

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5971/Del./2018
Assessment Year 2015-2016

Ms. Anupama Garg, BD-79, Pitampura, New Delhi – 110 034. PAN AEYPG5314B	vs.	The Income Tax Officer, Ward – 40 (1), New Delhi.
(Appellant)		(Respondent)

ITA.No.5972/Del./2018
Assessment Year 2015-2016

Smt. Pushpa Garg, BD-79, Pitampura, New Delhi – 110 034. PAN AAMPG7056J	vs.	The Income Tax Officer, Ward – 40 (1), New Delhi.
(Appellant)		(Respondent)

ITA.No.5973/Del./2018
Assessment Year 2015-2016

Bhushan Garg HUF, BD-79, Pitampura, New Delhi – 110 034. PAN AAGHB1175H	vs.	The Income Tax Officer, Ward – 40 (1), New Delhi.
(Appellant)		(Respondent)

ITA.No.5974/Del./2018
 Assessment Year 2015-2016

Mr. Rajesh Garg, BD-79, Pitampura, New Delhi – 110 034. PAN AEIPG1274N	vs.	The Income Tax Officer, Ward – 40 (1), New Delhi.
(Appellant)		(Respondent)

For Assesseees :	Ms. Rano Jain, Advocate And Shri Pranshu Singhal, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	05.12.2018
Date of Pronouncement :	12.12.2018

ORDER

All the above four appeals filed by different Assesseees are directed against different Orders of the Ld. CIT(A)-14, New Delhi, Dated 31.07.2018 for the A.Y. 2015-2016.

2. I have heard the Learned Representatives of both the parties and perused the findings of the authorities below and considered the material available on record. Learned Representatives of both the parties submitted that the issue is

same in all the appeals. Therefore, all appeals were heard together. Both the parties mainly argued in the case of Ms. Anupama Garg in I.T.A.No.5971/Del./2018 and have submitted that the issue is same in the remaining three appeals. Therefore, Order in this case may be followed in other three appeals. In this view of the matter, I proceed to decide ITA.No.5971/Del./2018 as under.

ITA.No.5971/Del./2018 – Ms. Anupama Garg, New Delhi :

3. Briefly, the facts of the case are that the assessee filed return of income declaring income of Rs.3,57,000/-. The case was selected on reasons of “Suspicious long term capital gains on shares”. During the scrutiny assessment, statement of assessee was recorded on oath under section 131 of the I.T. Act. The A.O. found that assessee had sold 2000 shares of M/s. Jackson Investment Limited on BSE and payment was received from the broker M/s. Anurity Multi Broking Pvt. Ltd. The assessee explained that shares were purchased in October, 2011 and were sold in October, 2014. The purchase

price was Rs.20,000/- which was sold for Rs.6,14,000/- and the long term capital gains of Rs.5,83,762/- was claimed as exempt under section 10(38) of the I.T. Act. The assessee submitted copies of the bank account, Demat account, share purchase documents and share certificate are on record. The details of purchase and sale of this particular scrip i.e., M/s. Jackson Investment Limited were examined. It was found that assessee had purchased 2000 shares of the scrip in October, 2011 in physical form which were sold in October, 2014 and there were abnormal rise in the price of the sale of the share. The financials of M/s. Jackson Investment Limited are noted in the assessment order to show that there were no business activity and it was either in loss or no profit earning. The A.O, therefore, found that the growth rate in the share price was abnormal. The A.O. also noted that department has made search and surveys operations on some share broking entities and Investigation Wing of Kolkata found many brokers indulged in providing accommodation entries of long term capital gains. Statements of some of the brokers viz., Sri

Bidyoot Sarkar, Sri Nikhil Jain, Sri Sanjay Vora, Sri Rakesh Somani, Sri Anil Khemkha and Sri Jai Kishan Poddar recorded by the Investigation Wing, Kolkata are reproduced in the assessment order. The A.O. observed the *modus operandi* of LTCG accommodation entry in the assessment order and also referred to recommendation of Special Investigation Team and held that huge capital gains were earned by the assessee within a short period of time by investing in penny stock whose fundamental/financials had no support, was neither the result of co-incidence nor of a genuine investment activities but were created through well planned and an executed scheme in which Company brokers and buyers and sellers of the scrip worked deliberately to achieve the pre-determined objectives. The A.O. called for the explanation of assessee. The reply of the assessee is reproduced in the assessment order in which the assessee filed the requisite details and documentary evidences before A.O. It was also explained that assessee held the share for three years in physical form and then in Demat account and then sold these

shares on recognized Stock Exchange through share broker on which STT on sale of share have been paid. The assessee produced sufficient documentary evidences to prove genuineness of the transaction. No adverse material have been brought on record against the assessee. The assessee relied upon several decisions to show that proposed action for addition is wholly unjustified. The A.O. however, rejected the explanation of assessee and noted that assessee has received sale consideration of Rs.6,14,000/- on sale of shares of penny stock company M/s. Jackson Investment Limited which is considered as unexplained cash credit. Addition of Rs.6,14,000/- was accordingly made. The A.O. also noted that entry have been obtained after paying Commission. Therefore, addition of Rs.18,420/- was made under section 69C of the I.T. Act on account of unexplained expenditure incurred for obtaining LTCG accommodation entry.

4. Both the additions were challenged before the Ld. CIT(A). The written submissions of the assessee is reproduced

in the appellate order in which the assessee reiterated the same submissions. The Ld. CIT(A), however, dismissed the appeal of assessee. The assessee in the present appeal challenged the addition of Rs.6,14,000/- under section 68 of the I.T. Act on account of sale proceeds of the shares and addition of Rs.18,420/- on account of Commission under section 69C of the I.T. Act.

5. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee was holding shares for about 36 months which were sold in assessment year under appeal. Purchase and sale of shares have not been doubted. These were supported by documentary evidences and all the transactions are carried-out through banking channel. The assessee asked for cross-examination of the share brokers whose statements are referred in the assessment order, but, no cross-examination have been allowed to their statements. Therefore, such statements shall not be admissible in evidence against the

assessee. The statement referred to at page-29 of the PB in which assessee asked for an opportunity to cross-examine these persons who have admitted to have provided accommodation entry. Learned Counsel for the Assessee, therefore, submitted that since no cross-examination have been allowed to the statement of these persons/brokers, therefore, their statements are not admissible in evidence against the assessee. Learned Counsel for the Assessee relied upon the following decisions :

1.	Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II 2016 (15) SCC 785.
2.	Pr. CIT vs. BLB Cables & Conductors, 2018 (8) TMI 525 – Calcutta High Court.
3.	Pr. CIT (Central), Ludhiana vs. Prem Pal Gandhi, ITA.No.95 of 2017 Dated 18.01.2018 of Punjab & Haryana High Court.
4.	Veena Gupta vs. ACIT, Order of ITAT, Delhi in ITA.No.5662/Del./2018, Dated 27.11.2018.
5.	Smt. Jyoti Gupta vs. ITO, Order of ITAT Delhi Bench in ITA.No.3510/Del./2018, Dated 06.11.2018.
6.	Anubhav Jain vs. ITO, Order of ITAT, Delhi Bench in ITA.No.4566/Del./2018, Dated 26.11.2018.
7.	Suresh Kumar Chug vs. ITO, Order of ITAT, Delhi Bench in ITA.No.2789/Del./2018, Dated 29.11.2018.

5.1. Learned Counsel for the Assessee on merit also submitted that all the documentary evidences were produced before the authorities below which have not been doubted by them, therefore, assessee proved genuineness of the transaction in the matter. Therefore, addition is wholly unjustified.

6. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that assessee could not explain the receipt of alleged share transaction profits credited in her bank account, therefore, addition was rightly made. The Ld. D.R. relied upon the following decisions.

1.	Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain vs. CIT (2017) ITA.No.18 of 2017 – Bombay High Court – Nagpur Bench.
2.	Chandan Gupta vs. CIT (2015) 229 Taxman 173 (P& H)
3.	Balbir Chand Maini vs. CIT (2012) 340 ITR 161 (P & H)
4.	Usha Chandresh Shah vs. ITO 2014-TIOL-1459-ITAT-Mumbai.
5.	Ratnakar M. Pujari vs. ITO 2016-TIOL-1746-ITAT-MUM.
6.	Abhimanyu Soin vs. ACIT 2018-TIOL-733-ITAT-CHD.
7.	Arvind M. Kariya vs. ACIT ITA.No.7024/Mum/2010.
8.	ITO vs. Shamim M. Bharwani (2016) 69 taxmann.com 65

7. I have considered the rival submissions and perused the material available on record. In this case, assessee purchased the shares in question in October, 2011 which was sold in October, 2014. The A.O. admitted that assessee purchased the shares in physical form, therefore, assessee hold the shares for three years. Assessee sold shares on BSE and payment was received from share broker. The assessee submitted copies of bank account, Demat account, share purchase documents and share certificate before the authorities below. The assessee explained that after purchase of the shares in physical form, then, the same were put in Demat account and were sold through recognized Stock Exchange on which STT has also been paid. The documentary evidences submitted by assessee have not been rebutted by the A.O. No adverse material has been brought on record to disprove the claim of assessee. It is a case where shares have been purchased in earlier year which have not been doubted in earlier year by the Revenue Department and only the sale of shares have been doubted without giving any just reasons in

the impugned Orders. An identical issue has been considered and decided by ITAT, Delhi SMC Bench in the case of Shri Amar Nath Goenka, Delhi vs. ACIT, Circle-20(1), New Delhi in ITA.No.5882, 5883, 6457 to 6459/Del./2018 vide Order dated 12.12.2018 and the findings of the Tribunal are reproduced as under:

*“IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES “SMC” : DELHI*

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

*ITA.No.5882/Del./2018
Assessment Year 2015-2016*

<i>Shri Amar Nath Goenka, New Delhi – 110 070. PAN AAPPG9369R C/o.Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110085.</i>	<i>vs.</i>	<i>The ACIT, Circle-20(1), New Delhi.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

*ITA.No.5883/Del./2018
Assessment Year 2015-2016*

<i>Shri Arvind Goenka, New Delhi – 110 070. PAN ACTPG1708Q C/o.Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110085.</i>	<i>vs.</i>	<i>The ACIT, Circle-20(2), New Delhi.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

ITA.No.6457/Del./2018
Assessment Year 2014-2015

<p><i>Smt. Preeti Yadav,</i> <i>New Delhi – 110 070.</i> <i>PAN AALPY3249A</i> <i>C/o.Shri Kapil Goel, Advocate,</i> <i>F-26/124,</i> <i>Sector-7, Rohini,</i> <i>Delhi – 110085.</i></p>	<i>vs.</i>	<p><i>The Income Tax Officer,</i> <i>Ward-33(5),</i> <i>New Delhi.</i></p>
<i>(Appellant)</i>		<i>(Respondent)</i>

ITA.No.6458/Del./2018
Assessment Year 2014-2015

<p><i>Smt. Sneha Yadav,</i> <i>New Delhi – 110 070.</i> <i>PAN ACVPY0483A</i> <i>C/o.Shri Kapil Goel,</i> <i>Advocate, F-26/124,</i> <i>Sector-7, Rohini,</i> <i>Delhi – 110085.</i></p>	<i>vs.</i>	<p><i>The Income Tax Officer,</i> <i>Ward-33(5),</i> <i>New Delhi.</i></p>
<i>(Appellant)</i>		<i>(Respondent)</i>

ITA.No.6459/Del./2018
Assessment Year 2014-2015

<p><i>Smt. Pooja Yadav,</i> <i>New Delhi – 110 070.</i> <i>PAN AHXPY2139G</i> <i>C/o.Shri Kapil Goel,</i> <i>Advocate, F-26/124,</i> <i>Sector-7, Rohini,</i> <i>Delhi – 110085.</i></p>	<i>vs.</i>	<p><i>The Income Tax Officer,</i> <i>Ward-33(5),</i> <i>New Delhi.</i></p>
<i>(Appellant)</i>		<i>(Respondent)</i>

<i>For Assesseees :</i>	<i>Shri Kapil Goel, Advocate</i>
<i>For Revenue :</i>	<i>Shri S.L. Anuragi, Sr. D.R.</i>

<i>Date of Hearing :</i>	<i>08.12.2018</i>
<i>Date of Pronouncement :</i>	<i>12.12.2018</i>

ORDER

This Order shall dispose-of all the above five appeals filed by different Assesseees on an identical question with regard to addition under section 68 of the I.T. Act, 1961, on account of claim of long term capital gains.

2. I have heard the Learned Representatives of both the parties and perused the findings of the authorities below and considered the material available on record. Learned Representatives of both the parties mainly argued in ITA.No. 5882/Del./2018 and have submitted that the issue is same in the remaining appeals, therefore, Order in this case may be followed in other four appeals. In this view of the matter, I proceed to decide ITA.No.5882/Del./2018 as under.

ITA.No.5882/Del./2018 - Shri Amar Nath Goenka, New Delhi

3. *This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-7, New Delhi, Dated 08.08.2018, for the A.Y. 2015-2016, challenging the addition of Rs.14,61,585/- under section 68 of the I.T. Act, 1961, on account of long term capital gains.*

4. *Briefly, the facts of the case are that the assessee filed its original return of income declaring income of Rs.25.35.010/-. The assessee is an individual and declared income from Salary, House Property and Income from other sources. The assessee is Employee-Director of M/s. Premier Polyfilm Ltd. The assessee filed necessary details which have been examined by the A.O. The A.O. found that the assessee claimed Rs.23.44.613/- as long term capital gain (LTCG) on sale of listed shares. Part of the Long Term Capital Gain (LTCG) has been claimed to have been earned is through sale of shares of M/s.Esteem Bio Organic Food Processing Ltd., (Scrip Code - EBFL Security Id-534927) listed on Bombay Stock*

Exchange (BSE). The summary of the share transaction is as under :

<i>Sale consideration of 1200 shares</i>	<i>Rs.14,61,585/-</i>
<i>Less: Cost of acquisition</i>	<i>Rs. 60,000/-</i>
<i>LTCG :</i>	<i>Rs.14,01,585/-</i>

4.1. The assessee claimed LTCG from sale of Esteem Bio Shares as exempt from taxation under section 10(38) of Income-Tax Act, 1961. The assessee at assessment proceedings furnished details of mode of acquisition of these shares, bank A/c statements where sale proceeds are credited, depository participant statements and stock broker notes to support claim of exempt LTCG. The A.O. observed from the submissions of the assessee together with facts and circumstances of case in general and those surrounding the share transactions of M/s Esteem Bio Organic Food Processing Ltd (“EBFL”) in particular and noted that the events are not as simple as described in assessee's submissions. There are several important circumstantial as well as direct evidences that lead to the

conclusion that the exempt Long-Term Capital Gain claimed by assessee on sale of shares of EBFL is not genuine but is pre-arranged collusive transaction in form of accommodation entry without real substance. The A.O. noted that the assessee has earned windfall gain within a short span of time that too with the investment in a relatively unknown company. The financial figures of the above company are noted in the Order to show that net profit on turnover have declined. There is unreasonable and inexplicable rise in the share prices of the Company within a short span. The transactions are carried-out with predetermined understanding, plan. Increase of share price of the Company did not commensurate with its financial results and fundamentals. There is unrealistic returns on the investment. The DIT (Investigation), Kolkata carried-out countrywide investigation to un-earth organized racket/syndicate for generating bogus entries of long term capital gains which is exempt from tax. Statement of several entry operators were recorded which include statement of Shri

Sanjay Vohra who has admitted in his statement that M/s. Esteem Bio Organic Food Processing Ltd., is a penny stock company whose shares have been artificially manipulated to provide long term capital gains. The assessee was given show cause notice as to why the same should not be treated as non-genuine transactions. The assessee explained before A.O. that all evidences related to sale and purchase of shares have been provided and there is no material to hold that transactions are bogus. All the purchases have been made through banking channels and sold through stock market platform. Reason of suspicion is insufficient. The allegation that price is rigged is baseless and without any evidence. No opportunity to cross-examine have been given of the statements which are used against the assessee. The A.O. however, did not accept the contention of the assessee and by applying the test of human probability held that long term capital gains claimed by assessee is not genuine and falls within the ambit of Section 68 of the I.T. Act. Therefore, Section

115BBE of the I.T. Act is applicable and the same is taxable @ 30%. The A.O. accordingly made the addition of Rs.14,61,585/-.

5. The assessee challenged the addition before Ld. CIT(A). The written submissions of the assessee and grounds of appeals are reproduced in the appellate order in which the assessee briefly explained that cost of the acquisition of Rs.60,000/- have not been reduced. The addition is perverse and invalid and based on irrelevant reason. The statement of Shri Sanjay Vohra was not confronted to the assessee and no right of cross-examination have been given to rebut his statement. Therefore, such statement cannot be read in evidence against the assessee. No copy of the Investigation report of SEBI have been provided to assessee. The transaction is done on online through recognized Stock Exchange through Demat account and Security Transaction Tax ("STT") as per the contract note duly paid. The assessee produced all the documentary evidences like bank statement, contract

notes, transaction statement of Demat account, copy of share certificates, financial ledger of the assessee with broker etc., to prove the transaction as genuine. No specific material have been brought against the assessee on record to disprove the claim of assessee. The amount is paid and received through banking channel. No information of any inquiry made from the broker have been provided. Oral evidence cannot prevail over documentary evidence. M/s. Esteem Bio Organic Food Processing Ltd., has been very much a going concern company, an acting Company on MCA website allowed till recently to trade on recognized stock exchange by the SEBI. No copy of report of Investigation Wing have been provided. Assessee has no control over activity of the company in question whether its price rig etc., The SEBI after detailed investigation pronounced its order dated 06.09.2017 that there is no irregularity found in the case of M/s. Esteem Bio Organic Food Processing Ltd., Therefore, interim order was revoked. This company still listed with BSE and shares of

the company are being traded regularly. The assessee purchased 6000 shares through public issue and payment for this is made through banking channel, out of which, part shares have been sold and remaining are still with the assessee. The shares were directly transferred to Demat account, copy of which is also filed. The assessee held shares for more than the period specified by the Act to claim long term capital gains. The assessee has sold the shares through recognized stock exchange as governed by the SEBI on which STT has been paid. The contract note issued by the stock exchange/broker cannot be doubted. The assessee relied upon several decisions in support of the contention that assessee entered into genuine transaction. The assessee relied upon Judgment of Hon'ble Delhi High Court in the case of Pr. CIT-5 vs. Jatin Investment Pvt. Ltd., in ITA.No.43 & 44 of 2016, Dated 18.01.2017 approving the Order of ITAT, Delhi Bench in the case of ITO, Ward-4(2), New Delhi vs. Jatin Investment Pvt. Ltd., New Delhi in ITA.No.4325 & 4326/Del./2009.

The Ld. CIT(A), however, did not accept the contention of assessee and dismissed the appeal of assessee. The Ld. CIT(A), more or less on the same reasoning as given by the A.O. noted that there is strong circumstantial evidence against the assessee and that transaction is an accommodation entry, therefore, following the rule of preponderance of probability decided the issue against the assessee. It is also observed that A.O. is not under obligation to allow cross-examination of any person. The appeal of assessee was accordingly dismissed by the Ld. CIT(A).

6. *Before the Tribunal, the Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that that all documentary evidences were filed before A.O, of which were filed in the paper book. The documents are, copy of the application for allotment of shares along with copy of the cheque. Allotment of shares, copy of the bank pass book, copy of the Demat account of Oriental Bank of Commerce showing*

accrued 6000 shares of the aforesaid company, copy of the contract note of share broker for sale of the shares, copy of the financial ledger of the share broker showing sale of the shares, copy of the credit payment with bank statement. Learned Counsel for the Assessee filed copies of several Orders of the ITAT, Delhi Bench, Kolkata Bench and Mumbai Bench to show that in similar circumstances additions have been deleted. Learned Counsel for the Assessee also relied upon the Order of ITAT, Delhi SMC Bench, in the case of Arun Kumar, Delhi & Others vs. ACIT, Circle-1, Noida in ITA.No.457, 2825 & 2826/ Del./ 2018, Dated 05.11.2018 in which the Tribunal followed several decisions of various Benches of the Tribunal including the Order of ITAT, Delhi Bench in the case of ITO vs. Jatin Investment Pvt. Ltd., in ITA.Nos.4325 & 4326/Del./2009, Dated 27.05.2015 in which similar addition has been deleted, in which it was held that “on sale of investment, provisions of Section 68 will not be applicable”. He has submitted that the said decision has

been confirmed by the Hon'ble Delhi High Court in the case of Pr. CIT-5 vs. Jatin Investment Pvt. Ltd., 2017-TMI-342-Del-HC. He has submitted that the Tribunal following this decision decided the issue in favour of the assessee. Learned Counsel for the Assessee also relied upon the Order of the ITAT, Delhi Bench in the case of Smt. Shikha Dhawan, Gurgaon vs. ITO, Ward-4(2), Gurgaon in ITA.No.3035/Del./2018, Dated 27.06.2018 in which the Tribunal following its earlier decisions as well as decision of Hon'ble Punjab & Haryana High Court in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi in ITA.No.95 of 2017, Dated 18.01.2018, decided similar issue in favour of the assessee. Copies of the Orders are placed on record. Learned Counsel for the Assessee, therefore, submitted that the issue is covered by the aforesaid decisions of the Tribunal.

7. On the other hand, *Ld. D.R. relied upon the Orders of the authorities below.*

8. *I have considered the rival submissions and perused the material on record. The ITAT, Delhi Bench in the case of Smt. Shikha Dhawan, Gurgaon vs. ITO, Ward-4(2), Gurgaon (supra) in paras 6 to 10 noted the submissions of both the parties and decided the issue in favour of the assessee. The findings are reproduced as under :*

6. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and submitted that an inquiry conducted in the cases of other assessees and statements referred to by the AO in the assessment order have not been confronted to the assessee. The assessee has not been named by any of these persons for indulging in taking accommodation entries. He has, therefore, submitted that such evidence cannot be read in evidence against the assessee and relied upon the decision of the Hon'ble Supreme Court in the case of Kishan Chand Chela Ram 125 ITR 713 (SC). He has

submitted that for claiming exemption u/s 10(38) of the Act, the assessee shall have to prove twin conditions i.e. the income arise from the transfer of long term capital asset and being equity share in a company where the transfer of sale of such equity share is entered into on or after the date of which Chapter-VII of the Finance Act, 2004 comes into force and such transaction is chargeable to security transaction tax under that Chapter. In the case of the assessee, both twin conditions are satisfied. He has filed copy of the shares certificate with transfer form, copy of debit note issued by Shreeji Broking (P) Ltd., copy of cash receipt of Shreeji Broking (P) Ltd., copy of ledger account of Indus Portfolio (P) Ltd., Page | 18 ITA No.3035/Del/2018 copy of form for evidence for payment of securities transaction tax on transaction entered in a recognized stock exchange and copy of the bank statement of the assessee in the Paper Book. He has further submitted that on identical facts, ITAT SMC

Bench, Delhi in the case of [Meenu Goel vs ITO](#) in ITA No.6235/Del/2017 for AY 2014-15 vide order dated 19.03.2018 relying upon the decision of Hon'ble Punjab & Haryana High Court in the case of [Pr.CIT vs Prem Pal Gandhi](#) in ITA No.95-2017 vide order dated 18.01.2018, allowed the claim of the assessee. The findings of the Tribunal in para 6 to 8 are reproduced as under:-

“6. I have heard both the parties and perused the relevant records available with me, especially the orders of the revenue authorities and the case law cited by both the parties. I note that assessee has earned Long Term Capital Gain amounting to Rs.18,46,600/- during the financial year 2013-14 and the same has been claimed exempt under [Section 10\(38\)](#) of Income Tax Act, 1961. The assessee had purchased of 45,000/- shares of Unisys Software Holding Industries Ltd amounting Rs. 9,38,600/- at a

premium of Rs. 20.85 per share in physical form. Out of the aforesaid 45000/- Shares assessee sold of 8000 Shares only i.e. 17.77%. Thus, the major part of the Shares i.e. 82.33% are still in the hand of the assessee. In my view the assessee just wanted to enter into the transaction to earn exempted capital gain, but the assessee did not sell all the share 45000 shares instead of sale of a part i.e. 8000 shares only when that time was the best price ever. All the transaction were made through account payee cheque/banking channel and assessee had purchased share in financial year 2009-10 and sold the same in the financial year 2013-14 resulting in Long Term Capital Gain. The assessee has submitted various documentary evidences to prove the genuineness of the transaction of sale and purchase of shares which includes a copy of purchase bill dated 22.02.2010; a copy of share transfer form in the

favour of the assessee; Copy of bank statement highlighting the payment made against the share purchased; Transaction statement of the stock broker i.e. Pace Stock Broking Services (P) Ltd., account; copy of bank statement in which sale proceed from the sale of shares received; copy of calculation of long term capital gain, which was not faulted by the AO. However, the lower authorities have not considered the aforesaid documents and rejected all the claims made by the assessee by relying on the report of the Investigation Wing and thereby made the addition, which is not sustainable in the eyes of law. I further find that the AO has given detailed explanation in the order regarding the modus operandi of bogus LTCG scheme but failed to substantiate how the assessee fell in the purview of the same without bringing any material on record and proving that the assessee was directly involved in the so called

bogus transaction. I further note that the addition in dispute made by the AO and upheld by the Ld. CIT(A) u/s 68 as unexplained credit instead of long term capital gain as claimed by the assessee, however, the source identity and genuineness of the transaction having been established by documentary evidences and there is no case for making addition u/s 68 of the Act, hence, the same deserve to be deleted. I note that in most of the case laws of the Hon'ble High Courts referred by the Ld. DR the reason on the basis of addition was confirmed was that the assessee had not tendered cogent evidence with regard to share transaction, however, in the present the case assessee has submitted all the documents / evidences, therefore, the case laws relied by the Ld. DR are based on distinguished facts and circumstances, hence, the said case laws are not applicable in the present case. However, in my

considered opinion, the issue in dispute is squarely covered by the various decisions of the ITAT and the Hon'ble High Courts including the recent decision dated 18.1.2018 of the Hon'ble High Court i.e. Hon'ble High Court of Punjab & Haryana in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi passed in ITA No. 95 of 2017.

Decision dated 18.1.2018 of the Hon'ble High Court of Punjab & Haryana in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi passed in ITA No. 95 of 2017 wherein it has been held 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

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 AO has not pointed out as to how the figures 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 A.O. ?

3. The first three questions of law raised in this appeal are covered against the appellant by an order and judgment 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 2006-07 at Rs. 11/- and sold the same in the assessment year 2008-09 at Rs. 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 AO 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 AO 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 judgment 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(A) and the Tribunal. Firstly, the documents on which the AO relied upon the appeal were not put to the Assessee during the assessment proceedings. The CIT(A) nevertheless considered them in detail and found that there was no co- relation 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."

7. Keeping in view of the facts and circumstances of the case as explained above and respectfully following the precedent, as aforesaid, the addition amounting Rs.18,46,600/- made by the AO and confirmed by the Ld. CIT(A) is hereby deleted and ground raised by the assessee is allowed.

8. In the result, the appeal of the assessee is allowed."

6.1. He has, therefore, submitted that the issue is covered in favour of the assessee by above decision. The assessee entered into genuine transaction, therefore, no addition u/s 68 of the Act be made against the assessee.

7. On the other hand, Ld. Sr. DR relied upon the orders of the authorities below.

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 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 judgment 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.”

8.1. *The ITAT, Delhi SMC Bench, in the case of Arun Kumar, Delhi vs. ACIT, Circle-1, Noida (supra) following several decisions of various Benches of the Tribunal and following the decision of ITAT, Delhi Bench in the case of ITO, Ward-4(2), New Delhi vs. Jatin Investment Pvt. Ltd., New Delhi and Judgment of Hon'ble Delhi High Court in the same case (supra) allowed the appeal of assessee on identical facts. The Hon'ble Bombay High Court in the case of CIT-13 vs. Shyam R. Pawar (2015) 229 Taxman 256 (Bom.) held as under :*

“Where DMAT account and contract note showed details of share transaction, and Assessing Officer had not proved said transaction as bogus, capital gain earned on said transaction could not be treated as unaccounted income under section 68.”

8.2. *ITAT, Hyderabad Bench in the case of ITO, Ward-2, Nizamabd vs. Smt. Aarati Mittal (2014) 149 ITD 728 (Hyd.) (Trib.) held as under :*

“Where assessee having purchased shares in physical form, converted them in D-Mat form and thereupon sale of those shares was carried out through recognized stock exchange after paying securities transaction tax, said transactions were to be regarded as genuine in nature and, therefore, assessee's claim for exemption under section 10(38) was to be allowed.”

8.3. *ITAT, Delhi Bench in the case of ITO, Ward-4(2), New Delhi vs. Jatin Investment Pvt. Ltd., New Delhi in ITA.No.4325 & 4326/Del./2009 vide Order Dated 27.05.2015 in paras 12 to 14 held as under :*

“12. We have considered the submissions of both the parties and gone through the material available on the record. In the present case, it is noticed that the assessee purchased the shares in earlier years which were shown as investment in the books of accounts and reflected in the "Asset Side" of the "Balance Sheet", out of those investments (copy which is placed at page no. 23 and 24 of the assessee's paper book), the assessee

sold certain investments and accounted for the profit / loss and offered the same for taxation. In the present case, the amount in question was neither a loan or the deposit , it was also not on account of share application money, the said amount was on account of sale of investment therefore the provisions of [Section 68](#) of the Act were not applicable and the AO was not justified in making the addition. In our opinion, the Ld. CIT(A) rightly deleted the addition made by the AO.

13. On a similar issue the Hon'ble Jurisdictional High Court in the case of [CIT vs. Vishal Holding and Capital Pvt. Ltd.](#) vide order dated 9th August, 2010 upheld the order dated 30.7.2009 of the ITAT in ITA no. 1788/Del/2007 for the assessment year 2000-2001 wherein the order of the Ld. CIT(A) making the similar deletion was upheld by observing in para 6 as under :-

"We are of the view that the assessee had produced copies of accounts, bills and

contract notes issued by M/s. MKM Finsec Pvt. Ltd., and had been maintaining books of account as per [Companies Act](#). The assessee had also demonstrated the purchase and sale of shares over a period of time as seen from the balance sheet's. In our opinion, the Assessing Officer has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently the addition made by the Assessing Officer cannot be sustained."

14. We, therefore, considering the totality of the facts do not see any valid ground to interfere with the findings of the

Ld. CIT(A). Accordingly, we do not see any merit in this appeal of the department. In ITA no. 4326/Del./2009 of the assessment year 2004- 05 identical issue having similar facts is involved, the only difference is in the amount of addition which was deleted by the Ld. CIT(A). Therefore, our findings given in former part of this order, in respect of assessment year 2003-04, shall apply mutatis mutandis for assessment year 2004-05.

In the result, appeals of the department are dismissed.”

8.4. *The Order is confirmed by the Hon’ble Delhi High Court by dismissing the Departmental Appeal in case of PCIT vs. Jatin Investment Pvt. Ltd., in ITA.No.43 & 44 of 2016 Dated 18.01.2017 and decided the similar issue in favour of the assessee.*

8.5. *Considering the material on record in the light of above decisions it is clear that assessee placed sufficient documentary evidences before A.O. to prove*

genuineness of the transaction. The assessee purchased shares through banking channel and actually got the shares transferred in his name. Purchase was made through cheque which is supported by bank statement. The transactions of sale have been made through Demat account. The contract note along with other details were produced to show that purchase and sale of the shares have been made through banking channel through recognized Stock Exchange through Demat account on which Security Transaction Tax have also been paid. The A.O. did not make any enquiry on the documentary evidences filed by the assessee. No material have been brought on record against the assessee to disprove the claim of assessee. It is not the case of the Revenue that amount received on sale of shares is more than what is declared by the assessee. The assessee pleaded that the Interim Order of the SEBI have been diluted by passing final order in which no adverse view have been taken against the aforesaid company. Thus, the claim of

assessee of purchase and sale of shares have been supported by documentary evidences. The statement of Shri Sanjay Vohra was recorded by the Investigation Wing, Kolkata, but, the same was not confronted to the assessee and his statement was also not subjected to cross-examination on behalf of the assessee. Therefore, his statement cannot be read in evidence against the assessee. I rely on the decision of Hon'ble Supreme Court in the case of Kishan Chand Chela Ram 125 ITR 713 (SC). The A.O. did not mention any fact as to how the claim of assessee was sham or bogus. The assessee thus, satisfied the conditions of Section 10(38) of the I.T. Act. The broker through whom transactions have been carried out have not denied the transaction conducted on behalf of the assessee. It, therefore, appears that the addition is merely made on presumption and assumptions of certain facts which are not part of the record. The issue is, therefore, covered in favour of the assessee by several Orders of the Tribunal including the case of Smt. Shikha

Dhawan, Gurgaon vs. ITO, Ward-4(2), Gurgaon (supra).

There is no other material available on record to rebut the claim of assessee of exemption claimed under section 10(38) of the I.T. Act. Keeping in view of the above discussion and material on record in the light of above decisions of the Tribunal and Hon'ble Delhi High Court, I set aside the Orders of the authorities below and delete the addition of Rs.14,61,585/-. The appeal of Assessee is accordingly allowed.

9. *In the result, ITA.No.5882/Del./2018 of the Assessee is allowed.*

ITA.No.5883/Del./2018 – Shri Amarnath Goenka, Delhi :

10. *This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-7, New Delhi, Dated 08.08.2018, for the A.Y. 2015-2016 challenging the addition of Rs.7,00,793/- under section 68 of the I.T. Act on account of long term capital gains. The facts in this care are similar as have been considered in the case of Shri*

*Amar Nath Goenka in ITA.No.5882/Del./2018
hereinabove.*

ITA.No.6457/Del./2018 – Smt. Preeti Yadav, New Delhi :

ITA.No.6458/Del./2018 – Smt. Sneh Yadav, New Delhi. :

ITA.No.6459/Del./2018 – Smt. Pooja Yadav, New Delhi :

11. *These appeals by the above Assessees are directed against the different Orders of the Ld. CIT(A)-11, New Delhi, Dated 10.08.2018, for the A.Y. 2014-2015 challenging the additions of Rs.33,79,407/-, Rs.34,70,815/- and Rs.34,10,399/- respectively, under section 68 of the I.T. Act, 1961, on account of long term capital gains.*

12. *Learned Representatives of both the parties submitted that the issue is same as have been considered in the case of Shri Amar Nath Goenka, Delhi in ITA.No.5882/ Del./2018 (supra) except that in these cases the sale is shares of M/s. KAPPAC Pharma Limited, through broker. Learned Representatives of both the*

parties submitted that the issue being the sale, therefore, Order in the case of Shri Amar Nath Goenka, Delhi (supra) may be followed.

13. *We find that the issue in the remaining four appeals is same as has been considered in the case of Shri Amar Nath Goenka, Delhi (supra). Therefore, following the reasons for decision in the case of Shri Amar Nath Goenka, Delhi (supra), we set aside the Orders of the authorities below and delete the entire additions. Accordingly, appeals of the Assesseees are allowed.*

14. *In the result, ITA.No.5883, 6457, 6458 and 6459/Del./2018 of the Assesseees are allowed.*

15. *To sum-up, all the appeals of the Assesseees are allowed.”*

8. In the present case, the A.O. relied upon certain statements of the share brokers recorded by Investigation Wing, Kolkata to prove that they have

provided accommodation entries for long term capital gains. The assessee in her statement requested that assessee may be allowed for cross-examinations of these statements. However, no cross-examination have been allowed to the assessee to cross-examine any of such share brokers. Therefore, such statements could not be admissible in evidence against the assessee. The decisions relied upon by the Learned Counsel for the Assessee squarely apply to this proposition. I also rely upon the decision of the Hon'ble Supreme Court in the case of Kishan Chand Chelaram 125 ITR 713 (SC). Learned Counsel for the Assessee also pointed-out from the assessment order that A.O. recorded balance-sheet and P & L A/c of M/s. Jackson Investment Ltd., and their figures of income and net worth for several years to show that the said Company was declaring the profit as well as having net worth. Considering the above discussion, the decisions relied upon by the Ld. D.R. would not support the case of the Revenue. The issue is,

therefore, covered by the Order of ITAT, Delhi SMC Bench in the case of Shri Amar Nath Goenka, New Delhi & Others vs. The ACIT, Circle-20(1), New Delhi (supra). I, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.6,14,000/- under section 68 of the I.T. Act and addition of Rs.18,420/- under section 69C of the I.T. Act towards commission. Accordingly, appeal of assessee is allowed.

9. In the result, ITA.No.5971/Del./2018 of the Assessee is allowed.

ITA.No.5972/Del./2018 – Smt. Pushpa Garg, New Delhi :

10. In this appeal assessee challenged the addition of Rs.6,00,181/- under section 68 of the I.T. Act and addition of Rs.18,005/- on account of Commission under section 69C of the I.T. Act.

ITA.No.5973/Del./2018 – Bhushan Garg, HUF, New Delhi :

11. In this appeal assessee challenged the addition of Rs.6,20,000/- under section 68 of the I.T. Act and addition of Rs.18,600/- on account of Commission under section 69C of the I.T. Act.

ITA.No.5974/Del./2018 : Shri Rajesh Garg, New Delhi :

12. In this appeal assessee challenged the addition of Rs.5,97,796/- under section 68 of the I.T. Act and addition of Rs.17,933/- on account of Commission under section 69C of the I.T. Act.

13. Learned Representatives of both the parties submitted that the issue is same as have been considered in the case of Smt. Anupama Garg, Delhi in ITA.No.5971/Del./2018 (supra). Following the reasons for decision in the case of Smt. Anupama Garg, Delhi (supra), I set aside the Orders of the authorities below and delete all the additions. Accordingly, appeals of the Assessees are allowed.

13.1. In the result, ITA.No.5972, 5973 and 5974/Del./2018 of the Assesseees are allowed.

14. To sum-up, all the appeals of the Assesseees are allowed.

Order pronounced in the open Court.

Sd/-
 (BHAVNESH SAINI)
 JUDICIAL MEMBER

Delhi, Dated 12th December, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
 Delhi.