

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B-[SMC]": NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1234/Del/2019
(Assessment Year: 2015-16)

Shri Gaurav Aggarwal, Flat No. 12, 2 nd Floor, Sheel Tara House, 4866/24, Ansari Road, Daryaganj New Delhi – 110 002. PAN : AGEPA3001F	Vs.	Income Tax Officer, Ward 60 (5) New Delhi.
(Appellant)		(Respondent)

Revenue by :	Shri Umesh Takyar, Sr. D. R.;
Assessee by:	N O N E.
Date of Hearing	31/10/2019
Date of pronouncement	27/01/2020

ORDER

PER PRASHANT MAHARISHI, A. M. :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-19, New Delhi, dated 10.01.2019 wherein the order of the Id. Income Tax Officer, Ward 60 (5), New Delhi, passed under Section 143(3) of the Income Tax Act, 1961 (the Act) dated 27.12.2017 making an addition of Rs.25,57,377/- under Section 69C of the Act whereas the assessee has shown the above income exempt u/s 10(38) of the Act as it was earned on sale of M/s. HPC Biosciences Limited, was confirmed. The assessee has raised the following grounds of appeal:-

- "1. The Ld. Commissioner of Income Tax (Appeals) - XIX, New Delhi has erred in arbitrarily confirming the addition by the Ld. Income Tax Officer, without considering the facts of the case explained and submitted to him.*
- 2. That the Ld. Commissioner of Income Tax (Appeals) - XIX, New Delhi has confirm the addition made by Ld. ITO on account of long term capital gain of Rs. 24,82,890/- on sale of shares sold on recognized stock exchange and eligible for exemption u/s 10(38) of the Act and bringing to tax as unexplained cash credit u/s 68.*
- 3. That the Ld. Commissioner of Income Tax (Appeals) - XIX, New Delhi has confirm the addition despite the transaction having been done through proper banking channels and as per the rules and regulations of the stock Exchange. That the assessee had made investment in various share including M/s HPC Biosciences Limited.*

4. *That the Ld. Commissioner of Income Tax (Appeals) - XIX, New Delhi has erred both on facts and in law in confirming the above addition despite the assessee place latest pronouncements of the jurisdictional ITAT decision as of the assessee and the same scrip M/s HPC Bio Science Ltd which appended below:*
- a. **Sunita Khemka, New Delhi vs ACIT, Central Circle-15 ITA No. 389/Del./ 2008 dated 02.08.2018**
- b. **Nidhi Goel Vs ITO, ward 49(1), New Delhi. ITA No.6882/Del/2017 Delhi dated 12.03.2018.**
- c. **Chander Prakash, New Delhi vs Ito, Ward- 49(4), New Delhi. ITA No.6880/2017 Delhi dated 12.03.2018**
5. *That the Ld. Commissioner of Income Tax (Appeals) - XIX, New Delhi has erred both on facts and in law in confirming the above addition despite the assessee declaring the total consideration on sale of shares as his income exempt under section 10(38) of the Act, the addition amounts to double taxation on the same income.*
6. *That the Ld. Commissioner of Income Tax (Appeals) - XIX, New Delhi has erred both on the facts and in law confirming the addition made Ld. ITO which is not verified all the aspects and details filed by the assessee during the assessment proceeding. As vide letter dated 19.12.2017 submitted by the assessee genuineness of Long term Capital gain along with Copy of purchase bills of M/s HPC Biosciences Limited, Copy of Bmat Statement, copy of Financial Ledger with Share Broker & copies of all contract note of brokers sold in Asst. Year 2015-16. That the appellant has filed the complete details of which shows genuineness of Long term capital gain u/s 10(38) as declared by the assessee in his return of income.*
7. *That the Ld. Commissioner of Income Tax (Appeals) - XIX, New Delhi has also erred in relying on the report of Investigation Wing without applying his mind.*
8. *That the addition was made grossly indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.*
9. *That the Ld. Commissioner of Income Tax (Appeals)-XIX, New Delhi has erred in not proving the evidence which were used against the assessee nor any opportunity for cross verification has been provided resulted into gross violation of natural justice to the assessee.*
10. *The Ld. Commissioner of Income Tax (Appeals)-XIX, New Delhi has erred both on facts and in law in confirming the addition of Rs.74,487/- made by Ld. ITO by presuming that the assessee had paid Commission of Rs.74,487/- without any basis and without any sources of such cash generation during the year.*
11. *The appellant craves leave to add, alter, modify, any other matter. “*

2. The brief facts of the case shows that assessee filed return of income on 30.12.2015 declaring income of Rs.9,77,730/-. Assessment under Section 143(3) of the Act was passed by the Assessing Officer wherein an addition of Rs.25,57,377/- was made and total income was determined at Rs.35,35,107/-. The assessee preferred appeal before the learned CIT (Appeals), who dismissed the appeal of the assessee and, therefore, the assessee is in appeal before us.

3. The appeal was fixed for hearing earlier on 18.07.2019 where none appeared on behalf of the assessee. The case was fixed for hearing on 31.10.2019. Notices were issued. However, on the appointed date none appeared on behalf of the assessee. On perusal of the notices it is apparent that some have been sent at the address of

is unexplained cash credit u/s 68 and addition of Rs. 74,487/- on account of commission paid for receiving the bogus LTCG u/s 69C."

Findings/ Determination -

The appellant's main grievance arises from addition amounting to Rs. 25,57,377/-, being unexplained money representing unexplained income in possession of the appellant

The AO has noted in his assessment order at paras 3 till 5 and 10 till 11, as follows-

the assessee as mentioned in the assessment order as well as the order of the learned CIT (Appeals). Even in the acknowledgement for appeal filed assessee has accepted the address. As the assessee is not appearing, we do not find any other option, but to decide the issue on the merits of the case.

4. The learned Departmental Representative vehemently submitted that it is the case of penny stock and it is squarely covered in favour of Revenue by the decision of the Hon'ble Delhi High Court in the case of Mr. Udit Kalra Vs. Income Tax Officer in IT 220 of 2019 dated 8.03.2019 as well as the decision of Sunita Khemka. It was further stated that in both these cases the higher form has confirmed the addition.

5. We have carefully considered the rival contentions and perused the orders of the lower authorities. The facts and all the arguments of the assessee are reproduced by the learned CIT (Appeals) including the contentions of assessee. The same are as under:

" 3. Statement of facts as provided by the appellant are as follows:-

"The appellant has voluntarily filed his return of income declaring income of Rs. 9,77,730/- on 30.12.2015. The case of the assessee was selected for Complete Scrutiny under CASS. The assessment was completed by the Ld. ITO, Ward- 60(5), New Delhi vide order dated 27.12.2017 at an income of Rs. 35,35,107/- after addition of Rs. 24,82,890/-. On account of LTCG claimed, u/s 10(38) which

3. During the assessment proceedings it is observed that the assessee has claimed exempt income of Rs. 23,40,723/- u/s 10(38) of the I.T. Act from Long Term Capital Gain on sale of shares of M/s HPC Biosciences (Scrip Code-535217). The assessee furnished certain documentary evidences to strengthen his claim of Long Term Capital Gain.

4. After going through the submissions made by assessee, it is seen that however, the events are not simple or lucid as stated to have happened. There are some important circumstantial as well as direct evidences to show that the Long Term Capital Gain shown by the assessee is not natural but is arranged one.

5. Before dealing with the specific details of this particular case, put up the facts in perspective, it is necessary to give a background of investigation carried out by the investigation wing of the department

5.1 The Directorate of Investigation, Kolkata carried out a country wide investigation to unearth the organized racket of generating bogus entries of Long Term Capital Gains (LTCG) which is exempt from tax. The modus operandi adopted by the operators was to make the beneficiary buy some shares of a pre-determined Penny stock company controlled by them. These shares are transferred to the beneficiary at a very nominal price mostly off-line through preferential allotment or off-line sale. The beneficiary (an individual) holds the shares for one year, the statutory period after which LTCG is exempt u/s 10(38) of

the Income Tax Act, 1961. In the meantime the operators rig the price of the stock

and gradually raise its price many times, often 500 to 1000 times. This is done w volume transaction indulged in by the dummies of the operator at a .rrrurwd piik,e. When the price reaches the desired level the beneficiary who bought the shares at a nominal price, is made to sell it to a dummy paper company of the operator. For this, unaccounted cash is provided by the beneficiary which is routed through a few layers of paper companies by the operator and finally is parked with the dummy paper company that will buy the shares.

5.2. Further, it may be mentioned here that the price of the shares of the

penny stock companies are rigged and are raised through circular trading. This is

managed by the "Operator" of the scrip. An "Operator" is a person who is managing the overall affairs of the scheme and he is the one who contacts the *entities* who wish to take entry of bogus LTCG/STCL in their books and arranges the same through the scrips of penny stock companies. The Operator manages *many* paper/bogus companies and uses them to do circular transactions to rig the price of the shares. The shares of these penny stock companies, although listed on exchange, are always closely held and are controlled by the promoter of the Penny Stock Company and the Operator who is arranging for die bogus LTCG/Loss. This is due to the fact that the general public is not interested in these shares as these companies have no credentials and this helps the operator to keep a control on the price movement of the shares.

5.3. The Directorate of Investigation, Kolkata investigated transactions in 84

such penny stock shares quoted on BSE and examined on path a large number of *brokers, directors* of companies that finally purchased the shares, the promoters of Penny stock companies, the entry operators who managed the dummy *companies* involved in price rigging. The money *trial* of transactions was *also*

examined and, in a large number of transactions trial right frcm cash deposit *account to the* beneficiaries account was unearthed. As a result of *investigation*

Individuals who have been taken such entry of bogus LTCG amounting to several crores have been identified. The result of the investigation in brief is as under:

10. The detailed analysis of evidences available on record and the case laws quoted above provide enough support against the arguments of the assessee that his share transactions are genuine. Thus, in view of the elaborate discussion made above, I hereby hold the amount of Rs. 24,82,890/- shown as sale value of HPC BIO shares during the financial year 2014-15 (AY 2015-16) stands disallowed u/s 60A and is added back to the total income. Further, it is typical that these transactions are carried out on a commission basis. From various statements it is observed that commission @3% has been charged for providing arranged capital surrendered by such assessees.
- iv) In Kolkata, where this investigation was started some of the beneficiaries who had taken entries of nearly Rs 10 crores have voluntarily surrendered for taxation without any further enquiry.
- Several assessees have filed revised return since the enquiry and have taken back accordingly Rs. 74,487/- (3% of sale value i.e Rs. 24,82,890/-) is being added u/s 69C as v) their claim of exemption furnished

Security and Exchange Board of India (SEBI) has in the recent past passed some orders on the issue of manipulation of share market /or riding accommodation entry of bogus LTCG. SEBI considering the inputs from the Tax Department as well as from its own surveillance system and that of the following actions include passing interim direction, suspending the trade, reducing the price band etc. Under this shadowed background following are the H, With these remarks, the total income is computed as under:

substantial / direct evidences against assessee's claim of LTCG.

Data received from Kolkata, pertaining to the transactions undertaken by Returned income of this region was analysed. As the Rs. 25,57,377/- in progress Addition as discussed in para 13 above meet of a few scrips, SEBI passed an order vide WTM/RKA/ISE/54/2015; (Rs. 24,82,890/- u/s 69A and Rs. 74,487/- u/s 69C) in the case of four such companies viz. (i) Eco Food Processing Park Ltd (EFD), (ii) Esteem Qio Org&hlc Total Income:

Assessed at total Income of Rs. 35,35,110/-. Issue necessary forms. Charge interest u/s 234A, 234B, 234C and 234D, if any, as per the Act. Computation of tax and interest is as per ITNS 150 enclosed which is part of the assessment order. Penalty proceedings u/s 271(1)(c) of the I. T. Act 1961 are initiated separately.

and events.

test of human probabilities.

10. The detailed analysis of evidences available on record and the case has laws quoted above provide enough support against the arguments of the assessee that his share transactions are genuine. Thus, in view of the elaborate discussion made above, I hereby hold the amount of Rs.24,82,890/- shown as sale value of HPC BIO shares during the financial year 2014-15 (AY 2015-16) stands disallowed under section 69A and is added back to the total income. Further, it is typical that these transactions are carried out on a commission basis. From various statements it is observed that commission @ 3% has been charged for providing arranged capital gain.

Accordingly Rs.74,487/- (3% of sale value i.e. Rs.24,82,890/- is being added under Section 69C as unexplained expenditure. Accordingly, I am satisfied that the assessee has furnished inaccurate particulars of his income, therefore, penalty proceedings under Section 271(1)(c) are initiated separately.

[Addition of Rs.25,57,377/-]

11. With these remarks, the total income is computed as under:

Returned income	Rs.9,77,730/-
Addition as discussed in para 13 above (Rs.24,82,890/-) under section 69A and Rs.74,487/- under Section 69C).	<u>Rs.25,57,377/-</u>
Total Income:	<u>Rs.35,35,107</u>
Rounded off as 35,35,110/-.	

Assessed at total income of Rs.35,35,110/-. Issue necessary forms. Charge interest under Section 234A, 234B, 234C and 234D, if any, as per the Act. Computation of tax and interest is as per ITNS 150 enclosed which is part of the assessment order. Penalty proceedings under section 271(1)© of the I. T. Act 1961 are initiated separately.

I have examined the submission of the appellant. I have examined facts at hand and the legal issues. I have considered the appellant's arguments.

I find that the AO has correctly identified the unexplained income. Having identified the unexplained income the same needed to be brought to tax The AO has done the same.

7. The AO infers in the assessment order that the fact that the appellant returned income in the garb of Long Term Capital Gain does not take away from the fact that the appellant was involved in a wrongful activity. The amount involved in such transactions needed to have been taxed at full rate.

8. The appellant claims that it had entered into a genuine transaction of purchase of shares. The appellant wishes to proposition that it was his luck (and expertise) that resulted in such fantastic Long Term Capital Gain. The AO, based upon information received from Investigation Authorities (and based upon inquiries by SEBI) and from examination of the modus operandi (after giving due opportunity to the appellant), has concluded that the appellant had entered into arranged transactions to convert unaccounted cash into short term capital gain, which the appellant claimed to be exempt within the meaning of provisions of section 10(38) of I.T. Act, 1961.

8.1.1 I find that the appellant had made investment in shares of little known company(s). The Income Tax Investigation Authorities (and SEBI) have made detailed enquiries to establish that the persons connected with M/s HPC Biosciences Ltd., were systematically involved in the activity of converting unaccounted cash into long /short term capital gain. It is also noted that the appellant had purchased shares at a very less price and has shown to have sold those shares at a very high price within a span of around one year or more. There is no basis for the prices of shares of an unknown entity rising to such extraordinary levels without any perceptible (or apparent or actual) improvement in the working of the company. The appellant has not tendered

any cogent evidence to explain how the shares of a lesser known company worth such less value rose to such high price in so less time.

It is clear that the appellant did not have any special knowledge or expertise to earn such fantastic long term capital gain. I find that there is no economic or fundamental basis for the shares of such companies to reach such fantastic level of price.

The wrong doing of the appellant stands established.

When the long term capital gain itself has been treated as bogus, the entire sale proceeds and the cost incurred for obtaining such bogus long term capital gain also needs to be taxed. The AO has, therefore, rightly brought to tax the cost, being unexplained expenditure (out of unexplained income), incurred for obtaining the said bogus long term capital gain at the rate of 3% of gain so obtained.

8.2. The Hon'ble ITAT Mumbai vs Shamim M. Bharwani order dated 27.03.2015 reported as [2016] 69 taxmann.com 65(Mumbai-Trib.)/[2015] 170 TTJ 238 at paras 4 till 4.6 as follows-

"4. We have heard the parties, and perused the material on record.

4.1 *As shall be evident from the foregoing narration of events, the primary facts (and figures) of the case are not in dispute, which (dispute) arises principally on account of the different inferences drawn from the same set of primary facts by the two Revenue authorities. The issue is, thus, essentially factual, revolving or centering around as to which of the two inferential findings are maintainable in law, i.e., in view of the surrounding facts and circumstances of the case. The Revenue's principal and the only charge is qua the genuineness of the transaction/s, and which has been acceded to by the first appellate authority in view of the documentary evidences furnished by the assessee in support of his claims. That genuineness could validly be tested on the ground or principle of*

preponderance of human probabilities, which could thus form a valid ground or parameter for determining the genuineness, stands since settled, by the apex court in Sumati Dayal (supra), relied upon by the Revenue, wherein the apex court., in declaring the transaction as non genuine, discarded a host of documentary evidences filed or relied, upon by the assessee-appellant. That documentary evidences are not by themselves conclusive, and the truth of the matter or the documents could be determined on the basis of or on the anvil of the surrounding facts and circumstances of the case is well settled, and for which the Revenue relies on the decision in the case of Durga Prasad More (supra). What is relevant, more so where the genuineness of the transaction is in issue, is the truth of the document/s furnished in substantiation, as well as the substance of the transaction and not its form, and which is to be determined on the basis of and on the conspectus of the entirety of the facts and circumstances of the case.

The issue before us is whether the documents furnished by the assessee, including averments made by him, or even his broker, satisfy the test of preponderance of human probabilities. In our view if the assessee has reasonably explained the 'intriguing' facts and circumstances as pointed by the AO, and on the strength of which the genuineness is assailed by him, and which further agree with that observed in the case of a penny stock company, no case for treating the transaction as not genuine shall arise. The onus u/s. 68 though is on the assessee, so that his explanation would, however, require being substantiated or proved. The case law in the matter is legion, and toward which we may, if only the sake of completeness of our order, advert to the some of the celebrated decisions by the apex court in the matter:

A. Govindarajulu Mudaliar Vs. CIT (1958) 34 itr 807 (sc);

Sreelekha Banerjee Vs. CIT (1963) 49 ITR 112 (SC)

Kale Khan Mohammad Hanit Vs. CIT (1963) 50 ITR 1 (SC)

Durga Prasad More (supra);

CIT Vs. Biju Patnaik (1986) 160 ITR 674/26 Taxman 324 (SC).

Surrmti Dayal (supra); and

CIT v. P. Mohanakala 120071291 ITR 278/161 Taxman 169 (SC)

We may further clarify that in proceeding with the matter, we have circumscribed the entire material on record.

4.2 *The assessee, to begin with, has nowhere explained as why the shares were purchased in cash, the source of which is ascribed to cash-in-hand, and not to any contemporaneous evidence, as cash withdrawn from bank on that or nearby dates. How was the cash, one may ask, transmitted from Mumbai, where the assessee is resident, to Kolkata, where the purchase stands made, and the broker, to whom it is paid, located?*

4.3 *Then, again, why was the transaction not carried through a recognized stock exchange (SE), mandatory in law, even as it was done through its registered member. This becomes relevant and significant for more than one reason. Firstly, it proves the time of the transaction, which is of essence inasmuch as it determines the holding period of the shares/asset, with reference to which, where over 12 months, exemption from tax to gains arising on transfer is granted by law per s. 10(38) read with other relevant defining provisions of the Act. The first appellate authority has in this regard mentioned the settlement number of the transaction as D-2005326. The same, even as stated by the A.O. (refer para*

4.8 of the assessment order), is the number of the contract note issued by the broker. The settlement, where the transaction is carried through the SE, which is admittedly not the case, is between the brokers or the members of the SE and, accordingly, only a net amount is payable or receivable by a particular broker for a particular period, called the settlement period, which extends to generally one week or a fortnight, and which is to or from the SE, which aggregates the financial impact, i.e., the net result of all the transactions amongst all the brokers for the settlement period, acting as a collecting/disbursing agency. A single amount is thus either payable or receivable by each broker to or from the SE for a particular period, which is again numbered (i.e., as settlement number), and

serves to settle the financial obligations to or claims on all the other members of the exchange, i.e., of each broker, for that period. This is of course accompanied by giving and taking delivery of the shares, either in physical form or by issuing or accepting delivery, which in either case is remitted by the member to his clients, for on behalf of the whom he acts, charging a fee called brokerage/ commission, for his services. The whole purport of the forgoing note on the trading process is to clarify that the settlement only signifies a settlement between the brokers, carried out through the exchange acting as a nodal agency, so that the purchase transaction/s under reference may not be so construed inasmuch the same is admittedly off the market (exchange), which stands established by the Revenue through the communication per its letter to the AO in response to a notice u/s. 133(6) by the Calcutta Stock Exchange. This aspect is in fact not disputed by the assessee. The same may not necessarily imply that the transaction is not genuine or not undertaken at the relevant time, but then the same would have to be shown with reference to some corroborative, external evidence. The contract note/bill by the broker is only an 'internal voucher', i.e., by person who is a party to the transaction and, thus, acting in cohesion, if not in collusion. It is after all a document generated by him, so that its truth, in the context of paper companies, the 'selling' of 'gains' and 'losses' in which the brokers, as operators, play a significant role, cannot therefore be decided with reference thereto or the statement by the broker, a related party. This, however, would be so only where there are strong factors or circumstances which cause serious doubt about the transaction. For example, how one may ask, were the shares transmitted to the assessee, located at Mumbai, who would have signed the transfer form?

The broker or the assessee nowhere states the reason for carrying out the transaction in the manner done, i.e., off the market, which is not ordinarily permissible, and is subject to some legal constraints under Securities Contracts (Regulation) Act, 1956. Rather, how could he deal with the assessee, who is not his client! Then, again, why was it paid for in cash, for which there is no

evidence, and neither has the broker been shown to accept cash in the ordinary course of his business. V/hy, for the persons trading therein, this would be an impediment to claim the cost of shares traded in, in view of the non obstante clause of s 40A(3). The brokers are in fact required to maintain separate bank account for the funds received from or on behalf of the clients, so that the same do not merge with that of the broker himself. What is equally important is the date on which the shares were dematerialized. This is as no transaction could be carried out in listed shares, i.e., in the physical form, where the shares stand dematerialized by the company. Why were the shares sent for dematerialization only in May 2005, i.e., after a delay of over a year, having been dematerialized only on 12.07.2005 (PB pg.10), i.e., days prior to their sale on 22.07.2005. That is, assuming that the shares were actually purchased and delivered to the assessee in May, 2004. Rather, as it would appear to us, the dematerialization of the shares coincides with the spiraling price of the scrip, so that an orchestration of the 'events' is apparent. The shares, even assuming a valid purchase, thus, would be close to the date/s of dematerialization. The assessee states of having reported its purchase (of shares) on 06.05.2004, per his balance-sheet as at 31.03.2005, enclosing it along with his return of income for A.Y.2005-06 (PB pgs. 15, 16). The return of income, however, is filed only on 28.10.2005, which is even subsequent to the sale of shares on 12.07.2005, so that the said reporting of the transaction, which of course does not bear the date of purchase, is to no moment. The assessee relies on a communication from the company dated 17.05.2004 (PB pg. 2) to show that the shares were lodged for transfer with the company immediately upon purchase on 06.05.2004, evidencing, thus, the validity of the purchase date. In this regard, we may firstly clarify that proving purchase as genuine; the Revenue doubting the price rise and, thus the gain, would therefore only make out a case for the exclusion of a part (Rs. 54,250/-) of the impugned sum of Rs. 12.15 lacs, which represents the entire sale proceeds of the shares. It needs to be appreciated that what is essentially under cloud, and being seriously doubted as to the genuineness, is the gain stated to arise on the transaction. It is the gain which is abnormal, i.e.,

both qua the scrip; its' trading and, thus, its quantum, and unexplained, besides being tax exempt, and which is independent of its purchase. The purchase of shares of a little known company of the face value of Rs. 10/- each at Rs. 21-22 would even otherwise hardly raise any eyebrow or doubt. The purchase gets doubted examined only for the reason that it represents a part of the overall transaction, which is considered by the Revenue as an artifice. In other words, proving the purchase would by itself not prove the transaction of gain, which stands impugned and, further, being at a minor sum has little bearing in the matter. In fact, the A.O. states precisely this (refer para 4.9(a) of his order), that even assuming the purchase as genuine, the sales, given the high rates for such penny stocks, with no real buyers, are bogus. Coming to the assessee's contention on merits, the letter dated 17.05.2004 supra inspires little confidence. It does not specify the name of the authorized signatory, the sign being otherwise not visible. It bears no serial number, even as it represents a communication, which a company or its secretarial department is required to make in the regular course of its business. It further does not bear any indication of the manner in which it is conveyed to the assessee, i.e., by hand, per post -ordinary or registered; per courier, etc., which is, again, a norm, besides establishing its date. Such remittances are generally through registered post, so that it would constitute evidence with the company for having delivered the shares, which are even otherwise valuable documents. The incidental question that arises is the date when the shares were dematerialized by the company. This is as it clearly shows that the shares, issued only on 31.03.2004, being remitted to the transferee in the physical form on 17.05.2004, were not converted into the D-mat form till then. This is relevant as the trading on the exchange, which only would make the share a listed share, gain on which is exempt u/s. 10(38), could as per the guidelines only be in the D-mat form. No wonder, the trading on the exchange in the said scrip commences only on 03.03.2005. 'How could, in that case, it be said that the assessee has transferred/sold a listed share after holding it for a period of a year (or more)?' The assessee speaks of having deposited STT, but,

then, the question is whether the said payment would make a non-genuine transaction, genuine.

4.4 *Further on, why, und on what basis, me assessee, a teacher by vrofession as well as a partner in a partnership, with no documented or reported experience in trading in shares or investment therein - his balance sheet as on 31.03.2005 reflecting no investment in shares except the 2500 shares in ECL (besides another for a meager amount ofRs. 2100), pick the said shares, i.e., selected the said scrip for investment, and which in fact stood issued only days earlier on 31.03.2004. The company reportedly has no standing either in the industry or in the market (i.e., for the goods or services it presumably deals in), or even in the trading circles, i.e., for shares. That apart, no material to establish its business activity, viz. it's annual reports, or of the companies under the same management/industry, etc., to exhibit its credentials in any manner, stands adduced by the assessee at any stage of the proceedings. Continuing further, how and on what basis, a share trading in the range of Rs. 21/- to Rs. 22/- in May 2005, witness a rise to Rs. 465 to Rs. 490 inside a couple of months - the assessee's sale, at Rs. 487/- apiece, being on 22.07.2005. This is amazing by any standard, and which has not been explained in any manner, i.e., assuming it to be not a case of price manipulation, which is the modus operandi adopted for reflecting prices on the SE. Who, one may ask, are the purchasers of such shares, i.e., in a nondescript company at such high prices; no information qua which stands furnished at any stage, even as it is they who have apparently bought the shares, supplying the credit to the assessee, which is being questioned and examined as to its genuineness u/s. 68 of the Act. All this definitely casts serious doubts on the genuineness of the sale price and, thus, the ensuing gain. This, in fact, is a classical feature of a penny stock, the price zooming for no apparent, economic or even technical, reasons. One could understand where the same is in sympathy with the market sentiment or some industry-wise favourable development, even as the share ostensibly trades, i.e., going by the market quote, at over 22 times its price obtaining two months*

earlier, implying, by correspondence, a jump in the market index to the same or similar extent, i.e., 2200%, over the same period, which is both unheard of - work as it does to, a growth rate of 13200% p.a., and, of course, not shown. There is again no whisper and, consequently, no information on record of the particular industry/s in which, if any, the said company operates, or its financials, much less future prospects, the information on all of which gets factored into and captured in what is called 'price', representing an equilibrium of the supply and demand forces. In fact, each of the other incidences, i.e., for a penny stock company, are exhibited in the present case, as pointed out by the AO per paras

4.8 and 4.9 of his order, as under:

A the scrip is a penny stock, purchased at a low price, which is over a period of time ramped up by operators acting in benami names or name lenders. The purchases are off market purchases, and not reported on the exchange;

b the purchase/s is back dated, i.e., per a back dated contract note, paid for in cash, so that there is no trail;

C the purchases are in the physical form, and dematerialized only subsequently; generally long after the purchase date, being back dated

and, further, close to the date of sale; and

L the investee is a penny stock company, with no credentials, and the sale rates artificially hiked, with no real buyers, so that the inference of the sales being bogus, is unmistakable.

4.5 The assessee was show caused on all these parameters, seven in number, listed at para 4.11 (page 7) of the assessment order, to no satisfactory reply by the assessee and, in fact, at any stage. There is in fact no reply to the AO (refer para 4.14 (i) of the assessment order), whose satisfaction the law mandates, so that the purview of the appellate authority is as to whether the AO in being not satisfied had acted reasonably, i.e., given the assessee's explanation, including the materials/evidences furnished in support, or not. The AO, accordingly,

treated the impugned transaction as not satisfactorily explained, and added the same u/s.68 of the Act. Reliance was placed by him on the decisions by the tribunal in the case of Som Nath Maini (supra), also reproducing there-from, as well as in the case of Dy. CIT v. Housing Development & Finance Corpn. Ltd. (2006] 98 ITD 319 (Mum.), rendered applying the first principles and the legal propositions enunciated by the apex court per the decisions cited by the AO (supra). The tribunal in the case of Ziauddin A. Siddique [IT Appeal Nos. 4699 & 4700 (Mum.) of 2011, dated 25-4-2014] issued a finding of fact, of course on the basis of the material on record, as to circular trading, in case of a penny stock company, Eltrol Ltd., exposing or validating the modus operandi as stated to be adopted in the case of such stocks - the price, de-hors any fundamentals or other factors, of paper companies being raked up on the Exchange, so as to yield 'gain¹', and then again, equally without basis, grounded to yield 'loss', both of which, i.e., 'gain' and 'loss', find ready 'customers' or 'takers'. The purpose is to evade tax or to yield some tax benefit. True, this has not been established in the present case, but the features are strikingly same, with the impugned transaction bearing the same incidents, so that odds are loaded heavily against the genuineness of the transaction. The onus to establish the same, it is to be borne in mind, is on the assessee. The Id. CIT (A) has dismissed the same as merely suspicions. We are, however, unable to, for the reasons afore-stated, persuade ourselves to agree with him, each of the several incidents and, therefore, the questions arising, that impugn the genuineness in the present case, are based on admitted and undisputed facts. The issue, as clarified at the beginning of the discussion, being the validity of the inferential findings -there being a difference between the two Revenue authorities. We find the observations by the AO as valid and relevant, to no satisfactory answer or explanation by the assessee, i.e., to the questions, incidents or the phenomenon observed. Dismissing the same as mere suspicions, as does the Id. CIT (A), is, to our mind, glossing over the many attendant facts and incidents, the most vital, and on which we observe complete silence or absence of any explanation, is the absence of any credentials of the investee-company. The Id. CIT (A) picks up one

incident or aspect of the transaction at a time to note of it being backed by documentary evidence/s and, therefore, genuine. The approach is fallacious. Firstly, documentary evidences, in the face of unusual events, as prevailing in the instant case, and without any corroborative or circumstantial evidence/s, cannot be regarded as conclusive. Two, the preponderance of probabilities only denotes the simultaneous existence of several facts', each probable in itself, albeit low, so as to cast a serious doubt on the truth of the reported, facts', which together make up for a bizarre statement, leading to the inference of collusiveness or a device set up to conceal the truth, i.e., in the absence of credible and independent evidences. For a scrip to trade at nearly 50 times its' face value, only a few months after its issue, only implies, if not price manipulation, trail blazing performance and/or great business prospects (with of course proven management record, so as to be able to translate that into reality), ivhile even as much as the company's business or industry or future program (all of which would be in public domain), is conspicuous by its absence, i.e., even years after the transaction/s. The company is, by all counts, a paper company, and its share transactions, managed. We, accordingly, reversing the findings of the first appellate authority, confirm the assessment of the impugned sum u/s. 68 of the Act. We decide accordingly.

4.6 *The assessee has relied on several case laws. As would be apparent from the forgoing, abundant case law has been relied upon by the both sides. The issue is not of the application of any particular case law. The legal propositions being well settled, each case rests on its own facts. Our decision, likewise, and as would also be apparent, is guided solely by the facts and circumstances of the instant case, including the assessee's explanation in respect thereof. The reliance on case law, the facts of none of which were gone through at the time of hearing, even as the issue is principally factual, would thus be of no assistance to the assessee's case. We may though clarify that the Revenue having invoked the provision of s. 68, the burden to prove the credit transaction/s and, thus, its genuineness, is on the assessee. It is therefore not necessary or incumbent on the Revenue to, i.e., for the purpose of application of sec.68, to either disprove or*

exhibit the transaction as sham or bogus, and its obligation only extends to show that the genuineness of the impugned credit transaction is doubtful or has not been satisfactorily proved by the assessee.”

[Emphasis supplied]

8.3. Similarly Hon'ble ITAT Chandigarh Bench in the case of Abhimanyu Soin Vs ACIT ITA No. 95/Chd/2016 order dated 18.04.2018 have confirmed the addition with regard to Penny Stocks in similar circumstances the Hon'ble ITAT held in paras 12 till 16 as follows-

6. On consideration of the facts of the case as a whole it cannot be accepted that the assessee can have long term capital gains of Rs. 80,25,291/- within 17 months of buying of shares at Rs. 2,72,000/- of a non descript company incorporated in 2017 which got merged in 2009. This cannot be a case of intelligent investment or a simple case of tax planning to gain benefit of long term capital gains. The issue that it deals with and the facts are however, quite interesting. The in-congruencies found out by the Revenue that the investments were made on the advice of renowned investment advising company like Edelweiss for which the assessee has not paid any consultation fee leads to a conclusion that the entire transaction is synchronized and carefully planned only to defeat the purpose of revenue. The earnings @ 3072% over a period of 17 months breaks the ceiling of any record of return on investment which is beyond the human probability and beyond the business logics of any enterprise.

7. The fact of purchase of shares of the company with such a higher premium of Rs. 328 per share, whose net worth was not known by the assessee and the company is not listed with any Exchange cuts no ice . Another important factor considered is that the assessee has made transaction with share broker Sh. S.M. Khemka banking channels and subsequent years still the assessee has made transaction in cash for the year under consideration accords credence to the non reliability of the entire transaction of shares giving rise to such capital gains.

6. The ratio laid down by the Honble Supreme Court in the case of Sumati Dayal Vs. CIT [1995] 214 ITR 801 is squarely applicable in this case. Though the assessee has received the amounts by the way of account payee cheques, the assessee could nowhere prove the purchase of shares as claimed to have been made on 02/12/2008 in cash and it was also not proved about the availability of the funds with the assessee as on the date of purchase of shares. The assessee was not in India as per the passport details available as per the record. This, coupled with the fact that the transfer of money in cash from Ludhiana to Delhi and a person representing the broker operating at Kolkata has collected the money at Delhi cannot be accepted. The tax authorities are entitled to look into the surrounding circumstances to find out the realities and the matter has to be considered by applying test of human probabilities as enunciated by the Honble Supreme Court. The fact that inspite of earning 3072% of profits, the assessee never ventured to involve himself in any other transactions with the broker which gave him even much lower profits during the period which cannot be a mere coincidence or lack of interest or absence of advice from the financial institutions as done earlier.

7. In view of the detailed discussion above, and keeping in view the entirety of the facts and circumstances and specific peculiarity of the instant case and the judgments quoted above, we decline to interfere in the order of the Ld. CIT (A).

8. In the result, appeal of the Assessee is dismissed. Order pronounced in the Open Court. Sd/- Sd/- (SANJAYGARG) (DR. B.R.R. KUMAR) JUDICIAL MEMBER ACCOUNTANT MEMBER Dated : 18/04/2018 Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR

[Emphasis supplied]

8.4 Similarly Hon'ble ITAT Bangalore Bench in the case of Smt. M. K. Rajeshwari Vs. the Income Tax Officer, Ward-3, ITA. No. 1723/Bang./2018, date of order 12.10.2018, has held so. It was held in paras 4 till 9 as follows –

4. The CIT (Appeals) re-examined the claim of the assessee and analysed the facts brought on record by the Assessing Officer, the references to SEBI, the financial analysis of the scrips, the movement of shares price wise and also the judicial pronouncement quoted by the assessee in the light of judgment of the Bombay High Court in the case of Sanjay Bimalchand Jain Vs. pr. CIT dated 10.04.2017 and has finally confirmed the additions made by the Assessing Officer. The relevant observations of the CIT (Appeals) are extracted hereunder for the sake of reference:

“Bogus LTCG from Penny stocks: “The assessee has not tendered coent evidence to explain how the shares in an unknown company worth Rs.5 had jumped to Rs.485/- in no time. The fantastic sale price was not at all possible as there was no economic or financial basis to justify the price rise, the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the

garb of long term capital gain ",

Relevant portion of judgement:

The authorities have recorded a clearfinding of fact that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing, the authorities held that the assessee had not tendered cogent evidence to explain as to how the shares in an unknown company worth Rs. 5/had jumped to Rs.485/in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no economic or financial basis as to how a share worth Rs.5/of a little known company would jump from Ms. 5/ to Ms. 485/ The findings recorded by the authorities are pure, findings of facts based on a proper appreciation of the material on record. While recording the said findings, the authorities have *followed* the tests laid down by the Hon'ble Supreme Court and this Court in several decisions. The findings do not give rise to any substantial question of law

In the ease on hand also the scrips were of unknown or lesser known company, sale price was fantastic, there was no economic or financial basis to justify the price rise {poor financials as analysed by AO), share transactions were dubious (as held by various departments including SEBI investigation wing etc.), the company did not qualify for investment, the assessee was able to sell the shares at an abnormally high price as compared to purchase price and that too within a short period and the fantastic sale price was not at all possible as there was no economic or financial basis as held in the judgment of Mumbai High Court."

5. Aggrieved, the assessee has preferred an appeal before the Tribunal and reiterated its *submissions as raised before the lower authorities. The learned Counsel for the assessee has invited our attention to balance sheets as on 31.03.2013 and 31.03.2015 and the share certificates, demat account and the bank statements in order to establish the transaction in shares are genuine and the assessee has rightly claimed deduction under section 10(38) of the Act. The learned DR on the other hand has contended that a big scam in Kolkata has been surfaced during the course of investigation conducted by various agencies and it has been revealed that unaccounted money was converted into a long terra capital gain on which deduction under section 10(38) of the Act was claimed. The learned DR further contended that in such type of transactions, the decision should not be taken on the basis of contract notes and the rates quoted at the stock exchange. The financials of the company and its increase in the financial worth should also be examined. The reasons for the sharp increase in the share price should also be examined. In the instant case, the lower authorities have examined that no corporate announcement has been made by the Mahavir Advanced*

Remedies f 1.1. which would have, rm.de a jWiUve j, np<r.r.t
support the phenomenal increase in the price. The sharp me in the price 1^ ^

- HW scrip was not

supported by its fundamentals or any other genuine *factor*. The learned DR has, further, invited our attention to the fact that Mahan Advanced Remedies Ltd., have been found involved in fraudulent practices by the SEBI and in its finding, the SEBI stated that this

syndicate of people acts as accommodation entry providers. They chose a particular scrip and rig if prices to provide bogus capital gain and capital loss to various beneficiaries.

Based upon its findings SEBI have restrained these persons from trading in market, The learned DR further placed heavy reliance upon the investigation conducted by the AO and the findings of the CIT(A).

6. Having carefully examined the orders of the lower authorities in the light of rival submissions, I find that assessee has purchased 12500 shares of Mahavir Advanced Remedies Ltd., (MARL) on 22.02.2013 at a total purchase cost of Rs. 1,00,000/- at the rate of Rs.8/- per share. The consideration for purchase of these shares was by transfer of funds from Lakshmi Narayana Rice Mills to her account in which the assessee has a stake. This purchase was through M/s. Global Enterprises and Eager Corporation* Mumbai. The assessee has made the payment to the aforesaid entity and not to the owner of the shares of MARL. As is evident from the receipts issued by M/s. Pagar Corporation, Mumbai, the invoice indicates the share price at Rs.8/- per share whereas the face value of the scrip itself is Rs.10/- per share. It is also evident from the record that the MARL in its Extraordinary General Body Meeting held on 18.02.2013 has increased share

capital from Rs.5.5 Crores to Rs.15.5 Crores by issue of 1,00,00,000 shares of Rs.10/- each at a price of Rs. 11/- per equity share including premium of Rs.1/- per share to the non-

promoters. The AO has also noted that 2500 shares of MARL have been transferred to the assessee from Mr.

BVS Koteeswar Rao and 10,000 shares have been transferred to the

assessee from Smt. Vijayalakshmi Bai and Mr. BVS Koteeswar Rao is the Maturing Director of the company and Smt Vijayalakshmi is related to him. As per share transfer certificate, the shares of MARL have been transferred to the assessee only on 24.08.2013 and price of

each equity share is priced at Rs. 10/- whereas the assessee has paid only Rs.8/-. The AO has also examined the report submitted by Mr. BVS Koteeswar Rao and Smt. Vijayalakshmi

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and that Mr UVS Kotceswtra K«,* atx! Smt Vijayakshitt
and 3.15,000 Shares respect lively of MARI . «i n.Q6J0J | a

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Rs. 1827000/* and Rs. 1 respectively. I he A(> further observed that m .SI:

sale price of each share works out to Rs.fi/- per share, which h almost half the pnee feed by the company at its [extraordinary General Body Meeting held on 18,02.2013. It b nlv. worthwhile to mention that sale has been done off fine. 'Hie AO has also further observed m order that there is a sharp rise in the price of the scrips which was not supported by its fundamental* or any other genera! factor. Tie AO carefully examined the findings of the imcstigation wing who has investigated the scam of penny stock and the dubious schemer, through which unaccounted money of the beneficiaries moves into the books of accounts in the garb of long term capital gain. This entry of long term capital gain is taken by selling the shares on the exchange and registering the proceeds arising out of sale of shares into book term capital i\ in (1 ICG). For implementing this scheme, shares of penny

stock companies were used. The same modus is adopted for providing accommodation entries of being, bogus logs, it was further observed that in this scheme, shares of penny stock exchange arc acquired by the beneficiaries of the LTCG at very low price through the root of" preferential sliotment (private placement) and off market transactions. These shares have a lock-in-period of one year as per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. Another route to acquire the shares iis through .Amalgamation or merger, in this route, the beneficiaries of LTCG are allotted shares of a private limited company which is subsequently amalgamated with a listed penny Stock and the beneficiaries receive shares of the listed penny stock in exchange of the shares of private limited company. The modus operandi of conversion of unaccounted money in long term capital gain was examined by the AO before coming to the conclusion. The AO has also examined die balance sheets of Mahavir Advanced Remedies Ltd., and the balalnce sheet and profit and loss account for the last 3 years was extracted in the assessment order. For the sake of reference, we extract the same hereunder :

Mahavir Advanced Remedies Ltd.
(Earlier known as Indo-American Advanced Pharmaceuticals Ltd.)

PARTICULARS	AS ON			
	31/03/2011	31/03/2013	1/03/2012	31/03/201
EQUITY AND LIABILITIES	11,35,92,000	11,35,92,000	3,75,80,000	3,75,80,00
SHAREHOLDERS' FUNDS	(2,56,74,000)	(2,70,51,000)	3,18,70,222	(2,86,99,633)
Share Capital Reserves and	8,79,18,000	8,65,41,000	57,09,232	88,80,36

SHARE APPLICATION MONEY			7,65,633	7,65,63
DEDUCTING ALLOTMENT NON-CURRENT LIABILITIES				
CURRENT LIABILITIES				
Other Current Liabilities	90,000	5,000	6,34,991	7,60,82
Short-Term Provision				
	90,000	5,000	6,34,991	7,60,82
TOTAL :	8,80,08,000	8,65,46,000	71,10,392	1,04,06,82

ASSET

NON-CURRENT ASSETS

Fixed Assets Tangible

Assets Non-Current

Investments

44,70,300

6,000

44,76,300

f CURRENT ASSETS Stock-in-

Trade Other Current Assets Cash

and Cash Equivalents Short-term

loans and advances

44,65,000

44,65,000

3,36,495

38,64,95

49,70,000

1,16,000

2,58,979

83,23

7,85,73,000

8,19,65,00

29,86,460

19,82,32

TOTAL :

8,80,08,000

8,65,46,000

71,10,392

1,04,06,82

7. The Assessing Officer has also examined the price value statements quoted on the stock exchange and noticed that there was abnormal price rise by the overall percentage increase in sensex during the period when the shares stock phenomenal price rise and has made the following observation :

“(v) This abnormal price rise is also highlighted by the overall percentage increase in the SENSEX during the period when the shares saw phenomenal price rise. Normally the SENSEX is a benchmark of the average price movement in any share. Most of the stocks which have good market capitalization and are majorly held by public tend to follow the price movement of the SENSEX. The deviation in price movement vis-à-vis SENSEX is usually guided by the fundamentals of the company and the behavior of individual investors. When the price increase in the shares of M/s. MAHAVIR ADVANCED REMEDIES LTD is compared with the movement in the SENSEX, it is seen that there is no correlation. While SENSEX is deviating only marginally, the price of the MAHAVIR ADVANCED REMEDIES LTD is moving abnormally. Hence, it is clear that the Price of MAHAVIR ADVANCED REMEDIES LTD has moved in absolute disregard to the general market sentiments.

From the perusal of above chart as well as the trading data of the scrip which was collected from the BSE, it is evident that during the period of price rising, the volume of the shares traded as well as number of trades on each trading day was very low. Now the interesting factor to be noted here is that on all these days, there has been a constant rise in the price of the shares. A close look reveals that on most trading days, the percentage increase in price is in the range of 3% to 4%: This percentage price rise on each day was just short of 5% which was the circuit limit for price rise as per the exchange guidelines in respect of T type scrips. On some trading days, the percentage increase in price is in the range of 1.90% to 1.99% which again was just short of percentage increase of 2% which was the circuit limit for price rise as per the exchange guidelines in respect of T type scrips. On some trading days, the percentage increase in price is in the range of 1.90% to 1.99% which again was just short of percentage increase of 2% which was the circuit limit for price rise as per the exchange guidelines on those trading days.

Thus, it is seen that the price of these shares have seen phenomenal rise and have been constantly traded near the circuit limit so as to avail maximum } out hitting and triggering the circuit limit, and thereby avoid surveillance by the Stock Exchange Regulator. This continuous price rise has been achieved over a very thin volume and almost a single trade per day.

During this period of price rise, no corporate announcement has been made by M/s. MAHAVIR ADVANCED REMEDIES LTD which would have made a positive impact on the shares and which could support this phenomenal increase in price.

Thus, the sharp rise in the price of the scrip was not supported by its fundamentals or any other genuine factor. The above discussion clearly establishes the fact that the price of the shares of MAHAVIR ADVANCED REMEDIES LTD were rigged in a pre-planned systematic manner by conducting limited trades and with miniscule volume.”

8. The Assessing Officer has also examined the SEBI's findings about the accommodation entry providers obtained on the basis of various investigations and has brought out sufficient material on record to demonstrate that the transactions are not genuine and he accordingly concluded that the long term capital gain booked by

the assessee in the books were pre-arranged method to

evade taxes *un* laxxral*,- money. The findings and observations of the AO were not controverted by the assessee by placing any evidence. He placed reliance upon the various judicial pronouncements in support of his contention that once the assessee has placed the evidences with regard to payments and the identity of the persons and the credit worthiness of the creditors, no addition under section 68 is called for. Since the assessee has placed the contract note, payment through cheques identifying the company whose shares were transacted, the genuineness of claim of long term capital gain should not have been doubted. We do not find, merit in these contentions of the assessee in the light of the facts that there is prevalent practice in the country through which unaccounted money is converted into long term capital gain by circuitous means. While dealing with the issue of long term capital gain accrued to the assessee in short span, one has to examine the financials of the company whose shares were inflated *within a short period and after the sharp rise in the price of shares it again comes down. In the instant case, financials were examined by us and we find that the financial worth of the company is meagre and not at all worth to be invested therein. With such financials, we are unable to understand how there can be manifold increase in the shares. In the light of the duration of transactions and the financials* of the company whose shares were transacted, we find that the Revenue has brought sufficient material on record to demonstrate that unaccounted money was introduced in the books of accounts through long term capital gain by adopting such, method. Whatever judicial pronouncements are relied on, these are in those cases where the transactions are genuine. Under these circumstances, we are of the view that Revenue authorities have rightly adjudicated the issue and no interference is called for in the order of the CIT(A).

9. In the result, appeal of the assessee stands dismissed.

8.5 While arriving at this inference, I find support from Hon'ble Bombay High Court in the case of Sanjay Bimalchand Jain v. Pr. CIT-1, Nagpur ((89 taxmann.com 196(Bombay))). I also note that none of the case laws relied upon by the appellant counter the fact that the appellant did not know how did the shares of a little known company, without any matching improvement in performance (or even having any fundamentals to speak of), rose to such fantastic level. The rise of share prices of an unknown company (in this case the two -companies have shown such trend), defies human limits of probability.

It would also not be out of place to mention here that different courts have held that the transactions should stand the test of human probability. Transactions need to be understood in their entirety and in the context in which they take place. It would not be far fetched to conclude that it is the assessee's own money earned through unaccounted transactions which has been routed through bogus long term capital gains, in the light of the evidence on record, circumstances and totality of the context. In the context, the following case laws are relevant-

- (a) In the case of Commissioner of Income Tax v Durga Prasad More (1971) 082 ITR 0540 - SC, it has been held "It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents".

- (b) In the case of Sumati Dayal v CIT (1995) 214 ITR 801, the court observed, "Thus, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities. We are, therefore, unable to agree with the view of the chairman in his dissenting opinion. In our opinion, the majority opinion after considering the surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winnings from races is not genuine."

As such, the case laws relied upon by the appellant are not relevant. The enquiries made by SEBI and the Investigation Authorities and the surrounding circumstances establish beyond doubt that this is a case where unaccounted income has been converted into capital gains in a bogus manner to show income in the garb of Long Term Capital Gain. Accordingly, I uphold the addition made by the Assessing Officer."

6. We have carefully looked at the orders of the lower authorities and find the facts that the assessee has failed to show that the shares purchased by the assessee of M/s. HPC Biosciences Limited and its sale earning huge capital gains is a genuine transaction. Further it is apparent that the brother of the assessee has also identically dealt with in the shares of this company and has earned huge capital gain. The finances of the above company does not support the share price. The price of the share of the company were jacked up by nearly 17 times within 16 months. Such jacking up of the share price was also confirmed by Shri Atul Jalan and Others, that it was artificial. In response to statement u/s 131 of the Act the assessee categorically stated that he has no idea about the business activities carried on by this company whose shares resulted into huge capital gain in the hands of the family. Pertinent to note that assessee earned a long term capital gain of Rs.23,40,723/- in his hands and his brother Gaurav Aggarwal earned capital gain of Rs.40,22,518/- in the shares of same company. Mr. Gaurav Aggarwal has offered a small income of Rs.9,77,000/- and has earned long term capital gains of two and a half times on his regular income. He also does not show of the kind of business he is doing. He is merely declaring salary income and is earning huge capital gain. He acquires 4000 shares of that company on 14.03.2013 and sold during the year at a phenomenal price approximately 600 per share. His brother also sells the same. The company whose shares are traded was also suspended. Before the Assessing Officer accepted the paper work nothing was shown. The assessee makes an investment in a non-discreet company, does not know about his business and warrant to have earned almost three times of his regular income as long term capital gain where such company was to be operating through another operator providing long term capital gain, accommodation entries, we do not find any infirmity in the orders of the lower authorities in confirming the addition. The decision of the Hon'ble Delhi High Court in the case of Mr. Udit Kalra Vs. Income Tax Officer (supra) as well as of Suman Poddar Vs. Income Tax Officer in IT 841 of 2019 dated 17.09.2019 of the Hon'ble Delhi High Court clearly covers the issue against the assessee.

In view of this the appeal filed by the assessee on all the grounds is dismissed.

7. The appeal is dismissed.

Order pronounced in the open court on : 27/01//2020.

**Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 27/01/2020.

MEHTA

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	27.01.2020
Date on which the typed draft is placed before the dictating member	27.01.2020
Date on which the typed draft is placed before the other member	27.01.2020
Date on which the approved draft comes to the Sr. PS / PS	27.01.2020
Date on which the fair order is placed before the dictating member for pronouncement.	27.01.2020
Date on which the fair order comes back to the Sr. PS / PS	27.01.2020
Date on which the final order is uploaded on the website of ITAT	27.01.2020
Date on which the file goes to the Bench Clerk	27.01.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	