

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH : KOLKATA

[Before Hon'ble Shri J. Sudhakar Reddy, AM & Shri S.S. Godara, JM]

I.T. A No. 2360/Kol/2017 A.Y 2014-15

Prakasho Devi Saria  
PAN: AGZPD611L  
(Appellant)

Vs.

CIT(A), Siliguri  
(Respondent)

For the Appellant : Shri Dhiraj Lakhotia, Id.AR

For the Respondent /Assessee : Shri C.J. Singh, JCIT, Id.DR

Date of Hearing : 31-01-201 & 17-05-2019

Date of Pronouncement : 17-05-2019

### **ORDER**

**Shri S.S. Godara, JM:**

1. This Assessee's appeal for assessment year 2014-15 arises against the CIT(A), Siliguri's order dated 29-08-2017 passed in case no. 45/CIT(A)/SLG/2016-17 involving proceedings u/s 143(3)/153D/153A of the Act.

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal challenges correctness of both the lower authorities 'action adding her short term capital loss arising from sale of shares ( Securities Transaction Tax - STT) paid amounting to Rs. 93,41,510/- claimed as set off against short term capital gain on in the matter of compensation received from govt. of Haryana against acquisition of land.

3. The CIT(A) detailed discussion adhering Assessing Officer's action making the impugned disallowance reads as under:-

*The CIT(A)'s findings:*

*5. Decision :-*

*The only ground of appeal relates to the disallowance of loss in shares transaction amounting to Rs. 93,41,510/- which was claimed as short Term Capital Loss. This STCL was set off against the compensation of Rs.1 ,22, 12,055 compensation the AO rejected the Short Term Capital Loss of Rs. 93,41,510/- arising from shares transactions and thereafter added back the same to the total income.*

*Perusal of fact shows that in the return of income, the appellant has claimed to have received compensation of RS.1 ,22,12,0551- from the Land Acquisition Officer, Haryana Govt against acquisition of her land. She had declared the said amount as short term capital gain which had been set off with the Short Term Capital Loss of Rs.93,41 ,510/- from share dealings. As per the details filed by the assessee, she dealt with the shares of Seven (7) different companies and claimed to have incurred above said loss. The details of the shares dealings are given as under:-*

Sl. No.	Name of the Company	Nos of Shares	Purchase		Sales		Gain/Loss Rs.
			Date	Amount all values excluding	Date	Amount all values excluding	
1	Strides Accolab Ltd	1,100	STT(Rs.) 17/12/13	9,95,436	STT(Rs.) 24/02/2014	3,88,754	(6.06,682)
2	Oil & Natural Gas Ltd	9,000	2013-14	24,68,852	2013-14	26,05,541	1,36,689
3	First Fin	2,75,000	17/7/13	81,61,087	14/01/14	22,86,664	(58,74,423)
4	Ashok Leyland	10,000	15/7/13	1,75,086	25/2/14	1,55,326	(19,760)
5.	Rutron Int.	1,50,000	12/7/13	40,49,207	19/3/14	10,67,296	(29,81,911)
6	NHPC Ltd	5,000	11/7/13	91,484	17/9/13	95,900	4,416

7	<i>SJVN Ltd</i>	3000	11-7-13	60,120	25-02-14	60,281	161
	<i>TOTAL</i> <i>(Rs.)</i>			1,60,01,272		66,59,762	(93,41,510)

*The A/R of the assessee explained both verbally and in writing that the assessee had received enhanced compensation and the interest on the compensation on 03/07/2013 from the Govt. of Haryana and immediately after the said date she has started investing in the shares of various companies which can be observed from the table given above. Ultimately, at the close of the financial year the assessee incurred huge loss in the share dealings and therefore such loss was set off with the Short Term Capital gain i.e. Compensation amount so received. The above short term Capital loss of Rs.93,41,510/- includes loss from two scripts viz. First Financial Services Limited (Rs.58,74,423) and Rutron International Limited. (Rs.29,81,911) ..*

*The AO disallowed the loss are accept of various observation which are enlisted as under:*

*(I) The assessee is not a habitual investor in shares as there was no such record of share investments/dealings even in small amount in any earlier period. She being a senior citizen lady she had no previous knowledge of investing in shares and stocks. How could she invest such huge sum' of money in the shares of lesser known penny stock companies viz. M/s First Financial Services Ltd. and M/s Rutron International Limited. Therefore dealing in above named penny stocks was nothing but a well thought manipulation to book manufactured loss in connivance with the entry operators/ shares brokers.*

*(II) A Search & seizure operation u/s.132 of the LT. Act, 1961 was conducted by the Investigation Wing of the department in the office and residential premises of various Share Brokers, Entry Operators and Promoters across the country including at Mumbai and Kolkata on 12/04/2015 reveal that the above stated scripts viz. FIRST FIN and RUTRON INT. are penny stock companies which are bogus. The statement on oath given by one of the Entry Operator Shri Anil Agarwal the Promoter/Operator u/s.132(4) of the I. T: Act, 1961 on 12/04/2015 in answer to Q.7, Q.8, Q.9, Q.10*

*stated that trading were done on behalf of client/beneficiary to book bogus L.T.C;G or S.T.C loss as per their requirement.*

*(In the course of a Search operation u/s 132 of I TAct 1961 on 12/04/2015 in the office and residence of one the Entry Operator Shri Anil Agarwal, who was the promoter. of companies viz. M/s First Financial Services Ltd. and Rutron International, in his statement recorded u/s 132(4), has! accepted such dubious and unscrupulous entries were done through the accounts of the companies managed or promoted by him. The modus operandi of how the Capital Gains or Losses are created as per the requirement of the beneficiaries through entry operations by layering of funds under the various penny stock companies ~are well described by him in his statement made on oath before the investigating officer, the DCIT (Inv),Unit- 8(1), Mumbai. The extract of answers to questions Nos 8 and 9 of the statements given by Shri Anil Agarwal, on oath recorded us 132(4) are reproduced below:-*

*"Q8. Please explain the modus operandi of the bogus L TCG/STCL entry obtained by the beneficiaries.*

*Ans: Sir, the bogus L TC,C? entry beneficiary approaches an entry operator who is having a listed company through some agent/mediator or directly. These listed companies are penny stock companies, having no actual business and having a closed share holding pattern. Thereafter, the beneficiary on instruction of the operator, purchases the shares of these penny stock companies at a very low price. The purchase is usually through the route of private' placement i e. preferential allotment. Once the preferential share allotment is complete, the operator (iggs the price of the penny stock through circular transactions and thus the price of thy penny stock is increased. Once a period of one year is over from the purchase of the shares (pre-requisite for claiming exempt L TCG) and the price of the stock reaches the desired level, the beneficiary is intimated by the operator/agent of the operator to provide cash, which can be routed to some other paper/bogus entities to by these shares from the beneficiary. The entry operator then routes and layers back this cash so received into various paper entities which are controlled and managed by him. These paper entities which have received layered money are then used as a dummy buyer for buying the rigged/ artificially jagged up shares from the beneficiaries. When the buyers are ready, then the entry operator intimates the beneficiaries to sell specific number of shares at*

*specific price at a specific time. This ensures that the shares of only the beneficiaries are purchased by the dummy buyers. The transactions take place through the stock exchange and brokers and some nominal commission is charged in cash on the net pre-arranged bogus L TCG accruing to the beneficiary. This pre-arranged bogus Capital gain income so earned through rigging of shares is claimed as exempt in the books of the beneficiary. In the same process, the entities which purchase the shares of the beneficiaries at high price book bogus short term capital loss by selling the shares when the prices fall.*

*09. Please explain in detail about your role in providing bogus LTCG to the beneficiaries of the scripts Redford Global Limited, First Financial Services Limited and Rutron International Limited.*

*Ans:- Sir, I knew three persons, namely, Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain, of Mumbai, who are primarily involved in the business of providing entry of LTCG. I knew the directors of M/s Rutron International Limited and M/s First Financial Services limited and introduced them to Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain. I also came to know that M/s Redford Global Limited is also one such penny stock company which was operated by Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain. Some clients contacted me for availing the entry of L TCG and I introduced them to Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain. Thereafter, as per the modus operandi the beneficiaries invested in the penny stock of M/s Redford Global Limited, M/s Rutron International Limited and M/s First Financial Services Limited. The shares of these companies were rigged and the price was increased to desired level over a desired period. Once the prices of the shares reached their peak price, the sale of the above mentioned scripts was arranged by Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain so as to provide entry of L TCG to the beneficiaries. In this process some of the entities were given entry of Short Term Capital Loss also. ")*

*(III) That the extract statements of Shri Anil Agarwal it transpires that his companies including M/s First Financial Services Ltd and M/s Rutron International Ltd. were involved to give the accommodation entry unscrupulously in the form of capital gains and losses*

*(IV) It was also noted that both the companies i.e. Ms First Financial Services Limited and M/s Rutron International Limited are suspended by the Security Exchange Board of India (SEBI), due to fact that order W3S passed by SEBI against M/s. financial services Ltd dated 14.06.2016 M/s. Rutron International Ltd where in its is held that M/s. first financial group misused*

*stock exchange mechanism to exit at a higher price in order to tenure fictitious L TCG and sale these shares at free loan price within a period of one year using the stock exchange mechanism. therefore, by booking losses.*

*(V) that the assessee had resorted to adopt above method to avoid paying tax on the income received from capital gain and interest from compulsory acquisition of land by the Haryana Govt.*

*(VI) The Hon'ble Supreme Court in the case of MCDOWELL & co. LTD. Vs CTO 154 ITR has held that "tax planning may be' legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious method. It is the obligation of every citizen to pay tax honestly without resorting to subterfuges. The taxing authority is entitled and indeed bound to determine the true legal relation resulting from a transaction. If the parties have chosen to conceal by a device the legal relation, it is open to the taxing authorities to unravel the device and to determine the true character of the relationship".*

*During the course of hearing, the AJR of the assessee in his submission has accepted this fact that above said two companies are lesser known companies. Further, it is far from the truth that how a simple elderly lady spends such a huge compensation money in the unknown shares of the unknown companies to incur huge losses. This was nothing but a willful intention to evade the tax by setting off such bogus loss with the capital gain made from Compensation amount received from Haryana Govt.*

*Perusal of aforesaid observations of the AO and finding of investigation wing shows that the Entry Operator Shri Anil Agarwal, who was the promoter of companies viz. M/s First Financial Services Ltd. and Rutron International, in his statement recorded u/s 132(4), has accepted such dubious and unscrupulous entries were done through the accounts of the companies managed or promoted by him. In his 'statement Sh. Anil Agarwal stated that Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain, of Mumbai, who are primarily involved in the business of providing entry of L TCG were known to him. He also knew the directors of M/s Rutron International limited and M/s First Financial Services limited and introduced them to Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain. He also came to know that M/s Redford Global limited is also one such penny stock company which was operated by Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain. Some*

*clients contacted me for availing the entry of L TCG and I introduced them to Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain.*

*Thereafter, as per the modus operandi the beneficiaries invested in the penny stock of M/s Redford Global limited, M/s Rutron international limited and M/s First Financial Services limited. The shares of these companies were rigged and the price was increased to desired level over a desired period. Once the prices of the shares reached their peak price, the sale of the above mentioned scripts was arranged by Shri Paras Chaplot, Shri Pankaj Shah and Shri Vijay Jain so as to provide entry of LTCG to the beneficiaries. In this process some of the entities were given entry of Short Term Capital Loss also.*

*The appellant is not a habitual investor in shares as there was no such record of share Investments/dealings even in small amount in any earlier period. She being a senior citizen lady she had no previous knowledge of investing ill shares and stocks. How could she invest such huge sum of money in the shares of lesser known penny stock companies viz. M/s First Financial Services Ltd. and M/s Rutron International limited. Therefore dealing in above named penny stocks was nothing but a well thought manipulation to book manufactured loss in connivance with the entry operators/ shares brokers.*

*In case of Sh. Avtar Singh, Sirsa vs Department Of Income Tax on 8 November, 2012 IN THE INCOME TAX APPELLATE TRIBUNAL CHANDIGARH BENCH 'A' CHANDIGARH ITA No. 948/CHD/2011 Assessment Year: 2008-09 the honorable ITAT has held the share loss as structured and colorable transaction in order to reduce loss. The gist of the decision is reproduce as under:*

*"It is the duty of the Court in every case, where ingenuity is expended, to avoid taxing and welfare legislation, to get behind the smoke screen and discover the true state of affairs. The Court is not to be satisfied with form and leave alone the substance of the transaction This view has been upheld by the Hon'ble Supreme Court, in Workman of Associated Rubber Industries Ltd. (1986) 157 ITR 77 (S.C) and in Ess Ess Kay Engg. Co.(P) Ltd. V CIT (1985) 15 ITR 636 (P&H). The Hon'ble Kerala High Court in Onam Agarbati Co. V Dy.CIT (2009) 310 ITR 56 (Ker) has held that though a tax payer may resort to a device to divert the income before it accrues to him, the effectiveness of advice depends upon its genuineness. The substance of the transaction has to be assessed by applying the taxing Statute so as to ascertain whether it is a sham or make-believe transaction or one which is genuine.*

*Ld. 'DR' placed reliance on the decision of the jurisdictional High Court in the case of Somnath Maini V CIT (2008) 306ITR 414 (P&H) and Balbir Chand Maini V CIT & another (2012) 340 ITR 161 (P&H) and contended that the issue in question is covered by these decisions. We have carefully perused and considered the facts and the ratio of the decisions of the jurisdictional High Court, in the case of Balbir Chand Maini (supra) and Somnath Maini V CIT (supra) and found that the facts of the present case are squarely covered by this decision. The relevant and operative part of the decision in the case of Balbir Chand Maini (supra) is reproduced hereunder*

*"The return for the assessment year 1998-99, filed by the assessee at an income of Rs 7,93,140 was processed under section 143(1) of the Income-tax Act, 1961. Subsequently, in response to a notice under section 148, the assessee again filed a return declaring the same income as shown in the return filed earlier. I During the reassessment proceedings. The Assessing Officer found that the assessee had purchased 30000 shares of A at the rate between Rs. 2.50 and Rs 3.40 per share, in the month of April, 1997, and out of those shares, he sold 24000 shares through a broker. The Assessing Officer came to the opinion that the value of the shares could not be as high as Rs. 55 per share and accordingly made an addition of RS.12,47,500 to the income of the assessee as income from undisclosed sources. However, he determined a sum of Rs. 2,85,620 as long-term capital loss, while computing the income. The Commissioner (Appeals) deleted the additions whereas the Tribunal reversed the order of the Commissioner (Appeals) and upheld the additions made by the Assessing Officer. On appeal :Held, dismissing the appeal, (i) that the Tribunal recorded a finding of fact that the transaction of sale and purchase of shares of A was not a genuine transaction. The Assessing Officer had found that the sale of shares had not taken place through any- stock exchange. On scrutiny of the books of account if the broker the Assessing Officer found that there were cash deposits in its bank account preceding the issue of cheques in the name of the assessee for purchase of shares claimed to be the sale proceeds of the same shares received in advance. The broker could not give the details of the purchaser of the shares. The AO found that it was a close circuit transaction and clearly a structured one. The AO had also determined the value of shares of A on the basis of the financial data collected by him and worked out the value of shares to be not more than Rs. 9. 37 per share by adopting two methods for calculation of net asset value. There was no perversity or error of law in the order of the Tribunal. "*

15. It is essential on the part of the revenue authority, to look into the real nature of transaction and what happens in the real world and contextualize the same to such transactions in the real market situation. It is pertinent to state here, the judicial wisdom of Hon 'ble Supreme Court in CIT V Arvinda Raju (TN) (1979) 120 ITR 46 (S. C) wherein it was held that "one day, in our welfare state geared to social justice, this clever concept of 'avoidance' as against 'evasion' may have to be exposed." In the present case, there is an obvious and plain transaction of tax evasion which has been clothed with the smoke-screen of subterfuges, by the assessee appellants. The facts of the present case clearly reveals that such trading transactions of purchase and sale of shares, had not been effected, for commercial purpose but to create artificial loss, with a view to reducing tax liability. The appellant resorted to readymade scheme for purchase and sale of shares which ultimately found their last destination, to the original seller i.e. the said unlisted company. Such transactions are not genuine and natural transactions but preconceived transactions, demonstrating creation of such short term capital loss. Such transactions are mutually self-serving. It is mentioned that earning profit is a natural instinct ingrained in human beings, particularly in the businessman unless of course, earning of loss is also a profitable proposition, as is discernible from the fact- situation of the present appeals. The appellants resorted to a preconceived scheme, to procure short term capital loss, for the purpose of neutralizing the short term capital gains, by way of price-differential, in the said share transactions, not supported by market factors. Cumulative events in such transactions of shares reveals that the same are devoid of any commercial nature and fall in the realm of not being bonafide, in contents. In view of the above legal and factual discussions and judicial precedents discussed above, we are of the opinion that the findings of the CIT(Appeals) are not based on relevant, cogent and credible material or evidence: Such share transactions were not quoted and consequently, were not traded through stock exchange. When all the facts and circumstances of the case are viewed, in totality, it is evident that the assessee appellants failed to discharge the onus, to prove the genuineness of the transactions of purchase and sales such shares. The impugned transactions of shares are pre-ordained one, not for legitimate commercial purpose in view but for the purpose of creating non-genuine and artificial short term capital loss, with a view to reducing valid tax- liability. These transactions of shares were not governed by market factors prevalent at that relevant time, in such trade, but the same are product of the design and mutual understanding on the part of the appellants and the said Hissar based unlisted company. Ld. CIT' (Appeals) has failed to bring any cogent and credible evidence, to dislodge such finding.

*Having regard to the peculiar fact-situation of the present case, it is evident that such share transactions were close circuit transactions and clearly structured one. Therefore, in the light of judicial precedents of jurisdictional High Court and Hon'ble Supreme Court, as discussed above, we do not find any merit in the findings of the CIT(Appeals). Having regard to the above legal and factual discussions, including judicial precedents discussed above, of the Hon'ble Supreme Court and jurisdictional High Court, the findings of the AO, as recorded in the impugned assessment order, are restored."*

*Considering the aforesaid acts and order passed by SEBI against M/s. financial services Ltd and dated 14.06.2017 M/s. Rutron International Ltd where in its is held that M/s. first financial group misused stock exchange mechanism to exit at a higher price in order to tenure fictitious LTCG and sale these shares at free loan price within a period of one year using the stock exchange mechanism, therefore, by booking losses. (The order of SEBI is made as annexure-A.). The Hon'ble Supreme Court, in the case of CIT V Durga Prasad More (1971) 82 ITR 540 (S.C) has categorically held that the revenue is entitled to look into the surrounding circumstances, to find out the reality of the recitals made in the documents. The relevant observations and findings of Hon'ble Supreme Court, in the matter of discharge of 'onus of proof' and the relevance of surrounding circumstances of the case are; "that though an appellant's statement must be considered real until it was shown that there were reasons to believe that the appellant was not the real, in a case where the party relied on self-serving recitals in the documents, it was for the party to establish the transfer of those recitals. the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals. Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probability. Human minds may differ as to the reliability of piece of evidence, but, in the sphere, the decision of the final fact finding authority is made conclusive by law." "*

*The above ratio laid down by the Hon'ble Supreme Court has been reiterated and applied by the Hon'ble Apex Court in the case of Sumati Dayal V CIT 214 ITR 801 (S.C). Keeping in view of the aforesaid facts it is held that the transaction made by the appellant was bogus and same in order to reduce its taxable liability under the guise of bogus capital loss, Therefore, the action taken by the AO hereby upheld and ground of appeal appellant is hereby dismissed."*

3. We heard the rival contentions and carefully gone through the facts of the case as well as assessee's detailed paper book as filed before us comprising of Assessing Officer's show cause notice dated 28-10-2016, reply dated 16-11-2016, another show cause notice dated 23-11-2016 and reply thereto dated 30-11-2016, search statement u/s. 132(4) of Shri Anil Agarwal, various judicial pronouncements and SEBI's final order dated 02-04-2018 in the matter of M/s. First Financial Services Ltd respectively; stands perused.

4. Learned authrosied representative vehemently contends during the course of hearing that both the lower authorities have erred in law as well as facts in treating the assessee's impugned short term capital loss as bogus in the nature of unexplained cash credits thereby doubting genuineness thereof in the course of assessment and upheld in the lower appellate proceedings. He invites our attention to the case records comprising of details of assessee's shares purchase in as many as 7 scrips listed in BSE/NSE on various dates ranging between 11-07-2013 to 17-12-2013, details of the sale transactions between 18-07-2013 to 19-3-13, contract notes regarding the impugned purchases as well as sales, broker's bills, D-mat statement, security transaction tax (STT), brokerage and service tax details, on line price quotation of the scrips, bank statement, brokers' ledger to submit that this taxpayer has filed all the relevant particulars in support of her impugned short term capital gain/loss.

5. The Revenue's case on the other hand supports the CIT(A)'s finding under challenge that the assessee has failed to prove the genuineness of the shares transactions in view of overwhelming evidence indicating her to have engaged in dubious methods of scrips prices rigging alongwith entry operators. It refers to search statement of Shri Anil Agarwal, (supra) made before the Investigation Authorities that he had engaged in artificial price rigging of M/s. First Financial Services Ltd and M/s. Rutron International

Ltd (supra). Learned department representative's case is that the assessee has failed to explain/prove the genuineness of her share transactions on both purchase and sale aspects. And also even lack of cross examination to assessee in such circumstances does not vitiate the entire proceedings. Mr. Singh lastly quotes hon'ble Supreme Court's decisions in (1995) 214 ITR 801(Sc) Sumati Dayal V/s. CIT V/s. Durga Prasad More 82 ITR 540(Sc) that assessee's explanation has to be considered in the light of human probabilities by removing all blinkers.

8. We have given our thoughtful consideration to rival contentions. The question that arises for our consideration/adjudication is about the genuineness of assessee's impugned short term capital gain treated as bogus by both the lower authorities. She has filed all the requisite details on record in support of her share transactions. The Revenue's case questions the genuineness of assessee's details particularly in the light of search statement by Shri Anil Agarwal in the light of SEBI's proceedings finalized on 2-4-2018 regarding M/s. First Financial Services Ltd. Rutron International Ltd (supra). Learned departmental representative fails to dispute that there is no direct evidence against the assessee to have indulged in artificial rigging of any of the 7 scrips' shares. Or that said statement of Shri Anil Agarwal has nowhere quoted the assessee's name adopting any of the alleged dubious means for artificial rigging of scrips prices. This tribunal's recent decision in Mahavir Jhanwar V/s. ITO, Kolkata, ITA No. 2474/Kol/2018 decided on 01-02-2019 has taken into consideration hon'ble jurisdictional high court's decision as well as this co-ordinate bench's order deciding the similar issue of genuineness of long term capital gain treated as bogus by observing as under:-

*“5. After hearing both sides, I find that in a number of cases this bench of the Tribunal and Jurisdictional Calcutta High Court has consistently held that, decision in all such cases should be based on evidence and not on generalization, human probabilities,*

*suspicion, conjectures and surmises. In all cases additions were deleted. Some of the cases were, detailed finding have been given on this issue, are listed below.-*

Sl.No.	ITA Nos.	Name of the Assessee	Date of order/judgment
1.	ITA No. 714 to 718/Kol/2011 ITAT, Kolkata	DCIT vs. Sunita Khemka	28.10.2015
2.	214 ITR 244 Calcutta High Court	CIT vs. Carbo Industrial Holdings Ltd	-
3.	250 ITR 539	CIT vs. Emerald Commercial ltd	23.03.2001
4.	ITA No. 1236-1237/Kol/2017	Manish Kumar Baid vs. ACIT	18.08.2017
5.	ITA No. 569/Kol/2017	Gautam Pincha	15.11.2017
6.	ITA No. 443/Kol/2017	Kiran Kothari HUF	15.11.2017
7.	ITA No. 2281/Kol/2017	Navneet Agarwal vs. ITO	20.07.2008
8.	ITA No. 456 of 2007 Bombay High Court.	CIT vs. Shri Mukesh Ratilal Marolia	07.09.2011
9.	ITA No. 95 of 2017 ( O & M)	PCIT vs. Prem Pal Gandhi	18.01.2018
10.	ITA No. 1089/Kol/2018	Sanjay Mehta	28.09.2018

6. Regarding the case laws relied upon by the Id. Departmental Representative, I find that, in the case of M/s. Pankaj Agarwal & Sons (HUF)(supra), the issue was decided against the assessee for the reason that, the assessee could not justify his claim as genuine by producing evidence and was only arguing for the matter to be set aside to the lower authorities on the ground of natural justice. As similar arguments were not raised before the lower authorities by the assessee, the ITAT rejected these arguments. In the case on hand, all evidences were produced by the assessee. In the case of Sanjay Bimalchand Jain, legal heir of Santi Devi Bimalchand Jain, the Hon'ble High Court upheld the stand of the Revenue that the transaction in question is an adventure in nature of trade and the profit of the transactions is assessable under the head of 'Business Income'. In the case on hand, the Id. Assessing Officer has not assessed this amount as 'Business Income'. In any event, I am bound to follow the judgment of the Jurisdictional High Court in this matter. I find that the assessee has filed all necessary evidences in support of the transactions. Some of these evidences are (a) evidence of purchase of shares, (b) evidence of payment for purchase of shares made by way of account payee cheque, copy of bank statements, (c) copy of balance sheet disclosing investments, (d) copy of demat statement reflecting purchase, (e) copy of merger order passed by the High Court, (t) copy of allotment of shares on merger, (g) evidence of sale of shares through the stock exchange, (h) copy of demat statement showing the sale of shares, (i) copy of bank statement reflecting sale receipts, UJ copy of brokers ledger, (k) copy of Contract Notes etc.

*7. The proposition of law laid down in these case laws by the Jurisdictional High Court as well as by the ITAT Kolkata on these issues are in favour of the assessee. These are squarely applicable to the facts of the case. The Id. Departmental Representative, though not leaving his ground, could not controvert the claim of the Id. Counsel for the assessee that the issue in question is covered by the above cited decisions of the Hon'ble Jurisdictional Calcutta High Court and the ITAT. I am bound to follow the same."*

We adopt the above detailed discussion/reasoning *mutatis mutandis* taking into consideration the hon'ble high court's decision (supra) to conclude that such a disallowance has to be based on evidence rather as alleged suspicion circumstances. We accordingly direct the Assessing Officer to delete the impugned addition.

8. This Assessee's appeal is allowed in above terms.

**Order pronounced in the Court on 17-05-2019**

Sd/-

[ J. Sudhkar Reddy ]  
Accountant Member

Sd/-

[ S.S.Godara ]  
Judicial Member

Dated : 17-05-2019

\*\*PRADIP, Sr. PS

Copy of the order forwarded to:

1. Appellant/Assessee: Smt. Prakasho Devi Saria C/o Pradip Lakhotia, 2<sup>nd</sup> Floor, Metro Plaza, SF Road, Siliguri-734005.
2. Respondent/Department; The CIT(A), Siliguri, Aaykar Bhawan, Matigara, Siliguri-734005.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar  
H.O.O/D.D.O Kolkata