

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCHES 'A' CHANDIGARH**

BEFORE SHRI. SANJAY GARG, JUDICIAL, MEMBER AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

**ITA No.951/Chd/2016**  
Assessment Year: 2011-12

Shri. Abhimanyu Soin  
31, Garden Enclave  
South City, Ludhiana

Vs. The Asst. CIT  
Circle- VII, Ludhiana

PAN No. BVKPS1586B

(Appellant)

(Respondent)

Assessee By : Sh. Kuldip Singh  
Department By : Smt. C. Chandrakanta

Date of hearing : 22/01/2018  
Date of Pronouncement : 18/04/2018

**ORDER**

**PER DR. B.R.R.KUMAR, AM**

The present appeal has been filed by the assessee against the order of the Ld. CIT(A)-3, Ludhiana dt. 07/06/2016.

2. The assessee has raised the following grounds of appeal:

1. That the order of Ld. CIT(A), Ludhiana 3 dt. 07/06/2016 is wrong against law and facts of the case.

2. (a) On the facts and the circumstances of the case the Ld. CIT(A) Ludhiana 3 has erred in rejecting the contention of the appellant with regard to exemption under section 10(38) of the Income Tax Act 1961 and in conforming the action of the Assessing Officer in rejecting claim of the appellant "of long term capital gains" of Rs. 80,25,291/-.

3. (b) That the action of the Ld. CIT(A) in confirming the addition of Rs. 83,57,578/- (total sale proceeds of shares) by denying the exemption under the long term capital gain and further assessing the income under section 68 of Income Tax Act 1961 is against the facts against law and circumstances of the case.

3. The assessee had claimed long term capital gain amounting to Rs. 80,25,291/- as exempt u/s 10(38) of the Act from the total sale proceeds amounting to Rs. 83,57,578/- with respect to the said share transaction.

4. The assessee submitted that he had purchased 800 shares of M/s Sharp Transport Limited(STL), a company base at Kolkata in December 2008. Subsequently, STL along with another company M/s Sakshi Vayapar Ltd. (SVL) merged into M/s Oasis Cine Communication Ltd.(OCL). Pursuant to the said merger, the assessee was allotted 27,200 shares of OCL in the ratio of 1:34, in Oct 2009 which were sold at CSE in May 2010 for Rs. 83 lakh (approx) The assessee claimed to have paid securities transaction tax (STT) on the transfer and returned LTCG as claimed exempt u/s 10(38) of the Act.

5. On considering the assessee's contention regarding the long term capital gain, the AO was of the view that it cannot be normal in tune with the regular business transactions to have long-Term capital gains of Rs. 80,85,577/- within 1.5 years of buying shares worth Rs. 2,72,000/- of a non descript company. The Assessing Officer was also of view that it was quite possible that the appellant had not purchased the shares of M/s Sharp Transport Ltd. as was claimed by the appellant, in 2008 and had fictitiously arranged to show the same afterwards. The matter was examined on the genuineness of the purchase and sale of the shares.

6. In response to the notices issued by the Assessing Officer under section 133(6) on 19.12.2013, the following points emerged:

i. *Sharp Transport Pvt. Ltd., Registration. No. 119293ROC, Kolkata. Addressed at 4, Fairelie place, First Floor Room No. 109 Kolkata*

ii. *The details of the selling of the shares of OCL on the dates 12/05/2010, 13/05/2010 and 14/05/2010 revealed that the sale had taken place in the name of Client Code NJ06 which is that of the assessee and it was observed that circular transactions had taken place among the brokers for the scrip.*

6.1 It was also examined by the Assessing Officer regarding the purchase of the scrips from one Sh. S.K. Khemka (broker) u/s 133(6) vide notice dated 27.01.2014. The broker was asked to provide details of payment made by the assessee with respect to the said purchase of shares on 02.12.2008. In response to this, reply was received on 14.02.2014. It revealed that:-

*The settlement No. is mentioned as 2009465/Rolling/CSC(Settlement date 02.12.2008) on the contract note whereas it is mentioned as 09465/Roll/00021(Settlement ending date 04.12.2008) in the ledger account. Further, the details of payment received by the broker was examined as to how a Kolkata based broker from Ludhiana based assessee was received in cash and that too on three different dates i.e. 01.12.2008(Rs.1 Lac), 02.12.2008(Rs.1Lac)and*

04.12.2008(Rs. 72,000/-). The bank statement of assessee in Karnataka Bank Ltd. showed that the assessee has been maintaining a bank account from 2008 onwards and there were payments to S.K. Khemka through banking channels in 2010 from the same bank account. Hence the fact of payment of cash to purchase the shares to the broker situated at Kolkata becomes primordial.

6.2 The Assessing Officer has called the assessee for giving statement u/s 131 and the statement u/s 131 was taken on 21.02.2014 to verify the source of the payment as well as mode and nature of payment. The excerpts of the statement recorded are as under:

- i. It was found that the assessee is drawing salary income from Saber Paper Books Pvt. Ltd. and income from investments.
- ii. The investment had taken care by his father Mr. Dinesh Soin .
- iii. The assessee has purchased 800 shares of M/s Sharp Transport Pvt. Ltd.(M/s STP Ltd.) on 02/12/2008 and received 27,000 shares of M/s Oasis Cini Communication Ltd.(OCC Ltd.) on amalgamation of M/s STP Ltd. which were sold.
- iv. The assessee has taken advice of consultants like "Edelweiss consultants" for investment in shares.
- v. No formal consultancy charges were paid by the assessee to the Edelweiss.
- vi. The assessee could not throw any light on the rationale given by the consultancy firm in respect of the investment in M/s STP Ltd. which is situated in Kolkata.
- vii. Net worth position of the company has not been examined by the assessee before investment.
- viii. The shares were purchased through the broker S.K. Khemka.
- ix. The shares were purchased in cash @ Rs. 10/- per share and Rs. 328/- as share premium.
- x. No details / dates of payment in cash to the broker could be established.
- xi. The assessee was in United States from 2009 to 2012 explains that the payments were made to one of the representative whose name could not be recollected sent by the broker.
- xii. This is the first deal with the broker S.K. Khemka.

xiii. The assessee was also involved in taking tuition classes to students in small groups.

6.3 The Assessing Officer after while treating the receipt of Rs. 83,57,578/- which was received by the assessee as undisclosed income under section 68 rationale for the addition as under:

**(i)** The assessee was not even present in India at the time of purchase of shares i.e. 02.12.2008 (as per the passport details assessee was outside India from 15.08.2008 to 19.12.2008). It is difficult to understand as to how the assessee performed the necessary formalities for acquiring shares i.e. even if the investment activities are taken care by the father of the assessee, still the assessee has to sign on some necessary papers in original if the scrips are not traded on any stock exchange and are not purchased electronically.

**(ii)** The assessee was asked his source of income to which the assessee replied that he was drawing salary from Sabar Paper Boards Pvt. Ltd., Ludhiana. In the earlier years, he was having certain income from investments in the form of purchase and sale of shares. The investments are being taken care of by his father Sh. Dinesh Soin. Which clearly shows that in earlier years i.e. in the year of investment in shares of STL, the assessee has no tuition income.

**(iii)** When it was asked as to how the assessee came to know about this company M/s Sharp Transport Ltd. (STL) based in Calcutta (question No. 7) it was replied that the investments were based on the advice from various financial and investment consultants like Edelweiss. However, no formal consultancy fee or consideration was paid by me to the Edelweiss. The investments were made based on the informal and general advice given by them during the meetings and social gatherings etc. (reply to question no. 8). This reply is also doubtful as the assessee was out of India from 15.08.2008 till 19.12.2008 and cannot have interacted with the said consultancy firms in informal during the preceding months of the said share purchase.

**(iv)** Further, the reply of the question No. 9 & 12 shows that no convincing reply was given by the assessee with respect to the rationale of purchase of the shares after paying huge premium, of a relatively small and non-descript company i.e. STL based in Kolkata.

**(v)** The replies to question no. 20 & 40 makes it clear that the amount of Rs. 2,72,000/- was paid to one of the representative sent by the broker Sh. S.K. Khemka at the Delhi office of the company. As per the ledger account sent by Sh. S.K. Khemka it is seen that the said amount was received by Sh. S.K. Khemka on three different dates (01.12.08, 03.12.08 AND 04.12.08) and it is beyond common logic as to why the broker from Kolkata would send the representative on three different dates to collect money from Delhi for comparatively small amounts. The gist of the replies to question no. 20 & 40 also indicate that the representative was sent by the broker only once to the Delhi office. Therefore, this discrepancy adds to the claim of the undersigned that the purchase was bogus.

**(vi)** The fact that it was first transaction with the share broker Sh. S.K. Khemka, and still the assessee favoured the transactions in cash even as in subsequent years there are transactions through banking channel with the same person indicate that no transactions has taken place during the year of purchase and all the affair is stage managed in back date.

**(vii)** Most importantly when the assessee was asked about the source of the said amount of Rs. 2,72,000/- it was told by him that he had earned tuition income of Rs. 1,60,000/- during the year and also had received gift of Rs. 15,50,000/- from

his father. This claim of the assessee was not acceptable based on the following reasons:-

(a) Out of Rs.15.5 lacks received from the father Rs. 14 lacks have been transferred back to the company i.e. Saber Paper Ltd. (as per bank records), So only Rs. 1.5 lakhs from the father as gift can be at max accepted as available said purchase of Rs. 2,72,000/-.

(b) The claim of the assessee that he has earned tuition income during the is also untenable.

(c) Further the fact that the assessee has never given any tuition can be inferred from the fact that on being asked vide question no. 30 as if the assessee has undertaken tuition classes in other years also it was replied by the assessee that only up to financial year 2009-10 he has undertaken tuition classes. However the perusal of the passport shows that during the financial year 2009-10 the assessee was present only for a brief period from 30.07.2009 to 22.08.2008 and rest of the time the assessee was abroad to pursue his studies. It **is** highly improbable that the assessee will come to India for 20 days and give tuition for earning Rs. 10,000/- during the year. This fact collaborate the fact that the assessee has not undertaken tuition classes in financial year 2008-09 also as the assessee's claim with respect to tuition classes is in contradiction with the facts mentioned above.

3) Lastly, if all the facts are seen as a whole instead of in parts then it is abundantly clear that the assessee has entered in sham arrangement to evade due taxes by introducing its own unaccounted income through bogus LTCG. All these relevant facts are narrated in the above discussion at one place or another. Thus, the explanation of the said credits in the books of the assessee (totaling Rs.83,57,578/- in the bank account No.4522500110230901 with Karnataka Bank, which is explained as proceeds of sale of shares thereby generating exempt LTCG amounting to Rs.80,85,577/-) is not found satisfactory and therefore this whole amount i.e. Rs.83,57,578/- is held to be the deemed income of the assessee as per section 68 of I.T. Act

7. The addition has been confirmed by the Ld. CIT(A).

8. Before us, the Ld. AR has reiterated the submissions made before the lower authorities. It was argued that,

I. The evidence of purchase of shares of M/s Sharp transport Pvt. Ltd. In the form of contract note and copy of account of assessee in the books of broker namely S K Khemka, which are enclosed at Page No. 1 and 2 of the Paper Book.

II. The allotment advice allotment of shares of M/s Oasis Cine Communication Ltd. Pursuant to scheme of amalgamation in lieu of the shares of M/s Sharp transport Pvt. Ltd. enclosed at Page No. 3 of the Paper Book.

III. The copies of share certificate of M/s Oasis Cine Communication Ltd. in the name of the assessee enclosed at Page No.4 to 5 of the Paper Book.

IV. Demat account statement of the assessee enclosed at Page No. 7 to 9 of the paper book.

V. Contract notes of sale of shares of M/s Oasis Cine Communication Ltd. through Calcutta Stock Exchange enclosed at Page No. 10 of the Paper Book.

VI. Confirmed copy of account of the assessee in the books of broker enclosed at page No. 10 of the Paper Book.

*VII. Bank statement of assessee in Karnataka bank in which the sale proceeds of shares are credited and the balance sheets for the year ended on 31.03.2009 and 31.03.2011 enclosed at Page No. 11 to 12 of the Paper Book.*

*Besides the above, the broker has given independent verification in response to the enquiry made by the AO u/s 133(6) of the Act. Despite all of the above evidences produced by the assessee, the Assessing officer has completely overlooked the said evidences without giving any cogent reasons and has passed the impugned assessment order making the additions.*

8.1 The Ld. AR further argued that when the sale transaction has been confirmed by the Calcutta stock exchange, the focus of the A.O shifted towards the purchase transaction and he has stated in the assessment order that the purchase of shares is bogus. Regarding the purchase of the shares of M/s Sharp Transport Pvt. Ltd., it is submitted that the assessee has purchased 800 shares of the said company at price of Rs.340 per share and to vouch that we have already submitted the contract note above evidencing the purchase of shares and it is pertinent to mention that the information provided by the broker of the assessee u/s 133(6) of the Act regarding the purchase of the shares wherein he has categorically stated that the assessee had purchased the shares through him. When the broker himself has confirmed that the assessee has purchased the shares from him, then no doubt should be cast on the purchase of shares.

8.2 It was argued that the when the broker has himself independently verified the transaction before the AO by way of his response under section 133(6) then there is heavy onus on the AO to prove that the transaction is bogus and it cannot be simply done only on the imagination and probabilities built by the AO. It is pertinent to mention here that the purchase of shares of M/s Sharp Transport Pvt. Ltd. was made by the assessee in cash in an off market transaction through the said broker.

8.3 It was argued that Sh. S.K Khemka who is the assessee and in that reply, the broker has categorically stated that he has received cash from assessee on the aforesaid dates for the purchase of shares of M/s Sharp Transport Company. Then the broker himself has confirmed that he has received the cash from assessee which is similar to what the assessee has said in a statement before the A.O., then there should not be not any doubt left in the mind with regard to this Point.

8.4 It was argued that the Assessing Officer held that it is difficult that the person can have capital gain of Rs. 80 lakh on purchase of shares worth Rs. 2,72,000/- of a non descript, small and unknown company within one and half years cannot be accepted as the Assessing Officer has no evidence and is repeatedly giving thrust on the point that the whole transaction is a series of preplanned steps without any finding on record. In this regard, it was submitted that the transactions were carried out with the Registered Share Broker and in this regard, copy of contract notes, Demat A/c and copies of Bank Passbook evidencing the transactions taken place has been provided. The assessee has proved that the transactions are accounted for, STT has been charged, documented and supported by evidence then the same cannot be held to be bogus or colorful. The said evidences have not been rejected by the AO and rather the AO himself verified such transaction from the stock exchange and the same is clearly mentioned in his assessment order:

8.5 The Ld. AR brought to our notice the following judgments:

**"ITO vs. Haran Chandra Sarkar I.T.A No. 1740/Kol/2011"**

In this case, the complete details i.e. transaction were carried out with registered broker, copy of contract notes, assessee's demat account, copy of bank Pass books etc. Were produced and placed.

The Tribunal found that the AO carried out the entire exercise just on the basis of conjecture and surmises and disallowed the exemption claimed by the assessee without any basis. The Tribunal has found a weightage on the point that when the assessee has proved that the transactions are accounted for and STT is also charged on the transaction. The assessee has produced complete evidence to support her claim and CIT(A) has rightly treated the sale transaction as LTCG.

**COMMISSIONER OF INCOME TAX vs. ANIRUDH NARAYAN AGARWAL(2013) 84 CCH 028 ALL HC.**

Income-Cash credits- Addition- Substantially - Assessee's case was selected for scrutiny and income from LTCG on sale of shares through broker was investigated -AO disallowed plea of LTCG on ground that broker had not given details and furnished documents transaction appeared to be fake - Therefore , added differential amount as income from other sources - CIT (A) deleted

addition- Held, there was no evidence on record or in assessment order to prove that proceeds received against sale of shares represented assessee's undisclosed income- Burden was on Department to prove that money belong to Assessee by bringing proper evidence on record and assessee could not be expected to call concerned person in evidence to help department to discharge burden that lay upon on it - Assessee was in possession of shares in question and had sold shares as ordinary transaction at stock exchange - If broker did not file any evidence since same was seized by Revenue department, there was no fault of assessee - Shares was allotted to assessee in public issue which were held in demat a/c and sale consideration was received by demand draft-Therefore, transaction could not be said to be fake- Order of CIT (a) upheld-Appeal dismiss"

**"COMMISSIONER OF INCOME TAX vs. UDIT NARAYAN AGARWAL (2013) 81 DTR (ALL) 63"**

AO was not justified in making addition of capital gain earned on sale and purchase of shares as income from undisclosed source where the assessee has proved genuineness of share transaction

**"COMMISSIONER OF INCOME TAX vs. KUNDAN INVESTMENTS LTD.(2003) ITR 626 (CAL)**

Tribunal having found that all the relevant documents relating to contract notes, bills, quotations and other materials were produced and the transactions were made through cheques at the prevailing quoted market rates which was verified from the statements of the stock exchange, findings of the Tribunal that the loss in the share transactions was genuine was not perverse and the claim for loss was allowable.

The Ld. AR further argued that, the A.O. did not bring in record any material to show any specific infirmity or falsity in the documents produced by the assessee in support of purchase and sale of shares. The AO could not assess the income without supporting evidences and simply could not assume the transaction to be bogus. The addition has been made by the AO. on the basis of the surmises and conjectures ignoring the evidence produced before him. Thus, the addition made on the doubt, surmises and conjectures have no legs to stand.

9. On the other hand Ld. DR vehemently argued that the assessee has grossly failed to prove the very fact of purchase of share at the first instance. Statement of the assessee recorded clearly proves that the assessee has only tried to camouflage the transactions as genuine inspite of the glitches in the statement recorded. The name of the representative of the broker of Kolkata who has received the money at Delhi from the assessee having business at Ludhiana and consequent sale of shares at 34 times of the investment cannot be accepted as the assessee has failed to discharge even the basic credentials of the company in which the investments have been made. The assessee has also failed to satisfactorily explain the reason of investment of shares.

9.1 The Ld. DR relied on the case recent decision by Hon. Indore Bench of ITAT in case of Agrawal Coal Corpn. (P.) Ltd. v. Asstt. CIT 63 DTR 201. In this case it was held by the Tribunal that merely because the companies were registered with ROC, were filling return of income, having PANs/bank accounts, share application forms were submitted but the same did not establish their identity as these companies might have been existing on papers or in real sense at the time of registration.

9.2 Ld. DR further placed reliance on the theory of preponderance of human probability as pronounced by the Hon. Apex Court in the cases of CIT v. Durga Prasad More [1971] 82 ITR 540 and Sumati Dayal v. CIT [1995] 80 Taxman 89/214 ITR 801 (SC) is of utmost importance. In this cases where it has been established that the source company is a mere 'paper company' solely engaged in the activity of providing accommodation entries, the presumption on the basis of human probability has also rightly been referred by the assessing officers to fortify their findings. Hon. Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540 , at pages 545-547 made a reference to the test of human probabilities in the following fact situation : -

*"...It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide-open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They*

*were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.*

*'...Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities. Human minds may differ as to the reliability of a piece of evidence. But, in that sphere, the decision of the final fact-finding authority is made conclusive by law.'*

9.3 The Ld. DR has also relied on the test of human probabilities has been emphasized in yet another decision of the Hon. Supreme Court in the case of *Sumati Dayal v. CIT* [1995] 80 Taxman 89/214 ITR 801 (SC). It was held in this case that in view of Section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of the previous year if the explanation offered by the assessee about the nature and source thereof, is, in the opinion of the Assessing Officer, not satisfactory.

9.4 The Ld. DR argued that this case is one of its special kinds, and in the operation in toto relates and similar to the test of human probability enumerated in the judgment Hon'ble Punjab & Haryana High Court in case of *Som Nath Maini v. CIT* [2008] 306 ITR 414 (Punj. & Har.). In this case, the assessee in his return declared loss from sale of gold jewellery and also declared a short-term capital gain from sale of shares so that the two almost match each other. This simple tax planning became ineffective after the Assessing Officer disbelieved the astronomical share price increase applying the test of human probability. The Assessing Officer observed that short-term capital gains were not genuine in as much as the assessee had purchased 45000 shares of Ankur International Ltd. at varying rates from Rs. 2.06 to Rs. 3.10 per share and sold them within a short span of six-seven months at the rate varying from Rs. 47.75 paisa to Rs. 55. Even though -the two respective transactions for purchase and sale of shares were routed through two different brokers, yet the Assessing Officer did not believe the astronomical rise in share price of a company from Rs. 3 to Rs. 55 in a short-term. The assessee lost its case before the Tribunal. Confirming the order of the Tribunal, the Punjab and Haryana High Court held as under:

*that the burden of proving that income is subject to tax is on the revenue but, on the facts, to show that the transaction is genuine, burden is primarily on the assessee. As per the Court, the Assessing Officer is to apply the test of human probabilities for deciding genuineness or otherwise of a particular transaction. Mere leading of the evidence that the transaction was genuine, cannot be conclusive. Any such evidence is required to be assessed by the Assessing Officer*

in a reasonable way. Genuineness of the transaction can be rejected in case the assessee leads evidence which is not trustworthy, and the department does not lead any evidence on such an issue.

9.5 The Ld. DR has also distinguished the cases quoted by the assessee as under:

(i) ITO Vs. Haran Chanda Sarkar ITA No. 1740/Kol/2011:- In this case, the assessee has made payment through account payee cheques for purchase of shares. In the case of the assessee, the assessee has purchased shares in cash of which the assessee has failed to prove the source as well as payment to the Kolkata based broker from Ludhiana.

(ii) Commissioner of Income Tax Vs. Anirudh Narayan Aggarwal (2013) 84 CCH028 All. HC:- In this case the assessee has made payment of share application money through account payee Demand Draft for purchase of shares. In the case of the assessee, the assessee has purchased shares in cash of which the assessee has failed to prove the source as well as payment to the Kolkata based broker from Ludhiana.

(iii) Commissioner of Income Tax Vs. Udit Aggarwal ITA No. 560 of 2009:- In this case, the assessee has made payment of share application money through account payee Demand Draft for purchase of Shares. In The case of the assessee, the assessee has purchased shares in cash of which the assessee has failed to prove the source as well as payment to the Kolkata based broker from Ludhiana.

(iv) Commissioner of Income Tax Vs. Kundan Investment Ltd. It Ref. No. 24 of 1996:- In this case, the transaction was held ingenuine on the ground that purchase was sold immediately at loss and the share broker was produced in one group only not for the all four groups. But in the case of the assessee, the transaction has held in genuine on the ground that the assessee has failed to prove the source of investment, failed to prove the channel of cash payment to the broker and on the ground of surrounding circumstances.

(v) ITO Vs. Ajay Shantilal Lalwani ITA No. 163 (Pune) 2010:- In this case, the Assessing Officer has denied exemption u/s 10(38) in respect of LTCG mainly on the basis that there was substantial delay in transferring the shares in to D-MAT account from the date of purchase. Thus, the facts of the case of the assessee are different from this case.

(vi) DCIT Vs. Sanjay Jain ITA No. 992/Chd./2009:- In this case , the share broker has failed to produce the directors of the company whose shares were traded by the assessee and the Inspector of the Department also could not trace the concern. Thus, the facts of the case of the assessee are different from this case.

The assessee has also placed reliance on the judgements of Hon. Courts. Perusal of these judgements reveals that facts of the cases mentioned in the judgements are different from the case of the assessee.

10. We have carefully considered the submissions of both the parties and also the rationale given by the Ld. CIT(A) who has dealt the issue in relation to the facts and the judgment put forth. It was held by the Ld. CIT(A) that :

4.9 This an uncontroverted fact that appellant has failed to furnish copy of ITR with its enclosures or copy of assessment order and produce the concerned party

*i.e. M/s Sharp Transport Limited(STL) or by change name of M/s Oasis Cine Communication Ltd.(OCL) after the said merger. Therefore, the appellant has failed to prove the genuineness of the transaction. The Id. AO has worked out certain glaring facts which cannot be ignored and which are clear indicative of suspicious nature of transaction. Some of these facts are that the appellant has under collusion with the stock broker has managed to show transaction, whereas as per contact note received from broker the dates of transaction are different which shows that the transaction has been managed after a later date. The appellant has failed to satisfactorily explain the reason of investment of shares of the company whose net worth was not to him.*

*Apparently, the shares were not transacted, through any recognized exchange, as apparently it is a petty private limited company having very meager net worth. It is claimed that the purchase of shares have been made through a Calcutta-based broker by way of making cash payments in four different The broker is also based at Calcutta, therefore the theory of making transaction of a company the net worth of which is not known at all as it is not listed in any recognized exchange, the appellant was not at all experienced to know these kinds of investment. Most importantly, the appellant was out when these transactions took place. The assessing officer has also worked but with regard to a major fact that the appellant did not have the requisite source of investment during the relevant period of investment.*

10.1 we observe, in CIT Vs. Frostair Pvt. Ltd. 26 Taxmann 11 (Del) it was held that the assessee has to establish the share holders identity and genuineness of the transaction. In this case the genuineness of the transaction could not be proved by the assessee. Similarly in the case of CIT Vs. Oasis Hospitality Pvt. Ltd. 333 ITR 119 (Del) (2011) it was held by the Hon'ble Court that "*The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are: (i) identity of the investors; (ii) their creditworthiness/ investments; and (Hi) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise.*"

10.2 In the case of CIT Vs Precision Finance P. LTD. (Cal)208 ITR 465, K.C.N. Chandrasekhar Vs AC IT (ITAT.Bang) 66 TTJ 355, CIT Vs United Commercial & industrial Co.(P) Ltd.(Cal)187 ITR. "*It is necessary for the assessee to prove prima face the transaction which results in a cash credit in his books of account. Such proof includes proof of the identity of his creditor, the capacity of such creditor to advance the money and, lastly, the genuineness of the transaction. These things must be proved prima facie by the assessee and only after the assessee has adduced evidence to establish prima facie the aforesaid, the onus shifts on the department. Merely establishing the identity of the creditor is not enough "*

11. The assessee has failed to prove that the purchase and sale transactions are genuine and could not even furnish and iota of evidence regarding the sale

of shares. Similarly in the case of Hon. ITAT Indore Bench in the case of Vaibhav Cotton (P.) Ltd. vs. Income-tax Officer, 4(4) Indore, [2012] 26 taxmann.com 352 (Indore) held that the assessee company had shown in its balance sheet certain amount representing share capital received from a Kolkata based company and some other individual investors. Face value of shares was Rs. 10 and those shares were issued at a premium of Rs. 90 per share. Next year, promoters/directors of assessee-company purchased those shares back at a discount of 90 per cent. The facts of this case are also akin to the case mentioned supra wherein the assessee has purchased 800 shares @ Rs. 340/- per share amounting to Rs. 2,72,000/- and sold these shares for Rs. 83,57,000/- in a gap of approximate seventeen months.

12. On consideration of the facts of the case as a whole it cannot be accepted that the assessee can have long term capital gains of Rs. 80,25,291/- within 17 months of buying of shares at Rs. 2,72,000/- of a non descript company incorporated in 2017 which got merged in 2009. This cannot be a case of intelligent investment or a simple case of tax planning to gain benefit of long term capital gains. The issue that it deals with and the facts are however, quite interesting. The in-congruencies found out by the Revenue that the investments were made on the advice of renowned investment advising company like Edelweiss for which the assessee has not paid any consultation fee leads to a conclusion that the entire transaction is synchronized and carefully planned only to defeat the purpose of revenue. The earnings @ 3072% over a period of 17 months breaks the ceiling of any record of return on investment which is beyond the human probability and beyond the business logics of any enterprise.

13. The fact of purchase of shares of the company with such a higher premium of Rs. 328 per share, whose net worth was not known by the assessee and the company is not listed with any Exchange cuts no ice. Another important factor considered is that the assessee has made transaction with share broker Sh. S.M. Khemka banking channels and subsequent years still the assessee has made transaction in cash for the year under consideration accords credence to the non reliability of the entire transaction of shares giving rise to such capital gains.

14. The ratio laid down by the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT [1995] 214 ITR 801 is squarely applicable in this case. Though the assessee has received the amounts by the way of account payee cheques, the assessee could nowhere prove the purchase of shares as claimed to have been made on 02/12/2008 in cash and it was also not proved about the availability of the funds with the assessee as on the date of purchase of shares. The assessee was not in India as per the passport details available as per the record. This, coupled with the fact that the transfer of money in cash from Ludhiana to Delhi and a person representing the broker operating at Kolkata has collected the money at Delhi cannot be accepted. The tax authorities are entitled to look into the surrounding circumstances to find out the realities and the matter has to be considered by applying test of human probabilities as enunciated by the Hon'ble Supreme Court. The fact that inspite of earning 3072% of profits, the assessee never ventured to involve himself in any other transactions with the broker which gave him even much lower profits during the period which cannot be a mere coincidence or lack of interest or absence of advice from the financial institutions as done earlier.

15. In view of the detailed discussion above, and keeping in view the entirety of the facts and circumstances and specific peculiarity of the instant case and the judgments quoted above, we decline to interfere in the order of the Ld. CIT (A).

16. In the result, appeal of the Assessee is dismissed.

Order pronounced in the Open Court.

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**  
Dated : 18/04/2018  
AG

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR