

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.7124/M/2019
Assessment Year: 2013-14**

Mrs. Pallavi Pandey, Premises No.1 & 2, 4 th Floor, Shreepati Arcade, August Kranti Marg, Nana Chowk, Mumbai – 400 036 PAN: AGUPC 1894N	Vs.	DCIT (CC) 2(3), 8 th Floor, Room No.803, Old CGO Bldg. Pratishtha Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**ITA No.7581/M/2019
Assessment Year: 2013-14**

Shri Rajendra Chaturvedi, Premises No.1 & 2, 4 th Floor, Shreepati Arcade, August Kranti Marg, Nana Chowk, Mumbai – 400 036 PAN: ACZPC 5041Q	Vs.	DCIT (CC) 2(3), 8 th Floor, Room No.803, Old CGO Bldg. Pratishtha Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anil Shathe, A.R.
Revenue by : Shri Manpreet Singh Duggal, D.R.

Date of Hearing : 09.11.2020
Date of Pronouncement : 23.12.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by two different assesseees against the order dated 30.08.2019 of the

Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

ITA No.7581/M/2019

2. The ground raised by the assessee are as under:

1. The reassessment is bad in law as the assessment was reopened based only on the information from the investigation wing. The statements made by some brokers which are not related to the appellant cannot be considered as tangible material to form a belief that the income has escaped assessment. The names of the appellant's brokers are not at all mentioned in the list of brokers indulged in providing accommodation entries.
2. Without prejudice to the above, the learned CIT(A) erred in upholding the action of the assessing officer in treating the long-term capital gains accruing to the appellant as non-genuine only on the basis of general finding of Directorate of Investigation and admission by operators, entry providers and stock brokers in general of having provided the accommodation entries and when there was no cogent material on record and no direct nexus / connection with the appellant was established to prove the impugned transaction as bogus.
3. The learned CIT(A) failed to take cognizance of documentary evidence provided by the appellant such as bank statements, brokers' contract notes and ledger accounts, demat accounts, etc. to substantiate the transactions of purchase and sale of shares. The addition made u/s 68 is merely on presumptions, suspicion, surmises and conjectures disregarding the direct evidence placed on record.
4. The learned CIT(A) erred in denying the benefit of sec. 10(38) of the Act to the appellant when all the conditions for claiming exemption are satisfied by the appellant.
5. The learned CIT(A) erred in treating the transaction of the appellant as non-genuine relying only on circumstantial evidence such as price movements of the equity share which is beyond the control of the appellant.
6. The learned CIT(A) erred in upholding the addition of unexplained expenditure u/s 69C of Rs. 2,07,41,9627- being five percent of the capital gains on account of alleged commission paid to the broker for arranging artificial capital gains, without there being any corroborative evidence.
7. The learned Assessing Officer erred in ignoring the various judicial pronouncements cited by the appellant in her favour.
8. The appellant craves leave to add, alter or amend any of the grounds of the appeal, at any time before or at the time of hearing.

3. The issue raised in ground No.1 is a jurisdictional issue challenging the confirmation of reopening of assessment proceedings by the Ld. CIT(A) as made by the AO under section 147 read with section 148 of the Act.

4. The facts are that the assessee is an individual and promoter of Srinath Group of Builder and Developers. During the year, the assessee filed the return of income on 30.03.2015 declaring a total income of Rs.6,97,66,920/-. The case of the assessee was selected for scrutiny and assessment was framed vide order dated 30.03.2016 passed under section 143(3) of the Act assessing the total income at Rs.6,99,41,920/-. Subsequently, the AO reopened the case of the assessee on the basis of information received from Directorate of Investigation, Kolkata and Mumbai that assessee is a beneficiary of bogus long term capital gain arising from penny stocks. According to the information received by the AO from Directorate of Investigation, Kolkata the assessee is a beneficiary of entries of Rs.41,48,39,241/- in respect of shares of M/s. Shrinath Commercial and Finance Ltd. and claimed exemption under section 10(38) in respect of long term capital gain of Rs.35,44,38,501/-. Based on the said information the AO reopened the assessment of the assessee after recording reasons to believe under section 148(2) of the Act by issuing notice u/s 148 of the Act dated 19.10.2016. In response to the said notice issued under section 148, the assessee vide letter dated 28.12.2016 submitted that the return filed originally under section 139(1) of the Act on 30.03.2015 may kindly be treated as filed in response to notice under section 148 and also requested to provide the reasons recorded for reopening the

assessment. The assessee was provided reasons recorded under section 148(2) on 31.05.2017 and thereafter objections to the reopening of assessment were filed vide letter dated 06.10.2017 by the assessee. The assessee had purchased 28 lakh shares of M/s. Shrinath Commercial and Finance Ltd. during a span commencing from 04.03.2011 to 15.03.2011. Thereafter a bonus issue in the ratio of 1:1 was brought out by the company on 22.03.2011. Consequently the total holding of the assessee became 56 lakh shares which were sold by the assessee during the period beginning from 23.08.2012 to 08.02.2013 for aggregate consideration of Rs.41,48,39,241/- thereby making a long term capital gain of Rs.35,43,35,716/- which was claimed as exempt under section 10(38) of the Act. During the assessment proceedings the AO has narrated detailed modus operandi adopted by various operators and the manner in which the purchase and sale of shares were rigged to spiral the prices and accommodation provided by various brokers, related entities and exit providers. The statement of the assessee was also recorded under section 131 of the Act. According to the AO the financial strength of M/s. Shrinath Commercial and Finance Ltd. does not justify the increase in sales prices which became clear from the statements recorded of various brokers and operators during investigation. Thus the long term capital gain is nothing but accommodation received by the assessee from these brokers. During the assessment proceedings the AO required the assessee to prove the genuineness of the share transactions and the resulting capital gain made therefrom. During the course of assessment proceedings the assessee filed various documents supporting the sale and purchase of shares

to prove the genuineness of the transactions. The assessee submitted that the purchase of shares were made through stock exchange and shares were credited in D-mat account upon purchase. Besides the payment was made through banking channels. Similarly, the bonus shares were also credited in D-mat account. The assessee also submitted that shares were held more than 12 months before being sold through stock exchange and due debit was made through D-mat account and money was too received through banking channels. The AO, however, disbelieving the various documents furnished during the course of hearing and also the various contentions and submissions put forward by the assessee came to conclusion that financial position of the company was not sound during the period when the shares were held by the assessee. The AO also held that the trading volumes and correlation with sensex on the stock exchange does not justify the increase in the share prices of the company which shows that share prices were clearly manipulated by the brokers in order to yield undue and bogus gain to the assessee. The AO also noted that various share brokers whose statements were recorded confirmed the fact of these penny stock companies used to provide accommodation entries of long term capital gain. Similarly, various exit providers also confirmed these shares to be of penny stock companies. Finally, the AO made the addition of Rs.41,48,39,241/- under section 68. The AO further added a sum of Rs.2,07,41,962/- on account of commission paid by the assessee for such alleged accommodation entries and considered the same as unexplained under section 69C of the Act .

5. Aggrieved by the order of AO, the assessee went in appeal before the Ld. CIT(A) challenging the order of AO on both jurisdictional issue as well as on merit, however the Ld. CIT(A) dismissed the appeal of the assessee on both counts. The Ld. CIT(A) while dismissing the appeal on jurisdictional issue observed and held as under:

"5.1.3 In view of these facts, AO had reason to believe that income to the extent of Rs. 41,48,39,241/- had escaped assessment. The facts taken on face value by Assessing Officer at the time of original assessment were found to be false presentation of facts. Thus facts themselves got changed on receipt of information from Investigation wing. Thus, it is not case of change of opinion.

5 1.4 in view of above detailed and satisfaction note of AO on the basis of new facts unearthed by Investigation Wing and made available to AO, it is held that AO was correct in assuming jurisdiction u/s 147 and has correctly issued notice u/s 148. The appeal of assessee therefore, does not succeed on this account.

Following case laws where law is expounded in this regard, support the action of AO:-

(i) McDowell's 154 ITR 148(SC) - in so far the 'corporate veil' needed to be lifted in such cases to distinguish "apparent" from "real". All documents placed at the time of 143(3) assessment are farce and principle of Essence of Colourable Device has to be applied.

(ii) ITO vs Purshottam Das Bangur 90 Taxmann.com 541 (SC) - wherein it was propounded by Hon'ble SC that information contained in letter of Directorate of Investigation could be said to be definite information and. ITO could act upon for taking action u/s 147(b) and ITO could have formed opinion that there was reason to believe that income had escaped.

(iii) Phoolchand Bajrang Lal vs ITO 69 Taxman 627 (SC) - on identical facts as in the impugned case, on subsequent information it was found that transactions were found to be bogus and hence, mere disclosure of such transactions at the time of original assessments cannot be said to be disclosure of "true" and "full facts" of the case and hence ITOs jurisdiction to reopen such concluded assessment was held as justifiable.

5 1.5 While rejecting assessee's ground. I also rely on following case laws of jurisdictional High Court (i) Nickuni Eximp Enterprise vs ACIT 48 Taxmann.com 20 (Bombay HC) Since genuineness of purchase bills was not subject matter of original assessment u/s 143(3) and these bills being bogus was discovered subsequently to 143(3) during survey.

(ii) Sohar Siraj. Lokhandwala vs ACIT (77 Taxman 302) Bombay H.C. Mere submissions of documents in the original assessment but not disclosing 'full & true facts of these and if some material lies embedded in evidence while assessee could have uncovered but did not will amount to 'not disclosing full facts by assessee Thus in the instant case the fact of these companies being bogus and only providing

entry was not disclosed by assessee hence what was submitted was not true. Therefore, failure on the part of assessee.

(iii) Yash Raj Films Pvt Ltd vs ACIT 15 Taxmann.com 275 Bombay High Court in this case, it was on the basis of survey action that several new facts came to light and several discrepancies in the accounts of assessee were discovered which indicated escapement of income thus reopening was held valid. Hence, ground no. 1 and its sub-parts (a), (b) (c) and (d) are dismissed.”

6. After hearing both the parties and perusing the material on record, we observe that in this case a specific information has been received by the AO from Directorate of Investigation, Kolkata and Mumbai that assessee is beneficiary of hawala racket which is giving accommodation entries in the form of long term capital gain and is part of several thousands of crores scam and assessee is a beneficiary of the said organized scam. Thereafter, the AO after analyzing the information received from the Directorate of Investigation recorded reasons under section 148(2) by referring to the return of income filed by the assessee and information furnished by the assessee qua the sale of shares and long term capital gain and came to conclusion that assessee's income has escaped assessment accordingly. In our view, the reopening of assessment is based on specific information as the director of investigation has specifically provided information to the AO that assessee is beneficiary of bogus long term capital gain which is a part of big racket. In view of these facts, we do not find any merit in the contentions of the assessee that there is no linkage between the report of the investigation wing, statement of various individual recorded during the search with the facts of the appellant. Though the statement of various persons/brokers/exit provider did not name the assessee, however, during overall investigation of the entire scam the assessee's name came to light that he is beneficiary of these bogus long term capital gain. Therefore, the

decision relied upon by the assessee in the case of ITO vs. Lakmani Mewal Das 103 ITR 437 (SC) is not applicable to the facts of the case. Accordingly, we are inclined to dismiss the ground raised by the assessee on jurisdiction. Accordingly ground no. 1 is dismissed.

7. The common issue raised in ground No.2 to 7 is on merit challenging the order of Ld. CIT(A) wherein the Ld. CIT(A) has upheld the order of AO thereby confirming the addition of Rs. 41,48,39,241/- by the AO under section 68 of the Act and Rs. 2,07,41,962/- u/s 69C of the Act being 5% commission on total sales proceeds.

8. The facts qua this addition has already been discussed in the paras hereinabove, therefore the same are not being reiterated for the sake of brevity. The Ld. CIT(A) dismissed the appeal of the assessee on merit also by observing that the documents filed and line of arguments made before the appellate authority were same as before the AO and assessee has not brought any new material or new arguments before Ld. CIT(A). The Ld. CIT(A) while dismissing the appeal held that it was brought out during the investigation by Directorate of Investigation, Kolkata and Mumbai that shares of M/s. Shrinath Commercial and Finance Ltd. were manipulated and prices were artificially jacked up and the entire process of purchase and sale of shares were manipulated to realize the bogus gain in favour of various beneficiaries of which the assessee was one. The Ld. CIT(A) noted that shares were purchased at a very low price of Rs.10/- per shares which goes to as high as Rs.62 to Rs.81 in a span of one year. The Ld. CIT(A) while dismissing the appeal of

the assessee passed a very detailed order commencing from para No.5.2 on page No.6 to page 31 of the appellate order.

9. The Ld. A.R. vehemently submitted before us that the assessee has filed all the necessary documents to prove the genuineness of the purchase and sale of the shares by the assessee of M/s. Shrinath Commercial and Finance Ltd. such as contract notes for purchase and sale of shares, copy of D-mat account evidencing the purchase and sales of shares, the proofs of payment through banking channels etc. The Ld. A.R. submitted that shares were purchased from recognised stock exchange through registered share brokers and all the purchases and sale transactions were duly evidenced by the contract notes. Similarly, the purchase consideration was paid through banking channels and sale consideration too was also received through banking channel, STT duly paid and all the transactions were duly reflected in the return of income of the assessee. These shares were held for a period of more than one year and then sold yielding long term capital gain of Rs.35,44,38,501/- which was claimed as exempt under section 10(38) of the Act. The Ld. A.R. submitted that assessee has even given the details of brokers through whom these transactions were made and these brokers were not the parties whose statements were recorded by the investigation wing or who had admitted that this particular script was used to provide bogus entries of long term capital gain. The Ld. A.R. submitted that there is no specific mention of assessee or his family member in any of the recorded statements which could establish the nexus with the whole arrangement of providing and accepting accommodation entries by these operators/exit providers. The

Ld. A.R. submitted that the assessee has carried out these transactions through a recognised stock exchange and operated through a mechanism which is lawful platform for doing such transactions. Therefore, the Ld. A.R. submitted that the allegation of the AO that assessee was hand in glove with these persons who were operators and exit providers were totally baseless and based on surmises and conjunctures of the authorities below. The Ld. A.R. also strongly controverted the findings given by the authorities below that the documents filed by the assessee were self serving/sham documents while the same were contract notes d-mat accounts, bank statements/accounts which were issued by third parties and can not be described as sham/self serving documents. Referring to the order passed by SEBI, the Ld. A.R. submitted that though the SEBI has passed an order on 04.12.2014 whereas the transactions carried out by the assessee have taken place in between 2011 and 2013, as such the assessee was under bonafide belief that all these were bonafide share transactions. The Ld AR finally prayed that the addition made by the AO and as sustained by the CIT(A) may please be deleted. The Ld. A.R. relied on a series of decisions to defend his argument as under:

- 1 Commissioner of Income-tax v. Shyam R. Pawar ([2015] 229 Taxman 256 (Bombay HC))
- 2 Commissioner of Income-tax v. Smt. Sumitra Devi ([2014] 49 Taxmann 37 (Rajasthan HC))
- 3 Kamla Devi S. Doshi v. Income-tax Officer ([2017] 88 Taxmann 773 (Mumbai - Trib.))
- 4 Income-tax Officer v. M/s Arvind Kumar Jain ITA No.4862/M/2014
- 5 Smt. Madhu Killa v. Assistant Commissioner of Income-tax ([2018] 100 Taxmann 264 (Kolkata - Trib.))

- 6 Swati Luthra v. Income-tax Officer ([2020] 115 Taxmann 167 (Delhi - Trib.))
- 7 Shri Vijayrattan Balkrishan Mittal v. Dy. Commissioner of Income Tax (ITA 3427 to 3429/Mum/2019)
- 8 Dipesh Ramesh Vardhan v DCIT In The Income Tax Appellate Tribunal "D" Bench, Mumbai (ITA7662/Mum/2019)

The Ld. A.R. finally prayed that in view of the facts of the case of the assessee and the ratio laid down by the Hon'ble Bombay High Court, Hon'ble Rajasthan High Court and the co-ordinate benches of the Tribunal, the order of Ld. CIT(A) may kindly be reversed and AO may be directed to delete the addition made as the same is based on the presumptions and guess work of the AO.

10. The Ld. D.R., on the other hand, strongly opposed the arguments of the assessee by submitting that the scam was brought out by the Directorate of Investigation, Kolkata and Mumbai which runs into several thousands of crores of rupees. This was an organized racket carried by the stock brokers/operators and exit provider to benefit the parties in the form of accommodation of long term capital gain which was claimed as exempt under section 10(38) and assessee was none of the beneficiaries. The Ld. D.R. submitted that during the said investigation the assessee was found to be the beneficiary of the bogus long term capital gain and his name cropped up during the investigation itself. It is only thereafter the investigation wing passed on the information to the AO about the huge transaction of purchase and sale of shares and the consequent long term capital gain which was claimed as exempt under section 10(38) of the Act. The Ld. D.R. referred to the financial

position of M/s. Shrinath Commercial and Finance Ltd. and submitted that the financials were poor during the period when the shares were held by the assessee and did not justify the phenomena increase in the share prices which proved beyond doubt that the prices of these shares were manipulated and rigged through an organized racket in order to yield the bogus long term capital gain to various beneficiaries including assessee. The Ld. D.R. submitted that the assessee was one of the beneficiaries which also came to light only during the course of investigation that assessee has made huge purchases of shares of 26 lakhs in the said company at a meager price of Rs.10 /- each and thereafter a bonus issue was brought by the company and holdings post bonus issue came to 52 lakh shares. Thereafter, holding these shares for more than 12 months and then selling at a very high price which is approximately eight times higher than the purchase price, during a short span of 12 months which itself shows that this long term capital gain is nothing but accommodation taken from the hawala operators in an organized manner transacted through the recognised stock exchange. The Ld. D.R. further submitted that the entire modus operandi has been brought out and discussed by the AO in the assessment order in great detail. The Ld. D.R. finally contended that even the circumstantial evidences are against the assessee as the assessee is a beneficiary of a racket which runs into several thousands of crores. In defence of his argument the Ld. D.R. highly relied on the order of Ld. CIT(A) wherein the Ld. CIT(A) relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Durgaprasad More 82 ITR 540 and Simit Dayal vs. CIT 214 ITR

801 wherein it has been held that the tax authorities are entitled to look into the surroundings circumstances to find out the truth and relied and applied the test of human probability. The Ld. D.R. argued that the documents produced by the assessee were self serving documents and authorities are not bound to rely on them. Ld. D.R. therefore prayed before the Bench that the mere production of evidences which are sham and manipulated can not be relied and therefore the order of Ld. CIT(A) deserved to be upheld on this issue by dismissing the various grounds raised by the assessee on merit.

11. We have heard the rival submissions of both the parties and perused the material on record including the various case laws referred by the rival parties during the course of hearing. The undisputed facts are that the assessee has purchased 28 lakhs of shares of M/s. Shrinath Commercial and Finance Ltd. between 04.03.2011 to 15.03.2011. M/s. Shrinath Commercial and Finance Ltd. thereafter issued bonus shares in the ratio of 1:1 on 22.03.2011 and thus the assessee came to hold 56 lakh shares in the said company. We note that these shares were purchased through recognised stock exchange through registered broker and were credited in the D-mat account of the assessee. Similarly the bonus shares were also credited in the said D-mat account held by the assessee. All these purchase of shares were supported by the contract notes issued by the authorised brokers of the stock exchange and the payments were made through banking channels. Thereafter, the assessee sold these shares during the period commencing on 23.08.2012 to 08.02.2013 for a total consideration of Rs.41,48,39,241/- and was received through banking channel thereby making a long

term capital gain of Rs.35,44,38,501/- which was claimed as exempt under section 10(38) of the Act as long term capital gain on sale of shares. We notice that all these transactions were carried out on a recognised stock exchange by the assessee through registered brokers duly evidenced by the contract notes and entries in the D-mat account and the sale and purchase consideration reached through banking channels. The AO has also only relied on the investigation carried out by the Investigation wing, Kolkata and Mumbai that assessee is a beneficiary of these bogus long term capital gain entries. Nowhere the AO has brought on record any other evidence than relying on the report of investigation wing that the assessee is beneficiary of this huge racket of taking bogus entries of long term capital gain. The AO has disbelieved these documents by observing that these are sham and bogus documents without pointing out any specific defect or infirmity as these were issued as per the system of the recognised stock exchange through registered brokers. Similarly, the Ld. CIT(A) has upheld the order of AO by holding that the assessee is beneficiary of a big racket whereby the prices of the shares were rigged and manipulated to yield bogus gain to various entities/individuals of which assessee was one. Thus we find merit in the arguments of the Ld A.R. that assessee has furnished all the informations, details, documentary evidences before the AO but the AO has not done any further verification to find out the truth or done anything to prove the money trail of the funds as has been alleged in the order. Under these circumstances, we are not in a position to sustain the order of Ld. CIT(A) upholding the order of AO wherein the long term capital gain has been held to

be non genuine and bogus. The case of the assessee is supported by a series of decisions as relied upon by the Ld. A.R. which are discussed as under:-

- In case of CIT vs. Shyam R. Pawar (supra) the Hon'ble Bombay High Court has dismissed the appeal of the revenue by observing and holding as under:

"5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny. It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt. Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt. Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,1507-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DM AT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the

transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But The Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.”

- In the case of CIT Vs Sumitra Devi(supra), the Hon’ble Rajasthan High court has held that where the assessee has furnished all the documents comprising contract notes, brokers note, cash book extracts, copies of share certificates and D-Mat statements etc and the AO has failed to show that the material documents placed on records by the assessee were false, fabricated or fictitious , then the transactions of purchase and sale of shares can not be treated as non genuine.
- We have also perused other decisions of the coordinate Mumbai benches wherein under similar facts the issue has been decided in favour of the assessee.

12. We do not find merit in the argument of the Ld. D.R. as the decisions relied by the Ld. D.R. clearly are distinguishable on facts. In view of the above facts and the ratio laid down as discussed above, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition made under section 68 of the Act of Rs.41,48,39,241/-.

13. Since we have deleted the addition as made by the AO under section 68 of the Act by setting aside the order of Ld. CIT(A), the other addition of Rs.2,07,41,962/- as made by the AO towards commission paid on the accommodation entry is a consequential one and is also deleted.

Accordingly, ground Nos.2 to 7 are allowed.

The appeal of the assessee is partly allowed.

ITA No.7124/M/2019

14. The issue involved in the present appeal is identical to the one as stated above in ITA No.7581/M/2019 for A.Y. 2013-14. Therefore, our finding in ITA No.7581/M/2019 for A.Y. 2013-14, mutatis mutandis would apply to this appeal as well. Accordingly the appeal of the assessee is partly allowed.

15. In the result the appeals hereinabove are partly allowed.

Order pronounced in the open court on 23.12.2020.

Sd/-
(Amarjit Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: .12.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.