

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER**

**ITA No.2021/Del/2018
Assessment Year : 2014-15**

Shoubit Goel (HUF), C/o. Kapil Goel, Adv., F- 26/124, Sector- 7, Rohini, Delhi.	Vs.	ITO, Ward- II(3), Faridabad.
PAN : AAVHS2861J		
(Appellant)		(Respondent)

**ITA No.2022/Del/2018
Assessment Year : 2014-15**

Shobhit Goel, C/o. Kapil Goel, Adv., F- 26/124, Sector- 7, Rohini, Delhi.	Vs.	ITO, Ward- II(3), Faridabad.
PAN : AICPG9748H		
(Appellant)		(Respondent)

**ITA No.2023/Del/2018
Assessment Year : 2014-15**

Omwati Aggarwal, C/o. Kapil Goel, Adv., F- 26/124, Sector- 7, Rohini, Delhi.	Vs.	ITO, Ward- 2(5), Faridabad.
PAN : AGTPA2312C		
(Appellant)		(Respondent)

**ITA No.2024/Del/2018
Assessment Year : 2014-15**

Mohini Goel, C/o. Kapil Goel, Adv., F- 26/124, Sector- 7, Rohini, Delhi.	Vs.	ITO, Ward- 1(5), Faridabad.
PAN : AYQPG2481B		
(Appellant)		(Respondent)

ITA No.2025/Del/2018
Assessment Year : 2014-15

Naina Agarwal, C/o. Kapil Goel, Adv., F- 26/124, Sector- 7, Rohini, Delhi.	Vs.	ITO, Ward- II(1), Faridabad.
PAN : APFPG6588K		
(Appellant)		(Respondent)

ITA No.2026/Del/2018
Assessment Year : 2014-15

Shyam Sunder Bansal, C/o. Kapil Goel, Adv., F- 26/124, Sector- 7, Rohini, Delhi.	Vs.	ITO, Ward- II(3), Faridabad.
PAN : AIVPB4058L		
(Appellant)		(Respondent)

ITA No.2027/Del/2018
Assessment Year : 2014-15

Nand Kishore, C/o. Kapil Goel, Adv., F- 26/124, Sector- 7, Rohini, Delhi.	Vs.	ITO, Ward- II(1), Faridabad.
PAN : ACFPK0906Q		
(Appellant)		(Respondent)

ITA No.2028/Del/2018
Assessment Year : 2014-15

Mayank Goel, C/o. Kapil Goel, Adv., F- 26/124, Sector- 7, Rohini, Delhi.	Vs.	ITO, Ward- 1(5), Faridabad.
PAN : AIXPG9560C		
(Appellant)		(Respondent)

Assessee by : Shri Kapil Goel, Adv.
Department by : Shri Atiq Ahmed, Sr.DR

Date of hearing : 31-07-2018
Date of pronouncement : 25-09-2018

ORDER

PER R. K. PANDA, AM :

The above batch of eight appeals filed by the respective assessees are directed against the separate orders of the Id. CIT(A), Faridabad relating to assessment year 2014-15. Since identical grounds have been taken by the respective assessees in their appeals, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

2. First I take up ITA No.2021/Del/2018 in the case of Shoubit Goel (HUF) as the lead case. Facts of the case, in brief, are that the assessee (HUF) is deriving income from trading in the name and style of M/s Shobhit Goeel HUF and interest income from bank and unsecured loans given to different parties. It filed its return of income on 31.12.2014 declaring total income of Rs.4,43,870/-. The assessee, in the said return, has claimed exemption of Rs.19,14,520/- u/s 10(38) of the I.T. Act, 1961 on account of sale of securities. The case of the assessee was selected for scrutiny by CASS on the basis of information uploaded by the Investigation Wing that "Suspicious transaction relating to long term capital gain on sale of shares". After examining the information and written submissions filed by the assessee from time to time and taking into consideration the sworn statements recorded u/s 131 before the Investigation

Wing, the Assessing Officer proceeded to complete the assessment. He discussed about the features of Penny Stocks which are as under :-

1. *Most of these companies have no business at all. Few of the companies which have some business do not have the credentials to justify the sharp rise in market price of their share.*
2. *The sharp rise in market price of the shares of these entities is not supported by fundamentals of the company or any other genuine factor.*
3. *The market price of shares of these companies rise to very high level within a span of 1 year.*
4. *The trading volume of shares during the period, in this manipulations are done to raise the market price is extremely thin.*
5. *The shares of these companies are not available for buy/sell to any person outside the syndicate of brokers who act in connivance to ramp up the price of the penny stock and provide exit option to the beneficiary.*
6. *Initial allotment of shares to beneficiaries is done through multiple routes – i) Preferential allotment of shares, ii) Offline Trading, iii) Online Trading, iv) Merger/Amalgamation of private company with the listed penny stock (thus share holders of private company become share holders of listed penny stock company).”*

3. He referred to the investigation carried out by the Directorate of Investigation Wing of Kolkata to unearth the organized racket of generating bogus entries of long term capital gains which is exempt from tax. The modus operandi adopted by the operators was to make the beneficiary buy some shares of a pre-determined Penny Stock company controlled by them. These shares are transferred to the beneficiary at a very nominal price mostly off-line through preferential allotment or off-line sale to save STT. The beneficiary (an Individual) holds the share for more than one year, the statutory period after which LTCG is exempt u/s 10(38) of the I.T. Act. In the meantime, the operators rig the price of the stock and gradually raise its price many times, often 500 to 1000 times. This is done through low volume transaction indulged

in by the dummies of the operator at a pre-determined price. When the price reaches the desired level the beneficiary, who bought the shares at a nominal price, is made to sell it to a dummy paper company of the operator. For this, unaccounted cash is provided by the beneficiary which is routed through a few layers of paper companies by the operator and finally is parked with the dummy paper company that will buy the shares.

4. The Assessing Officer further observed that the price of the shares of the penny stock companies are rigged and are raised through circular trading. This is managed by the “operator” of the scrip. An “Operator” is a person who is managing the overall affairs of the scheme and he is the one who contacts the entities who wish to take entry of bogus LTCG/STCG in their books and arranges the same through the scripts of penny stock companies. The Operator manages many paper/bogus companies and uses them to do circular transactions to rig the price of the shares. The shares of these penny stock companies, although listed on exchange, are always closely held and are controlled by the promoter of the Penny Stock Company and the Operator who is arranging for the bogus LTCG/Loss. This is due to the fact that the general public is not interested in these shares as these companies have no credentials and this helps the operator to keep a control and the price movement of the shares.

5. He noted that the Securities and Exchange Board of India (SEBI) has in the recent past, passed some orders on the issue of manipulation of share market

for providing accommodation entries. He further noted that the assessee is one such beneficiary who has taken the entry of Rs.23,18,118/- during the impugned assessment year. From the various details furnished by the assessee during the course of assessment proceedings including copies of computation, bank statements and the details of long term capital gain, he noted that the assessee purchased and sold the shares of M/s Unno Industries Limited, the details of which are as under :-

<i>Scrip Purchased</i>	<i>M/s Pinnacle Vintrade Ltd. converted into M/s Unno Industries Ltd.</i>
<i>No. of shares purchased</i>	<i>72,800 (Originally purchased 80 shares, on 20.07.2012 Bonus announced 90:1 i.e. 7200 bonus shares given. On 18.01.2013 a scheme of arrangement has been ordered by Hon'ble High Court of Bombay and one share of Pinnacle Vintrade Ltd. replaced by ten shares of Unno Industries Ltd. so that 7280 shares converted to 72,800 shares of succeeding company).</i>
<i>Date of purchase</i>	<i>20.10.2011</i>
<i>Amount paid</i>	<i>Rs.1,00,000. (80 shares @ 1250/-)</i>
<i>Broker through whom purchased</i>	<i>Uniglory Developers Private Limited, Mumbai.</i>
<i>No. of shares sold</i>	<i>72,800</i>
<i>Date of sale (NSE)</i>	<i>22.04.2013 (65000 shares) and 29.04.2013 (7800 shares).</i>
<i>Broker</i>	<i>HDFC Securities</i>
<i>Amount received</i>	<i>Rs.21,66,450/- (net after STT & Brokerage).</i>

6. He noted that during the course of proceedings u/s 131 on 02.06.2015 before the Investigation Wing and sworn depositions of Mr. Amit Dalmia, Son of Shri Jai Parkash Dalmia recorded during the course of survey at the business premises of M/s Intellect Stock Broking Pvt. Ltd. at 95, Sarat Bose Road, 3rd Floor, Kolkata – 700026 he has confirmed on oath that he has provided and

accommodated bogus long term capital gain entries. The Assessing Officer referred to the various questions put to him and accordingly issued a show cause notice to the assessee dated 05.12.2016 asking him to explain why the exemption claimed u/s 10(38) should not be disallowed. In the said notice, he further referred to the statements recorded in the case of seven other persons who had stated that M/s Unno Industries Ltd. was engaged in providing bogus long term capital gains and short term capital gains through penny stock.

7. The assessee in his reply dated 13.12.2016 submitted that the comments given by Shri Amit Dalmia and others in the statements are wrong, fabricated and denied. They might have given the statement to avoid their own liabilities. The assessee requested for providing an opportunity to cross examine the persons stated in the letter issued by the Assessing Officer. It was argued that the documents regarding purchase, sales, STT paid and period of holding are already given. The abstract of transfer of shares in the records of Registrar of Companies (ROC) showing that the shares existed in assessee's name was brought to the notice of the Assessing Officer. The provisions of section 10(38) was also brought to the notice of the Assessing Officer and it was argued that all the provisions of section 10(38) are duly complied with i.e. :-

1. *There is transfer of long term assets as per detail given under:*
 - *80 shares of Pinnacle Vintrade Pvt. Ltd. were purchased on 20.10.2011.*
 - *7200 Bonus shares were issued on 23.03.2012.*
 - *72800 shares of Unno Industries allotted in lieu of shares of Pinnacle Vintrade Pvt. Ltd. in a scheme of amalgamation on 12.02.2013.*

- 72800 shares of Unno Industries sold on 29.04.2013.

Since shares allotted in the scheme of amalgamation is not a transfer u/s 47(vi), period of holding was from 20.10.2011 to 27.05.2013 i.e. more than 1 year and hence was a long term capital asset u/s 2(42A).

2. Transaction of sale of equity shares is after Finance (2) Act, 2004.

3. STT has been duly paid as per contract notes already filed.

In view of above long term capital gain has arisen and is duly exempt u/s 10(38) of I.T. Act and may not be disallowed.”

8. The Assessing Officer supplied the copies of statements of Shri Amit Dalmia recorded by the DDIT (Inv.), Kolkata to the assessee and he also asked the assessee to attend the Office of DDIT (Inv.), Unit- 4(1), Kolkata vide letter dated 14.12.2016 for cross examination of the person which the assessee did not avail. Rejecting the various explanations given by the assessee and relying on various decisions, the Assessing Officer rejected the claim of exemption u/s 10(38) and made addition of Rs.19,14,520/- to the total income of the assessee by invoking the provisions of section 68 of the I.T. Act.

9. Similar additions have been made by the Assessing Officer in other appeals, the details of which are as under :-

S.No.	Name of the assessee	ITA Nos.	Addition (Rs.)
1.	Shobhit Goel	2022/Del/2018	20,66,450/-
2.	Omwati Aggarwal	2023/Del/2018	23,02,985/-
3.	Mohini Goel	2024/Del/2018	20,88,749/-
4.	Naina Agarwal	2025/Del/2018	22,64,521/-
5.	Shyam Sunder Bansal	2026/Del/2018	22,97,500/-
6.	Nand Kishore	2027/Del/2018	22,19,420/-
7.	Mayank Goel	2028/Del/2018	20,59,711/-

10. In appeal, the ld. CIT(A) upheld the action of the Assessing Officer. While doing so, he observed that the assessee had purchased 80 shares of M/s

Pinnacle Vintrade Ltd. offline (not through recognized stock exchange) for Rs.1,00,000/- on 20.10.2011 through broker, Uniglory Developers Pvt. Ltd. After getting bonus shares in the ratio of 90:1 on 20.07.2012 and conversion of one shares of M/s Pinnacle Vintrade Ltd. into 10 shares of M/s Unno Industries Ltd. under the scheme of amalgamation by the order of Hon'ble High Court of Bombay, the assessee received 72,800 shares of M/s Unno Industries Ltd. The assessee sold these shares of M/s Unno Industries Ltd. for Rs.21,66,450/- on 29.04.2013 through stock exchange with payment of STT after getting these shares dematerialized on 28.04.2013. Survey operation was carried out by the Investigation Wing, Kolkata at the business premises of M/s Intellect Stock Broking & Others. During the assessment proceedings, Shri Amit Dalmia has clearly admitted that he was engaged in providing accommodation entries in the form of share capital, share premium, unsecured loan and LTCG/STCG/STCL through various jamakharchi companies and managed by him including M/s Unno Industries Ltd. The scrip of M/s Unno Industries Ltd. in which the assessee traded has been suspended in trading of securities w.e.f. January 7, 2015 by the SEBI as a "Surveillance Measures". A detailed show-cause notice was issued to the assessee by the Assessing Officer, in response to which, the assessee merely repeated the facts. The assessee has failed to give any concrete evidence of his bona-fide claim during the assessment as well as the appellate proceedings. The assessee has failed to counter the observations and facts cited

by the Assessing Officer in para 9 and 10 of the assessment order. The Assessing Officer also provided the assessee an opportunity to attend the Office of DDIT (Inv.), Unit- 4(1), Kolkata vide letter dated 14.12.2016.

11. Aggrieved with such order of the ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :-

- “1. *That order passed by Ld AO dated 23/12/2016 and further order passed by ld CIT A dated 29/01/2018 are bad in law in as much as notice u/s 143(2) on basis of CASS is not in accordance with jurisdictional conditions stipulated under the Act.*
2. *That order passed by Ld. AO dated 23/12/2016 and further order passed by ld CIT A dated 29/01/2018 are bad in law in as much as addition of Rs.19,14,520 is made violating principles of natural justice and on basis of vague show cause notice which was challenged and repudiated before Ld. AO for not confronting back material referred in show cause notice issued.*
3. *That on the facts and in the circumstances of the case and in law, ld CIT-A erred in sustaining the action of ld AO in making addition of Rs 19,14,520 without appreciating that mandatory CBDT guidelines 017 issuing show cause notice has been flagrantly violated and vague show cause notice is made basis of addition, thus resulting in invalidating the entire proceedings.*
4. *That on the facts and in the circumstances of the case and in law, ld CIT-A erred in sustaining the action of ld AO in making addition of Rs 19,14,520 without appreciating that burden to prove that transaction is bogus/sham has remained un-discharged from side of revenue.*
5. *That on the facts and in the circumstances of the case and in law, both ld CIT-A and ld AO erred in making subject additions without appreciating that the modus operandi relied extensively in impugned orders is never co-related even remotely to the facts of the present case as there is no iota of evidence brought on record which can display that assessee herein has inducted certain cash at the time of sale to certain indentified broker/middleman/syndicate member who has in turn introduced certain identified artificial paper company for alleged parking of said cash to buy the shares sold by the assessee which theoretical trail has remained inchoate completely nullifying the entire basis of the addition.*
6. *That on the facts and in the circumstances of the case and in law, ld AO erred in making subject additions without appreciating that law gives discretion to the assessing officer in applying deeming fictions u/s 68 etc which discretion has not been judiciously exercised in facts are present case as assessee has no economic capacity and source to generate given amount of unaccounted income. Further law requires that additions under said deeming fiction cannot be made sans incriminating material brought on record which is completely lacking in present case.*

7. *That on the facts and in the circumstances of the case and in law, ld CIT-A erred in sustaining the action of ld AO in making addition of Rs 19,14,520 /- without appreciating that basis of findings of the lower authorities is "suspicion" and "human probabilities" only which is never converted to reliable and trustworthy material and entire assessment order is passed on sole basis of "borrowed satisfaction" and without any independent application of mind.*
8. *That on the facts and in the circumstances of the case and in law, ld CIT-A erred in sustaining the action of ld AO in making addition of Rs 19,14,520 /- without appreciating that no opportunity is given to the assessee to be confronted with back material relied extensively in impugned orders like investigation wing report etc and no opportunity to cross examine the revenue's witness was given despite specific written request in this regard made to Ld AO/CIT-A.*
9. *That on the facts and in the circumstances of the case and in law, ld CIT-A erred in sustaining the action of ld AO in making addition of Rs 19,14,520/- without appreciating that section 68 is not applicable to sale of shares as mentioned in impugned assessment order at last page.*
10. *That on the facts and in the circumstances of the case and in law, ld CIT-A erred in sustaining the action of ld AO in making addition of Rs 19,14,520 without appreciating that in identical facts in various orders relief has been granted to assessee accepting LTCG (long term capital gains) as genuine.*
11. *That on the facts and in the circumstances of the case and in law, ld CIT-A erred in sustaining the action of ld AO in making addition of Rs 19,14,520 without appreciating spirit of law contained in section 10(38) and section 43(5)(d) where statutory status is provided to evidences generated from stock exchange system treating the same to be impeccable and only from finance act 2017 with prospective effective from AY 2018-2019, amendment is made in section 10(38), prior to which such gains would remain exempt.*
12. *That on the facts and in the circumstances of the case and in law, ld CIT-A erred in sustaining the action of ld AO in applying section 115BBE which is out rightly bad in law.*
13. *That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal."*

12. The ld. counsel for the assessee strongly opposed the order of the ld. CIT(A). He submitted that the assessee had requested for the cross examine of the persons whose statements have been used by the Assessing Officer for making the addition. However, such request was indirectly turned down by the Assessing Officer by asking the assessee to go to office of the DDIT (Inv.), Kolkata and cross-examine the concerned persons before the DDIT,

Investigation Wing. He submitted that the Assessing Officer has invoked the provisions of section 68 which are not applicable to the facts of the present case because the said provisions are applicable where any sum is found credited in the books of the assessee maintained for any previous year and the assessee does not offer any explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

13. Referring to the decision of the Hon'ble Punjab & Haryana High Court in the case of Pr.CIT vs. Prem Pal Gandhi vide ITA No.95/2017 order dated 16.02.2017, he submitted that under identical circumstances the Hon'ble High Court in the said decision dismissed the appeal filed by the Revenue, wherein, the Tribunal had upheld the order of the ld. CIT(A) in deleting the addition of Rs.4,11,77,474/- made by the Assessing Officer on account of sham shares transactions.

14. Referring to the following decisions, he submitted that under identical circumstances the various Benches of the Tribunal have deleted such addition made by the Assessing Officer on account of gains from penny stock :-

- (i) *Navneet Agarwal, Legal Heir of Late Kiran Agarwal vs. ITO, ITA No.2281/Kol/2017 order dated 20.07.2018.*
- (ii) *Shri Vinay Kumar Sogani vs. Pr.CIT, ITA No.444/JP/2018 order dated 26.07.2018.*
- (iii) *Smt. Shikha Dhawan vs. ITO, ITA No.3035/Del/2018 order dated 27.06.2018.*

- (iv) *Prakash Chand Bhutoria vs. ITO, ITA No.2394/Kol/2017 order dated 27.06.2018.*
- (v) *G.R. Kalra HUF vs. ITO, ITA No.6564/Del/2013 order dated 12.04.2017.*

15. He submitted that the Assessing Officer in the instant case has not brought on record any specific transactions or specific evidence to negate the claim of the assessee. The principle of natural justice has been completely violated. Nothing has been confronted to the assessee and there is no evidence whatsoever on record to show that the assessee's own money has come back to it in any manner. During the course of survey operation at the business premises of M/s Intellect Stock Broking and Others, Shri Amit Dalmia, whose statement was the basis of addition in the instant case, has not specifically taken the name of the assessee. Further, the scrip of M/s Unno Industries Ltd. in which the assessee traded was suspended in trading of securities w.e.f. 07th January, 2015 only whereas the previous year in the instant case is for the period from 01.04.2013 to 31.03.2014. He accordingly submitted that denial of exemption u/s 10(38) and invoking of the provisions of section 68 is not justified in the instant case especially when the shares were purchased on 28.10.2011 through brokers. The shares were sold through HDFC Securities Ltd. and STT was paid on such sales and all these facts are not controverted by the Revenue. Their action is only on the basis of presumption and surmises which is not permissible in income-tax proceedings. Referring to various decisions enclosed in the Paper Book, he submitted that under identical

circumstances the various Benches of the Tribunal have deleted such addition. Therefore, the order of the Id. CIT(A) be set-aside and the grounds raised by the assessee be allowed.

16. The Id. DR on the other hand heavily relied on the order of the Id. CIT(A). He submitted that it is impossible and improbable that the shares of the company, whose business is not known to the general public, will appreciate 22 times over a period of less than 2 years. He submitted that during the course of investigation at the business premises of M/s Intellect Stock Broking and Others, the statement of Shri Amit Dalmia was recorded who had clearly and categorically stated that he is engaged in providing accommodation entries in the form of share capital, share premium, unsecured loan and long term capital gains through various JK companies. Various other persons have also given such type of statements. Therefore, under the facts and circumstances of the case, the order of the Id. CIT(A), which is very elaborate, should be upheld. He also relied on the following decisions :-

- (i) *Sanjay Bimalchand Jain, L/H Shantidevi Bimalchand Jain vs. PCIT (ITA No.18/2017).*
- (ii) *Chandan Gupta vs. CIT, (2015) 54 taxmann.com 10.*
- (iii) *Balbir Chand Maini vs. CIT, (2011) 12 taxmann.com 276.*
- (iv) *Usha Chandresh Shah vs. ITO [2014-TIOL-1459-ITAT-MUM].*
- (v) *Ratnakar M. Pujari vs. ITO [2016-TIOL-1746-ITAT-MUM].*

17. I have considered the rival arguments made by both the sides and perused the material available on record. I find the assessee in the instant case has claimed long term capital gain of Rs.19,14,520/- u/s 10(38) on account of sale

of 72,800 shares of M/s Unno Industries Ltd. It may be pertinent to mention here that the assessee had purchased 80 shares of M/s Pinnacle Vintrade Ltd. on 20.07.2012 on which bonus were announced @ 90:1 i.e. 7200 bonus shares were given. On the basis of scheme of arrangement ordered by the Hon'ble Bombay High Court on 18.01.2013 one share of Pinnacle Vintrade Ltd. was replaced by 10 shares of M/s Unno Industries Ltd. Accordingly 7280 shares were converted into 72800 shares of succeeding company. I find the Assessing Officer rejected the claim of long term capital gain on account of sale of above shares on the ground that during the course of survey at the business premises of M/s Intellect Stock Broking and Others, Shri Amit Dalmia, in his statement recorded u/s 131, had admitted that he was engaged in providing accommodation entries. Further, according to the Assessing Officer, the scrip of M/s Unno Industries Ltd., in which the assessee traded, has been suspended in trading of securities w.e.f. 07th January, 2015 by SEBI as surveillance measure. It is the allegation of the Assessing Officer that the assessee failed to give any concrete evidence of his bona-fide claim during the assessment as well as appellate proceedings. The opportunity of cross-examination granted by him was also not availed by the assessee. I find the Id. CIT(A) upheld the action of the Assessing Officer. It is the submission of the Id. counsel for the assessee that the request of cross-examination was not effectively provided by the Assessing Officer since the Assessing Officer asked the assessee go to Kolkata

and avail the opportunity of cross-examination in the Office of the DDIT, Investigation Wing. Further, the statements so recorded from different persons do not give any case specific or transaction specific evidence relating to the assessee. Nothing adverse has been given by those persons and no such adverse material was confronted to the assessee. There is no evidence whatsoever on record to suggest that the assessee's own money has come back to the assessee. It is also his submission that the entire addition is based on presumptions and surmises. Since the transactions were through banking channels and through regular brokers of the stock exchange and when the transactions are fully supported by documentary evidences, therefore, the same cannot be brushed aside merely on suspicion and surmises.

18. I find merit in the above argument of the ld. counsel for the assessee. It is an admitted fact that the shares were sold through national stock exchange and HDFC Securities was the broker, the amounts were received after payment of STT and brokerage and the shares were sold through banking channels. No case specific or transaction specific information was given by the persons whose statements were recorded and are the basis of addition in the instant case.

19. I find the Hon'ble Punjab & Haryana High Court, which is the Jurisdictional High Court in the case of the assessee, in the case of Prem Pal Gandhi (supra) has observed as under :-

"2. The following questions of law have been raised:-

(i) *Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 4,11,77,474/- made by the AO on account of sham share transactions ignoring an important aspect that the transaction of shares showing their purchase price at Rs. 11,00,000/- and sale consideration at Rs. 4,23,45,295/- within a period of less than two years/purchases of shares made in cash not cheque that too before shares got dematerialized/worth of the company at the time of purchase/sale of shares not proved-All suggest non-genuineness of the said transaction?*

(ii) *Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 4,11,77,474/- made by the AO on account of sham share transactions, whereas the CIT(A) himself had held that the assessee had not been able to substantiate the source of investment of Rs. 11,00,000/- in the said shares purchased during the financial year 2005-06 and the AO was directed to reopen the case of the assessee for the assessment year 2006-07 on this issue?*

(iii) *Whether the Hon'ble ITAT has erred in ignoring an important aspect that in such cases of sham transactions of shares showing abnormal hike in their value, where the facts themselves speak loud and clear, the AO is justified to even draw an inference from the attendant circumstances?*

(iv) *Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 12,59,000/- made by the AO on the basis of seized document on the grounds that the Assessing Officer has not pointed out as to how the figure of Rs. 12.59 lacs has been worked out ignoring the fact that the assessee himself in his reply to the AO had tried to explain the source of the receipts of Rs. 12,59,000/- instead of challenging the working out of the said figure by the AO?*

3. *The first three questions of law raised in this appeal are covered against the appellant by an order and judgement of a Division Bench of this Court dated 16.02.2017 in ITA-18-2017 titled as The Pr. Commissioner of Income Tax (Central), Ludhiana Vs Sh. Hitesh Gandhi, Bhatti Colony, Chandigarh Road, Nawanshahar.*

4. *The issue in short is this: The assessee purchased shares of a company during the assessment year 2006-2007 at ` 11/- and sold the same in the assessment year 2008-2009 at ` 400/- per share. In the above case, namely, ITA-18-2017 also the assessee had purchased and sold the shares in the same assessment years. The Assessing Officer in both the cases added the appreciation to the assessee's income on the suspicion that these were fictitious transactions and that the appreciation actually represented the assessee's income from undisclosed sources. In ITA-18-2017 also the CIT (Appeals) and the Tribunal held that the Assessing Officer had not produced any evidence whatsoever in support of the suspicion. On the other hand, although the appreciation is very high, the shares were traded on the National Stock Exchange and the payments and receipts were routed through the bank. There was no evidence to indicate for instance that this was a closely held company and that the trading on the National Stock Exchange was manipulated in any manner.*

5. *In these circumstances, following the judgement in ITA-18-2017, it must be held that there is no substantial question of law in the present appeal.*

6. *Question (iv) has been dealt with in detail by the CIT (Appeals) and the Tribunal. Firstly, the documents on which the Assessing Officer relied upon in the appeal were not put to the assessee during the assessment proceedings. The CIT (Appeals) nevertheless considered them in detail and found that there was no correlation between the amounts sought to be added and the entries in those documents. This was on an appreciation of facts. There is nothing to indicate that the same was perverse or irrational. Accordingly, no question of law arises.*
7. *In the circumstances, the appeal is dismissed.”*

20. I find the Co-ordinate Bench of the Tribunal in the case of Smt. Shikha Dhawan (supra) has deleted similar addition by observing as under :-

“8. *I have heard the rival submissions and perused the material available on record. The assessee placed sufficient documentary evidences before the AO which are copy of the shares certificates with transfer form, copy of debit note issued by Shreeji Broking (P) Ltd., copy of cash receipt of Shreeji Broking (P) Ltd., copy of the account statement of the assessee in the books of the broker, copy of ledger account of Indus Portfolio (P) Ltd., copy of evidence for payment of securities transaction tax and copy of the bank statement of the assessee to show that the assessee had entered into genuine transaction of purchase of share which were later on sold through the broker on recognized stock exchange after payment of STT. The claim of the assessee for sale of shares has been supported by the documentary evidences which have not been rebutted by the authorities below. Whatever inquiry was conducted in the cases of other parties and statement recorded of several persons namely Sh. Anil Khemka, Sh. Sanjay Vohra and Sh. Bidyoot Sarkar as referred in the assessment order and the report of the Investigation Wing were not confronted to the assessee and above statements were also not subject to cross-examination on behalf of the assessee. Therefore, such evidences cannot be read in evidence against the assessee. The order of the SEBI was also not confronted to the assessee. AO did not mention any such fact in assessment order. More so in those reports and statements, the name of the assessee has not been referred to. Ld. Counsel for the assessee, therefore, rightly contended that the twin conditions of section 10(38) of the Act have been satisfied in the Page \ 24 ITA No.3035/Del/2018 case of the assessee. The assessee has been able to prove that she has entered into the genuine transaction of purchase and sale of shares and the sale consideration is received from broker through banking channel. The brokers have not denied the transaction with the assessee. The assessee rooted the transaction of sale of shares through recognized stock exchange after making payment of STT. In similar circumstances, ITAT SMC Bench, Delhi in the case of Meenu Goel vs ITO (supra) following the decision of Jurisdictional Hon'ble P&H High Court in the case of Pr.CIT vs Prem Pal Gandhi(supra) deleted the similar addition. Therefore, the issue is covered in favour of the assessee by the order of ITAT, Delhi Bench in the case of Meenu Goel vs ITO (supra) followed by judgement of Jurisdictional P&H High Court which is binding. There is no other material available on record to rebut the claim of the assessee of exemption claimed u/s 10(38) of the Act.*

9. *Keeping in view of the above discussion and the material on record, in the light of the order of the Tribunal in the case of Meenu Goel vs ITO (supra), I set aside the orders of the authorities below and delete the addition of Rs.19,51,357/-. The appeal of the assessee is, accordingly, allowed.*

10. *In the result, the appeal of the assessee is allowed.”*

21. I find the Kolkata Bench of the Tribunal in the case of Prakash Chand Bhutoria (supra) has dealt with identical issue where the long term capital gain on account of sale of shares of M/s Unno Industries Ltd. was denied by the Assessing Officer on the basis of Investigation Wing of Kolkata and the Id. CIT(A) upheld the action of the Assessing Officer. On further appeal by the assessee, the Tribunal deleted the addition made by the Assessing Officer u/s 68 by observing as under :-

“8. A perusal of the order of the AO demonstrates that this addition was made merely on "suspicion" and in a routine and mechanical manner. This is clear from the fact that the AO refers to some 'Sharp Trading Compnay' as one of the main ,manipulated company and whereas the assessee sold scrips in Unno Industries Ltd. The AO refers to various enquiries made by "The Directors of Income Tax" , Kolkata on project basis and that this resulted into unearthing of a huge syndicate of entry operators and share brokers and money lenders involved in providing of bogus accommodation entries. The report as the so-called project and the evidence collected by the DIT (Inv.), Kolkata etc have not been brought on record. It is well settled that any document relied upon by the AO for making an addition has to be supplied to the assessee and an opportunity should be provided to the assessee to rebut the same. In this case, general statements have been made by the AO and the addition is made based on such generalizations. The assessee has not been confronted with any of the evidence collected in the investigation done by the DIT(Inv.), Kolkata. Evidence collected from third parties cannot be used against the assessee without giving a copy of the same to the assessee and thereafter giving him an opportunity to rebut the same.

9. *The AO further relies on the shop increase of 31000% of the value of shares over the period of 2 years. Though this is highly suspicious, it cannot take the place of evidence. The Hon'ble Supreme Court has stated that suspicion however strong cannot be the basis for making an addition. The evidence produced by the assessee listed above proves his case and the AO could not controvert the same by bringing on*

record any evidence. The evidence said to have been collected by the DIT (INV.), Kolkata and the report is not produced before this Bench.

10. I now discuss the case law on the subject. The Hon'ble Calcutta High Court in the case of CIT, Kolkata-III vs. Smt. Shreyashi Ganguli reported in [2012] (9) TMI 1113 held as follows:

"1. Whether on the facts and circumstances of the case, the order of the Ld.. Tribunal is perverse in law as well as on facts in deleting the addition made by the Assessing Officer as unexplained cash credit under section 68 of the Income Tax Act, 1961, by ignoring the facts on record. The ld. Tribunal after considering the material and hearing came to a fact finding which is as follows:

The Assessing Officer has doubted the transaction since the selling broker was subjected to SEBI's action. However, the demat account given the statement of transactions from 01.04.2004 to 31.03.2005 i.e. relevant for the assessment year under appeal (2005-06) are before us. There cannot be any doubt about the transaction as has been observed by the assessing officer. The transactions were as per norms under controlled by the Securities Transaction Tax, brokerage service tax and cess, which were already paid. They were complied with. All the transactions were through bank. There is no iota of evidence over the above transactions as it were through demat format. Hence, we agree with the given findings of the ld. Commissioner of Income Tax (Appeals) in accepting the transactions as genuine too.

In view of the fact findings we cannot reappraise, recording is such, cannot be said to be perverse as it is not fact finding of the ld. Tribunal alone. The commissioner of Income Tax came to the same fact finding. Concurrent fact finding itself makes the story of perversity, unbelievable."

The "D" Bench of the Kolkata Tribunal in the case of Gautam Kumar Pincha vs. ITO, in I.T.A. No. 569/Kol/2017 dated 15.11.2017 at para 19 onwards held as follows:

(i) *M/s Classic Growers Ltd. vs. CIT [ITA No. 129 of 2012] (Cal HC)* - In this case the ld AO found that the formal evidences produced by the assessee to support huge losses claimed in the transactions of purchase and sale of shares were stage managed. The Hon'ble High Court held that the opinion of the AO that the assessee generated a sizeable amount of loss out of prearranged transactions so as to reduce the quantum of income liable for tax might have been the view expressed by the ld AO but he miserably failed to substantiate that. The High Court held that the transactions were at the prevailing price and therefore the suspicion of the AO was misplaced and not substantiated.

(ii) *CIT V. Lakshmanarh Estate & Trading Co. Limited [2013] 40 taxmann.com 439 (Cal)* - In this case the Hon'ble Calcutta High Court held that on the basis of a suspicion howsoever strong it is not possible to record any finding of fact. As a matter of fact suspicion can never take the place of proof. It was further held that in absence

of any evidence on record, it is difficult if not impossible, to hold that the transactions of buying or selling of shares were colourable transactions or were resorted to with ulterior motive.

(iii) CIT V. Shreyashi Ganguli [ITA No. 196 of 2012] (Cal HC) - In this case the Hon'ble Calcutta High Court held that the Assessing Officer doubted the transactions since the selling broker was subjected to SEBI's action. However the transactions were as per norms and suffered STT, brokerage, service tax, and cess. There is no iota of evidence over the transactions as it were reflected in demat account. The appeal filed by the revenue was dismissed.

(iv) CIT V. Rungta Properties Private Limited [ITA No. 105 of 2016] (Cal HC) - In this case the Hon'ble Calcutta High Court affirmed the decision of this tribunal , wherein, the tribunal allowed the appeal of the assessee where the AO did not accept the explanation of the assessee in respect of his transactions in alleged penny stocks. The Tribunal found that the AO disallowed the loss on trading of penny stock on the basis of some information received by him. However, it was also found that the AO did not doubt the genuineness of the documents submitted by the assessee. The Tribunal held that the AO's conclusions are merely based on the information received by him. The appeal filed by the revenue was dismissed.

(v) CIT V. Andaman Timbers Industries Limited [ITA No. 721 of 2008] (Cal HC) - In this case the Hon'ble Calcutta High Court affirmed the decision of this Tribunal wherein the loss suffered by the Assessee was allowed since the AO failed to bring on record any evidence to suggest that the sale of shares by the Assessee were not genuine.

(vi) CIT V. Bhagwati Prasad Agarwal [2009- TMI-34738 (Cal HC) in ITA No. 22 of 2009 dated 29.4.2009] - In this case the Assessee claimed exemption of income from Long Term Capital Gains. However, the AO, based on the information received by him from Calcutta Stock Exchange found that the transactions were not recorded thereat. He therefore held that the transactions were bogus. The Hon'ble Jurisdictional High Court, affirmed the decision of the Tribunal wherein it was found that the chain of transactions entered into by the assessee have been proved, accounted for, documented and supported by evidence. It was also found that the assessee produced the contract notes, details of demat accounts and produced documents showing all payments were received by the assessee through banks. On these facts, the appeal of the revenue was summarily dismissed by High Court.

8.4. *In the light of the documents stated i.e. (I to xiv) in Para 6(supra) we find that there is absolutely no adverse material to implicate the assessee to have entered gamut of unfounded/unwarranted allegations leveled by the AO against the assessee, which in our considered opinion has no legs to stand and therefore has to fall. We take note that the ld. DR could not controvert the facts supported with material evidences which are on record and could only rely on the orders of the AO/CIT(A). We note that in the absence of material/evidence the allegations that the assessee/brokers got involved in price rigging/manipulation of shares must therefore also fail. At the cost of repetition, we note that the assessee had furnished all relevant*

evidence in the form of bills, contract notes, demat statement and bank account to prove the genuineness of the transactions relevant to the purchase and sale of shares resulting in long term capital gain. These evidences were neither found by the AO nor by the ld. CIT(A) to be false or fictitious or bogus. The facts of the case and the evidence in support of the evidence clearly support the claim of the assessee that the transactions of the assessee were genuine and the authorities below was not justified in rejecting the claim of the assessee that income from LTCG is exempted u/s 10(38) of the Act. For coming to such a conclusion we rely on the decision of the Hon'ble Calcutta High Court in the case of M/s. Alipine Investments in ITA No.620 of 2008 dated 26th August, 2008 wherein the High Court held as follows :

"It appears that there was loss and the whole transactions were supported by the contract notes, bills and were carried out through recognized stock broker of the Calcutta Stock Exchange and all the bills were received from the share broker through account payee which are also filed in accordance with the assessment.

It appears from the facts and materials placed before the Tribunal and after examining the same, the tribunal allowed the appeal by the assessee.

In doing so the tribunal held that the transactions cannot be brushed aside on suspicion and surmises. However it was held that the transactions of the shares are genuine. Therefore we do not find that there is any reason to hold that there is no substantial question of law held in this matter. Hence the appeal being ITA No.620 of 2008 is dismissed."

8.5. We note that the ld. AR cited plethora of the case laws to bolster his claim which are not being repeated again since it has already been incorporated in the submissions of the ld. AR (supra) and have been duly considered by us to arrive at our conclusion. The ld. DR could not bring to our notice any case laws to support the impugned decision of the ld. CIT(A)/AO. In the aforesaid facts and circumstances of the case, we hold that the ld. CIT(A) was not justified in upholding the addition of sale proceeds of the shares as undisclosed income of the assessee u/s 68 of the Act. We, therefore, direct the AO to delete the addition.

9. In the result the appeal of the assessee is allowed."

The "A" bench of the Kolkata Tribunal in the case of ITO vs. Shaleen Khemani in I.T.A. No. 1945/Kol/2014 dated 18.10.2017 at para 9.1. to 9.4 held as follows:

9.1 We further find that the transaction of sale of shares by the assessee was duly backed by all evidences including Contract Notes, Demat Statement, Bank Account reflecting the transactions, the Stock Brokers have confirmed the transactions, the Stock Exchange has confirmed the transactions, the Shares have been sold on the online platform of the Stock Exchange and each trade of sale of shares were having unique trade no. and trade time. It is not the case that the shares which were sold on the date mentioned in the contract note were not traded price on that particular date. The ld AO doubted the transactions due to the high rise in the stock price but for that, the assessee could not be blamed and there was no evidence to prove that the assessee or any one on his behalf was manipulating the stock prices. The stock exchange and

SEBI are the authorities appointed by the Government of India to ensure that there is no stock rigging or manipulation. The ld AO has not brought any evidence on record to show that these agencies have alleged any stock manipulation against the assessee and or the brokers and or the Company. In absence of any evidences it cannot be said that merely because the stock price moved sharply, the assessee was to be blamed for bogus transactions. It is also to be seen that in this case, the shares were held by the Donors from 2003 and sold in 2010 thus there was a holding period of 7 years as per Section 49 of the Act and it cannot be said that the assessee and the Donors were making such plans for the last 7 years to rig the stock price to generate bogus capital gains that too without any evidences whatsoever.

9.2 *It is also pertinent to note that the assessee and / or the stock broker M/s P Didwania & Co and Toshith Securities P Ltd., both registered share and stock brokers with Calcutta Stock Exchange had confirmed the transaction and have issued legally valid contract notes under the Law and such contract notes are available in pages 41-52 of the Paper Book. We find that the Hon'ble Calcutta High Court in the case of Pr CIT Vs Rungta Properties Private Limited ITAT No 105 of 2016 dated 8th May 2017 in a similar issue dismissed the appeal of the Department by making the following observations:*

(11) On the last point, the Tribunal held that the Assessing Officer had not brought on records any material to show that the transactions in shares of the company involved were false or fictitious. It is finding of the assessing officer that the scrips of this company was executed by a broker through cross deals and the broker was suspended for some time. It is assessee's contention on the other that even though there are allegations against the broker, but for that reason alone the assessee cannot be held liable. On this point the Tribunal held -

"As a matter of fact the AO doubted the integrity of the broker or the manner in which the broker operation as per the statement of one of the directors of the broker firm and also AO observed that assessee had not furnished any explanation in respect of the intention of showing trading of shares only in three penny stocks. AO relied the loss of Rs.25,30,396/- only on the basis of information submitted by the Stock fictitious. AO has also not doubted the genuineness of the documents placed on record by the assessee. AO's observation and conclusion are merely based on the information representative. Therefore on such basis no disallowance can be made and accordingly we find no infirmity in the order of ld. CIT(A), who has rightly allowed the claim of assessee. Thus ground No. 1 of the revenue is dismissed."

We agree with the reasoning of the Tribunal on this point also. We do not find any reason to interfere with the impugned order. The suggested questions, in our opinion do not raise any substantial question of law.

9.3. *We therefore hold that there is absolutely no adverse material to implicate the assessee to the entire gamut of unwarranted allegations leveled by the ld AO against*

the assessee, which in our considered opinion, has no legs to stand in the eyes of law. We find that the ld DR could not controvert the arguments of the ld AR with contrary material evidences on record and merely relied on the orders of the ld AO. We find that the allegation that the assessee and / or Brokers getting involved in price rigging of SOICL shares fails. It is also a matter of record that the assessee furnished all evidences in the form of bills, contract notes, demat statements and the bank accounts to prove the genuineness of the transactions relating to purchase and sale of shares resulting in LTCG. These evidences were neither found by the ld AO to be false or fabricated. The facts of the case and the evidences in support of the assessee's case clearly support the claim of the assessee that the transactions of the assessee were bonafide and genuine and therefore the ld AO was not justified in rejecting the assessee's claim of exemption under section 10(38) of the Act. We also find that the ld CITA rightly relied on the decision of the Hon'ble High Court at Calcutta in the case of ALPINE INVESTMENTS in ITA No. 620 of 2008 dated 26th August 2008 wherein the Hon'ble Court held as follows:

"It appears that the share loss and the whole transactions were supported by contract notes, bills and were carried out through recognized stockbroker of the Calcutta Stock Exchange and all the payments made to the stockbroker and all the payments received from stockbroker through account payee instruments, which were also filed in accordance with the assessment.

It appears from the facts and materials placed before the Tribunal and after examining the same the Tribunal came to the conclusion and allowed the appeal filed by the assessee. In doing so, the Tribunal held that the transaction fully supported by the documentary evidences could not be brushed aside on suspicion and surmises. However, it was held that the transactions of share are genuine. Therefore, we do not find that there is any reason to hold that there is any substantial question of law involved in this matter. Hence, the appeal being ITA No.620 of 2008 is dismissed."

9.4. *We also find that the various other case laws of Hon'ble Jurisdictional High Court and other case laws also relied upon by the ld AR and findings given thereon would apply to the facts of the instant case. The ld DR was not able to furnish any contrary cases to this effect. Hence we hold that the ld AO was not justified in assessing the sale proceeds of shares of SOICL as undisclosed income of the assessee u/s 68 of the Act and therefore we uphold the order of the ld CITA and dismiss the appeal of the revenue. Accordingly the grounds raised by the revenue are dismissed."*

Applying the proposition of law laid down in all the above referred cases, the facts of this case, I find force in the submission of the assessee and there are backed by evidence. I also find that the revenue has not based its finding on in any evidence. In view of the above discussion the addition made u/s 68 of the Act is hereby deleted."

22. Since the facts of the instant case are identical to the facts of the cases decided by the Hon'ble Punjab & Haryana High Court and the Delhi and

Kolkata Benches of the Tribunal, therefore, respectfully following the above decisions, I set-aside the order of the Id. CIT(A) and direct the Assessing Officer to delete the addition made u/s 68 of the I.T. Act. So far as the decisions relied on by Id. DR are concerned, they are distinguishable and not applicable to the facts of the present case. The grounds raised by the assessee in the impugned appeal are accordingly allowed.

23. The grounds raised by the assesseees in other appeals i.e. in ITA No.2022 to 2028/Del/2018 are identical to the facts of the present case. I have already decided the issue in favour of the assessee. Following similar reasoning, the grounds raised by the assesseees in the above appeals are also allowed.

24. In the result, all the above eight appeals filed by the respective assesseees are allowed.

Order pronounced in the open Court on this 25th September, 2018.

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 25-09-2018.

Sujeet

Copy of order to: -

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

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi