

**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.1704/Del/2019
Assessment Year: 2015-16

Shri Satish Kishore, 1397, Tilak Bazar, Delhi	Vs.	ITO, Ward-47(2), New Delhi
PAN :AWUPK3580F		
(Appellant)		(Respondent)

And

ITA No.1705/Del/2019
Assessment Year: 2015-16

Shri Nawal Kishore, 1397, Tilak Bazar, Delhi	Vs.	ACIT, Circle-47(4), New Delhi
PAN :AAGPK1458C		
(Appellant)		(Respondent)

Assessee by	Shri R.K. Gaur, CA
Department by	Shri N.K. Bansal, Sr.DR

Date of hearing	29.07.2019
Date of pronouncement	06.09.2019

ORDER

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

These appeals by the respective assessees are directed against two separate orders, i.e., order dated 29/01/2019 in the

case of Sh. Satish Kishore and order dated 28/01/2019 in the case of Sh. Naval Kishore, passed by the Ld. Commissioner of Income Tax (Appeals)-16, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2015-16. The issue in dispute involved in both the appeals being identical in similar set of circumstances, both the parties agreed to argue the case of Sh. Satish Kishore as lead case and result of the same to be followed in the case of Sh. Naval Kishore. Accordingly, both the cases were heard together and disposed off by way of this consolidated order for sake of convenience.

2. The grounds raised in ITA No. 1704/Del/2019 in the case of Shri Satish Kishore are reproduced as under:

1. *On the facts and circumstances of the case and in law Learned AO has erred in making subject addition of Rs. 66,85,928 merely on the basis of suspicion, conjecture surmises and modus operandi without correlating the same in the Context of the appellant.*
2. *On the facts and circumstances of the case and in law Learned AO has made subject addition without bringing incriminating material on record solely on hearsay borrowed satisfaction of investigating wing on a hypotheses of modus operandi at the macro level.*
3. *On the facts and circumstances of the case and in law learned AO has erred in law by disallowing the exemption of capital gains on the sale of STT paid equity share on the recognized stock exchange exempt U/s 10(38) of the Income Tax Act, 1961 being duly supported with documentary evidence in a systematic manner, more specifically encompassed in Section 43(5) of the Income Tax Act.*
4. *On the facts and circumstances of the case and in law, Learned AO has erred in law in making subject addition u/s 68 and 69C by invoking discretionary jurisdiction arbitrarily.*
5. *On the facts and circumstances of the case and in law, the Learned AO has grossly erred in not providing the material used against the appellant annihilating the opportunity of cross examination despite specific request*
6. *On the facts circumstances of the case the Learned AO has erred in law by involving Jurisdiction U/s 143(2) on the basis of CASS without independent evaluation of the information.*
7. *On the facts circumstances of the case and in law Learned CIT(A) has erred in sustaining the order of the Learned AO making*

disallowance of capital gain exempt u/s 10(38) on the basis of unrelated precedents leaving aside good law thereby confirming the addition u/s 68 and 69C.

8. *On the facts circumstances of the case, the order of the Learned AO and sustenance thereof by the Learned CIT (A) is bad in law and is against the tenants of natural justice.*
9. *The appellant carves to add, alter, modify, or delete any ground of appeal during the pendency of the appeal.*

3. Briefly stated facts of the case are that the assessee, an individual, filed return of income on 24/01/2015, declaring total income of Rs.14,83,715/-, which constituted income declared under the head 'salary', 'income from house property', 'profit in case of the business of profession', 'capital gain' and 'income from other sources'. The long-term capital gain on sale of the shares amounting to Rs.63,67,551/- was shown by the assessee as exempted under section 10(38) of the Income-tax Act, 1961 (in short 'the Act'). The case of the assessee was selected for scrutiny and during the course of scrutiny proceeding, the Assessing Officer noticed sale of following shares claimed under exempted long-term capital gain:

Sl. No.	Name of Shares	No. of shares	Date of purchase	Cost of acquisition	Sale consideration	Capital Gain
1	Risa International	1200	15.01.2013	54,000.00	1,379,873.51	1,325,873.51
2	Pawansut Holding Ltd.	18000	21.02.2013	63,000.00	1,433,641.92	1,370,641.92
3	Tarang Project and consultant Ltd	450	15.05.2013	4,500.00	836,752.71	820,252.71
		1200	13.07.2013	12,000.00		
4	Suchak Trading Ltd	6000	15.11.2013	18,000.00	993,748.53	975,748.53
5	TTK Prestige Ltd	270	01.04.2009	24,300.00	1,922,735.21	1,875,035.21
		260	15.04.2009	23,400.00		

	Total	27380		199,200.00	6,566,751.88	6,367,551.88
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3.1 The Assessing Officer was in possession of information from the Investigation Wing of Income Tax Department, Kolkata related to providing accommodation entry of exempted long-term capital gain on 'Penny Stocks' by a cartel of share brokers, entry operators, beneficiaries and proprietors in the scrip "Suchak Trading", which was appearing in the list of shares sold by the assessee during the year under consideration. The report of Investigation Wing explained entire *modus operandi* as how the companies in collusion with a set of brokers, accommodation entry operators, first sold the share in offline market (not on the stock exchange) either in cash or cheque by private placement, or preference shares etc. In some cases after private sales, bonus shares had also been issued. Thereafter, companies were listed on stock exchange with small number of shares available for trading. The share price were then artificially jacked up by trading (sale and purchase) in small number of shares through set of accommodation entry providers. Once the shares prices got increased substantially, the persons who were provided shares for making them available exempted LTCG, were asked to sale their share holding on stock exchange, which were to be by bought by pre-decided set of accommodation entry operators. Since the sale being on stock exchange with STT paid, the seller becomes eligible for exempted LTCG. In this manner, all the persons, who invested for getting exempted LTCG by accommodation entry, would exit from shares at high profit. But the company being

being not having actual worth, the share prices would fall after some time and the accommodation entry providers, then will sale their shares at low prices and avail long term capital loss, which would be available for setting off against any Long Term Capital gain.

3.2 In view of report of investigation in the shares traded by the assessee and price fluctuation in the Scrips sold by the assessee not commensurate with their financial result, the Ld. AO asked the assessee to substantiate the claim of LTCG by the Assessee. In support of the claim of exempted long-term capital gain, the assessee filed following documentary evidences:

- a. Details of purchase of shares.*
- b. Broker's debit note and receipt for purchase of shares.*
- c. Statement of Holding in Demat Account.*
- d. Broker's transaction summary statement and statement of account.*
- e. Contract note for sale of securities indicating levy of security transaction tax.*
- f. The statement of banks through which sale proceeds have been realized.*

3.3 The contention of the assessee that assessee fulfils all the requirement of section 10(38) as shares was purchased in cash and converted from physical to de-mat prior to sale and sales have been made through stock exchange by paying STT. According to the assessee, the allegation of Investigation Wing of

Kolkata, were general in nature and not specific that assessee was engaged in obtaining accommodation entry.

3.4 The learned Assessing Officer rejected the claim of the assessee observing that in normal course it was not possible to have such huge profit in view of the facts that the assessee was a casual investor and all the shares were purchased in cash and dematerialized only prior to sale. He also observed that the assessee was not even aware of the location of the companies and their directors. According to the Assessing Officer, the transactions were carried out to give the shares a colour of long-term asset and the transactions were made beyond any human probabilities. The Assessing Officer, relying on the decision of the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT 214 ITR 801, wherein the Hon'ble Court held that in view of the material available on record, surrounding circumstances, the transaction of the assessee failed the test of human probabilities. Accordingly, the amount of Rs.63,67,552/- received by the assessee, was held by the Assessing Officer as unexplained cash credit under section 68 of the Act and also made addition at the rate of 5% of the amount of the sale consideration treating the same as commission expenses for obtaining the accommodation entry.

3.5 Before the Ld. CIT(A), the assessee submitted that the transactions have been routed through the channels controlled by the statutory authorities like, Banks, SEBI, and Stock Exchange leaving no access to or interference by either purchaser or seller of the shares. According to him, the transaction of purchase and sale of the shares were supported by contract notes, payment

proofs, demat statement, and STT payment, which is necessary ingredient for exemption under section 10(38) of the Act and the addition were made merely on presumption, suspicions, conjecture and surmises. He submitted that the Assessing Officer failed to bring any material on record to prove nexus between the listed company and the assessee. He also submitted that the Assessing Officer had failed to provide any material relied upon against the assessee as well as cross-examination of the relevant person.

3.6 The Ld. CIT(A) analyzed the submission of the assessee with reference to the evidences available on record and observed that the assessee made gain of Rs.63.67 lakhs on five scrips within a short period of almost more than one year, cannot be a coincidence unless the assessee add a 6th sense about making profit in shares or it can be laundering of black money through accommodation entry. The Ld. CIT(A) also analyzed unprecedented share price increase in the five scrips, sold by the assessee and found that the price rise was not supported by the financials of those companies. She observed that the scrip 'Pawansut Holding Private Limited' was not traded during the financial year 2012-13 and earnings per share (EPS) for the year ended 31/03/2012 was 0.15 and for the year ended 31/03/2013 was 0.23. Similarly, she observed profits not commensurate with the price rise in case of other scrips sold by the assessee. She also observed that trading in the scrips traded by the assessee, were suspended by the Bombay stock exchange from time to time. The Ld. CIT(A) also pointed out that as a part of surveillance measure, the Bombay stock exchange has categorized 'Pawansut

Holding' as an XT category, where a cross trade occurred when a broker executed an order to buy and sell the same security at the same time, in which both the buyer and the seller are clients of the broker. The Ld. CIT(A) has reproduced the surveillance notice issued by the BSE in the impugned order. Similarly, she has observed that trading in the scrip "Suchak Trading Ltd." was also suspended by the BSE during January 2015. Ld. CIT(A) also observed that the assessee sold shares through SMC Global Securities and VP Consultant Ltd., i.e., the concerns which have been claimed by the sub-broker Sh. Pawan Kalyan as part of accommodation entry providing syndicate. The purchase of the shares in cash has been shown from brokers and not from the respective companies. In the case of scrip "Riya International Ltd", even no evidence of the purchase were submitted before either Assessing Officer or before the Ld. CIT(A). The Ld. CIT(A) also referred to the statement of the assessee recorded on oath where he explained that he was a casual investor in shares. The assessee could not explain the name of the directors or location of the entities, in which he claimed to have invested. In view of the observations, the Ld. CIT(A) upheld the addition made by the Assessing Officer relying on various decisions cited in the impugned order.

4. Before us, the Ld. counsel of the assessee filed a paper-book containing pages 1-44 and supported the grounds raised. He assailed mainly the preponderance of human probability for sustaining addition in the case of the assessee. The Ld. counsel submitted that the theory of preponderance of human probability, the apparent not being real, have to be applied in a nuanced,

subtle and calibrated manner and not on a blanket basis. According to him, it has to be applied with utmost care and diligence and keeping in view the material in hand. He submitted that in the instant case, the Ld. Assessing Officer has ignored all the documents which had been gathered by the assessee from authorised institutions such as stock exchange and contract notes issued by the brokers on their behalf. He further submitted that all the transaction has suffered security transaction tax and the sale proceeds have travelled from the stock exchange to the assessee's bank account and therefore doctrine of human preponderance is not applicable in the instant case.

4.1 He further emphasized that the theory of human preponderance is not applicable in capital market transactions as same are extremely complex in nature and dependent on multiple variables. According to him, no linear equations can resolve the behavior of the capital market movement and such a complex tracing is inevitable for human perception. He submitted that capital market transactions render either profit to someone or loss to somebody, aggregating to a zero-sum game and price movement in share prices not correlated always with their fundamentals.

4.2 The Ld. counsel submitted that the capital market transactions are based on demand and supply of certain scrips. According to him, the share prices and indices are governed by the two factors, the quantity of tradable shares and the number of buyers and sellers in the market. The Ld. counsel is of the view that price of the scrip has nothing to do with the company or its fundamentals. He submitted that it does many a time but

essentially the correlation does not exist. He submitted that the graphical representation by the Ld. Assessing Officer is a post-mortem analysis, which does not validate the hypothesis. He referred to News reported in financial express dated 24/07/2019 about loss suffered by the investors in share trading and submitted that no human preponderance or perception can explain the said loss.

4.3 The Ld. counsel admitted that no doubt such kind of dubious practices are rampant but merely because there is an acknowledgement of such practices, would not mean that in any such cases coming before the court, the court has to presume that the assessee in question also indulged in that practice. The Ld. counsel submitted that an innocent person cannot be fastened with liability without cogent evidences. The Ld. counsel in support of the contentions relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs Gangeshwari Metals Private Limited (2013) 30 taxmann.com 328 (Delhi).

4.4 The Ld. counsel further submitted that assessee has discharged its burden of providing documentary evidence to support the long-term capital gain by submitting contract notes from brokers, de-mat account, broker statement of the account, proof of STT payment and transaction through banking channel, which has not been discarded by the Assessing Officer.

4.5 He further submitted that it is settled law that suspicion, however, strong cannot take place of the proof and no addition can be made on the basis of mere suspicion. In support, he relied on following decisions:

- *Lalchand Bhagat Ambica Ram v CIT [(1959) 37ITR 288 (SC)]*;
- *CIT v. Paras Cotton Co[(2007) 288 ITR 211 (Raj.)]*;
- *Faqir Chand Chaman Lai v. ACIT [(2004) 1 SOT 914 (Asr.)] [Appeal dismissed by P&H*
- *High Court in 262 ITR 295 and SLP dismissed by SC in 268 ITR 215 (St)]*;
- *Assam Tea Co. v. ITO [(2005) 92ITD 85 (Asr.) (SB)]*;
- *Jhantala Investments Limited v ACIT [(2000) 73 ITD 123 (Mum.)]*

4.6 The Ld. counsel also submitted that the information from DIT, Kolkata has not been provided to the assessee, which is against the tenets of the natural Justice and thus, assessment might be quashed. In support of the contention, he relied on the decision of the Hon'ble Supreme Court in the case of M/s Andman Timber Industries Vs Commissioner of Central Excise, Kolkatta-II reported in (2015) 281 CTR 241(SC).

4.7 The Ld. Counsel, also relied on the decision of the Tribunal in the case of Deepak Nagar Vs ACIT in ITA No.3212/Del/2019 for assessment year 2015-16 and decision of Kolkata 'SMC' bench of the Tribunal in the case of Sh. Mangli Jain in ITA No. 729/Kol/2018 for assessment year 2014-15.

5. The Ld. DR, on the other hand, supported the finding of the lower authorities and further relied on the following decisions:

1. *Udit Kalra Vs ITO 2019-TIQL-751-HC-DEL-IT (Copy Enclosed)*
2. *Sh. Sanat Kumar Vs ACIT -Hon Delhi ITAT G Bench in ITA No. 1881/D/2018 order dated 14.06.2019. (copy enclosed)*
3. *Pooja Ajmani Vs ITO -Hon Delhi ITAT in ITA No. 5714/D/2018 order dated 25.04.2019. (copy enclosed)*
4. *Sanjav Bimalchand Jain L/H Shantidevi Bimalchand Jain Vs PCIT (ITA No.18/2017 Bombay High Court (Nagpur Bench)(Copy Enclosed)*
5. *Anip Rastoqi Vs ITO (ITA No. 3809/DEL/2018)(Copy Enclosed)*
6. *Abhimanvu Soin Vs ACIT 2018-TIQL-733-ITAT-CHD (Copy Enclosed)*
7. *Smt. M.K.Rajeshwari Vs ITO (ITA No.1723/Bang/2018)(Copy Enclosed)*

8. *Chandan Gupta Vs CIT [2015] 54 taxmann.com 10 (Punjab & Haryana)/[2015] 229 Taxman 173 (Copy Enclosed)*
9. *Balbir Chand Maini Vs CIT [2011] 12 taxmann.com 276 (Punjab & Harvana)/[2011] 201 Taxman 94 (Punjab & Harvana)(MAG.)/[2012] 340 ITR 161 (Punjab & Harvana)/[2012] 247 CTR 468 (Punjab & Haryana) (Copy Enclosed)*
10. *Usha Chandresh Shah Vs ITO [2014]-TIQL-1459-ITAT-MUM1 (Copy Enclosed)*
11. *Ratnakar M Puiari Vs ITO [2016-TIQL-1746-ITAT-MUM] (Copy Enclosed)*
12. *Arvind M Kariva Vs ACIT (ITA No. 7024/Mum/ 2010)*
13. *Hon'ble ITAT Mumbai in the case of ITO Vs Shamim M Bharwani (2016) (69 Taxmann.com 65)*

5.1 The Ld. DR also provided a copy of statement of the brokers referred by the Assessing Officer in the assessment order, a copy of which was also provided to the Ld. counsel of the assessee. The Ld. DR referred to the statement dated 30/03/2015 of Sh. Pawan Kumar Kayan under section 132(4) of the Act during search and seizure action at his premises and submitted that he admitted of having engaged in providing accommodation entry in the form of LTCG through his concern including PKC Commodities Ltd., a sub-broker of SMC Global Securities Ltd.

6. We have heard the rival submissions and perused the relevant material on record, including the judicial decisions relied upon by both the parties. We find that in the instant case the issue in dispute is whether the long-term capital gain on sale of shares by the assessee is an arranged affair to convert its own unaccounted money or it is a genuine transaction of purchase of shares and sale. The assessee has submitted documents to support purchase as well as sale of the shares and contended that sale transactions have been done on the platform of stock exchange, where the seller is having no control to choose the

buyers, and thus according to the assessee, he has simply sold the shares on the stock exchange and received the profit, which according to him, is exempt under section 10(38) of the Act. According to the assessee, he is an innocent investor and windfall gain has been received due to demand and supply gap in capital market. The assessee has claimed that documentary evidences submitted by him fulfils the requirement of provision of section 10(38) of the Act.

6.1 Whereas, according to the Revenue Authorities, the circumstantial evidences establish that the transactions of the assessee are against human probabilities and are not genuine purchase and sale and those are only accommodation entries, thus nature and source of the amount credited against sale of shares is unexplained cash credit under section 68 of the Act.

6.2 The various circumstantial evidences brought on record by the Revenue Authorities, can be summarized as under:

- (i) As against availability of listed share/securities for purchase through stock exchange, the assessee purchased unknown and unlisted share/securities that too through few brokers. It is not clear as how and from which sources, the assessee identified potential of those shares. The assessee himself claimed to be not a regular investor in shares and securities.
- (ii) The purchase of all the shares have been shown to be made in cash, without any supporting cash receipts from sellers of those shares.

- (iii) The shares claimed to have been purchased in physical form had been dematerialized only immediately prior to their sale on the stock exchanges.
- (iv) At the time of the purchase the value of the shares was very low and after purchase by the assessee, the prices of the shares have gone astronomically, without any commensurate financial results of those companies.
- (v) The shares have been sold within a small period as soon as after attaining peak value and thereafter share prices have come down again at their original level around purchase price.
- (vi) The shares have been sold through SMS Global Securities and VP Consultant Ltd. One of the entry operators, Sh Pwan Kayan from Kolkata in his statement on oath, has admitted that M/s. SMC Global Securities was part of accommodation entry syndicate providing accommodation entries.
- (vii) The trading in most of the shares dealt by the assessee was suspended by the stock exchange due to abnormal behaviour of trading of shares.

6.3 We have also perused the evidences of purchases of shares by the assessee submitted in the paper book. On perusal of page 4 of the paper book we find that Shivam Trading Company has issued a debit note to the assessee for sale of 18,000 shares of Pawansut Holding Ltd., but in this debit note the serial numbers of the shares transferred to the assessee is not mentioned. Similarly, on page 5 of the paper book a copy of the debit note

issued by Fair Finwiz is available, according to which assessee was sold 450 shares of Tarang Projects and Consultant Limited. Similar, debit notes have been filed by the assessee in the paper book to substantiate the purchase as genuine transaction. But the assessee has not filed any receipt of cash paid either to the brokers or to the companies.

6.4 When the documentary evidence containing contract notes of purchase, demat account, contract note of the sale and receipt of sale proceeds in bank account are seen vis-à-vis the observations of the AO on transactions, in our opinion, the documents are not sufficient to discharge the burden of proof that the purchase and sale transactions of the assessee were genuine. The onus was on the assessee to explain astronomical rise in prices of all the scrips purchased by him, that too without any financial rational. The assessee has failed to discharge his onus in this regard. Even if, we take into account the argument of the Ld. counsel of the assessee that in capital market the movement in the price of the shares/securities is not always connected with their fundamentals, it was not possible that prices of all the shares purchased by the assessee would go up and not even in the single case price of the share would come down. It may be possible that few scrip may go up, but in normal course it is not possible that prices of all the shares will go up without any corresponding profit or prospectus of the company. This feature of the transactions of the assessee itself is against the human probabilities. The assessee has not demonstrated of earning such huge profits from shares of any listed companies purchased from the stock exchange either in the earlier years or in the

subsequent years and huge profit has been shown only from off-line purchases.

6.5 In the case of Sumati Dayal (supra), also the assessee shown winning from the horse races for most of the time and that too without any expert knowledge of horse races. During her statement to the Settlement Commission, the taxpayer had stated that she first started going to the races in 1969 and she won her first jackpot on 12/12/1969, the first day on which she went to the races. She also stated that she worked out the combination of winning horses on the basis of what her husband advised her but she used to add some horses on her own, she, however, knew nothing about the performance of those horses. Further, she suddenly lost interest in horse racing in 1972, when the race winning became taxable and given her exceptional winning streak in the earlier years. The Hon'ble Supreme Court in case held that income from winning horse races was against the human probability and inferred that the taxpayer had not really participated in any of the races except to the extent of purchasing the winning ticket after the event presumably with unaccounted funds. The facts and circumstances in the instant case are also identical and in normal circumstances it was not possible to earn a huge profit from investment in all the scrips purchased by the assessee, unless obtaining long-term capital gain through accommodation entry providers.

6.6 Regarding the contention of the Ld. counsel that assessee was not having any control over the buyer of the shares and it was a transaction in uncontrolled manner on the stock exchange, we note that the investigation carried out by the Department has

brought the facts on record that the shares prices have been manipulated artificially, which purchased by a set of accommodation entry provider companies controlled by cartel of brokers, entry operator etc., thus, in such circumstances, to say that sale transactions on the stock exchange were made in uncontrolled manner, will be on only an idealistic view and away from the reality of the market. The Ld. Counsel has himself accepted this fact that such types of dubious practices were rampant during relevant period. The contention of the Ld. counsel that sale transaction of assessee is uncontrolled, cannot be accepted in the circumstances of the case where all share purchases have been made in physical form from off market and all such shares have been sold at astronomical prices without commensurate financials of the companies in the background of the fact the purchases of these shares have been made at high prices by accommodation entry operator and not genuine buyers.

6.7 The case laws relied upon by the assessee distinguishable on facts. In the case of Deepak Nagar (supra) nothing adverse was observed by the SEBI about the scrip traded by the assessee but in the instant case, trading in most of the shares sold by the assessee was suspended during relevant period. The facts in the case of Mangi Lal Jain (supra) are also distinguishable as in the said case purchases were made by cheque and not through cash as in the instant case.

6.8 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 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:

“The court has considered the submissions of the parties. Besides 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.”

6.9 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.

6.10 In the case of MK 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.

6.11 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 is 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.

6.12 As far as contention of the learned counsel that no opportunity of cross-examination of the statement of share brokers relied upon by the Assessing Officer is concerned, we find that the authorities have not merely relied on the statement of the relevant brokers, but also has taken into account other circumstantial evidences and the assessee was asked to justify the genuineness of the transactions, which the assessee has failed. In our opinion, the ratio in the case of M/s Andman Timber Industries (supra) is not applicable over the facts of the instant case.

6.13 In the light of the ratio laid down in cases cited above, the contention of the assessee that the transaction leading to long-term capital gains are supported by documents of sale and

purchase, bank statement etc., cannot be accepted keeping 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 the corroborating evidences. 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 shares despite weak financials of the companies. 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 and huge profit in all shares traded by the assessee against the human probability, in our opinion, the Ld. CIT(A) has rightly confirmed the addition in dispute, which does not require any interference on our part, we uphold the action of the Ld. CIT(A) on the issue in dispute and dismiss the grounds raised by the assessee in the appeal. Accordingly, the appeal bearing ITA No. 1704/Del/2019 is dismissed.

7. The facts and circumstances of the appeal in ITA No. 1705/Del/2019 are identical with the facts and circumstances of appeal in ITA No. 1704/Del/2019, few except scrips traded by the assessee and Sh. Satish Kishore (ITA No. 1704/Del/2019) are different. Accordingly, following our finding in ITA No.

1704/Del/2019, the grounds of appeal in ITA No. 1705/Del/2019 are also dismissed.

8. In the result, both the appeals of assesseees are dismissed.

Order is pronounced in the open court on 6th September, 2019.

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

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

Dated: 6th September, 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