

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G', NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI K.N. CHARY, JUDICIAL MEMBER**

ITA No.420/Del/2019  
Assessment Year: 2015-16

Shri Sandeep Bhargava, Flat No. 97, Samrat Apartments, Vasundhara, Enclave, New Delhi	<b>Vs.</b>	ACIT, Circle-60(1), New Delhi
<b>PAN :AARPB2053P</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	S/shri B.L. Mittal & Ankur Mittal, Adv.
Respondent by	Shri N.K. Bansal, Sr. DR

Date of hearing	18.07.2019
Date of pronouncement	20.08.2019

**ORDER**

**PER O.P. KANT, A.M.:**

The instant appeal by the assessee is directed against the order dated 30/11/2018 passed by Ld. Commissioner of Income-tax (Appeals)-19, New Delhi, [in short 'the Ld. CIT(A)'] for assessment year 2015-16, raising following grounds:

- 1. On the facts and in the circumstances of the case and the Ld. CIT(A) is wrong, unjust and has erred in Law in confirming finding recorded by the Assessing Officer that Long Term Capital Gain of Rs.58,89,195/- on sale of shares is not genuine allegedly on the ground that purchase of those shares is a sham transaction and thereby confirming addition to the extent of Rs.58,59,195/- to the income of the appellant u/s 69 of the I.T. Act, 1961 and denial of the claim of exemption u/s 10(38) of the Act on the basis of suspicion and without any cogent material on record.*

2. *That on facts and in the circumstances of the case, the Ld. CIT(A) is not justified in confirming the addition of Rs.1,76,675/- on account of alleged commission merely on the basis of suspicion and without any material on record.*

**2.** Briefly stated facts of the case are that, the assessee an individual, was engaged in running proprietorship firm under the name of M/s. S.R. Investment having commission income from various mutual funds and sub brokerage for trading in shares. For the year under consideration, the assessee filed return of income on 31/08/2015, declaring total income of Rs.16,62,370/-. In the return of income, the assessee also claimed long-term capital gain on the sale of shares of "HPC Bioscience Ltd." as exempt from Income-tax under the provisions of section 10(38) of the Income-tax Act, 1961 (in short 'the Act'). The case was selected for scrutiny. In the course of scrutiny, on behalf of the assessee, it was submitted that he purchased 5000 shares in physical form in private placement from the company on 31/12/2012 for Rs. 50,000/- and the company declared bonus in the ratio of 1:1 on 31/03/2013 and the assessee was allotted 5000 bonus shares and his holding became 10,000 shares. The assessee then dematerialized the shares in his demat account on 02/04/2013 and sold 9900 shares for consideration of Rs. 58,85,847/- between the period of 15/04/2014 and 19/05/2014 through Broker M/s Adroit Financial Services Pvt. Ltd. having registered office at Ghaziabad (UP) and registered as broker at Bombay Stock Exchange, Mumbai. The assessee submitted documentary evidences of purchase and sale, dematerialization of shares etc., but according to the Assessing Officer, the assessee failed to substantiate sharp rise in price of shares commensurate

with the financials i.e. profit declared of the Company. The AO also mentioned the investigation carried out by the Investigation Wing of the Department, where in it was found that the share price of 'HBC Bioscience Ltd.' was manipulated by a group of brokers, directors of the company, entry operators, shell companies etc to generate bogus long term capital gain/loss for providing to entry seekers. In the assessment completed under section 143(3) of the Act, the sale proceeds of Rs.58,89,195/- received from sale of shares of 'HPC bioscience Ltd.' ( in short 'HPC bioscience') were held to be accommodation entry only for converting unaccounted income of the assessee. The Assessing Officer also estimated unexplained commission expenses at the rate of 3% for arranging accommodation entries and made corresponding addition. The Assessing Officer made total addition of Rs.60,65,870/-. On further appeal, the Ld. CIT(A) upheld the additions relying on various decisions of coordinate benches of the Tribunal. Aggrieved, the assessee is in appeal before the Tribunal raising grounds as reproduced above.

**3.** Before us, the Ld. counsel of the assessee filed a paper book containing pages 1 to 13 and relied on the submission made before the lower authorities. The Ld. counsel submitted that shares of 'HPC bioscience' were purchased in physical form by way of bank payment by the assessee to the company. The Ld. counsel of the assessee referred to copy of share certificates issued by the company through letter dated 02/01/2013 (copy of which are placed on page 2 to 5 of the paper book). The Ld. counsel also referred to copy of the request form for dematerialization of the shares from the physical share certificate (copy of which is placed on page 5 of the paper book). The Ld.

counsel further submitted that shares have been sold on Bombay Stock Exchange by way of paying Security Transaction Tax (STT) through broker, namely, Adroit Financial Services Private Limited and thus assessee fulfilled all the documentary requirement of claiming exemption of the long-term capital gain under section 10(38) of the Act on the sale of the shares of the HPC bioscience. He further submitted that assessee is not new to the share trading and he is engaged in the activity of share purchase and sales for last many years. The Ld. counsel relied on the following decisions of the coordinate benches of the Tribunal:

1. *Chandder Prakash Vs. Income Tax Officer, ITA No.6880/Del/2017 (AY: 2014-15), dated 12.03.2018;*
2. *Shri Meghraj Singh Shekhawat Vs. DCIT, ITA No. 443 & 444/JP/2017 (AY: 2013-14 & 2014-15), dated 07.03.2018*
3. *Shri Deepak Nagar Vs. ACIT, ITA No. 3212/Del/2019 (AY: 2015-16), dated 12.06.2019*

**4.** On the contrary, learned DR relied on the order of the lower authorities and submitted that finding of the lower authorities should be seen in the light of the human probabilities as held in the decision of the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT 214 ITR 801 and CIT Vs. Durga Prasard More 82 ITR 540. In support of the contention, the learned DR also relied on the decision of the Hon'ble Delhi High Court in the case of Udit Kalra Vs. ITO 2019 TIOL-751-HC-DEL-IT. He also relied on the other decisions as under:

1. *Sh. Sanat Kumar Vs. ACIT, Hon. Delhi ITAT 'G' Bench in ITA No.1881/Del/2018, order dated 14.06.2019;*
2. *Pooja Ajmani Vs. Income Tax Officer- Hon. Delhi ITAT in ITA No. 5714/Del/2018, order dated 25.04.2019;*
3. *Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain Vs. PCIT, ITA No. 18/2017 Bombay High Court (Nagpur Bench);*
4. *Anip Rastogi Vs. Income Tax Officer (ITA No. 3809/Del/2018)*

5. *Abhimanyu Soin Vs. Asstt. Commissioner of Income Tax, 2018-TIOL-733-ITAT-CHD;*
6. *Smt. M.K. Rajeshwari Vs. Income Tax Officer (ITA No.1723/Bang./2018);*
7. *Chandan Gupta Vs. CIT [2015] 54 taxmann.com 10 (Punjab & Haryana)/[2015] 229 Taxman 173;*
8. *Balbir Chand Maini Vs. CIT [2011] 12 taxmann.com 276 (Punjab & Haryana)/[2011] 201 Taxman 94 (Punjab & Haryana) (MAG.)/[2012] 340 ITR 161 (Punjab & Haryana)/[2012] 247 CTR 468 (Punjab & Haryana);*
9. *Usha Chandresh Shah Vs. Income Tax Officer [2014-TIOL-1459-ITAT-MUM];*
10. *Ratnakar M Pujari Vs. Income Tax Officer [2016-TIOL-1746-ITAT-MUM];*
11. *Arvind M Kariya Vs. Asstt. Commissioner of Income Tax (ITA No. 7024/Mum/2010); and*
12. *ITAT Mumbai in the case of Income Tax Officer Vs. Shamim M. Bharwani (2016) (69 Taxmann.com 65)*

**5.** We have heard the submission of both the parties and perused the relevant material on record including the decisions relied upon by the parties. We find that the issue in dispute is regarding benefit of section 10(38) of the Act availed by the assessee on sale of shares of 'HP Bioscience'. For claiming exemption under section 10(38) of the Act, the assessee has to prove twin conditions, i.e., the income arise from transfer of long-term capital asset being equity share in a company where the transfer of sale of such equity shares as 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.

**5.1** According to the assessee, both these conditions are satisfied. The assessee has submitted that all the documents including purchase of shares, dematerialization and thereafter sale of the shares through recognized stock exchange have been placed before the lower authorities. The assessee has also filed

copy of these documents, including bank statement at the time of purchase of the shares in the paper book filed before us.

**5.2** Whereas according to the Department, the documents are only in the form of the paper trail, and all the circumstantial evidence establishes that the transaction is routing of unaccounted money through accommodation entry provider and bogus claim of long-term capital gain for claiming benefit of exempted income. The contentions of lower authorities are that transactions are against the human probabilities.

**5.3** We find that in the case of Sumati Dayal (supra), the assessee's own income from winning horse races, which according to the Hon'ble Supreme Court, was not genuine when seen from human probabilities as it was improbable for an individual to win so many horse races. The observations of the Hon'ble Supreme Court are reproduced as under:

*“8. During the year 1970-71, (pertaining to asst. yr. 1971-72) between 6th April, 1970 to 20th March, 1971, the appellant claims to have won in horse races a total amount of Rs. 3,11,831 on 13 occasions out of which 10 winnings were from Jackpots and 3 were from Treble events. Similarly, in the year 1971-72 the appellant won races on 2 occasions and both the times winnings were from Jackpot. In her sworn statement dt. 6th Jan., 1973, the appellant had stated that she started going for races from the end of 1969 and that she first won Jackpot on 12th Dec., 1969 on the first day she went to races. The appellant also stated that she worked out the combination on the basis of what her husband advised her but she used to add a few horses of her own although she admitted that she did not know anything about the performance of these horses before December, 1969. As regards her husband, the appellant stated that he won once in Calcutta and once in Madras and he had similar wins also. The appellant had also stated that she had not gone to races in 1972. The appellant admitted that she had been buying jackpot tickets of the value of Rs. 2,000, Rs. 1,400 and even tickets for Rs. 3,000 have been bought and that on the first day she won the jackpot she purchased a jackpot combination ticket for approximately Rs. 2,500 and that on 8th Nov., 1970 she had bought two combinations, each for about Rs. 2,000. The appellant also*

admitted that she had not claimed any loss in races and only winnings were shown and stated that she won similar amounts which were not accounted and the losses were met out of the said amounts. The appellant further stated that she had no record of her expenditure at the race course as against her claim of winnings.

Having regard to the said statement of the appellant, the two members, constituting the majority on the Settlement Commission, came to the conclusion that the apparent is not the real and that the appellant's claim about her winning in races is contrived and not genuine for the following reasons :

(i) The appellant's knowledge of racing is very meagre.

(ii) A jackpot is a stake of five events in a single day and one can believe a regular and experienced punter clearing a Jackpot occasionally but the claim of the appellant to have won a number of jackpots in three or four seasons not merely at one place but at three different centres, namely, Madras, Bangalore and Hyderabad appears, *prima facie*, to be wild and contrary to the statistical theories and experience of the frequencies and probabilities.

(iii) The appellant's books do not show any drawings on race days or on the immediately preceding days for the purchase of jackpot combination tickets, which entitled sizable amounts varying generally between Rs. 2,000 and Rs. 3,000. The drawings recorded in the books cannot be co-related to the various racing events at which the appellant made the alleged winnings.

(iv) While the appellant's capital account was credited with the gross amounts of race winnings, there were no debits either for expenses and purchase of tickets or for losses.

(v) In view of the exceptional luck claimed to have been enjoyed by the appellant, her loss of interest in races from 1972 assumes significance. Winnings in racing became liable to income-tax from 1st April, 1972 but one would not give up an activity yielding or likely to yield a large income merely because the income would suffer tax. The position would be different, however, if the claim of winnings in races was false and what were passed off as such winnings really represented the appellant's taxable income from some undisclosed sources.

The majority opinion concludes that it would not be unreasonable to infer that the appellant had not really participated in any of the races except to the extent of purchasing the winning tickets after the events presumably with unaccounted funds.

The Chairman of the Settlement Commission, in his dissenting opinion, has laid emphasis on the fact that the appellant had

*produced evidence in support of the credits in the form of certificates from the racing clubs giving particulars of the crossed cheques for payment of the amounts for winning of Jackpots, etc. The Chairman has rejected the contention regarding lack of expertise in respect of the appellant and has observed that the expertise is the last thing that is necessary for a game of chance and anybody has to go and call for five numbers in a counter and obtain a Jackpot ticket and that books containing information are available which are quite cheap.*

*This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities : The Chairman of the Settlement Commission has emphasised that the appellant did possess the winning ticket which was surrendered to the race club and in return a crossed cheque was obtained. It is, in our view, a neutral circumstance, because if the appellant had purchased the winning ticket after the event she would be having the winning ticket with her which she could surrender to the race club. The observation by the Chairman of the Settlement Commission that "fraudulent sale of winning ticket is not a usual practice but is very much of an unusual practice" ignores the prevalent malpractice that was noticed by the Direct Taxes Enquiry Committee and the recommendations made by the said Committee which led to the amendment of the Act by the Finance Act of 1972 whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races, etc., was withdrawn. Similarly the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the allegor to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. **In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence.***

**(Emphasis supplied by us)"**

**5.4** In the assessment order, the Assessing Officer referred to the investigation carried out by the Directorate of Income-tax (Investigation), Kolkatta, to unearth the organized racket of generating bogus entries of long-term capital gain. The Assessing Officer has referred to various modes of acquiring such shares or stocks (termed as 'Penny Stock') including through merger of unlisted companies with listed companies , preferential share allotment , allotment of bonus shares and share split etc. The Ld. Assessing Officer made a diagrammatic depiction of the transfer of unaccounted cash from the beneficiary to the entry operator and receipt of money by way of cheque from the buyer of the shares, which are shell companies .

**5.4.1** After discussing modus operandi of such a racket of generating bogus entries, the Ld. Assessing Officer came to specifics of the scrip of 'HPC bioscience' and pointed out that a very small number of total public shareholding was available in the scrip 'HPC bioscience', which was 893 in December 2013, 921 in March 2014, 738 in September 2014, 669 in March 2015 and 664 in December 2015. According to the Ld. Assessing Officer only a small number of the pre-decided people traded in the scrip and thus there was a high possibility of controlled pattern of the trading, which was evident from the price rigging and manipulation done by a cartel of brokers, entry operators, promoters and exit providers. The Assessing Officer pointed out that within a period of 16 months from January 2013 , the share price of 'HPC bioscience' jumped 17 times whereas the profit after taxes of the company fallen from Rs. 2.98 crores in financial year 2012-13 to Rs. 71 lakhs in financial year 2014-15. According to the Assessing Officer, increase in the share price of 'HPC

bioscience' was not commensurate with the financial result of the company. The Ld. Assessing Officer pointed out that while the Sensex had shown almost no progress, the price of the scrip moved phenomenally.

**5.4.2** The Assessing Officer also brought to the knowledge of the assessee statement of share brokers, operators and exit providers including Sh Anil Kumar Khemka, Suman Choudhary etc. who admitted under oath that shares of 'HPC bioscience' were manipulated for providing accommodation entry of bogus capital gain or loss.

**5.4.3** The learned Assessing Officer in the assessment order has listed the person who bought shares from the assessee as under:

Sl. No.	SCRIP CODE	TRADE DATE	SCRIP NAME	Trade ID	QTY	Rate	TRADE VALUE	PAN of Buyer	Name of Buyer
1.	535217	15-Apr-14	HPC BIO	43	12000	59	708000	AAECT4670L	BALISHTH VINMAY TRADING PRIVATE LIMITED
2.	535217	16-Apr-14	HPC BIO	27	12000	60.1	721200	AZHPK6978P	RAJEEV KUMAR
3.	535217	21-Apr-14	HPC BIO	76	12000	62.1	745560	AAKFG7595A	GAJANAN ENTERPRISES
4.	535217	23-Apr-14	HPC BIO	44	12000	64.2	770700	AABCL3306N	BEGORO BUILDERS PRIVATE LIMITED a
5.	535217	28-Apr-14	HPC BIO	67	12000	63.6	762600	AAF CG2554B	GAJGAMINI MERCHANDISE PRIVATE LIMITED
6.	535217	05-May-14	HPC BIO	134	9000	58.6	527580	AALCA7880J	ANTARYAMI TRADERS PRIVATE LIMITED
7.	535217	07-May-14	HPC BIO	20	3000	56.3	168915	AAACA7626H	ATULI ALAN PORTFOLIO & FINANCE PRIVATE LIMITED

8.	535217	07- May-14	HPC BIO	21	6000	56.3	337830	AMEPK4853B	RAJIV KUMAR
9.	535217	19- May-14	HPC BIO	136	6000	54.6	327660	AATCS3687H	SIDHIMAN VYAPAAR PRIVATE LIMITED
10.	535217	19- May-14	HPC BIO	137	15000	54.6	819150	AATCS3687H	SIDHIMAN VYAPAAR PRIVATE LIMITED

**5.4.4** The Ld. Assessing officer issued letter under section 133(6) of the Act to the buyers who purchased shares from the assessee but none responded. According to the Assessing Officer, the entities who purchased shares from the assessee are appearing in the list of the companies provided by the entry operators as engaged in providing accommodation entry. The Assessing Officer has specifically mentioned the name of two such companies, namely, 'Gajgamani Merchandise Private Limited' and 'Shidiman Vyapar Private Limited'.

**5.4.5** The Assessing Officer also questioned the assessee (page 19 of the Assessment order) about the mode of acquisition of the shares, which the assessee replied as 5000 share through IPO (initial public offer), and balance 5000 shares through splitting of shares (08/02/2013). This information provided by the assessee under statement recorded under section 131 of the Act, was found to be incorrect, because the assessee acquired 5000 shares by way of preferential allotment or private placement and not under Initial Public Offer (IPO) of company and balance 5000 by way of bonus shares. In IPO public at large is invited for investment through advertisement in print or other media, which is not in private placement or preferential allotment. Further, the assessee provided the name of the broker for purchase of shares

as Adroit Financial, whereas actually shares were purchased directly from the company without involving any broker.

**5.4.6** The Assessing Officer further observed that the assessee appeared to be prudent investor in terms of number of shares bought and sold and also the nature of the shares held i.e. well-known public and private sector companies, however, with regard to the purchase and sale of the shares of 'HPC bioscience', the assessee displayed a behaviour which appeared to be an outlier in comparison to his normal pattern of investment. According to the Assessing Officer, the number of shares bought, the duration of holding, and date of the sale all pointed out to the fact that move to acquire the shares of HPC bioscience, through a physical transfer of the shares, was a predetermined move which had sole aim to bring back unaccounted money. The Assessing Officer summarised his finding as under:

- *The financials of HPC Bioscience were very poor during the period when the preferential shares were allotted*
- *The business profile shows that the company was not engaged into any substantial activity.*
- *The business profile shows that the company was not having any future plans which could attract investors from all over India to invest in the company.*
- *The funds that were raised through preferential allotment have not been used for any business expansion and have been further advanced as loans and investments.*
- *The whole process of preferential allotment was a prearranged and a managed process so as to allot preferential shares to beneficiaries of bogus LTCG which could later be sold by them for booking accommodation entry of bogus LTCG/STCG in the garb of sale proceeds on sale of shares.*
- *The shares were rigged on the stock exchange by manipulation of stock exchange.*
- *Various share brokers have confirmed the fact that the shares of HPC Bioscience have been used for providing entry of bogus LTCG/STCG.*
- *Various Exit Providers have confirmed that they have purchased the shares of HPC Bioscience to provide entry of bogus LTCG/STCG.*

**5.4.7** Assessing Officer relied on various judicial decisions to support his contention and after elaborate discussion held the sale proceeds of Rs.58,89,195/- as unexplained.

**5.4.8** In the instant case before us, the assessee is habitual investor in sharemarket but as observed by the Assessing Officer, the assessee has purchased shares of established public and private limited companies in a small amount through stock exchange as compared to purchase of 5,000 shares from off-market. The Ld. counsel of the assessee was asked whether the assessee has made any purchases of shares (other than the shares of HPC bioscience ) directly from the company through preferential shares or otherwise, he could not provide any information. When the assessee is a regular investor, it is improbable that he will invest in shares of a company having very weak financials. During the statement recorded under section 131 of the Act, in question No. 18, the assessee was asked specifically that whether somebody contacted him for preferential allotment in the company, the assessee replied that nobody contacted. We do not understand as how the assessee came to know about availability of preferential allotment in the shares of the HPC bioscience, without any contact with the company. It could be possible only if the assessee got information from the entry operator(s), whose name, he was not interested in disclosing to the Assessing Officer. It is highly improbable that a person will invest in only one off market transaction (purchase directly from the company) which result in gold mine or a Jackpot to the assessee. Here the assessee has gained Rs. 58,85,847/- against investment of Rs. 50,000/- within a period of around one year, which is more than 100 times gain.

**5.4.9** The financials of the company M/s HPC bioscience have been reproduced by the Assessing Officer in the assessment order. According to said financials, in the financial year 2012-13, the company was having gross turnover of Rs. 4.7 crores and shown profit after taxes of Rs. 2.9 crores. In financial year 2013-14, turnover of the company decreased to Rs.3.46 crore and profit decreased to Rs.1.24 crores. In financial year 2014-15, the turnover further decreased to Rs.3.09 crores and profit to small amount of Rs.71 lakhs only. In contrast to these financial result as pointed by the AO, the share prices have gone up from Rs. 3.91 in January 2013 to Rs. 63 in the month of April 2014 and thus there was increase of 17 times in the share price. This phenomenal increase in price of the shares without any extra ordinary increase in the profit of the company is against all human probabilities and no investor would buy the shares at such a higher price with decreasing turnover and profit of the company and it could only be possible for the purpose of providing long-term capital gain entry by the entry providers against certain commission income.

**5.4.10** The Assessing Officer has referred to statement of various brokers, who admitted to have manipulated the price of “HPC bioscience”. These statements support the other evidences on record.

**5.5** Before us, the Ld. counsel of the assessee submitted that SEBI had not delisted the share of HPC bioscience and thus following the decision of the Tribunal in the case of Shri Deepak Nagar (supra), the addition made by the Assessing Officer deserve to be deleted. However, the Ld. DR brought to the knowledge of Bench that SEBI found the unusual price and volume movement

in the shares of the company and involvement of the company and its directors and other brokers in price escalation. The relevant part of the SEBI enquiry having reference no. WTM/RKA/ISD/54/2015 dated 29<sup>th</sup> June, 2015 in HPC bioscience alongwith other three shares, which was placed on record by the Ld. DR, is reproduced as under:

- “36. It is matter of common knowledge that in a private placement, wherein allotment is made to select persons or group of persons on one -to- one basis, the issuer and their promoters/ directors have connection on account of acquaintance and familiarity. Such inference of connection becomes stronger in case of private placement by an unlisted company whose share are not tradeable in market. Thus, it is safely inferred that in the case of preferential allotment by the aforesaid companies, the companies and their promoters/ directors had prior understanding, arrangement and purpose. Further, the off market transactions between the preferential allottees and the pre-IPO transferees in the said company prior to their IPOs demonstrate the connection between the preferential allottees and the pre-IPO transferees.*
- 37. I further note that the entities of the Funding Group and the Trading Group are inter se connected within the respective group as well as , directly or indirectly , with the entities across both the groups, on the basis of common directors, common address, common phone numbers, funding, off market transactions, etc. as discussed in above table 5 and table 11. In this regard, I note that Hon'ble SAT has, in many cases such as Classic Credit Ttd. vs. SEBI (SAT Appeal no. 68/2003, Order dated December 8, 2006), Classic Credit Etd. vs. SEBI (SAT Appeal no. 76/ 2003, Order dated January 9, 2007) and Veronica Financial Services Etd. vs. SEBI (SAT Order dated August 24, 2012), held that connection/relations can be established on the basis of factors including the common addresses, common directors/ shareholders, etc.*
- 38. It is also relevant to mention that in the screen based trading the manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. Such intention may be demonstrated from the attending circumstances as observed by Hon'ble SAT in Ketan Parekh Vs. SEBI, Appeal no. 2/2004 decided on July 14, 2006 in the following words-*

*"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, ....., the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

39. *In the present matter, the facts and circumstances as brought out hereinabove, when seen holistically, indicate high preponderance of probability of manipulative intention. From the aforesaid observations of preliminary inquiry it is inter alia noted that*
- a) *All the companies had very small share capital prior to the year 2011. In the year 2011 and 2012 the companies increased their capital base by issuing shares to several entities by way of preferential allotment and later by issuing bonus shares. Certain preferential allottees transferred their shares in the respective company to pre IPO transferees.*
  - b) *Thereafter, all the companies came out with IPOs and the entities belonging to Funding Group funded substantial portion of the IPOs. IPO proceeds of respective IPO were immediately routed back to the entities of the Funding Group by the concerned companies and thus they financed their own IPO and allotted shares without receipt of consideration to the extent they returned the subscription monies to the Funding Group from IPO proceeds.*
  - c) *The respective companies had actively concealed the deviation in utilisation of IPO proceeds as they deliberately did not make any disclosures as required under clause 46 of SME Listing Agreement.*
  - d) *Once the shares were listed at the exchange, Trading Group entities started pushing up the price of the scrip through manipulative trades and increased the prices of the scrips astronomically.*
  - e) *Trading Group entities consistently and repeatedly placed buy orders at higher prices than LTP in four fundamentally weak newly listed companies. After the expiry of the lock-in period, Trading Group entities further purchased shares from preferential allottees and pre IPO transferees at artificially increased prices.*

- f) *In the whole process, entities of Trading Group provided a hugely profitable exit to the preferential allottees and pre IPO transferees.*
  - g) *Consequently, all the preferential allottees and pre IPO transferees have collectively made a profit of Rs.614crore.*
  - h) *The funds required for purchase of shares by the Trading Group entities had been provided to them through layering of fund transfers from several entities including the entities of the Funding Group.*
40. *I observe that, the key to the scheme of operations in this case lies in the preferential allotment of the shares of Eco, Esteem, CNE and HPC, and, thereafter getting those shares listed on the stock exchange so as to avail exemption on LTCG tax gains. Such pre-IPO shares could be listed only by making an IPO and listing them alongwith shares issued in the IPOs which in this case were ostensibly made successful on account of financing by respective companies. The profit could be maximised on account of manipulative trading by connected entities primafade acting in concert/ league.*
41. *Considering the above facts and circumstances, I am of the opinion that the transactions in the said scrips were with a premeditated understanding, plan, device or artifice. In the present matter, once the shares of these companies got listed in SME segment of BSE, the Trading Group entities manipulated the price/volume of the scrips and then provided profitable exit to preferential allottees and Pre IPO transferees. Moreover, in any market, a sudden supply if not matched by similar demand leads to price fall. Considering the same, any rational investor would not have dumped a large number of shares without facing the risk of a significant price fall until and unless he was sure of the demand side absorbing the supply. In this case, the entities of Trading Group created the demand against the supply from the preferential allottees/pre IPO transferees. In the whole process, the principle of price discovery was kept aside and the market lost its purpose. It is evident from the above analysis that the Trading Group entities provided a hugely profitable exit to the preferential allottees and pre IPO transferees.*
42. *The analysis of trading during the examination period shows uniform pattern of repeated placing of buy orders at price above LTP in four fundamentally weak newly listed companies to push the price up significantly and provide hugely profitable exit to the preferential allottees and pre-TPO transferees. Since all the aforesaid companies did not have any financial standing in the securities market, in my view, the only way they could*

*have increased their share value is by way of market manipulation. I further note that, Trading Group entities and preferential allottees/pre-IPO transferees traded amongst themselves as substantiated by their matching contribution to net buy and net sell. Further, as mentioned earlier the Trading Group entities did not have the financial capacity to buy shares at such high price and they are found to have been funded by several entities including the entities of the Funding Group. Such trading behaviour belies economic rationale and indicates existence of premeditated arrangement among preferential allottees, pre IPO transferees, Trading Group and Funding Group entities.*

43. *From the above facts and circumstances, I prima facie find that the preferential allottees, pre IPO transferees acting in concert with Funding Group and Trading Group have used the stock exchange system to artificially increase volume and price of the scrip for making illegal gains and to convert ill-gotten gains into genuine one. However, the whole scheme could not have been possible without the involvement/ connivance of companies and their promoters and directors.*
44. *The acts and omissions were prima facie for generating fictitious LTCG so as to convert unaccounted income of preferential allottees and pre-IPO transferees into accounted one with no payment of taxes as LTCG is tax exempt under section 10(38) of Income Tax Act, 1961. I prima facie find that the above modus operandi helped the concerned entities to not pay income tax on account of LTCG and helped them to show the source of this income to be from legitimate source i.e. stock market.”*

**5.6** In view of the above facts and circumstances the ratio in the case of Deepak Nagar (supra), cannot be imported into the facts of the instant case.

**5.7** In the case of Maghraj Singh Shekhawat (supra) relied upon by Ld. counsel of the assessee, also the SEBI Inquiry was not found to be related to rigging of share prices and it was related to financial irregularities and use of the fund belonging to clients by the broker M/s Anand Rathi share and stock brokers Ltd. The said case is distinguishable on facts.

**5.8** In the case of Udit Kalra (supra), the Hon'ble Delhi High Court upheld the addition in respect of the long-term capital gain claimed as exempted under section 10(38) of the Act on the ground of impossibility of astronomical growth of the value of the company shares as against the consistent losses of the company. The relevant finding of the Hon'ble High Court is reproduced as under:

*“This court has considered the submissions of the parties. Aside from the fact that the findings in this case are entirely concurrent – A.O., CIT(A) and the ITAT have all consistently rendered adverse findings – what is intriguing is that the company (M/s Kappac Pharma Ltd.) had meagre resources and in fact reported consistent losses. In these circumstances, the astronomical growth of the value of company’s shares naturally excited the suspicions of the Revenue. The company was even directed to be delisted from the stock exchange. Having regard to these circumstances and principally on the ground that the findings are entirely of fact, this court is of the opinion that no substantial question of law arises in the present appeal.”*

**5.9** In the case of Sanjay Bimal Chand Jain L/H of Shantidevi Bimal Chand Jain (supra), the assessee had purchased shares of two penny stocks of Calcutta-based companies, i.e., 8000 shares at the rate of Rs.5.50 per shares on 08/08/2003 and 4000 shares at the rate of Rs.4 per share on 05/08/2003. The assessee sold 2200 shares at an exorbitant rate of Rs.486.55 per shares on 07/06/2005 and 800 shares on 20/06/2005 at the rate of 485.65. The authorities held that the assessee had not tendered cogent evidence to explain as how the shares in an unknown company with worth Rs. 5 had jumped to Rs. 485 in no time. In view of the facts, the Hon'ble Bombay High Court confirmed the addition.

**5.10** In the case of M.K. Rajeshwari Vs. ITO (supra), the coordinate bench of the Tribunal has held that while dealing the

issue of long-term capital gain accrued to the assessee, one has to examine the financials of the company whose shares were inflated within a short period and after the sharp rise in the price of shares, it again comes down.

**5.11** The coordinate bench of the Tribunal in the case of Shamim M. Bharwani (supra) held that where the assessee claimed income earned from sale of shares as exempt under section 10(38), in view of the fact that purchase transaction of said shares was not recorded in the stock exchange and moreover, selling rates were artificially high later on with no real buyers, Assessing Officer rightly rejected assessee's claim and added amount in question to his taxable income under section 68 of the Act.

**5.12** In the light of the ratio decidendi of the cases cited above, the contention of the assessee that the transaction leading to long-term capital gains are supported by documents such as sale and purchase invoices, bank statement etc., cannot be accepted in view of the facts and circumstances of the case brought on record by the Assessing Officer after proper examination of the material facts and taking into account corroborating evidences gathered by the Directorate of Income-tax (Investigation), Kolkata, involving a network of brokers and operators engaged in manipulation of market price of the shares of the shares of the HBC bioscience controlled and managed by such person with a purpose to provide accommodation entries in the form of long-term capital gains. The onus was on the assessee to prove the transaction leading to claim of long-term capital gain was a genuine transaction. The assessee failed to justify manifold increase in the prices of the share of 'HBC bioscience' despite weak financials of the company. Initial investment in the

company of unknown credential and subsequent jump in the share prices of such a company, cannot be an accident or windfall but could be possible, because of manipulation in the share prices in a preplanned manner, as brought on record by the Assessing Officer. In view of the failure on the part of the assessee to discharge his burden of proof and explain nature and source of the transaction, in our opinion, the Ld. CIT(A) has rightly confirmed the addition in dispute, which does not require any interference on our part. We accordingly, uphold the action of the Ld. CIT(A) on the issue in dispute and dismiss the grounds raised by the assessee on this issue.

**6.** In the result, the appeal of the assessee is dismissed.

***Order is pronounced in the open court on 20<sup>th</sup> August, 2019.***

Sd/-  
**[K.N. CHARY]**  
**JUDICIAL MEMBER**

Sd/-  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 20<sup>th</sup> August, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi