

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्रीवी. दुर्गा राव, न्यायिक सदस्य एवं
श्रीजी. मंजूनाथा, लेखासदस्यकेसमक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.571/Chny/2020
निर्धारण वर्ष / Assessment Year: 2016-17

Mr.Ramaswamy Shivaraman,
144/15, Kailash Colony,
Anna Nagar West,
Chennai-600 101.

v. The Asst. Commissioner of
Income Tax,
Corporate Circle-1(1),
Chennai.

[PAN: BZOPS 3579 J]
(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Mr.B. Ramakrishnan, CA
: Mr.AR.V.Sreenivasan,
Addl.CIT

सुनवाई की तारीख / Date of Hearing

: 17.11.2021

घोषणा की तारीख / Date of Pronouncement

: 17.12.2021

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-1, Chennai, dated 28.02.2020 and pertains to AY 2016-17.

2. The assessee has raised the following grounds of appeal:

1. *The order of the Learned Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.*

2. *For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the assessment made on suspicion, conjectures and surmises.*

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3. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Long Term Capital Gain amounting to Rs.6,22,63,014/- (Tax Effect- Rs.1,43,65,323/-).

3A. Thereby the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Short Term Capital Loss of Rs.3,81,74,128/-.

3B. Thereby the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of deduction claimed u/s 54F amounting to Rs.2,41,17,741/-.

4. For that the Learned Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the shares of M/s CL Educate Ltd had "Material Adverse Effect" in lieu of cancellation of their IPO and hence the shares were sold at book value of Rs.179.15 per share, thereby resulting in short term capital loss of Rs.3,81,74,128/-.

5. For that the Learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant's mother did not have sufficient funds to complete the construction of the impugned property and hence had sold the same to the appellant at market value. Hence the appellant had rightly claimed the deduction u/s 54F of Rs.2,41,17,741/-.

6. For that the Learned Commissioner of Income Tax (Appeals) committed a grave error in giving a finding in para 7.5 of the impugned order which are contrary to the facts of the case.

7. For that the Learned Commissioner of Income Tax (Appeals) erred in refusing to accept the reasons without any basis and concluding the transactions to be a Sham Transaction, without appreciating the transparency of the transactions.

For these grounds and such other grounds that may be adduced before or during the hearing of the appeal, it is prayed that the Hon'ble Tribunal may be pleased to delete the addition of Long Term Capital Gains made and/or pass such other orders as this Hon'ble Tribunal may deem fit.

3. Briefly, the facts of the case are that the assessee is a shareholder/director of M/s. Accendere Knowledge Management Services Pvt. Ltd., filed his return of income for the AY 2016-17 on 30.12.2016 declaring a total income of Rs.4,99,860/-. The case was taken up for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee had entered into a shares purchase agreement with M/s.CL Educate Ltd., on 07.09.2015 to sell 51% stake held by him in M/s. Accendere Knowledge Management Services Pvt. Ltd., for a consideration

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of Rs.13.64 Crs. The consideration for sale of shares was discharged by M/s.CL Educate Ltd., by paying Rs.1.25 crores in cash and the balance in the form of allotment of 99915 equity shares at Rs.590/- per share. The assessee has computed long term capital from sale of equity shares at Rs.6,72,63,014/-. It was further noted that the assessee is one of the co-owner of immovable property held in the name of his mother. After the demise of his father, the property was jointly owned by his mother along with his brother. Subsequently, the assessee and his brothers had relinquished their right in the property in favour of their mother vide Release Deed No.3855/2016 dated 27.06.2016. The said property has been subsequently purchased by the assessee from his mother vide Sale Deed No.4426/2016 dated 19.07.2016 for a consideration of Rs.2,21,26,500/- and said consideration was paid partly in cash amounting to Rs.54,80,778/- and the balance amount of Rs.1,66,45,722/- by way of transfer of equity shares held by the assessee in M/s.CL Educate Ltd. The said sale of shares resulted in short term capital loss of Rs.3,81,74,128/-. The assessee has computed long capital gain from sale of shares of Accendere Knowledge Management Services Pvt. Ltd., at Rs. 6,72,63,014/-. The assessee had also computed short term capital loss of Rs. 3,81,74,128/- from sale of M/s CL Educate Ltd. Finally, after claiming exemption u/s.54EC & u/s.54F of Income Tax Act, 1961, declared net short term capital loss to be carry forward to

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subsequent year at Rs.28,855/-. The relevant computation of capital gain is as under:

Long Term Capital Gains	Rs.6,72,63,014/-
Less: Deduction u/s.54F	Rs.2,41,17,741/-
Less: Deduction u/s.54EC	Rs.50,00,000/-
Long Term Capital Gain after investment u/s.54F and 54EC	Rs.3,81,45,273/-
Less: Short Term Capital Loss	Rs.3,81,74,128/-
Short Term Capital Loss c/f	Rs.28,855/-

4. During the course of assessment proceedings, the AO, however, was not convinced with the explanation furnished by the assessee and according to him, subsequent Release Deed executed by the assessee and his brother in favour of his mother and purchase of very same property by the assessee by paying cash consideration and transfer of equity shares of M/s.CL Educate Ltd., is a colourable device arranged by the assessee through multiple layers of transaction between related parties and thus, opined that short term capital loss declared by the assessee on transfer of M/s.CL Educate Ltd., shares to his mother, is a sham transaction and hence, cannot be allowed to be set off against long term capital gains derived from transfer of equity shares of M/s. Accendere Knowledge Management Services Pvt. Ltd. The AO discussed the issue in the light of transaction between the assessee and his mother and share price of M/s.CL Educate Ltd., when it was allotted to the assessee on 07.09.2015 and subsequent transfer of shares to his mother at a much lesser rate of Rs.179.15 per share, and opined that transaction of purchase of property by transfer of equity shares is nothing but an arranged transaction between two related parties and hence, cannot be considered as a

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genuine transaction, which was took place between two independent parties. The AO had also disputed property purchased by the assessee from his mother in the light of guidelines value of the property and held that, although the guideline value of the property is much lesser as on the date of transfer, but the assessee has paid a consideration of Rs.1,03,50,000/- which is more than guideline value. The AO had disputed amount paid for building and according to him, amount paid by the assessee for 3458 sq.ft. building is much higher than the actual cost of construction. Therefore, he has denied subsequent purchase of property from his mother and also sale of equity shares and consequently, denied the benefit of exemption claimed u/s.54F of Income Tax Act, 1961 and also set off short term capital loss derived from the sale of equity shares to his mother. The relevant findings of the Assessing Officer are as under:

2.1 The submissions made by the assessee have been carefully perused, the facts and circumstances of the transaction are also examined and the following observations are made with respect to the transactions.

2.2 The assessee Sh. RamaswamySivaraman has sold his shares in the company M/s Accendure Knowledge Management Services India Pvt Ltd. It is seen that, as per the agreement, M/s CL Educate Ltd, agreed to purchase the shares for a 51% stake in the company for a total consideration of Rs. 13.64 crores, partly to be paid in cash and the rest to be paid as shares of M/s CL Educate Ltd.

2.3 The consideration was paid as cash to the tune of Rs.1.25 crores and the remaining was paid to the assessee in the form of shares of M/s CL Educate Ltd - a total of Rs.92915 shares that has been valued at Rs.590/- per share (Face Value of Rs.10/-). Since the same was a transfer under the Income Tax Act, the assessee had to declare long term capital gains on the said transaction. The long term capital gain from the said transaction was worked out to be arriving at the tune of Rs.6,72,63,013.92/- as per the assessee's calculations.

2.4 Further, the assessee has claimed a deduction under the sections 54EC as well as 54F of the Income Tax Act, 1961 out of the aforementioned capital gains. The details of the transactions along with relevant documents were called for and examined. The deduction claim under section 54EC by investment in the bonds of NHA I appears to be in order. However, on examining all the documents related to the claim of deduction under section

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54F, it is noticed that the arrangements were made in such a way that the transfer as well as the values of the transaction has been designed purposefully between the related parties to specifically claim a deduction and avoid the payment of long term capital gains.

2.5 For the claim of deduction under section 54F of the Income Tax Act, 1961, the assessee has made a purchase, of a residential property from his own mother. It is also noticed that the prior to the purchase of the property, the assessee himself had relinquished his rights on the property acquired as a legal heir in favour of his mother without receiving any compensation, and brought back the same along with the rest of the property, a mere 3 weeks after the relinquishment: Similarly, the consideration for the acquisition of the property was also shown as being made partially through cash (to the tune of Rs.54,80,778/-) and the remaining amount was shown to have been paid in the form of the shares of CL Educate Ltd, received as part of the sale consideration itself. However, the valuation of the shares at this time was not taken at the value of Rs.590/- per share but at Rs.179.15/- per share and considered to have a total value to the tune of Rs.1,66,45,722/-. Thus, the acquisition of the property has been made through this arrangement from his mother for claiming the deduction under section 54F.

2.6 Similarly, as mentioned above, since the part of the consideration has been shown as paid in shares, the assessee has considered it as a short term capital transfer. Since the value of the share at this point of time was taken as Rs. 179.15/- as opposed to Rs. 590/- at the time of allotment, a short term capital loss of Rs. 3,81,7,127.75/- was claimed by the assessee which was again used to set off the remaining long term capital gains. Thus, in effect, the assessee successfully negates the entire gains received by the original sale of shares by the elaborate arrangement made with his mother. Similarly, with the abnormal value of acquisition and consideration, as opposed to the market value of the property purchased, the mother also ended up having no tax liability from the said transaction, as the arbitrary values being assigned by the assessee and his mother has resulted again in a long term capital loss in her own hands. The assessee has conveyed the property to his mother estimating the market value of property at Rs.2,23,50,000/- wherein the land of 2258 sq.ft is valued at Rs.1,03,50,000/- and the building of 3458 sq.ft is valued at Rs.1,20,00,000/-. But on verification of the guideline value of the said land at www.tnreginet.net the same is valued at Rs.3500/- per sq.ft which translates to a sum of Rs.79,03,000/- in respect of the land, against Rs.1,03,50,000/- considered by the assessee. The guideline value as obtained from the website is incorporated for ready reference:

2.7 Further, the construction cost of 3458 sq.ft of super structure has been adopted as Rs.1,20,00,000/- by the assessee which translates to the cost of construction of Rs.3470/- per sq.ft which is again a highly improbable valuation and also not supported by any supporting documentary evidences. Therefore, it can be seen that the mother also, avoids payment of taxes and has benefited from the arrangement made. Each of the transactions may be analysed carefully to examine the arrangements for tax avoidance envisaged by the assessee. Dealings involving funds transfer to near and dear ones need to be looked into with care and caution and necessary inferences drawn if there are abnormalities attaching to such transactions as per the law laid down by the Hon'ble Supreme Court in the cases of Workmen, Associated Rubber Industry Ltd. Vs Associated Rubber Industry Ltd. (SC) 157ITR 77, Union of India &Ors. Vs Playworld Electronics P. Ltd. &Anr. (SC) 184 ITR 308.

2.8 The property that has been acquired by the assessee for the claim of 54F deduction has been originally purchased by the father and mother of the assessee during the year 2014. Subsequently, upon passing of the father of the assessee, the legal rights vested with the mother (5/8th share) and 3 sons (1/8th share each). In the present case, the sale of shares by the assessee happened in the financial year 2015-16 on 7th September 2015. Further to this, before the filing of returns for the relevant assessment year, since there was a huge capital gain windfall for the assessee, the arrangement as discussed above has been designed within a short time period to entirely negate the gains made during the year and to avoid payment of taxes on the same. The three sons, including the assessee, has relinquished their legal rights of 1/8th share of the property each to their mother vide a release deed no. 3855 of 2016 dated 27.06.2016. Soon enough, the property was transferred to the name of the assessee, Shri RamaswamyShivaraman vide Sale Deed No.

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4426/2016 dated 19.07.2016, i.e. a mere three weeks after he had relinquished his share also in the name of the mother. It has to be seen that the assessee and the mother was staying in the same property and continues to do so.

2.9 The consideration for the transfer also, as seen from the records, as mentioned earlier was majorly paid in kind, by the shares of M/s CL Educate Ltd that was received by the assessee earlier. It is to be noted that annual report wherein the valuation of shares allotted to the assessee as available to the assessee wherein the share is valued at Rs.590/- per share. However, for subsequent transfer of the share, the assessee has conveniently taken the book value of shares as on 31.03.2015 without providing any reasonable logic, at Rs.179.15 whereas a few months before the assessee himself had accepted the shares at a value of Rs.590 per share. By taking the value of the shares at Rs.179.15, the assessee has not only claimed the 54F deduction by making it a part of the purchase consideration, but also a huge short term loss as well by considering the same as a short term capital asset transfer. It can be seen that the entire arrangement has been made with the sole intention of fitting all the values of the transactions as per the arrangements so as to avoid payment of any taxes.

2.10 The transfer of the property by the mother to the assessee in the aforesaid circumstances can only be considered as a sham transaction with only an intention of availing the benefit of deduction under section 54F of the Income Tax Act, 1961. The surrounding circumstances and the relationship between that parties, along with the convenient valuation of all the transactions involved, clearly points to a well schemed arrangement to avoid the payment of the taxes. It is also to be noticed that the mother continues to stay in the same property before and after the transfer and so does the assessee. There is only a change in ownership as per title deed but there is no change in the substance or the circumstances even after the transfer of the property. As already mentioned above, the valuations are conveniently made as per the requirement of the assessee and there is no tax liability arising for either the assessee or his mother. Substance of transaction should prevail over its form which is the trite law as per the decision of the Apex Court in the case of *Karanpura Development Co. Ltd. Vs CIT (SC) 44 ITR 362*. In lieu of the discussions, the claim of deduction under section 54F is only out of a sham transaction for the purpose of avoidance of long term capital gains tax and is to be disallowed.

2.11 Thus, it follows that the transfer of shares as part of the 'sale consideration' is also a sham transaction wherein there is no intention of the parties to actually transfer any rights on the asset. As already discussed, the assessee has derived a huge short term capital loss as well out of the said transaction. Further, the valuation of the shares at Rs.179.15 (as on 31.03.2015) while getting allotted for Rs.590/- per share on 07.09.2015 has not been explained satisfactorily, other than the fact that the values conveniently fit the mould of nullifying any tax liability. Therefore, the short term capital loss of the assessee is only out of arbitrary assignment of value of the shares and is liable to be disallowed. However, without prejudice, since the transfer of shares as part of the sale consideration is in itself a sham transaction, as discussed in the foregoing paragraphs, the short term capital loss claimed is also to be disallowed.

2.12 The Hon'ble ITAT Delhi has held that "Tax liability in the case of suspicious transactions to be assessed on the basis of the material available on record, surrounding circumstances, human conduct, preponderance of probability and nature of incriminating information / evidence" in the case of *Hersh V. Chadha L/H of Late W.N. Chadha Vs DDIT(Int.Tax) (ITAT, Del) 135 TTJ 513*. Similarly, with respect to a transaction, the Hon'ble Bombay HC has held that "What has to be considered is not to ask whether the provision should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it - Courts can remove the veil to find out the real nature of the transaction" in the case of *Nayantara G. Agrawal Vs CIT (Bom) 207 ITR 639*.

2.13 Thus, as per all the discussions: made supra, along with the support of various judgements over the years, it can be seen that the claim of 54F Deduction as well as the claim of Short Term Capital Loss-arise out of sham transactions and are therefore liable to

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be disallowed. Thus, the amount Claimed as deduction under section 54F, to the tune of Rs.2,41,17,740.93/- as well as the short term capital loss of Rs.3,81,74,127.75/- is hereby disallowed and added back to the total income of the assessee.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated his arguments made before the Ld.AO and submitted that when the AO has accepted capital gains declared for transfer of equity shares, has erred in denied subsequent sale of shares and consequent set off of capital loss and also exemption claimed u/s.54F of the Income Tax Act, 1961 towards purchase of residential house property from his mother. The Ld.CIT(A) after considering the relevant submissions of the assessee and also taken note of various facts brought out by the AO, opined that if we see sequent of events between the assessee and his mother, it appears that the assessee arranged a method to reduce his taxable income arises out of transfer of equity shares and thus, opined that there is no error in the reasons given by the AO to disallow set off claimed towards short term capital loss arises on account of transfer of equity shares to his mother and further denial of exemption claimed u/s.54F of the Income Tax Act, 1961, in respect of the purchase of property from his mother. Accordingly, rejected the arguments of the assessee and sustained additions made by the AO. Being aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

6. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in confirming the assessment made by the AO towards computation of long

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term capital gains derived from the sale of equity shares after excluding set off of short term capital loss derived from subsequent sale of shares. The AO for the assessee, further, submitted that there is no doubt, the assessee has entered into a transaction with his mother for purchase of property and further consideration for purchase of property was paid partly in cash and partly by transfer of equity shares of M/s.CL Educate Ltd. Just because, transaction was between mother and son, it cannot be said that the transaction is a sham transaction which is arranged for reducing tax liability. He, further, submitted that no doubt when the assessee transferred M/s.CL Educate Ltd., shares to his mother, the price was much lesser when compare to shares purchased by the assessee, when he had sold 51% stake in a company, but fact remains that when the assessee has sold his shares held in M/s.Accendere Knowledge Management Services Pvt. Ltd., to M/s.CL Educate Ltd., the shares were allotted on the basis of enterprise value which is, further, backed by the fact of M/s.CL Educate Ltd., was in the process of listing its shares in stock market. However, the same did not materialize and hence, the assessee could not liquidated said rate. However, fact remains that subsequently, M/s.CL Educate Ltd., came up with an IPO and the shares were listed in BSE and when the assessee has sold the shares to his mother at Rs.179.15 per share, the share price was trading at Rs.120.10 per share. Therefore, it is highly incorrect on the part of the AO to allege that the assessee has sold shares at a lesser price to book short term

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capital loss. He further submitted that in so far as purchase of property from his mother and claiming benefit of exemption u/s.54F is concerned, there is no dispute with regard to the fact that the property was jointly owned by the assessee, his mother and his brothers. It was also not in dispute that the assessee and his brothers were relinquished their right in property in favour their mother. It was also not in dispute that subsequently the assessee has purchased the property by paying cash consideration and transferring equity shares held by him in M/s.CL Educate Ltd.,. All these transactions were done in accordance with the law. There is no restriction under any law for entering into a transaction with related party. As long as the transactions are genuine which are backed by evidences, same cannot be doubted only for the reasons said transactions were between the related parties. Therefore, he submitted that the AO is completely erred in denying set off of short term capital loss against long term capital gains and further exemption claimed u/s.54F of the Income Tax Act, 1961 towards purchase of residential house property.

7. The Ld. DR, on the other hand, supported the order of the AO and submitted that the facts brought out by the AO clearly shows that subsequent Release Deed executed by the assessee in favour of his mother and purchase of very same property by paying consideration partly in cash and partly by transfer equity shares is nothing but a sham transaction arranged by the assessee with related parties to reduce his

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taxable income arise out of transfer of equity shares and thus, there is no error in the reasons given by the AO to deny set off of short term capital loss and exemption towards purchase of another residential house property. The Ld.CIT(A) after considering the relevant facts has rightly upheld the additions made by the AO and his order should be upheld.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The fact with regard to sale of equity shares held by the assessee in M/s.Accendere Knowledge Management Services Pvt. Ltd., to M/s.CL Educate Ltd., for a consideration of Rs.13.64 Crs. is not disputed by the AO. In fact, the first transaction of sale of shares and consequent computation of long term capital gains is undisputed. The only dispute is with regard to subsequent transfer of M/s.CL Educate Ltd., shares to his mother and consequent set off of short term capital loss against long term capital gains. As regards, selling of shares of M/s.CL Educate Ltd., to his mother, there is no dispute with regard to the fact that said transaction is for purchase of a residential house owned by his mother. Facts borne out from records shows that the assessee had purchased a residential house owned by his mother vide Sale Deed dated 19.07.2016 for a consideration of Rs.2,21,26,500/- and said consideration was discharged partly in cash of Rs.54,80,778/- and partly by transfer of equity shares of M/s.CL Educate Ltd., at Rs.179.15 per share. The AO has not disputed fact that the assessee has transferred shares to his mother's account through DEMAT

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Account and physical shares certificate are handed over to his mother. The AO disputed transaction only on the sole ground that when the assessee has purchased M/s.CL Educate Ltd., shares at Rs.590/- per share, no reason was given to sell very same share after a period of 10 months for a lesser price of Rs.179/- per share. Therefore, he opined that it is sham transaction arranged by the assessee in collusion with his mother to reduce his tax liability.

9. We have given our thoughtful consideration to the reasons given by the AO in light of various evidences filed by the assessee and we ourselves do not subscribe to the reasons given by the AO for the simple reason that, subsequent sale of shares to his mother is a normal transaction between two individuals although, both are relatives. Further, said transaction was happened in pursuant to a registered Sale Deed of immovable property conveyed by the assessee's mother in favour of the assessee. All these transactions were happened in accordance with law. As regards, price for which shares were sold to his mother, the assessee was justified selling price by adducing various evidences as per which M/s.CL Educate Ltd., shares were subsequently listed in BSE on the date of transfer at Rs.122.10 per share. Further, M/s.3A Financial Services Ltd., offered to buy shares of M/s.CL Educate Ltd., from the assessee for Rs.4/- per share on 15.01.2016. Subsequently, when M/s.CL Educate Ltd., was in the process of IPO, the very same firm made a revised offer of Rs.100/- per share. If you compare offer for share price received by

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the assessee from a third party, we find that the share price received by the assessee from his mother is more than prevailing market rate of the shares in the open market. Further, book value of M/s.CL Educate Ltd., share as on the date of transfer to assessee mother was at Rs.179.15 per share. No doubt, the assessee has purchased very same M/s.CL Educate Ltd., shares at Rs.590/- per share on 07.09.2015, but fact remains that there is a gap of 10 months between date of purchase of shares by the assessee and subsequent sale of shares to his mother. It is a well-known fact in the share market, share price may go up and come down for various reasons and it cannot and never be constant at any time. Therefore, merely for the reasons that the assessee has purchased very same shares at Rs.590/- per share, the AO cannot dispute selling price of shares at Rs.179.15 per share when other evidences filed by the assessee clearly shows that the transactions were genuine which was happened through proper channel. Further, the AO cannot dispute the transactions merely for the reason that said transaction was happened between the related parties. It is a well settled position of law that for the purpose of Income Tax, mother and son are two different persons. If there is any transactions between mother and son and said transaction is happened in the normal course, then the AO cannot dispute such transaction merely said transaction resulting in payment of less tax to the Department by any person. Moreover, the assessee has given various reasons to justify selling price of M/s.CL Educate Ltd., which is backed by factual evidences.

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Hence, in our considered opinion, the AO is completely erred in disputing subsequent sale of shares to his mother and consequent denial of set off of short term capital loss arises out of such transactions. Hence, we direct the AO to allow set off of short term capital loss arises out of transfer of shares to his mother against long term capital gain derived from sale of shares held by the assessee.

10. Coming back to denial of exemption claimed u/s.54F of the Income Tax Act, 1961 in respect of purchase of residential house from his mother. The AO has not disputed fact that the assessee has purchased a residential house vide Sale Deed dated 19.07.2016 for a consideration of Rs.2,21,26,500/-. The AO had also not disputed the fact that said property was legally owned by his mother. The sole reason for the AO to denial of exemption claimed u/s.54F of the Income Tax Act, 1961, was that, the assessee has arranged sham transaction by relinquishment of his right in the property in favour of his mother and subsequent purchase of very same property from mother to claim benefit of exemption u/s.54F of the Income Tax Act, 1961. In other words, facts with regard to purchase of property were not in dispute, but only dispute is manner in which such transfer took place. Admittedly, the property was initially owned by the assessee's father. The assessee's father was subsequently demised in November, 2015 and after his demise, all properties were inherited by the assessee, his mother and his brothers. As per the facts available on record, the assessee owned 1/8th share in the said property.

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The assessee's share was relinquished along with his brother's share in favour of their mother vide Release Deed dated 27.06.2016 and said Release Deed was registered in the Office of the Sub-Registrar. Further, the assessee had purchased very same property from his mother for a consideration of Rs.2,21,26,500/-. The AO had never disputed above facts. However, only dispute is with regard to manner of transfer of property and timing of transfer of said property. According to the AO, the relinquishment of assessee's right in the property and subsequent purchase of very same property, is sham transaction. Further, to arrive at such conclusion, the AO, except bringing relationship between the assessee and his mother, has not brought on record any evidences to justify his case. Admittedly, the assessee, his mother and brothers are different persons for the purpose of Income Tax. Each one has separate assessable entity. Further, there is no restriction whatsoever under any law for buying or selling a property between mother and son. If at all, two individuals decided to enter into a transaction of purchase/sale property, it is their own wisdom and decision. The Transaction may result in some consequential tax effect, but the AO cannot dispute said transaction merely because it resulted in payment of less taxes by anyone of the person, unless the AO brought on records evidences to prove that the parties have arranged transaction to evade payment of taxes.

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11. In this case, admittedly the property was initially owned by the assessee and his mother and his brothers. They decided to relinquish their right in favour of his mother and said transaction was a bona fide decision. His mother decided to sell her property and property purchased by the assessee was once-gain a bonafide transaction. Therefore, merely because transaction was between mother and son, the AO cannot dispute genuine transaction of purchase of property. If at all, he has any doubt about the conduct of the assessee in relinquishment of his 1/8th share in favour of his mother and subsequent purchase of said share by the assessee, then it can be held to be an arrangement between the parties for reducing the tax liability. In our considered view, except this in respect of remaining 7/8th share held by his mother and brothers, definitely right of the property was with different persons and the assessee has acquired said right by paying consideration and thus, same cannot be treated as sham transaction.

12. As regards value of the property, the AO has compared the guideline value of the land and opined that the assessee has paid more consideration to his mother. We have carefully considered reasons given by the AO and we find that there is a slight difference of Rs.20 lakhs between consideration paid by the assessee for purchase of land and guideline value of the said land. It is quite common in real estate market that the rate will fluctuate depending upon various factors and obviously,

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the guideline value of the property may not be correct value of the property. Therefore, for said reason, consideration paid by the assessee through a registered Sale Deed cannot be disputed by the AO. As regards, consideration paid for building, the assessee has paid a sum of Rs.2,00,00,000/- for a total 3458 sq.ft., building. The AO has disputed value and argued that it is higher side. However, could not bring on record any comparable cases of similar in nature. Therefore, without any evidence he cannot dispute consideration paid for purchase of property through a registered Sale Deed. Therefore, in our considered view reasons given by the AO to deny the benefit of exemption claimed u/s.54F of the Income Tax Act, 1961 for purchase of property cannot be appreciated.

13. It is a well settled principle of law by various decisions of Courts including the decision of the Hon'ble Apex Court in the case of Omar Salay Mohamed Sait v. CIT reported in [1959] 37 ITR 151 (SC)., that no addition can be made on the basis of suspicion, conjecture and surmises. The Hon'ble Apex Court in the case of Omar Salay Mohamed Sait v. CIT reported in [1959] 37 ITR 151 (SC) held that the conclusion arrived at was due to suspicion which could not take place of proof but based on many surmises and conjectures, reliance cannot be placed. In this case, the AO has doubted genuine transaction of purchase of property by the assessee from his mother which was supported by registered deed only

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on the basis of suspicion and surmises, because said transaction was between the mother and the son. Therefore, we are of the considered view that the AO is erred in completely denying the benefit of exemption claimed u/s.54F of the Income Tax Act, 1961. However, as we noted in earlier part of this order, the assessee was originally owned 1/8th share in impugned property and the same has been relinquished in favour of his mother without any consideration. The assessee has subsequently purchased very same 1/8th share in the impugned property by paying a consideration. Therefore, if at all, it can be said that there is an arrangement between the assessee and his mother for reducing tax liability, then it can be said in respect of 1/8th share held by him in the impugned property. Therefore, we are of the considered opinion that the AO is erred in denying complete exemption towards purchase of property u/s.54F of Income Tax Act, 1961. Hence, we direct the AO to allow exemption u/s.54F of the Act, towards 7/8th share in the impugned property.

14. In this view of the matter and considering the facts and circumstances of this case, we are of the considered opinion that the AO is erred in denial of set off of short term capital loss derived from sale of M/s.CL Educate Ltd., shares to assessee's mother against long term capital gains derived from sale of share of M/s.Accendere Knowledge Management Services Pvt. Ltd. Hence, we direct the AO to allow set off

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of short term capital loss against long term capital gains. We, further, directed the AO to allow exemption claimed u/s.54F of Income Tax Act, 1961 towards 7/8th of impugned property.

15. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on the 17th day of December, 2021, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/**JUDICIAL MEMBER**

Sd/-

(जी.मंजूनाथा)

(G. MANJUNATHA)

लेखासदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: December 17, 2021.

TLN

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF