

आयकर अधीकरण, 'डी' न्यायपीठ, चेन्नई।

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH: CHENNAI**

श्री जॉर्जमथन, न्यायिक सदस्य एवं  
श्री रामत कोचर, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2342/Chny/2019

प्रधान वष/Assessment Year: 2014-15

Smt. Sudha Eashwar,  
No.23A, P.T.Rajan Salai,  
K.K.Nagar,  
Chennai-600 078.

v. The Income Tax Officer  
Non-Corporate Ward-14(3)  
Chennai

**[PAN: ALXPS 0601 D]**

**(अपीलाथ/ Appellant)**

**(प्रत्यथ/ Respondent)**

अपीलाथ का ओर से/ Appellant by

: None

प्रत्यथ का ओर से /Respondent by

: Ms.Sumathi Venkatraman,  
JCIT

सुनवाई का तारख/Date of Hearing

: 09.10.2019

घोषणा का तारख /Date of Pronouncement

: 02.01.2020

**आदेश / ORDER**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by assessee is directed against appellate Order dated 28.06.2019 passed by learned Commissioner of Income Tax (Appeals)-7, Chennai (hereinafter called "the CIT(A)"), in ITA No.231(T-14)/CIT(A)-7/2016-17 for assessment Year (ay) 2014-15, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 31.12.2016 passed by learned Assessing Officer (hereinafter called

5 u/s.143(3) of the Income-tax Act, 1961

(hereinafter called "the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") reads as under:-

*"1. The order of the Ld. Commissioner of Income-Tax (Appeals) is against law as well as facts. The action of the CIT (A) in dismissing the appeal is unjustified, arbitrary and against law.*

*2. The learned Commissioner of Income Tax (Appeals) has erred to notice or adjudicate the issue that the Assessing Officer (A.O) had made the additions without even stating under which provisions of the Income Tax Act, 1961 he made those additions. Such non-mentioning the section invoked renders the assessment order bad in law.*

*3. The Ld. CIT (A) has completely erred against facts when she held that there is no violation of Natural justice as according to CIT (A) giving a show cause notice is sufficient compliance of "Natural Justice". The fact is that the A.O has neither furnished the copy of the statement recorded from a third party implicating the Appellant herein and nor the appellant was given an opportunity to cross examine the person who is purported to have given a statement implicating the appellant. This is a clear violation of Principle of Natural justice and this ground was never considered by the Ld. CIT (A) while passing the order on Appeal.*

*4. The Appellant submits that she was not given any opportunity to rebut the evidence, if any, gathered at the back of the Appellant. It is imperative that the Appellant shall be furnished with such information and should have been granted an opportunity to cross-examine the person who is purported to have given a statement implicating the Appellant. This violates the provisions of natural justice and on this factor alone, the order of the Assessing Officer deserved to be quashed.*

*5. Increase and decrease in market rates of shares on stock exchange always based on market forces and are determined on the basis of so many factors. It is not within the power of appellant to manipulate the rates of shares on stock exchange. Merely because there is, a sharp increase in the rates of shares, no adverse inference could be drawn only on the basis of mere suspicion and in absence of any direct or cogent evidence. It cannot be inferred that the Appellant has manipulated the share price merely because it moved up sharply. The AO has to produce material/evidence to show that the assessee/ brokers did price rigging/manipulation of shares. The AO must also show that the relevant evidence produced by the assessee in the form of bills, contract notes, demat statement, bank account etc to prove the genuineness of the transactions are false, fictitious or bogus.*

*6. It is well settled that evidence collected from third parties cannot be used against an assessee unless this evidence is put before him and he is given an opportunity to controvert the evidence. In this case, the AO relies only on a report as the basis for the addition. The evidence based on which the report is prepared is not brought on record by the AO nor is it put before the assessee.*

*7. The appellant submits that neither the CIT (A) nor the A.O has failed to adduce any evidence that there was an accommodation of cash being converted into mainstream income. The A.O's order was purely based on suspicion and surmises and based the*

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...port made against a set of stock(sic. stock) brokers. The AO ... investigation nor has he gathered any evidence against the ...  
...pugned share sales are not genuine. On the contrary the Appellant has produced the evidence for holding the shares in physical form earlier and then dematerialized the shares later and sold through a recognized stock exchange and the sale proceeds were received through proper banking(sic. banking) channels. Such chain of transactions cannot be held as "Bogus" or "sham" merely on suspicion or surmises by the AO.

8. The appellant submits that the recording of the statement from any person which is used as evidence in any proceedings under this act is not a conclusive proof of evidence by itself. The appellant has the right to cross-examine the person who has given this statement. This injustice has been ignored by not allowing cross-examining the person whose statement has been relied before dismissing the appeal by the Hon. CIT (A).

9. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in charging interest u/s.234B, 234C and 234D of the Act.

10. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other. The appellant prays that on the above grounds, the Hon. Income-tax Appellate tribunal may kindly delete the additions and pass such as they deem fit."

3. Before we proceed further, it is pertinent to mention at this stage that assessee filed stay petition bearing SP No. 268/Chny/2019 arising out of appeal in ITA No. 2342/Chny/2019 for ay: 2014-15 with tribunal seeking stay of outstanding demand of income-tax and interest thereon, which stay petition was disposed off by Chennai-tribunal on 13.09.2019. When the stay petition filed by assessee came up for hearing before the Bench on 13.09.2019 , the learned counsel for assessee Mr. S. Mohan, FCA and Ms Lekha, FCA were present before the Bench and argued for grant of stay of outstanding demand of income-tax and interest thereon. After hearing both the parties and keeping in view facts and circumstances of the case as discussed in order dated 13.09.2019 passed by the Bench disposing off stay petition , the Bench was pleased to grant early hearing of the appeal in ITA No. 2342/Chny/2019 for ay: 2014-15 wherein date of early hearing was fixed by Bench before regular Bench on 09<sup>th</sup> October

of the appeal was announced by the Bench in open court in the presence of both the rival parties and the same was duly noted by both the rival parties. It was made clear in the order dated 13.09.2019 disposing off stay petition that no fresh notice of hearing will be issued to both the rival parties as the date of hearing was announced in open court in the presence of both the parties which date was duly noted by both the rival parties . The Revenue on its part although objected to grant of stay of outstanding demand of tax and interest but did not raise any objection to grant of early hearing of the appeal announced by the Bench for 09.10.2019. The Bench while disposing off stay petition was pleased to place a condition for grant of early hearing of appeal that assessee will not seek adjournment when appeal will come up for hearing before the Bench unless for genuine and bonafide reasons. When , now this assessee's appeal in ITA no. 2324/Chny/2019 for ay: 2014-15 came up for hearing before the Bench on 09.10.2019 , the assessee and/or its learned counsel did not appear before the Bench nor any application for adjournment is moved by assessee and/or its learned counsel before the Bench. The learned DR on its part has strenuously argued for confirming the orders passed by authorities below. Now, with this back ground when conditions imposed in the order passed by the Bench on 13.09.2019 disposing of stay petition are blatantly infringed/violated , the Bench decided to proceed to adjudicate this appeal filed by assessee in ITA no. 2342/Chny/2019 for ay: 2014-15 after hearing learned DR and in the absence of the assessee.

are that assessee is an individual and partner in partnership firms. The assessee filed her return of income for impugned ay: 2014-15 on 29.07.2014 declaring total income of Rs. 4,99,910/-. The assessee's case was selected by Revenue under CASS for framing scrutiny assessment u/s 143(3) read with Section 143(2) of the 1961 Act. The statutory notices u/s 143(2) as well notices u/s 142(1) of the 1961 Act were duly issued by AO and served on assessee. During the course of aforesaid scrutiny proceedings conducted by AO, it was observed by AO that assessee has claimed an exempt income to the tune of Rs. 39,77,886/- u/s.10(38) of the 1961 Act. The said exemption was claimed by assessee on sale of long term capital asset, being shares of M/s. Turbotech Engineering Ltd. . The AO observed that investigations were conducted by various regulatory and enforcement agencies of Government of India which indicated that said company namely M/s.Turbotech Engineering Ltd. was a company with little or no inherent value and its share prices were rigged and manipulated with an object of conversion of unaccounted income into apparently genuine income to claim exemption u/s.10(38) of 1961 Act. The assessee was show caused by AO as to why said income which was claimed as an exempt u/s 10(38) of the 1961 Act should not be treated as an unexplained income of the assessee. In its reply filed by assessee before the AO, the assessee submitted that income is exempt u/s 10(38) of the 1961 Act and therefore the same should not be brought to income-tax. The AO observed that assessee had purchased 15000 shares of M/s.Turbotech Engineering Ltd. from

Ltd. vide share bill dated 22.11.2011 for Rs. 2/- per share. The AO observed that assessee is residing in Chennai while M/s.Shivani Tradecom Pvt. Ltd. from whom shares were purchased by assessee is registered at Mumbai and said company M/s.Shivani Tradecom Pvt. Ltd. is having little or no means. As per AO, the assessee was not able to explain as to how she being housewife/partner in two firms having no business activity could contact a company located in Mumbai and how she got information that M/s Shivani Tradecom Private Limited had shares to sell. Thus, the AO observed that the assessee could not explain reasons for investing good money in said company. The AO further observed that payment for aforesaid share purchase of Turbotech Engineering Limited did not took place through banking channel and payment for purchase of shares was made in cash as reflected in cash receipt issued by M/s Shivani Tradecom Private Limited vide their letter dated 24.11.2011. The AO also observed that these are alleged cash purchases , there is no proof of assessee having bought these shares on that particular date. The AO also observed that share transfer form is witnessed by a person named Mr. T.B.Patel residing at Ahmedabad. The AO observed that assessee could not explain as to how assessee who is based in Chennai has dealt with Mumbai based company namely M/s.Shivani Tradecom Pvt. Ltd. for purchasing these shares and as to how it is witnessed by a person located in Ahmedabad. The AO observed that assessee could not prove that all three parties namely assessee, the seller and witness were present at the same place at the same time when share transfer deed stood executed by

ns. The AO further observed that assessee has not furnished travel details to indicate that all three persons were in-fact present at the same place at the same time. The AO observed that assessee has opened a DMAT account with ICICI securities on 26.10.2010 and another DMAT account with Integrated Enterprises India Limited on 24.09.2013. The AO observed that aforesaid shares which were allegedly purchased on 22.11.2011 were dematerialized with ICICI Securities on 12.03.2013 i.e. nearly one and half years from the purchase of shares. The AO observed that subsequently these shares were sold on 23.09.2013 and 22.11.2013 and assessee claimed exemption u/s 10(38) of the 1961 Act on long term capital gains arising on sale of said shares. The AO observed that the above sequence of events clearly reveals that assessee has manipulated entire sequence of events related to alleged purchase of aforesaid shares to introduce unaccounted income as an exempt income. The AO called for information u/s.133(6) of the Act from Bombay Stock Exchange (in short "BSE") regarding transactions carried out by assessee during the year under consideration. The BSE in response thereof submitted desired data's to the AO from which AO observed that assessee has not dealt with any share through BSE during entire year under consideration. The AO observed that assessee has only dealt with shares of M/s.Turbotech Engineering Ltd. during the year under consideration. The AO also observed that it is beyond human probabilities to accept that assessee out of all listed securities in BSE has chosen to trade in only share of company namely M/s Turbotech Engineering Ltd.

The AO further observed that BSE through a notice bearing number 20150101-24, dated 01.01.2015 has suspended under the directions of SEBI, as a surveillance measure, the trading in securities of M/s.Turbotech Engineering Ltd.(Scrip Code 504358) effective from 07.01.2015 until further notice. The AO brought on record key financial parameters of M/s.Turbotech Engineering Ltd. for 2011-12 to 2015-16 in its assessment order, which are re-produced hereunder:

"4. The Key Financials of M/s Turbotech Engineering Limited for the 4 years are as under:

	Mar'16	Mar'15	Mar'14	Mar'13	Mar'12
Net Sales/Income from operations	-	-	-	-	-
Other Operating Income	-	-	0.00	-	-
Total Income From Operations	-	-	0.00	-	-
<b>EXPENDITURE</b>					
Consumption of Raw Materials	-	-	-	-	-
Purchase of Traded Goods	-	-	-	-	-
Increase/Decrease in Stocks	-	-	-	-	-
Power & Fuel	-	-	-	-	-
Employees Cost	-	0.04	0.01	0.02	0.02
Depreciation	-	-	0.00	0.00	0.00
Excise Duty	-	-	-	-	-
Admin. And Selling Expenses	-	-	-	-	-
R & D Expenses	-	-	-	-	-
Provisions And Contingencies	-	-	-	-	-
Exp. Capitalised	-	-	-	-	-
Other Expenses	0.09	0.09	0.03	0.02	0.02
P/L Before Other Inc. , Int., Excpt. Items & Tax	-0.09	-0.13	-0.04	-0.03	-0.03
Other Income	-	-	-	-	-
P/L Before Int., Excpt. Items & Tax	-0.09	-0.13	-0.04	-0.03	-0.03
Interest	-	-	-	-	-
P/L Before Exceptional Items & tax	-0.09	-0.13	-0.04	-0.03	-0.03
Exceptional items	-	-	-	-	-
P/L Before tax	-0.09	-0.13	-0.04	-0.03	-0.03
Tax	-	-	-	-	-
P/L after tax from ordinary activities	-0.09	-0.13	-0.04	-0.03	-0.03
Prior year adjustments	-	-	-	-	-
Extra ordinary items	-	-	-	-	-
Net profit/(Loss) for the period	-0.09	-0.13	-0.04	-0.03	-0.03

The AO also brought on record movement of price of the share of M/s.Turbotech Engineering Ltd. on BSE for last one year which has varied from Rs. 19.65 to Rs. 518/- during the financial year, which as per AO clearly defy economic rationale as financials of the said company Turbotech Engineering Limited reveals no revenue earned by company for

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changed during last four years and these reveals a pattern in the manipulation of the share price of the said company namely M/s Turbotech Engineering Limited , which is re-produced hereunder:

"4.1 The movement of the price of the company on BSE is also detailed below, that clearly reveals a pattern in the manipulation of the share price of the company:

Turbotech Engg BSE: 504358 | NSE: | ISIN: INE764M01018

Historic data for the period: Apr-2013 to Mar-2014 on BSE <sup>Change</sup>  
Period High: 518.00    Period Low: 19.65    Change in market-cap: -94.91%

<b>Date</b>	<b>Open</b>	<b>High</b>	<b>Low</b>	<b>Close</b>
Mar 2014	28.80	28.80	19.65	19.65
Feb 2014	41.65	41.65	29.35	29.35
Jan 2014	65.55	65.55	42.45	42.45
Dec 2013	99.45	99.45	66.85	66.85
Nov 2013	148.25	148.25	101.45	101.45
Oct 2013	190.00	201.00	151.25	151.25
Sep 2013	145.10	190.60	145.10	190.25
Aug 2013	299.95	304.00	142.50	148.05
July 2013	491.30	512.00	282.90	290.65
June 2013	465.00	518.00	403.40	468.00
May 2013	483.80	498.00	427.30	453.90
Apr 2013	385.80	509.00	385.80	465.10

The AO observed that said company namely M/s Turbotech Engineering Ltd. was not having any income/revenue during the year under consideration and infact for last four years there was no revenue/income earned by said company namely M/s Turbotech Engineering Ltd. and there is a huge variation in price traded of share of M/s Turbotech Engineering Limited which varied from Rs. 19.65 to Rs. 518/- per share during financial year itself which is not supported by financials of the said company and there is no economic rationale or justification for such price movement in share prices of Turbotech Engineers Limited in last one year ranging from Rs. 19.65 to Rs. 518/- per share. Thus, as per AO there is no justification for such variation in share price of said company namely M/s.Turbotech Engineering Ltd. from Rs. 19.65 to Rs. 518 per share

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eration, while for last four years the finances of the said company had remain same wherein there is no revenue/income reported by said company M/s.Turbotech Engineering Ltd. neither there has been investments made by said company to justify such share price variation from Rs. 19.65 to Rs. 518/- per share. The AO further observed that only reason for such a huge variation in share price from Rs. 19.65 to Rs. 518/- per share during the year is that said company namely Turbotech Engineers Limited and a group of brokers, chartered accountants and entry operators have operated in unison to manipulate the share price and the assessee has introduced her own unaccounted income and has shown it as legitimate income. The AO observed that the assessee did not invested in shares before or after her trading in Turbotech Engineering Limited. It was further observed by AO that information was called from BSE which revealed that during the financial year 2013-14 , the Kolkata based companies having little or no worth called jamakharchi companies bought the entire shares of M/s Turbotech Engineering Limited. The AO observed that these Kolkatta based companies have acted in concert with entry operators and share brokers to rig share prices of M/s Turbotech Engineering Limited as given in the order of the SEBI, referred above. . The AO observed that assessee is also part of the same transactions and claimed bogus long term capital gain on her own unaccounted money. The AO relied upon decision of Hon'ble Supreme Court in the case of CIT v. Durga Prasad More(1971) 82 ITR 540(SC) and in the case of Sumati Dayal v. CIT(1995) 214 ITR

decision that long term capital gain declared by assessee is bogus and it is the unaccounted money of the assessee which is routed through investment in this company and has now been shown as legitimate by claiming the same as an exempt income. The AO also relied upon decision of Hon'ble Guwahati High Court in the case of CIT v. Smt. Jasvinder Kaur [2013] 37 taxmann.com 286 (Guwahati) to disallow claim of exemption filed by assessee u/s 10(38) of the 1961 Act. The AO further relied on decision of Mumbai-tribunal in the case of Usha Chandresh Shah v. ITO in ITA No.6858/Mum/2011 , dated 26.09.2014 and the AO confirmed the additions to the income of the assessee by disallowing exemption of Rs. 39,77,886/- claimed by assessee u/s 10(38) of the 1961 Act, vide assessment order dated 31.12.2016 passed by AO u/s 143(3) of the 1961 Act.

5. The assessee being aggrieved by an assessment order dated 31.12.2016 passed by AO u/s 143(3) of the 1961 Act filed first appeal with Ld.CIT(A) who was pleased to dismiss appeal filed by assessee, vide appellate order dated 28.06.2019. During appellate proceedings before learned CIT(A) , the assessee filed written submissions and main bone of contentions by the assessee was that additions were made by AO which were merely based on surmises, conjectures and assumptions without any cogent evidences. It was claimed by assessee that she has furnished all documentary evidences to support that transactions for purchase and sale of shares was genuine . It was also claimed by assessee that AO did not

tries to disallow claim of exemption filed by assessee u/s 10(38) of the 1961 Act. It was also claimed that principles of natural justice are not adhered to by AO as the statements and documents obtained at the back of the assessee were not provided to assessee for rebuttal and for cross examination of persons who have given incriminating statements against assessee . The assessee also relied upon several judicial precedents to support her contentions before learned CIT(A) and prayed for allowing exemption claimed by assessee u/s 10(38) of the 1961 Act. The learned CIT(A) was pleased to dismiss appeal filed by assessee by holding that principles of natural justice has been duly adhered to by AO as show cause notice was duly issued by the AO to the assessee before disallowing exemption claimed u/s 10(38) of the 1961 Act and also learned CIT(A) observed that assessee has not submitted evidences in support of contentions and merely written submissions are filed, the purchases of shares are allegedly made in cash and not through banking channels and hence learned CIT(A) refused to interfere with assessment order passed by the AO and the appeal filed by assessee stood dismissed by learned CIT(A), vide appellate order dated 28.06.2019.

6. Being aggrieved by an appellate order dated 28.06.2019 passed by learned CIT(A), the assessee has come in appeal before Tribunal and none appeared on behalf of the assessee when this appeal was called for hearing on 09.10.2019 nor any application for adjournment was filed. We

entire background in para 3 of this order as to grant of early hearing in this case at the behest of assessee and the same is not repeated. The Ld.DR, on the other hand, supported the orders of the authorities below. It was submitted by Ld.DR that assessee has no case on merits and it is only after detailed investigations conducted by authorities below, the claim of exemption filed by assessee u/s 10(38) of the 1961 Act was disallowed by the authorities below by holding the same to be bogus claim filed by assessee for seeking exemption u/s 10(38) of the 1961 Act and it is infact assessee's own unaccounted money which is brought back as legitimate money through circuitous route of purchase and sale of shares which were all sham transaction to convert black money into legitimate money and then claiming exemption u/s 10(38) of the 1961 Act so that no liability to tax can be fastened on the assessee. The learned DR submitted that assessee is not regularly dealing in shares and there is around 2636% variation in share price of Turbotech Engineering Limited in which the assessee had claimed to have invested, within one year as the share price varied from Rs. 19.65 to Rs. 518 within financial year 2013-14. The assessee has stated in statement of facts that 7900 shares were sold for Rs. 40,22,940/- which translates into price of Rs. 509 per share. The Ld.DR prayed for upholding the appellate order passed by learned CIT(A).

7. We have considered contentions of learned DR and carefully perused the material on record including orders of authorities below. Before we

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ant to highlight conduct of the assessee. The assessee filed stay petition with tribunal praying for stay of outstanding demand of income-tax and interest thereon. The learned counsel for assessee namely Mr. S.Mohan, FCA and Ms Lekha, FCA appeared when stay petition was heard by tribunal . Based on totality of circumstances of the case and after hearing both the parties, the tribunal was pleased to grant early hearing of the appeal with the condition that the assessee will not seek adjournment unless for genuine and bonafide reasons. The date of hearing was announced in open court in the presence of both the parties which date was noted by both the parties. It was made clear that no separate notice will be sent by tribunal. The details are culled out in para 3 of this order. That is how, this appeal came to be heard on 09.10.2019 and when this appeal was called for hearing none appeared for assessee nor any adjournment letter was filed, which is reflective of the conduct of the assessee which is in blatant violation of direction of the tribunal disposing of stay petition .

7.2 We have observed that assessee is individual and she is partner in partnership firms. The assessee filed its return of income for impugned ay: 2014-15 on 29.07.2014 declaring total income of Rs. 4,99,910/-. The assessee's case was selected by Revenue for framing scrutiny assessment u/s.143(3) r.w.s.143(2) of the 1961 Act. The AO during the course of assessment observed that assessee has claimed exemption to the tune of Rs. 39,77,886/- u/s.10(38) of the 1961 Act being long term capital gains

Turbotech Engineering Ltd. . We have observed that assessee has claimed to have allegedly purchased 15000 shares of M/s.Turbotech Engineering Ltd. vide share bill dated 22.11.2011 for Rs. 2 per share from one M/s.Shivani Tradecom Pvt. Ltd. which entity is based in Mumbai. The payment for acquisition of said shares were claimed by assessee to have been made in cash as is emerging from receipt dated 24.11.2011 issued by said Shivani Tradecom Private Limited. The assessee has got these shares of M/s Turbotech Engineering Limited Dematted into her DMAT Account on 12.03.2013 which is almost one and half year after purchase of the said shares by assessee, which is against the normal human behavior more so when payments for these shares were claimed to be made in cash in an off market transaction which was not routed through stock exchanges . Under normal circumstances, the person who buys shares will get the shares transferred and Dematted to his/her DMAT account immediately on purchase of shares. These shares were then sold by assessee on 23.09.2013 and 22.11.2013 which is within 6-8 months of being transferred to assessee's DMAT account . The assessee has claimed that during previous year relevant to impugned ay: 2014-15 , the assessee has sold 7900 shares of Turbotech Engineering Limited for Rs. 40,22,940/- , translating into long term capital gains of Rs. 39,77,886/- , which long term capital gains were claimed as an exempt u/s 10(38) of the 1961 Act . Thus, the share which were bought for merely Rs. 15800/- ( Rs. 2 per shareX 7900 shares ) in November 2011 are sold during previous year 2013-14 relevant to impugned ay: 2014-15

013 i.e. within a short span of 2 years at a huge profits translating into astronomical return/yield of more than 12500% per annum at a price of Rs. 509 per share. It is also observed that share price of said company Turbotech Engineering Ltd. fluctuated from Rs. 19.65 to Rs. 518 per share within the financial year 2013-14 itself . The assessee has sold share at a price of more than Rs. 500 per share during previous year 2013-14 relevant to ay: 2014-15, while purchase of said shares were made just two years back at Rs. 2 per share. It is pertinent to mention that assessee has no experience in dealing in share market and these transactions in shares of Turbotech Engineering Ltd. are solitary transactions undertaken by assessee and no transactions in shares were ever undertaken by assessee prior to and after the aforesaid alleged transactions in shares of Turbotech Engineering Ltd.. Investigations were conducted by various government and regulatory and enforcement authorities/agencies of Government of India which indicated that said company M/s Turbotech Engineering Ltd. is a company with little or no inherent value and its shares prices were rigged and manipulated with an intention of conversion of unaccounted money into apparently genuine income to claim exemption u/s 10(38) of the 1961 Act. We have also observed that the AO independently carried out enquires by issuing notices u/s 133(6) of the 1961 Act to Bombay Stock Exchange. The BSE replied that assessee has not dealt in any other shares except dealing in shares of Turbotech Engineering Ltd. . The assessee is not a regular buyer and seller in shares and except for this alleged

Engineering Ltd. , the assessee has not dealt within any other shares even prior to it or even post to these alleged transactions in Turbotech Engineering Ltd. . The assessee could not rebut this assertion of the authorities below. These are the only transactions in shares made by assessee in which she has claimed to have earned an exempt income of Rs. 39,77,886/- on a meager investment of Rs. 15,800/- in a short period of 2 years giving astronomical return of more than 12500% per annum , in dealing in shares of M/s Turbotech Engineering Ltd. . We have also observed that SEBI has also debarred/suspended this company namely M/s Turbotech Engineering Ltd. effective from 07.01.2015 until further orders from trading/dealings of its shares in stock exchanges. It has also emerged from inquiries conducted by AO that certain Kolkatta based companies having little or no means have bought entire shares of M/s Turbotech Engineering Ltd. and these companies acted in concert with entry operators and share brokers to rig/manipulate share price of Turbotech Engineering Ltd. with an intent to defraud Revenue. The AO has deeply analyzed Balance Sheet and Profit and Loss account of this company M/s Turbotech Engineering Ltd. for five years from year ended 31.03.2012 till year ended 31.03.2016 and it revealed that this company does not have any revenue/income and expenses in all these years . Its profits were almost nil or negligible during all these years. Its key financial years are extracted in assessment order passed by AO which we have also reproduced in preceding para's of this order (page 8-9). We have also carefully gone through the financial of this

tech Engineering Limited and we are of the considered view that this company is a shell company having no income/revenues and expenses with negligible/nil profits(losses) for last five years since 2012-2016 . It is unbelievable at the touch stone of preponderance of human probabilities that company having no revenue/income or expenses in its financial statements for continuous period of five years will have price variation from Rs. 19.65 to Rs. 518 per share during the previous year 2013-14 relevant to impugned ay: 2014-15. The Turbotech Engineering Ltd. is a listed company and all its financials are available in public domain and assessee cannot complain that she was not confronted with SEBI order, Financial Statements and Prices prevailing on stock exchanges. The AO has elaborately brought this in its assessment orders and it is not the case of the assessee even before learned CIT(A) that these financial datas, share price of M/s Turbotech Engineering Limited on stock exchanges, SEBI order / BSE order etc were perverse finding. Even before learned CIT(A), no evidences were filed by assessee to rebut contentions/findings of the AO and merely it is stated that principles of natural justices was infringed, cross examination was not allowed, statements were not provided and additions were made on assumptions, surmises and conjectures. These are all bogies raised by assessee to protract litigation while fact of the matter is that the assessee has not come out clean on this claim of exemption u/s 10(38) which is a bogus claim raised by assessee. The assessee has not brought any cogent evidences even before learned CIT(A) to prove that these

Turbotech Engineering Ltd. were not bogus/sham transactions before the AO and rather it was a genuine transactions. The power of learned CIT(A) are co-terminus with powers of the AO and the assessee ought to have furnished necessary evidences and explanations before learned CIT(A) to prove that the transaction for purchase and sale of the shares were genuine .The assessee is claiming exemption by way of long term capital gains claimed by it to be earned on sale and purchase of Turbotech Engineering Ltd. by invoking provisions of Section 10(38) of the 1961 Act and onus is on the assessee to prove that these gains are genuine and assessee is entitled for exemption. The AO has not only relied upon investigations carried by other government agencies but has also conducted independent inquiries with BSE which also revealed that the prices of the shares of Turbotech Engineering Ltd. were rigged / manipulated with an intent to defraud revenue. The financials of said company M/s Turbotech Engineering Limited wherein there is no turnover/income earned and no expenses incurred by said company for last five years also does not support price variation of Rs. 19.65 per share to Rs. 518 per share within previous year 2013-14 relevant to ay: 2014-15, which clearly points to manipulation and rigging in share price of Turbotech Engineering Ltd. with malafide intention to defraud revenue. It is unbelievable that assessee having never dealt in share market will earn a yield / return of 12500% per annum within 2 years on her first dealing in stock market which also happened to be last dealing undertaken by assessee in stock market. The claim of the

shares was made in cash in November 2011 and that the DMAT of the shares of said company Turbotech Engineering Ltd. in assessee's DMAT account was credited after around one and half year in March 2013 just 6-8 months prior to sale clearly point to one and one irresistible conclusion that long term capital gains earned by assessee was bogus. This conclusion remains unshaken even if we eschew investigation conducted by other government agencies. Thus, there is no need to forward statements recorded or material collected by other government agencies in this case as even without these material collected by other government agencies, liability to tax can be fastened against assessee and hence there is no need to allow cross examination as liability to tax can be fastened on assessee in this case without relying on material collected by other government agencies. In this case, the AO himself has conducted inquiries which clearly points to one and only irresistible conclusion that these gains earned by assessee were bogus and sham transactions to convert her unaccounted money into legitimate money through circuitous route of sale and purchase of listed shares of M/s Turbotech Engineering Limited which is a penny stock and the assessee is trying to take advantage of exemption provision as enshrined u/s 10(38) of the 1961 Act. The onus was on assessee to prove that long term capital gains claimed by her as an exempt income u/s 10(38) of the 1961 Act were genuine gains and assessee was entitled for claiming exemption u/s 10(38) of the 1961 Act, keeping in view decision of Constitution Bench of Hon'ble Supreme Court in the case of Commissioner of Customs( Import),

Company & Ors. in Civil Appeal No. 3327 of 2007, judgment dated 30.07.2018 Keeping in view entire factual matrix of the case, we are of the considered view that long term capital gains earned by assessee to the tune of Rs. 39,77,886/- on purchase and sale of shares of M/s Turbotech Engineering Ltd. are bogus/sham gains and authorities below have rightly denied exemption claimed by assessee u/s 10(38) of the 1961 Act. We have also observed that Hon'ble Delhi High Court in the case of Suman Poddar v. ITO in ITA no. 841/2019, judgment dated 17.09.2019, under similar circumstances of penny stock case, has disallowed the exemption claimed by tax-payer u/s 10(38) of the 1961 Act. The decision of Hon'ble Delhi High Court in the case of Suman Poddar is reproduced hereunder:-

*"9. We have gone through the rationale given by both the parties pertaining to their arguments. In this case, it is an uncontroverted fact that the assessee has failed to prove the genuineness of the transaction. The AO has worked out the glaring facts, which cannot be ignored and which are clear indicative of the non-genuine nature of the transactions. The assessee could not satisfactorily explain how the investments in the absence of any evidence as to the financials, growth and operations of the company could earn profit of 4910% over a short period of 5 months from the date of allotment of shares (21.02.2013-date of allotment and 18.07.2013 to 12.09.2013 -date of sale) of Cressanda Solutions Ltd. against the purchase of 15,000 shares of Smarchamps IT and Infra Ltd. on 22.09.2011. Most importantly, in spite of earning so much of profit, the assessee has never embarked upon any transactions for investments with the broker or in any other dealing of shares. The revenue from operations of Cressanda Solutions Ltd. for the year March 2012 was Rs.00 and, for the year March 2013 is Rs. 0.99 Cr. The financials of the company proving that the entity is a penny stock company are as under:*

7. Thus, Tribunal has in depth analyzed balance sheets and profit and loss accounts of Cressanda Solutions Ltd. which shows that astronomical increase in share price of said company which led to returns of 491% for Appellant, was completely unjustified. Pertinently, EPS of said company was Rs. 0.01/- as in March 2016, it was Rs. - 0.01/- as in March 2015 and -0.48/- as in March 2014. Similarly, other financials parameters of said company cannot justify price in excess of Rs. 500/- at which Appellant claims to have sold said shares to obtain Long Terms Capital Gains. It is not explained as to why anyone would purchase said shares at such high price. Tribunal goes on to observe in impugned order as follows:

Balance Sheet of Cressanda Solution ---- in Rs. Cr. -----

	Mar 16	Mar 15	Mar 14	Mar 13	Mar 12
	12 mths	12 mths	12 mths	12 mths	12 mths
<b>EQUITIES AND LIABILITIES</b>					
<b>SHAREHOLDER FUNDS</b>					
Equity Share Capital	30.36	30.36	30.36	30.36	9.00
Total Share Capital	30.36	30.36	30.36	30.36	9.00
Reserves and Surplus	-	-0.65	-0.82	0.63	- 8.89
Total Reserves and Surplus	-	-0.65	-0.82	0.63	- 8.89
Total Shareholders Funds	29.29	29.71	29.54	30.99	0.11
<b>NON-CURRENT LIABILITIES</b>					
Long Term Borrowings	0.00	0.00	0.00	0.00	1.48

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	0.00	0.00	0.00	0.00	0.15
<i>Long Term Provisions</i>	0.00	0.00	0.00	0.00	0.05
<i>Total Non-Current Liabilities</i>	0.00	0.00	0.00	0.00	1.68
<b>CURRENT LIABILITIES</b>					
<i>Trade Payables</i>	0.00	0.00	23.82	22.35	0.00
<i>Other Current Liabilities</i>	0.01	0.10	0.32	0.56	0.00
<i>Short Term Provisions</i>	0.00	0.00	0.00	0.08	0.00
<i>Total Current Liabilities</i>	0.01	0.10	24.14	22.99	0.00
<i>Total Capital and Liabilities</i>	29.30	29.81	53.68	53.68	1.79
<b>ASSETS</b>					
<b>NON-CURRENT ASSETS</b>					
<i>Tangible Assets</i>	0.03	0.04	0.05	0.06	0.00
<i>Fixed Assets</i>	0.03	0.04	0.05	0.06	0.00
<i>Non-Current Investments</i>	0.00	0.00	0.00	1.09	1.09
<i>Long Term Loans and Advances</i>	18.96	18.87	24.11	25.11	0.00
<i>Other Non-Current Assets</i>	10.21	10.60	0.15	0.77	0.65
<i>Total Non-Current Assets</i>	29.20	29.50	24.31	27.03	1.74
<b>Current Assets</b>					
<i>Inventories</i>	0.00	0.00	0.00	0.70	0.00
<i>Trade</i>	0.00	0.00	29.13	26.01	0.00

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Cash and Cash Equivalents	0.10	0.23	0.18	0.18	0.04	
Short Term Loans and Advances	0.00	0.00	0.00	0.00	0.01	
Other Current Assets	0.00	0.08	0.05	0.05	0.00	
Total Current Asses	0.10	0.31	29.37	26.95	0.05	
Total Assets	29.30	29.81	53.68	53.98	1.79	

*Profit & Loss account of Cressanda Solution ---- in Rs. Cr. -----*

	Mar 16	Mar 15	Mar 14	Mar 13	Mar 12
	12 mths	12 mths	12 mths	12 mths	12 mths
<b>INCOME</b>					
Revenue From Operations [Gross]	0.00	0.00	6.44	0.99	0.00
Revenue From Operations [Net]	0.00	0.00	6.44	0.99	0.00
Total Operating Revenues	0.00	0.00	6.44	0.99	0.00
Other Income	0.03	0.17	0.14	0.07	0.02
Total Revenue	0.03	0.17	6.58	1.06	0.02
<b>EXPENSES</b>					
Operating and Direct Expenses	0.00	0.00	5.14	0.08	0.00
Changes in Inventories of FG, WIP and Stock in Trade	0.00	0.00	0.70	0.00	0.00

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	0.05	0.04	0.03	0.06	0.00
Benefit Expenses					
Depreciation and Amortization Expenses	0.01	0.01	0.01	0.01	0.00
Other Expenses	0.14	0.28	2.14	0.41	0.04
Total Expenses	0.20	0.32	8.02	0.57	0.04
	Mar 16	Mar 15	Mar 14	Mar 13	Mar 12
	12 mths	12 mths	12 mths	12 mths	12 mths
Profit/Loss before Exceptional, Extra Ordinary Items and Tax	0.17	-0.15	-1.44	0.49	-0.02
Profit/Loss Before Tax	0.17	-0.15	-1.44	2.49	-0.02
Tax Expenses-continued operations Current Tax	0.00	0.00	0.00	0.09	0.00
Tax for earlier years	0.25	0.00	0.00	0.00	0.00
Total Tax Expenses	0.25	0.00	0.00	0.00	0.00
Profit/Loss After Tax and Before Extra Ordinary Items	0.42	-0.15	-1.44	0.40	-0.02
Profit/Loss From Continuing Operations	0.42	-0.15	-1.44	0.40	-0.02
Profit/Loss for the Period	0.42	-0.15	-1.44	0.40	-0.02

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	Mar 16	Mar 15	Mar 14	Mar 13	Mar 12
	12 mths	12 mths	12 mths	12 mths	12 mths
<b>OTHER ADDITIONAL INFORMATION EARNINGS PER SHARE</b>					
<i>Basic EPS (Rs.)</i>	0.01	-0.01	-0.48	0.13	-0.02
<i>Diluted EPS (Rs.)</i>	0.01	-0.01	-0.48	0.13	-0.02

10. With such financials and affairs of business, purchase of share of face value Rs. 10/- at rate of Rs.491/- by any person and assessee's contention that such transaction is genuine and credible and arguing to accept such contention would only make decision of judicial authorities fallacy.

11. evidences put forth by Revenue regarding entry operation fairly leads to conclusion that assessee is one of beneficiaries of accommodation entry receipts in form of longterm capital gains. assessee has failed to prove that share transactions are genuine and could not furnish evidences regarding sale of shares except copies of Page 7 of 10 contract notes, cheques received against overwhelming evidences collected by Revenue regarding operation of entire affairs of assessee. This cannot be case of intelligent investment or simple and straight case of tax planning to gain benefit of longterm capital gains. earnings @ 491% over period of 5 months is beyond human probability and defies business logic of any business enterprise dealing with share transactions. net worth of company is not known to assessee. Even brokers who coordinated transactions were also unknown to assessee. All these facts give credence to unreliability of entire transaction of shares giving rise to such capital gains. ratio laid down by Hon'ble Supreme Court in case of Sumati Dayal vs. CIT, 214 ITR 801 is squarely applicable to case. Though assessee has received amounts by way of account payee cheques, transactions cannot be treated as genuine in presence of overwhelming evidences put forward by Revenue. fact that in spite

profits, assessee never ventured to involve transaction with broker cannot be mere coincidence of lack of interest. Reliance is placed on judgment in case of *Nipun Builders and Developers Pvt. Ltd. (supra)*, where it was held that it is duty of Tribunal to scratch surface and probe documentary evidence in depth, in light of conduct of assessee and other surrounding circumstances in order to see whether assessee is liable to provisions of section 68 or not. In case of *NR Portfolio*, it was held that genuineness and credibility are deeper and obtrusive. Similarly, bank statements provided by assessee to prove genuineness of transactions cannot be considered in view of judgment of Hon'ble court in case of *Pratham Telecom India Pvt. Ltd.*, wherein, it was stated that bank statement is not sufficient enough to discharge burden. Regarding failure to accord opportunity of cross examination, we rely on judgment of *Prem Castings Pvt. Ltd.* Similarly, Tribunal in case of *Udit Kalra*, ITA No. 6717/Del/2017 for assessment year 2014-15 has categorically held that when there was specific confirmation with Revenue that assessee has indulged in Page 8 of 10 non-genuine and bogus capital gains obtained from transactions of purchase and sale of shares, it can be good reason to treat transactions as bogus. differences of case of *Udit kalra* attempted by Ld. AR does not add any credence to justify transactions. Investigation Wing has also conducted enquiries which proved that assessee is also one of beneficiaries of transactions entered by Companies through multiple layering of transactions and entries provided. Even BSE listed this company as being used for generating bogus LTCG. On facts of case and judicial pronouncements will give rise to only conclusion that entire activities of assessee is colourable device to obtain bogus capital gains. Hon'ble High Court of Delhi in case of *Udit Kalra*, ITA No. 220/2009 held that company had meager resources and astronomical growth of value of company's shares only excited suspicion of Revenue and hence, treated receipts of sale of shares to be bogus. Hon 'ble High Court has also dealt with arguments of assessee that he was denied right of cross examination of individuals whose statements led to enquiry. Id. AR argument that no question of law has been framed in case of *Udit Kalra* also does not make any tangible difference to decision of this case. Since additions have been confirmed based on enquiries by Revenue, taking into consideration ratio laid down by various High Courts and Hon'ble Supreme Court, our decision is equally applicable to receipts obtained from all three entities.

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Also placed on orders of various Courts and  
law. *MK. Rajeshwari vs. ITO in ITA  
No.17231Bangl2018, order dated 12.10.2018. Abhimanyu Soin vs.  
ACIT in ITA No. 9511Chdl2016, order dated 18.04.2018. Sanjay  
Bimalchand Jain vs. ITO 89 taxmann.com 196. Dinesh Kumar  
Khandelwal, HUF vs. ITO in ITA No. 58 & 591Nagl2015, order dated  
24.08.2016. Ratnakar M Pujari vs. ITO in IT No. 9951Muml2012,  
order dated 03.08.2016. ITA 841/2019 Page 9 of 10 Disha N.  
Lalwani vs. ITO in ITA No. 6398 I Mum I 2012, order dated  
22.03.2017. ITO vs. Shamim. M Bharwoni [20 16] 69 taxmann.com  
65. Usha Chandresh Shah Vs ITO in ITA No. 6858 I Mum I 2011,  
order dated 26.09.2014. CIT vs. Smt. Jasvinder Kaur 357 ITR 638.*

*12. facts as well as rationale given by Hon 'ble High Court are  
squarely applicable to case before us. Hence, keeping in view overall  
facts and circumstances of case that profits earned by assessee are  
part of major scheme of accommodation entries and keeping in view  
ratio of judgments quoted above, we, hereby decline to interfere in  
order of Ld. CIT(A). (emphasis supplied)*

*8. From above extract, it would be seen that Cressanda Solutions  
Ltd. was in fact identified by Bombay Stock Exchange as penny  
stock being used for obtaining bogus Long Term Capital Gain. NO  
evidence of actual sale except contract notes issued by share broker  
were produced by assessee. No question of law, therefore arises in  
present case and consistent finding of fact returned against  
Appellant are based on evidence on record.*

*9. In aforesaid facts and circumstances, we do not find any merit in  
present appeal and same is dismissed."*

Thus, based on our above reasoning and discussions and also relying on  
aforesaid decision of Hon'ble Delhi High Court where the facts similar of  
penny stock case , decision of Hon'ble Supreme Court in the case of  
Sumati Dayal(supra) and decision of Hon'ble Supreme Court in the case of  
Durga Prasad More(supra), we hereby sustained the orders of the  
authorities below and dismiss the appeal filed by assessee in ITA

2014-15. The assessee fails in this appeal. We

order accordingly,

In the result, the appeal filed by the assessee in ITA  
No.2342/Chny/2019 for ay: 2014-15 is dismissed.

Order pronounced on the 02<sup>nd</sup> January, 2020 in Chennai.

Sd/-  
(जॉर्जमथन)

**(GEORGE MATHAN)**

न्यायक सदस्य/**JUDICIAL MEMBER**

Sd/-  
(रामत कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 02<sup>nd</sup> January, 2020

TLN

आदेश का प्रतिलिपि अपेक्षित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. वित्तीय प्रबंध/DR
6. गार्डफाइल/GF