 092

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051

...Respondent

Mr. Prakash Shah, Advocate in Appeal Nos. 412, 413 & 414 of 2015 for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point in Appeal Nos. 412, 413 & 414 of 2015 for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

1. In these group of twenty six appeals, the appellants have challenged the common order passed by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on 19.05.2015. By the said order penalty is imposed on each appellant under Section 15HA of Securities and Exchange Board of India Act, 1992 ("SEBI Act" for short). In some cases penalty is also imposed under Section 15A(a)/ 15HB of SEBI Act. Since common order is challenged in these appeals, all these appeals are heard together and disposed of by this common decision.

2. Dispute in all these appeals relate to the trades executed by the appellants in the scrip of Richa Industries Ltd. ("RIL" for short) during

the period from 01.12.2008 to 31.12.2009 (“Investigation Period” for short). During the investigation period, it was observed that the scrip of RIL opened at ₹ 61.10 on 01.12.2008, touched high of ₹ 161.80 on 16.11.2009, low of ₹ 29/- on 16.03.2009 and closed at ₹ 110.20 on 31.12.2009.

3. In the impugned order, the AO has considered the entities referred to therein as Group- I and Group- II entities and held that the entities covered under each group were connected to each other by one way or the other and had dealt in the scrip of RIL in a fraudulent and manipulative manner, without real change in beneficial ownership of shares by indulging in synchronized trades, structured trades, circular trades and cross deals, thereby creating artificial volumes and price rise in the scrip of RIL. It is also held that certain entities belonging to Group-I had also contributed significantly to the positive Last Traded Price (LTP), created New High Price (NHP) and entered into first trades which further created positive LTP, thereby, manipulating the price of the scrip of RIL. Accordingly, penalty is imposed on all the entities covered under Group-I and Group-II. Penalty is also imposed on DBS Cholamandalam Securities Limited (now known as Cholamandalam Securities Ltd.) for aiding and abetting its clients covered under Group-I and Group-II in executing manipulative and fraudulent trades i.e. circular trades, synchronized trades, structured trades and self trades which resulted in creation of artificial volume and price manipulation.

4. In para 16 of the impugned order, the AO has set out the connection between the entities in each group. In para 17, the gross buy, gross sell and net traded volume of the Group-I entities are set out. In paras 20 to 76 of the impugned order the AO has set out the details of the trades executed by the entities in Group-I and Group-II. In paras 77 to 161 of the impugned order the AO has recorded the submissions made by the respective entities in Group-I and Group-II.

5. Without considering the merits of arguments advanced by each entity in Group-I and Group-II, the AO, in paras 162 to 178 of the impugned order after referring to the details of the trades executed by the entities in the respective groups arrived at a conclusion that the said entities had entered into circular trades where there was no transfer of beneficial ownership and the shares were circulated among the group entities which ultimately resulted in creation of artificial volume and price rise in the scrip of RIL. It is further held that the said circular trades were executed through certain reversal trades, synchronized trades and structured trades.

Appeal No. 390 of 2015 (Dhvani D. Kothari v/s SEBI)

6. When Appeal No. 390 of 2015 was taken up for hearing, counsel for the appellant submitted that on 30.06.2009 the appellant had purchased 10000 shares of RIL in off market from Bahar Paper Pvt. Ltd. and on 07.07.2009 sold 10000 shares of RIL on market wherein the counter party happened to be Bahar Paper Pvt. Ltd. As the appellant had made profits by acquiring 10000 shares of RIL in off market and selling

the said shares on market it is submitted that the appellant being unconnected to Bahar Paper Pvt. Ltd., it could not be said that the trades executed by the appellant were fraudulent trades.

7. In para 178 (iv) of the impugned order the AO has held that the appellant alongwith others had indulged in various manipulative and fraudulent trades in the scrip of RIL and by executing off and on market transactions had created artificial volumes and thus violated the provisions contained in the SEBI Act and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for short) and hence liable for monetary penalty under Section 15HA of SEBI Act. Accordingly, penalty of ₹ 5 lac is imposed on the appellant.

8. In the Table set out in para 16 of the impugned order, it is recorded that the appellant-Dhvani Kothari is related to her husband Darshan Kothari. Apart from the above, nowhere in the impugned order it is stated that the appellant was connected with Bahar Paper Pvt. Ltd. or any of the entities set out in the impugned order. Fact that the appellant purchased shares of RIL from Bahar Paper Pvt. Ltd. in off market and sold the said shares on market, wherein, Bahar Paper Pvt. Ltd. happens to be the counter party, no doubt raises strong suspicion that the said trade may not be a genuine trade. However, without recording any reasons as to how the said trade could be said to be fraudulent and manipulative trade or the basis on which the appellant could be said to be connected to Bahar Paper Pvt. Ltd., merely on the basis of certain general observations the

AO could not have arrived at a conclusion that the trades executed by the appellant were fraudulent and manipulative trades.

9. Apart from the above, from the impugned order it is not possible to ascertain as to whether the AO has held that the trades executed by the appellant were circular trades or synchronized trades or structured trades. Assuming that the trades executed by the appellant were synchronized trades or circular trades, the AO is not justified in treating the appellant who has executed a single trade on market to be on par with other persons who have been executed several circular trades, synchronized trades, structured trades and self trades on market and impose uniform penalty of ₹ 5 lac on all such persons including the appellant.

10. It is relevant to note that indulging in a fraudulent and unfair trade practice relating to securities is a serious offence and therefore, under Section 15HA of SEBI Act, maximum penalty of ₹ 25 crore is imposable on any person indulging in such practices. In such a case, the AO without considering the merits of individual case of the appellant could not and ought not to have held that the trade executed by the appellant was a fraudulent trade.

11. It is possible to envisage that in a given case, a person may genuinely buy shares in off market and sell at a profit on market and by co-incident the counter party could be the person from whose the shares were purchased. In such a case, without establishing the fraudulent intention between the parties based on any direct or circumstantial evidence, it cannot be said that the trades were not genuine trades.

12. Counsel for SEBI fairly stated that the impugned order does not specifically record reasons for treating the trade executed by the appellant as fraudulent trade. However, counsel for SEBI sought to justify the impugned order by relying on a chart prepared by him from the data contained in the show cause notice. According to the counsel for SEBI, even though the impugned order does not record any reason for treating the trade of the appellant to be a fraudulent trade, the said inference can be easily drawn from the data contained in the show cause notice, copy of which has already been furnished to the appellant.

13. It is well established in law, that where a decision affects the rights of any person then it is absolutely essential that reasons must be recorded for arriving at such decision [see *Kranti Associates (P) Ltd. v/s Masood Ahmed Khan* reported in (2010) 9 SCC 496]. In the present case, appellant is held guilty of indulging in fraudulent transactions in securities which entails penalty up to ₹ 25 crore under Section 15HA of SEBI Act. In the absence of any reason recorded in the impugned order, it is not open to SEBI to contend that the inference must be drawn from the show cause notice. In these circumstances, we have no option but to set aside the impugned order qua the appellant and restore the matter for fresh decision on merits.

14. Fact that the appellant had not filed any reply to the show cause notice and the fact that the appellant had failed to avail the opportunity of personal hearing, did not preclude the AO from considering the data given in the show cause notice and record reasons for arriving at any

conclusion on the basis of the said data. In the absence of any such reasons recorded in the impugned order, it is not open to the counsel for SEBI to supply reasons on the basis of a chart prepared by him. Apart from the above, treating the appellant who has executed a single trade on market could not be treated on par with others who had executed multiple trades and impose uniform penalty, especially when the AO by exercising discretion has deemed it fit not to impose maximum penalty prescribed under Section 15HA of SEBI Act. In other words, the AO is not justified in treating the persons who are not similarly situated as one class and impose uniform penalty.

15. For all the aforesaid reasons, the impugned order is quashed and set aside qua the appellant and is restored to the file of AO for passing fresh order on merits and in accordance with law.

Appeal No. 391 of 2015

16. Appellant herein is the husband of Dhvani D. Kothari (Appellant in Appeal No. 390 of 2015). Appellant in off market had acquired 50,000 shares of RIL from Bahar Paper Pvt. Ltd. between 16.06.2009 to 30.06.2009 and sold on market 40,000 shares of RIL during the period from 18.06.2009 to 02.07.2009.

17. In the impugned order, the AO has held that the appellant has indulged in several manipulative and fraudulent trades in the scrip of RIL and by executing off and on market transactions has created artificial volumes, thereby violating the provisions contained in the SEBI Act and

PFUTP Regulations and hence appellant is liable for monetary penalty under Section 15HA of SEBI Act. Apart from recording that the appellant is related to his wife Dhvani D. Kothari, there is no finding recorded in the impugned order to suggest that the appellant was connected either to Bahar Paper Pvt. Ltd. or any other entities in Group-I/Group-II. In the absence of any finding recorded in the impugned order it is impossible to ascertain as to whether the AO has held that the trades executed by the appellant were circular trades or synchronized trades or structured trades. Reasons not recorded in the impugned order could not be supplied by counsel for SEBI by furnishing a chart. Apart from the above, the appellant could not be treated on par with other persons who had executed circular/synchronized/structured trades and impose uniform penalty of ₹ 5 lac, on the appellant and others who had executed circular/synchronized/structured trades.

18. In these circumstances, for the reasons stated in case of Dhvani D. Kothari (Appeal No. 390 of 2015) we set aside the impugned order qua the appellant and restore the matter to the file of AO for fresh decision on merits and in accordance with law.

Appeal Nos. 380, 381, 382 & 383 of 2015

19. Dispute in these four cases relate to the trades in the scrip of RIL executed during the investigation period by the broker, Cholamandalam Securities Ltd. (Appellant in Appeal No. 380 of 2015) on behalf of its clients Dynamic Global Profanchises Pvt. Ltd. (Appellant in Appeal No. 381 of 2015), Man Mohan Singh Dua (Appellant in Appeal No. 382 of

2015) and Ajit Singh Dua (Appellant in Appeal No. 383 of 2015) (“Clients” for convenience).

20. In para 87 and para 92 of the impugned order the AO has recorded the submissions made by the clients (Dynamic Global Profanchises Pvt. Ltd., Man Mohan Singh Dua and Ajit Singh Dua) that the transactions on market/ off market in the scrip of RIL were carried out in their account by the broker (Appellant in Appeal No. 380 of 2015) without their instructions/ consent. In para 126 of the impugned order, AO has recorded the submission made by the broker (Appellant in Appeal No. 380 of 2015) that the alleged trades were executed by it pursuant to instructions given by the aforesaid clients.

21. After recording the aforesaid submissions made by the broker and its clients which are diametrically opposite to each other, the AO, without recording any finding as to whose submission is worthy of acceptance, has purported to hold that the clients (Dynamic Global Profanchises Pvt. Ltd., Man Mohan Singh Dua and Ajit Singh Dua) are guilty of trading in the shares of RIL in a fraudulent and manipulative manner and the broker (Cholamandalam) is guilty of aiding and abetting the clients in executing fraudulent trades. If the clients had not instructed the Broker to trade in the shares of RIL, then the clients could not be held guilty. Assuming that the clients had instructed the broker to trade in the shares of RIL, how the broker can be said to have aided abetted in executing fraudulent trades is not set out in the impugned order. In our opinion, the AO was duty bound to consider the respective submissions made by the broker and the

clients and record his reasons for accepting or rejecting any of the said submissions. Failure on part of the AO to consider the submissions made by the broker and the clients has led to miscarriage of justice.

22. Apart from the above, in para 176 of the impugned order, the AO has recorded the submission of the broker that the cross deals executed by it on behalf of its clients are nothing but negotiated deals and thereafter, by relying on a decision of this Tribunal in case of Bubna Stock Broking Services Ltd. v/s SEBI (Appeal No. 41 of 2009 decided on 04.11.2009) the AO proceeded to hold that the trades in question are nothing but cross deals and cannot be treated as negotiated deals.

23. As per SEBI circular dated 14.09.1999, all negotiated deals (including cross deals) are permitted to be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other normal trade. Thus, executing negotiated deals including cross deals is permitted on the screens of the exchanges. As held by this Tribunal in case of Bubna Stock Broking Services Ltd. (supra) it is only if the broker had attempted to interfere with the price and the order matching mechanism of the system, action can be taken against the broker. In the present case, there is no such finding recorded. Since the impugned order does not contain any finding as in the case of Bubna Stock Broking Services Ltd. (supra) that the broker has attempted to interfere with the price and the order matching mechanism of the system, the AO is not justified in rejecting the plea of the broker by merely relying on the decision of this Tribunal in case of Bubna Stock

Broking Services Ltd. (supra). Counsel for SEBI cannot be permitted to supply reasons which are not to be found in the impugned order.

24. In these circumstances, we set aside the impugned order qua the appellants in these four appeals and restore the matters to the file of AO for fresh decision on merits and in accordance with law.

25. At this stage, counsel for both parties in the remaining cases submitted that in view of our decision in aforesaid appeals, the impugned order in all other appeals may also be quashed and restored for fresh decision on merits and in accordance with law.

26. Accordingly, the impugned order is quashed against all other appellants and restored for fresh decision on merits and in accordance with law.

27. All twenty six appeals are disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C.K.G. Nair
Member