

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.1593/Del/2019
Assessment Year: 2015-16

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| Shri Sanjay Kaul, C/o- Deepak Kapoor, Advocate, 59, Nehru Apartments, Outyer Ring Road, Kalkaji, New Delhi | Vs. | ITO, Ward-24(4), New Delhi |
| PAN :AAAPK2580P | | |
| (Appellant) | | (Respondent) |

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| Appellant by | Shri Deepak Kapoor, Adv. |
| Respondent by | Shri Shailesh Kumar, Sr.DR |

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| Date of hearing | 16.10.2019 |
| Date of pronouncement | 07.01.2020 |

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 14/01/2019 passed by the Id. Commissioner of Income-tax (Appeals)-8, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2015-16, raising following grounds:

A. Addition of Rs.1,22,76,352/-

BECAUSE the CIT(A)-08, New Delhi, has grossly erred both in law and on facts in denying the claim of set off of Short Term Capital Loss of Rs.1,22,76,352/- on sale of shares sold on recognized stock exchange and bringing to tax as unexplained credit under Section 68 of the Act.

2. BECAUSE the Ld. CIT (A) has erred in concluding without any basis that appellant has introduced his unaccounted income in the form of Short Term Capital Loss by manipulating the penny stock. This conclusion is absolutely perverse in as much as on account of Short Term Capital Loss the capital of the appellant stands depleted/ reduced. The inference by the Income-tax Officer as well as CIT (A) is perverse and against the common accounting principles.

3. BECAUSE the Ld. CIT (A) has also erred both in law and on facts in making an addition of Rs. 1,22,76,352/- being capital loss incurred by the appellant on sale of shares listed on recognized stock exchange as unexplained credit under Section 68 of the Act read with Section 115BBE of the Act.

4. BECAUSE by sustaining the aforesaid addition and denying the set off of loss under Section 70, the Ld. CIT (A) has failed to appreciate that appellant was owner of equity shares of listed companies which the appellant held for number of months and the same were sold on recognized stock exchange after payment of Securities Transaction Tax (STT), resulting into a Short Term Capital Loss and therefore, the Short Term Capital Loss incurred by the appellant on transfer of Short Term Capital Asset was to be set off against the Long Term Capital Gain accruing to the appellant under Section 70 of the Act.

5. BECAUSE the Ld. CIT (A) has failed to appreciate the evidence tendered by the appellant to support the claim of set off under Section 70, hence the findings mechanically recorded on borrowed inference in disregard of evidence, based on irrelevant and extraneous considerations are misconceived and misplaced.

6. BECAUSE the Ld. CIT (A) has confirmed the above addition and denied the set off without confronting material/ investigation to the appellant and also providing cross examination of the parties on whose statement reliance has been placed in the Impugned order of assessment and therefore, the order, so made in disregard of principles of natural justice, is vitiated.

7. BECAUSE furthermore the Ld. CIT (A) has sustained the addition on mere speculation, generalized statements, theoretical assumptions, allegations and assertions, without there being any supporting evidence and is therefore, not in accordance with law.

8. BECAUSE the ld. CIT(A) has failed to appreciate that once the broker of the appellant viz. M/s Elite Wealth Advisors Ltd. had neither denied nor disputed the genuineness of the transactions, the conclusion arrived in the order is highly whimsical, arbitrary, illogical and wholly untenable.

9. BECAUSE the Ld. CIT (A) while sustaining the above addition has arbitrarily and mechanically rejected the explanation and evidence tendered by the appellant and made the additions and denied the set off by drawing subjective premeditated and preconceived inferences and therefore, the same is not sustainable.

10. BECAUSE various adverse findings and conclusions recorded by the Ld. CIT (A) are factually incorrect and contrary to record, legally misconceived and untenable.

B) Addition of Rs. 3,06,908/-.

1. BECAUSE on facts and in law and on grounds taken and basis adopted the addition of Rs. 3,06,908/- under Section 69C read with Section 115BBE of the Act as being unexplained expenditure is unjustified, illegal and unwarranted. The Ld. CIT (A) has simply confirmed the addition holding the same as consequential in nature without application of mind and without passing a reasoned order. The addition of Rs. 3,06,908/- therefore, on facts and in law is perverse, unjustified and illegal.

2. Briefly stated facts of the case are that the assessee filed return of income on 30/09/2015 declaring total income of Rs.3,12,59,350/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and served. The assessment under section 143(3) of the Act was completed on 27/12/2017. In the return of income filed, the assessee declared income under the "salary", "Income from house property", "income from business or profession", "income from capital gain" and "income from other sources". The assessee declared long-term capital gain of Rs.4,15,67,925/- on sale of unlisted shares. Against the long-term capital gain, the assessee set off "short term capital loss" on sale of shares of four companies, out of which short-term capital loss of Rs.1,22,76,352/- on sale of shares of following companies, was not allowed by the Assessing Officer holding the same as part of the accommodation entry business of providing "bogus long-

term/short-term capital loss through trading of shares of penny stocks:

| <i>Name of the Company</i> | <i>Date of purchase</i> | <i>Purchase Cost</i> | <i>Date of Sale</i> | <i>Sales Price</i> | <i>Short Capital Gain/Loss</i> |
|--|-------------------------|----------------------|---------------------|--------------------|--------------------------------|
| <i>Cressanda Solutions Ltd.</i> | <i>05.05.2014</i> | <i>3020080</i> | <i>March, 15</i> | <i>551600</i> | <i>(-)2468480/-</i> |
| <i>Kailash Auto Finance Ltd.</i> | <i>23.02.2014</i> | <i>4764424</i> | <i>February, 15</i> | <i>511619</i> | <i>(-)4252805/-</i> |
| <i>MKEL (Matra Kaushal Enterprises Ltd.)</i> | <i>25.03.2014</i> | <i>7715360</i> | <i>March, 15</i> | <i>2160293</i> | <i>(-)5555067/-</i> |

2.1 The Assessing Officer has referred extensively the report of the Deputy Director of Income Tax (Investigation), Unit - 2(3), Kolkata, wherein the general practice followed by the companies, brokers and operators for providing long-term capital gain to beneficiaries and provide long-term/short-term capital loss to the entities seeking such capital loss. The Assessing Officer has mentioned specific involvement of the assessee in the entire chain of generating bogus entries of long-term capital gain/loss. The Assessing Officer has given detailed history of the price fluctuation in the share prices of the companies under reference vis-à-vis their financial performance during the relevant period. The Assessing Officer has summarized his finding in para 4.8 of the assessment order, which are extracted as under for ready reference:

“4.8 From the above depiction, it is clear that the assessee has also followed the same modus operandi to set off huge LTCG earned by it during the year. The modus operandi adopted by the assessee, by trading in such scrips, is detailed as under:-

- i. M/s Kailash Auto Finance Limited*
- ii. M/s Cressanda Solutions Ltd*

iii. *M/s Katra Kaushal Enterprises Ltd*

- a) *The unconventional nature of transaction entered by the assessee in purchase and sale of the scrips of the so called paper companies: M /s Kailash Auto Finance Ltd., M/s Cressanda Solutions Ltd and M/s Matra Kaushal Enterprise Ltd., for the purpose of claiming STCL is nothing but an accommodation entry to set off huge LTCG earned by it during the year. This is corroborated from the following facts and evidences discussed as under.*
- b) *The above companies are obscure companies with no business activity and assets as evident from the balance sheet and financial statements of the companies and is a penny stock companies. The shares in which the assessee has claimed to have made a deal, are identified as Penny Shares by the investigation wing of the department because rates of these shares are not based on business results of the companies but same are fluctuated by insider's trading from zero value (negligible price) to very high price and vice versa without any reason or basis to accommodate or generate bogus capital gain or loss.*
- c) *The assessee has purchased shares of these companies at around Rs.38/- to Rs. 55/- per share. Thereafter, by rigging, within a short span of time in 12 months, was sold at nearly Rs. 4.20 to Rs. 9/- per share. The dip in prices of these scrip are not supported by the fundamentals of the said companies.*
- d) *Assessee has purchased shares of such companies/scrip which is devoid of any basic fundamentals. One of the companies i.e M/s Kailash Auto Finance Ltd., was suspended by the BSE for trading previously as well as afterward. A regular and genuine investor would hardly know that such a company even listed on BSE. From the Audited financials filed by the companies with BSE, it is a matter of fact that these Listed companies does not have any significant/real business as seen from its last many P&L accounts and do not have any significant fixed assets or plant and machinery (most of assets are either investment or loans.)*
- e) *The price movement of Scrip is unrealistic and typically Bell shaped, that means huge rise over a short span, staying at peak over a short span of time and then sharp decline in price of share and not matching with overall movement of share market in general and movement of other scrips in same line of business.*
- f) *Price movement of scrip upward and down word done mainly through thin volume and most entities involved in the same are related in some way and are mainly operated by some entry operator and are bogus.*
- g) *There is hardly any history of dividend pay-outs.*
- h) *The Trading in the scrip of M/s Kailash Auto Finance Ltd., was suspended by the BSE pursuant to SEBI's directions vide notice no.20160804-24 dated 04.08.2016 and currently under suspension. In fact, as per the information*

- available on the BSE website, it is quite evident that the trading in M/s Kailash Auto Finance Ltd is still suspended.
- i) From the Investigation Report On Manipulation of Penny Stocks and the statements of various Scrip operators, Managers and Brokers, it is self-evident that the scrip price movement was mainly on account of manipulation in a pre-arranged synchronized fashion to book accommodation entries in form of Bogus LTCG as well as provide Shortterm Capital loss to a huge no. of beneficiaries.
 - j) The assessee has not been able to explain as to how and why did it invest in such scrips without knowing the financial performance of the company. The assessee claims that the transactions are arranged through tax consultants.
 - k) The assessee is not a regular investor in shares. However, he is a prudent businessman and high on educational qualification. From such an educated person it is expected that due diligence has been done before purchasing a stock. However, the analysis show a very different picture. The investor has only invested in High Risk Stocks only, which during the investigation were found to be penny stocks, a scheme hatched by various players to obtain/provide accommodation entry of bogus LTCG/STCL through manipulation of stock market. This being the case, the assessee has entered into a sham transaction with the full knowledge of it, so as to convert unaccounted money into accounted money in the guise of capital loss.
 - l) Securities and Exchange Board of India (SEBI) has in the recent past, passed some orders on the issue of manipulation of share market for providing accommodating entry of bogus LTCG. SEBI considering the inputs from Income Tax Department as well as from its own surveillance system and that of the stock exchanges has taken appropriate action in case of the suspect scrips. These actions include passing interim direction suspending the trade reducing the price band etc. in a large number of penny stocks, the price band had been reduced to the lowest band of 2 percent. Interim orders were also passed by SEBI giving a finding that price was rigged.
 - m) Statement of Sh Sunil Dokania S/o Sh Gajadhar Dokania was recorded on 12.06.2015 on oath by the DDIT (Inv), Unit-1(2), Kolkata wherein Sh Sunil Dokania admitted that he managed all affairs of M/s Kailash Auto Finance Ltd and the directors on roll were dummy directors for the name shake only. He further admitted that in order to provide bogus LTCG in the scrips of M/s Kailash Auto Finance Ltd the amalgamation method was followed. He has explained the modus operandi adopted in arranging bogus LTCG/STCL to the beneficiaries, which includes the assessee as a beneficiary. The relevant portion of his statement is reproduced below.”

2.2 The Assessing Officer has also reproduced the statement of Sh. Sunil Dokania, Kolkata given before the Deputy Director of Income-Tax (Investigation), Kolkata on 12/06/2015, where he

has admitted of having engaged in providing accommodation entry through control and management of various companies, including the shares of M/s. Kailash Auto Finance Ltd., i.e., the share of company in which the assessee has transacted. The relevant question and answers of Sh. Sunil Dokania related to scrip of "Kailash Auto Finance" reproduced by the Assessing Officer are extracted as under:

"Q.15. Please explain the modus operand of getting bogus long term capital gain through Scrips controlled and managed by you.

Ans. Generally beneficiaries approached to the broker/entry operators in search of generation of capital in an easier manner without paying any tax on it. Brokers identify the various bogus scrips to provide LTCG as the same is exempt from the tax, Kailash Auto is such scrips which is engaged in providing accommodation entry in form of LTCG/STCL to various beneficiaries. Beneficiaries are allotted the shares at nominal price and the price of the shares rise artificially by using loopholes of stock exchange mechanism and the shares were sold at desired level to various bogus entities. These bogus entities are paid by the unaccounted money of the beneficiaries in cash. As a result, unaccounted income ploughed back in the file of individuals and HUF's in the form of bogus L.TCG without paying income tax on it. In process the bogus Short Term Capital Loss is also hooked by the entities who wants to reduce their taxability.

Q.16. Please specifically mention modus operand of providing bogus LTCG in scrips of Kailash Auto Finance.

Ans. Sir. In this scrips of Kailash Auto Finance we have followed amalgamation method. Initially beneficiaries were allotted shares of Panchshul Marketing Pvt Ltd and Careful Projects Advisory Limited on high premium. Later on, these two companies got amalgamated vide high court order into Kailash Auto Finance Ltd. By the virtue of amlgamation shareholders of Panchshul Marketing Pvt. Ltd. and Careful Projects Advisory Limited got shares of Kailash Auto Finance. Valuation of shares are so arranged that beneficiaries of LTCG get higher number of shares of Kailash Auto Finance in place of Panchshul Marketing Pvt. Ltd. and Careful Projects Advisory Limited. After holding the shares of Kailash Auto for one years, we direct our clients to sell the shares of KALFIN on abnormally higher rate. At this stage we get equal amount of cash from the beneficiaries and get it deposited to various undisclosed

proprietorship concerns and get it layered through various accounts and finally transfer it to bogus/shell companies who purchases shares from our beneficiaries.

Q.17. Please furnish details of major clients who have taken accommodation entry in form of LTCG through scrips i.e of Kailash Auto controlled and managed by you.

Ans. Sir. I have already stated that I am engaged in providing accommodation entry and scrips of Kailash Auto is used for providing bogus LTCG to various clients. Sir, I will submit the list of major clients within 7 days.

Q.18 Please furnish details of other entry operators who arranged beneficiaries, bogus buyer for transactions in scrips Kailash Auto in order to execution of bogus LTCG.

Ans. Sir, scrips Of Kailash Auto is controlled and managed by me. Apart from me, Mr. Vimal Lohati and Mr. B.L. Agarwal have created various paper companies by placing dummy directors for purchasing of scrips from various beneficiaries in order to provide bogus LTCG.”

2.3 Further, answer of Sh. Sunil Dikania to the question No. 28 & 29 are also reproduced as under for ready reference:

“Q.28. During the course of Surrey operation u/s 133A of the Income Tax Act, 1961 on 19-05- 2015 at the registered office of Kailash Auto Finance Limited at 19, Rollant complex, 37/17, The Mall, Kanpur, statement of Mr. Ajav Kedia was recorded. I am showing you the statement of Shri Ajav Kedia in which he has deposed that M/s Kailash Auto Finance Limited is a penny stock company and the shares of M/s Kailash Auto Finance Limited have been used to provide, entry of bogus LTCG, and bogus Short Term Capital Loss to various beneficiaries. He also stated that he has provided table space for Kailash Auto Finance Ltd. on request of Mr. Vimal Lohati and Mr. Sunil Doknia. Please offer your comment.

Ans. Sir, I have gone through the statement of Shri Ajay Kedia and found it correct. Sir, M/s Kailash Auto Finance Limited is a penny stock company and the shares of M/S Kailash Auto finance Limited have been used to provide entry of bogus LTCG and bogus Short Term Capital Loss to various beneficiaries as per their requirement.

Q-29, During the course of Survey operation u/s 133A of the Income Tax Act, 1961 on 19-05-2015 at the office of M/s Kailash Auto Finance Pvt. Ltd. at 32/33, Gopal Bhavan, 2nd floor, 199, Princess Street, Mumbai-400002, statement of Mr. Dipan Patel registered office of Kailash Auto Finance Limited. Please go through the statement ant) offer your comment.

Ans. Sir, I have gone through the statement of Mr, Dipan Patel and found it correct.”

2.4 Sh. Sunil Dokania has also provided list of the entities, who availed the benefit of bogus accommodation entry of long-term capital gain.

2.5 Regarding the shares of M/s. Cresenda Solutions Ltd., the Assessing Officer has reproduced statement of ‘Sh. Devesh Uphadhya’ given before authorities of Director of Investigation, Kolkata, wherein he admitted of providing bogus entries of long-term capital gain to the beneficiaries on one side and bogus long-term capital loss on other side.

2.6 Regarding the shares of M/s Matra Kaushal Enterprises Ltd, the Assessing Officer has reproduced statement of ‘Sh. Rajkumar Kedia’, who admitted to have engaged in providing accommodation entries of long-term capital gain through various operators. He has provided list of beneficiaries as well as operators and modus operandi.

2.7 The assessee failed to justify before the Assessing Officer for making investment in the shares of above referred companies without any financial rationale.

2.8 The Assessing Officer on the basis of the material available on record, surrounding circumstances, human conduct and preponderance of the probabilities, held the short term capital loss claimed by the assessee as not genuinely market derived loss

but a pre-arranged transaction rooted in account of the assessee in lieu of unaccounted cash. The Assessing Officer treated the short-term capital loss of Rs.1,22,76,352/- as unexplained under section 68 of the Act. The Assessing Officer also made addition for commission income charged by the accommodation entry providers @ 2.5% of the amount of Rs.1,22,76,352/- in terms of section 69C of Act.

2.9 On further appeal, the ld. CIT(A) rejected the contention of the assessee to provide cross-examination of the accommodation entry providers on the ground that the statement was not the sole basis for making addition by the Assessing Officer and he has made the addition on the strength of independent analysis of the documents to arrive at the conclusion that the assessee has failed to prove genuineness of the short-term capital loss and the statement had been used only as collaborative material. The ld. CIT(A) held that the transaction of assessee can by no stretch of imagination be considered as investment transaction and they are only make believe transaction.

2.10 The ld. CIT(A) upheld the addition made under section 68 of the Act of observing as under:

“4.7 The entire amount of the so called receipt of share sales could well also be treated as unexplained credit u/s 68 of the I.T Act as it has all the ingredients of attracting the rigours of the said section. Section 68 of the Act provides that where any sum is found credited in the books of the appellant maintained for any previous year and the appellant offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the AO satisfactory, the sum so credited may be charged to income tax as income of the appellant of that year. In the present case the appellant's explanation that the said receipt is on account of investment in shares whereby share of unknown company has

jumped in no time has been totally rejected by the AO. The appellant has not at all been able to adduce cogent evidences in this regard. There is no economic or financial justification for the sale price of these shares. The fantastic sale price realization is not at all humanly probable, as there is no economic or financial basis that a share of little known company would jump so high, in these circumstances, I do not find any infirmity in the orders of the AO In view of the facts discussed in earlier paras, I am of the considered view that the AO was justified to disallow the claim of Short Term capital Loss and to treat the same as income from undisclosed sources. Therefore, the addition of Rs, 1,22,76,352/- on account of Short Term capital Loss made by the AO is confirmed. This ground of appeal is ruled against the appellant. The other additions of Rs. 3,06,908/- being consequential in nature is also confirmed.”

3. Before us, the Ld. counsel of the assessee filed a paper book containing pages 1 to 111 and contested that CIT(A) is not justified in upholding the finding of the Assessing Officer ignoring the fact that shares have been sold on recognized stock exchange after payment of Security Transaction Tax (STT) and payment through banking channels. He submitted that the addition has been made without recording any specific documents/material and without allowing the assessee to confront material/cross examine of the parties on whose statement the Assessing Officer has relied upon. He submitted that broker of the assessee has neither denied nor disputed genuineness of the transaction and thus the addition sustained by the ld. CIT(A) on mere speculation, assumptions and allegations is not in accordance with law.

3.1 The Ld. counsel further submitted that addition under section 68 is completely perverse and in it logical manner without applying the mind inasmuch as the cash credit was introduced by the assessee and on the contrary, the capital of the assessee has got depleted due to shorten capital loss. According to the assessee, it was a case of “cash debit” instead of “cash credit”.

4. The Ld. DR, on the other hand, relied on the order of the lower authorities and submitted that the assessee has failed to justify the financial rationale and other factors behind investment in companies not having worth proportionate to investment. According to him, evidences gathered during the course of search by the Investigation Wing, particularly in relation to the shares transacted by the assessee, clearly shows that large number of persons have availed bogus long-term capital gain and which is possible only through the persons available and interested in getting long-term capital loss. According to the ld. DR , the entry operators in their statements have admitted this fact that Cash money received from long-term capital gain seekers has exchanged hands with the persons seeking long-term or short-term capital loss through a complex web of directors of the companies, entry operators, brokers etc. he submitted that trading in the shares of M/s. Cresenda Solutions Ltd. was suspended by the BSE during calendar year, 2013, i.e., period relevant to year under consideration. He also submitted that the Tribunal in the case of Summan Poddar in ITA No. 1006/Del/2019 for assessment year 2014-15 has uphold the addition for bogus long-term capital gain on sale of shares of M/s. Cresenda Solutions Ltd., which confirm that shares of the said company were transacted for providing bogus long-term or short-term capital gain or loss. He submitted that order of the Tribunal has been further upheld by the Hon'ble Delhi High Court. The Ld. DR also relied on following decisions:

1. *Udit Kalra Vs. ITO, 2019-TIOL-751-HC-DEL-IT;*

2. *Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain Vs. PCIT (ITA No.18/2017 Bombay High Court (Nagpur Bench);*
3. *Sanat Kumar Vs. ACIT (2019-TIOL-1296-ITAT-DEL, ITA No. 1881/Del/2018)*
4. *Pooja Ajmani Vs. ITO [2019] 106 taxmann.com 65 (Delhi-Trib.)*
5. *Anip Rastogi Vs. ITO (ITA No.3809/Del/2018)*
6. *Abhimanyu Soin Vs. ACIT 2018-TIOL-733-ITAT-CHD*
7. *Smt. M.K. Rajeshwari Vs. ITO (ITA No.1723/Bang/2018)*
8. *Chandan Gupta Vs. CIT [2015] 54 taxmann.com 10 (Punjab & Haryana)/[2015] 229 Taxman 173*
9. *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)*
10. *Usha Chandresh Shah Vs. ITO [2014-TIOL-1459-ITAT-MUM]*
11. *Ratnakar M Pujari Vs. ITO [2016-TIOL-1746-ITAT-MUM]*
12. *Arvind M Kariya Vs. ACTI (ITA No.7024/Mum/2010)*
13. *Hon'ble ITAT Mumbai in the case of ITO Vs. Shamim M Bharwani (2016) (69 Taxmann.com 65)*
14. *Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More [(1972) 82 ITR 540]*
15. *McDowell & Co. Ltd. [(1985) 154 ITR (SC)]*

4.1 In the rejoinder, the Ld. counsel of the assessee submitted that the trading in the stock of Cressanda Solutions Ltd. were stopped with effect from 20/02/2013 for a short period on account of reduction and consolidation of the capital as evident from the notice dated 14/02/2013 and 12/03/2013 available on the BSE portal and the scrip was again listed with effect from 14/03/2013. He submitted that the stock of Cresanda Solutions Ltd. are still listed on BSE and trading activities are still

continuing. He submitted that the documents as evidence filed by the assessee in the form of bank statement, brokers ledger, contact notes, de-mat account statement, transaction statement etc. duly confirmed that transaction was carried out on recognizing stock exchange. He further submitted that in the case of Suman Poddar (supra) the shares of Cresenda Solutions Ltd. were purchased at price of Rs.10 per share and were sold at the price of Rs.491 per share, however, in the case of the assessee the shares have been purchased at much lower price of Rs.53/-per share.

4.2 The Ld. counsel further submitted that trading in the case of 'Kailash Auto Ltd.' was suspended by the Bombay Stock Exchange with effect from 04/08/2016, where the assessee purchased shares of Kailash Auto Ltd. on 20/03/2014 and sold the same on 08/01/2015. He submitted that trading in the shares of 'Matra Kaushal Ltd.' was never suspended.

4.3 The Ld. counsel attempted to justify the fall in prices of the shares purchased by the assessee. The assessee provided percentage fall in the price of the shares transacted as under:

| | <i>Name of the company</i> | <i>Purchase Price</i> | <i>Sale Price</i> | <i>% Fall</i> |
|----|----------------------------------|-----------------------|-------------------|---------------|
| a) | <i>Cressanda Solutions Ltd.</i> | 53.93 | 9.85 | 81.73% |
| b) | <i>Kailash Auto Finance Ltd.</i> | 38.37 | 4.12 | 89.29% |
| c) | <i>Matra Kaushal Enterprises</i> | 47.06 | 13.18 | 71.99% |

4.4 The Ld. counsel of assessee submitted that there was a similar fall in price of the various shares of other companies. He filed a copy of the newspaper report dated 14/10/2019 with the caption "Top wealth destroyers: Adozon loss over 90% market

value in a year”. According to him, loss in the transaction of the shares is normal feature of the present volatile/financial capital market where the value erosion is much faster compared to old times. The ld. Counsel submitted that principle of the preponderance of the probabilities and the ratio of the judgment in the Sumati Dayal Vs. CIT (1995) 80 Taxmann 89 (SC) are not applicable over the facts of the present case. The Ld. counsel submitted that the assessee carried out all transaction on public platform managed by the recognized BSE through registered brokers and there is no evidence whatsoever produced by the Assessing Officer or the CIT(A) specifically and pointedly supporting the allegation that the assessee was engaged in bogus trading. The ld. counsel further submitted that judgment in the case of Sumati Dayal (supra) is not applicable in the case of the assessee in view of the fact that transaction is not in the nature of cash credit and section 68 is not applicable in the present case. The ld. Counsel of the assessee distinguished the decision in the case of Suman Poddar (supra) as under:

- a) *In case of Suman Poddar the ground of appeal related to LTCG and the addition was confirmed u/s 68 of the Act. Whereas, the present case relates to STCL and in a case of Cash Debit.*
- b) *Section 68 is a deeming provision and is only applicable where there is cash credit in books. In the present case there is CASH DEBIT. Thus in the catina of legal cases the Hon’ble SC has held that burden of proof lies upon the I.T. Department if a receipt is sought to be taxed as income. Since the present case is not covered u/s 68 and the transactions are in fact in the nature of CASH DEBIT, it is amply clear that the department has miserably failed to discharge the burden.*
- c) *Since section 68 is not applicable the onus is on the IT Department that the loss incurred by the assessee is not*

genuine. The IT Department has not led any specific, direct and pointed evidence to discharge this onus.

- d) *Suman Poddar purchased shares of Crassanda @Rs. 10 and sold the same @ Rs. 491. However, in case of assessee the assessee purchased the shares at much lower price of Rs. 53 (after the price of Crassanda corrected from 491 to 53 i.e. a fall of 826%).*

4.5 In support of the contention that short-term capital loss claimed by the assessee is not bogus accommodation entry, the Ld. counsel relied on following decisions:

| S. No. | Issue involved | Case | Citation | Forum |
|--------|--|--|--|------------------------------------|
| 1. | Exemption of LTCG in alleged penny stocks u/s 10(38) | Shri Deepak Nagar vs A.C.I.T. | (2019) 73 ITR (Trib) 74 (HAT [DEL]): ITA No. 3212/DEL/2019- (A.Y. 2015-16) (Date: 12-06-2019) | DELHI BENCH 'B' |
| 2. | -Do- | Mukta Gupta vs ITO, Ward-1(4) Mohan Lai Agarwal (HUF) vs ITO, Ward-1(4) | ITA No. 2766/DEL/2018- (A.Y. 2014-15) ITA No. 2767/DEL/2018 (A.Y. 2014-15) (Date: 26-11-2018) | 'SMC' BENCH |
| 3. | - Do- | CIT IV vs Fair Finvest Ltd. | (2013) 357 ITR 146- Delhi High Court Del 5822 (Date: 22-11-2012) | Delhi High Court |
| 4. | -Do- | MahavirJhanwar vs ITO, Ward- 35(4) | ITA No. 2474/Kol/2018 (A.Y. 2014-15) (Date: 01-02-2019) | Co-ordinate Bench of Kolkatta ITAT |
| 5. | STCL | Mangilal Jain vs ITO, Ward-3(3) (related to Short Term Capital Loss) | ITA No. 729/Kol/2018 (A.Y. 2014-15) (Date: 15-05-2019) | ITAT Kolkatta |
| 6. | Share Trading Loss | CIT vs M/s Alpine Investments (Share trading loss) | ITA No. 620 of 2008 - High Court at Calcutta (Date: 26-08-2008) | High Court at Calcutta |
| 7. | Unexplain ed credit u/s 68 | Ms. KantabenBhogil alKubadia vs ITO- 21(2)(1) | ITA No. 1937/Mum/2018 - ITAT MUMBAI (A.Y. 2014-15) (Date: 10-07-2019) | ITAT MUMBAI |

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| 8. | <i>Exemption of LTCG in alleged penny stocks u/s 10(38)Exemption of</i> | <i>Pr. CIT (Central) Ludhiana vs Prem Pal Gandhi</i> | <i>(2018) 401 ITR 253 (P&H); ITA No. 95 of 2017 (O&M) (Date: 18-01-2018)</i> | <i>Punjab and Haryana High Court</i> |
| 9. | <i>Exemption of LTCG in alleged penny stocks u/s 10(38)</i> | <i>Prakash Chand Bhutoria vs ITO, Ward-35(1)</i> | <i>ITA No. 2394/Kol/ 2017 (A.Y. 2014-15) (27-06-2018)</i> | <i>ITAT Kolkatta</i> |
| 10. | <i>Denial of cross Examination</i> | <i>Sunita Jain vs ITO, Ward- 10(3)</i> | <i>ITA No. 501 & 502/AHD/2016 (A.Y. 2008-09) (Date: 09-03-2017)</i> | <i>IT AT Ahemdabad</i> |
| 11. | <i>Loss on account of sale of shares</i> | <i>CIT vs Carbo Industrial Holdings Ltd. (Loss on account of sale of shares)</i> | <i>(2000) 244 ITR 422; 2000 SCC Online Cal 677 (Date: 14-03-2000)</i> | <i>Kolkatta High Court</i> |

4.6 We have heard the rival submission of the parties and perused the relevant material on record. In the case, assessee has purchased shares of the three companies at a particular price and sold them at a lower price, which resulted in short-term capital loss. The list of the shares transacted by the assessee has been reproduced above. According to the assessee purchase and sale of the shares have been made on recognized stock exchange through registered brokers and payments have been made and received by way of bank account. According to him, in view of all the documents containing contract notes, de-mat account statement etc. the transaction have been carried out are in the normal course of its investment activity. On the Contra, according to the Revenue authorities the assessee has obtained the accommodation entries of short capital loss to set off the tax

liability of long-term capital gain arising on sale shares of unlisted companies.

4.7 The first, issue which has been raised by the assessee that it has not been confronted with the statements of various parties relied upon by the Assessing Officer. The assessee has also contended that opportunity of cross-examining those parties/persons was not provided to the assessee. According to the assessee, this resulted in the violation of the principle of natural justice and thus assessment should be held *void ab intio*. However, in our opinion, not providing opportunity of cross-examination may be in the nature of irregularity which is curable but not an illegality leading to annulling of the assessment. Further, the Id. CIT(A) in Para 4.1 of the impugned order has held that addition has not been made solely on the basis of the statement of those persons/parties. The relevant part of the order of Ld. CIT(A) is reproduced as under:

“4.1 I have considered the submission of the appellant and observation of the AO made in the assessment order on the issue The appellant has stated that it has not been allowed cross-examination of parties on the basis of whose statement, the addition has been made. On this issue it is observed from the assessment record that the AO has made the addition on the strength of independent analysis of the documents to arrive at the conclusion that the appellant has failed to prove genuineness of the transaction in respect of STCL as discussed above. Statements and other material found in the course of investigation has been used by him as a corroborative material to strengthen his findings. As per the requirement of section 68 of the Act, the AO has shifted the onus back on the appellant by confronting the adverse findings. Therefore, the appellant has failed to discharge the onus cast upon it u/s 68 of the Act to explain the transaction. The Investigation Wing has conducted detailed enquiries, made analysis of the seized / impounded documents and made analysis of beneficiaries. The report prepared contains details of complete modus operandi,

commission charged against accommodation entries, list of conduit companies, list of their bank accounts in the name of conduits. The said list contains names of companies in which the appellant dealt. Therefore, the findings in the case of Investigation wing corroborate the independent findings of the AO. Therefore, the AO was not required to allow the appellant the opportunity to cross-examine.”

4.8 The Tribunal in the case of Ram Niwas Gupta, Dehradun Vs DCIT, Dehradun on 6th February, 2019 in ITA No.4881 to 4883/Del/2016 (Assessment Years: 2010-11, 2012-13 and 2013-14), after considering various decisions of the Hon’ble Supreme Court, including the decision in the case Andaman Timbers Industries Vs Commissioner of Central excise, Kolkata -II reported in 2015 (324) E.L.T. 641 (SC), 2017 (50) S.T.R. 93 (SC), 2016 (15) SCC 785 has held as under:

“105. In our opinion right to cross-examine the witness who made adverse report, is not an invariable attribute of the requirement of the dictum, “audi alteram partem”. The principles of natural justice do not require formal cross-examination. Formal cross-examination is a part of procedural justice. It is governed by the rules of evidence, and is the creation of Court. It is part of legal and statutory justice, and not a part of natural justice, therefore, it cannot be laid down as a general proposition of law that the revenue cannot rely on any evidence which has not been subjected to cross-examination.

However, if a witness has given directly incriminating statement and the addition in the assessment is based solely or mainly on the basis of such statement, in that eventuality it is incumbent on the Assessing Officer to allow cross-examination.

Adverse evidence and material, relied upon in the order, to reach the finality, should be disclosed to the assessee. But this rule is not applicable where the material or evidence used is of Collateral Nature.”

4.9 We find that the Assessing Officer in the assessment order has referred to the general modus operandi of the bogus accommodation entry and thereafter, he has further referred to statement of the parties who had provided accommodation entry

through managing and controlling the shares of the companies, in which the assessee has also transacted. The Assessing Officer thereafter asked the assessee to justify the rationale behind investment in these penny stock companies not having financial worth, however, the assessee failed to justify the same. The Assessing Officer provided as why the investment in the shares transacted by the assessee was not justified in view of the comparison of the other shares available. The Assessing Officer also pointed out the price fluctuation in the shares of the companies over a period, dividend history and other financial parameters to substantiate that there was no financial logic for investment in the company except for claim of bogus short-term capital loss against receipt of cash money. The Ld. Assessing Officer accordingly concluded that the addition was made on the basis of the material available on record, the surrounding circumstances, the human conduct and preponderance of probabilities.

4.10 In view of the above facts and circumstances and in law, we find that in instant case addition in dispute is not solely on the basis of the statement of the persons and the Assessing Officer has relied on other materials. The statements of the persons who controlled the business of providing accommodation entry have been corroborated with the material, surrounding circumstances and preponderance of probability. We accordingly uphold the finding of the ld. CIT(A) on that issue in dispute. The relevant grounds of the appeal of the assessee are accordingly rejected.

5. The next issue is whether the transaction carried out by the assessee and the claim of the short Term Capital Loss is in the

normal course of the investment activity of the assessee. We find that the Assessing Officer has referred to investigation done by the Directorate of Investigation, Kolkata, to highlight the General *modus operandi* of providing bogus long-term or short-term capital gain/loss. The said report highlights that long-term capital gain is booked while the share prices are artificially jacked up and while downward journey is used by the operator for booking bogus losses. The people who have huge profit but does not wish to pay due taxes thereon, they choose the mode of short-term capital loss to set off their profit. The loss seeking beneficiary pays cheques to the beneficiary of long-term capital gain and cash provided by the beneficiary of long-term capital gain is returned to the beneficiary of seeking loss. These are also terms as “Exit Providers” as they facilitate exist to the long terms gain beneficiary. The operator who arranged wedding of both the beneficiary of capital gain and Exit Providers, deduct his commission before payment by cash. As the prices of shares crash and the Exist Providers sells the shares for a small value, which were bought at high-value, result in generation of artificial loss.

5.1 After describing the general *modus operandi* of accommodation entry by way of bogus capital gain/loss, the Assessing Officer has highlighted the statement of the persons who claimed to have provided bogus capital gain/loss entries. The assessee was then asked to justify the investment in the relevant shares. The Assessing Officer has pointed out that these companies are not having any significant/real business as seen from the financial statement of those companies. The price

movement of the shares was also found to be unrealistic by him. The Assessing Officer has particularly pointed out that price movement of the relevant shares transacted by the assessee, were not matching with movement of the share market in general and movement of the other scrips in the same line of the business. The Assessing Officer also pointed out that volume transacted in those script was also very low. There was no history of dividend payout by those companies. The ld. Assessing Officer has pointed out that the assessee could not explain, why it invested in such script without knowing the financial performance of the company. The relevant analysis has been reproduced by the Assessing Officer in Para 3.4 (Page-11) of the assessment order. The conclusion of AO has already been reproduced by us in brief facts of the case.

5.2 It was claimed by the assessee that said transactions were arranged through tax consultants. The assessee neither before the ld. CIT(A) not before us has rebutted these adverse finding by the Assessing Officer. The contention of the assessee is that the transactions have been done on recognized stock exchange through registered stock broker and through bank account and thus, it should be treated as genuine. However, the report of the Investigation Wing clearly shows that transaction on the stock exchange can also be manipulated and thus, in such circumstances, the onus was on the assessee to justify the rational of entering into the transactions, which the assessee has failed to do so.

5.3 We find that both the Assessing Officer and the Leonard CIT(A) has relied on the decision of the Hon'ble Supreme Court in

the case of Sumati Dayal (supra), which according to the assessee are not applicable in the facts of the case being it is not case of cash credit. In our opinion, here the issue is whether the short-term capital loss claimed by the assessee is genuine or not. In the case of Sumati Dayal (supra) also the winning from the horse races was not found to be genuine. The Hon'ble court held that the exceptional luck enjoyed by the taxpayer in that case was held to be beyond preponderance of probability and the Hon'ble Apex court affirmed the view that it would not be unreasonable to infer that the taxpayer 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. In the instant case also despite being no financial rational the investment in the shares has been made to claim long-term capital loss and presumably unaccounted cash has been received by the assessee. Thus, the contention of the Ld. counsel of the assessee that the decision of the Hon'ble Supreme Court in the case of Sumati Dayal (supra) applies only in the case of the cash credit entries is rejected.

5.4 The Hon'ble Delhi High Court in the case of Suman Poddar (supra), observed that Shares of Cressanda Solutions Ltd. have been identified by the Bombay Stock Exchange as penny stock used for obtaining bogus Long Term Capital gain and no evidence of actual sale except contract notes issued by the share broker were produced by the assessee. The Hon'ble High Court accordingly dismissed the appeal of the assessee as no substantial question of law involved.

“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 financial 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:

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 long term capital gains. assessee has failed to prove that share transactions are genuine and <http://itatonline.org> could not furnish evidences regarding sale of shares except copies of ITA 841/2019 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 of earning such steep profits, assessee never ventured to involve himself in any other 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 ITA 841/2019 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. ld. 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. Further, reliance is also placed on orders of various Courts and Tribunals listed below. MK. Rajeshwari vs. ITO in ITA No.17231Bangl2018, order dated 12.10.2018. Abhimanyu Soin vs. ACIT in ITA No. 9511/Chd/2016, 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. 9951Mum12012, 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.”

5.5 It is evident that one leg of the transaction (sale transaction of the share for capital gain) is bogus and non-genuine, then in same set of circumstances; the other leg of the transaction (purchase of share for capital loss) is bound to be bogus and not genuine. Thus, the transaction of the assessee of purchase and subsequent sale leading to short term capital loss are not genuinely entered.

5.6 In view of the decision of the Hon'ble High Court being of Jurisdictional High Court and in respect of the same share scrip in which the assessee has transacted, the ratio of other decisions of the Tribunal and other high courts relied upon by the assessee cannot be applied over the facts of the instant case.

5.7 In view of the above facts and circumstances, the short-term capital loss claimed by the assessee is not found to be genuine and deserve to be disallowed. The relevant grounds of the appeal of the assessee are accordingly dismissed.

6. The next issue which has been raised by the assessee that no addition could have been made under section 68 of the Act in the case of the assessee. According to the assessee, the case of

the assessee is of cash debit and not of cash credit, hence provisions of section 68 are not attracted. We find that the Ld. CIT(A) has rejected this contention of the assessee. We agree with the contention of the assessee that addition for short term capital loss cannot be made under section 68 of the Act, because addition has not been made for unexplained credit on sale of the shares during the year but in respect of the claim of bogus short capital loss. In the case of the assessee, correct action would be disallowance of claim of the short capital loss of the assessee. However, in our opinion, mentioning wrong section in the assessment order cannot render the entire assessment null and void. It is not the jurisdictional requirement for completing the assessment. The Assessing Officer has correctly acquired the jurisdiction over the case and only mistake is under which section the addition should be made.

6.1 In view of the law pronounced in the L. Hazari Mal Kuthiala vs. ITO (1961) 41 ITR 12 (SC), ITO vs. Seghu Buchiah Setty (1964) 52 ITR 538 (SC) : TC52R.1343 and P.M. Bharucha & Co. vs. ITO (1969) 74 ITR 513 (Guj), it is well settled that where the power to proceed is actually there, the mere reference to a wrong section for authority to act, will not vitiate the action taken. The Honble HIGH COURT OF DELHI in the case of **IMPERIAL BOX & CARTON MAKERS VS. COMMISSIONER OF INCOME TAX**, reported in (1991) 97 CTR 0122 also upheld that mere mentioning of wrong section cannot invalidate the penalty levied. The relevant finding of the Hon'ble High Court is reproduced as under:

"2. The question involved is with regard to levy of penalty. In the order passed by the Tribunal under s. 256(1), it has been observed as under :

"8. Question Nos. 1 and 2 as framed, were discussed in detail by the Tribunal in para 7 while deciding the appeal. The Tribunal pointed out that at the time of completing assessment the ITO initiated penalty proceedings under s. 271(1)(c) of the Act, 1961. Simply because the ITO in the body of the order mentioned a **wrong section**, it will not invalidate the order. Commissioner (A) has clearly held that Explanation to s. 271(1)(c) was attracted in the present cases. Before the learned Commissioner(A) no such plea was taken that the ITO applied **wrong** provision for imposing penalty. Moreover the Tribunal after hearing the assessee and considering the material on record came to the finding of fact that provision of s. 271(1)(c) were attracted. Even according to the assessee in the present case Explanation to s. 271(1)(c) is attracted. That provision was interpreted by the Tribunal after appreciating the facts. Thus no question of law would arise on these points.

6.2 In view of the above, we reject the contention of the assessee to nullify the order due to wrong application of section by the Assessing Officer while rejecting the claim of the short term capital gain. The grounds of the appeal are accordingly dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order is pronounced in the open court on 7th January, 2020.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 7th January, 2020.

RK/-(D.T.D.)

Copy forwarded to:

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