

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3640/Del/2018 : Asstt. Year : 2014-15

Abhinav Agarwal, C/o Kapil Goel, Adv. F-26/124, Sector-7, Rohini, New Delhi-110085	Vs	DCIT, Circle-1, Meerut
(APPELLANT)		(RESPONDENT)
PAN No. AFZPA5664E		

ITA No. 3641/Del/2018 : Asstt. Year : 2014-15

Abhinav Agarwal HUF, C/o Kapil Goel, Adv. F-26/124, Sector-7, Rohini, New Delhi-110085	Vs	Income Tax Officer, Ward-1(1), Meerut
(APPELLANT)		(RESPONDENT)
PAN No. AAJHA3969H		

Assessee by : Sh. Kapil Goel, Adv.

Revenue by : Smt. Kirti Sankratyayan, Sr. DR

Date of Hearing: 22.10.2021	Date of Pronouncement: 04.01.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

These appeals have been filed by the assessee against the orders of Id. CIT(A), Meerut dated 13.02.2017 and 13.02.2018.

2. Since, the issues involved in both the appeals are identical, they were heard together and being adjudicated by a common order.

3. In ITA No. 3640/Del/2018, following grounds have been raised by the assessee:

"1. That order passed by Ld AO dated 30/12/2016 and further order passed by Id CIT A dated 13/02/2018 are bad in law in as much as notice u/s 143(2) is not in accordance with jurisdictional conditions stipulated under the Act.

2. That order passed by Ld AO dated 30/12/2016 and further order passed by Id CIT A dated 13/02/2018 are bad in law in as much as addition of Rs 103,46,835 u/s 68 on a/c of alleged sham Long Term Capital Gains is made violating principles of natural justice and on basis of vague and generalized show cause notice (19/12/2016) without confronting any back material to assessee thus rendering the entire proceedings a nullity in eyes of law as replied to AO vide letter 20/12/2016.

2.1 That order passed by Ld AO dated 30/12/2016 and further order passed by Id CIT A dated 13/02/2018 are bad in law in as much as addition of Rs 103,46,835 is made violating principles of natural justice without confronting any investigation wing report relevant extract, material found by investigation wing etc which is sufficient to quash the assessment order and order passed by Ld CIT-A.

3. That order passed by Ld AO dated 30/12/2016 and further order passed by Id CIT-A dated 13/02/2018 are bad in law in as much as addition of Rs 103,46,835 is made inter-alia on basis of statements, which have no evidentiary value as notably assessee's retort submitted to Ld AO has been completely overlooked and fact that assessee has never done transaction with those persons, and that those statements has no direct nexus with assessee demolish the case set up by Ld AO and arbitrarily confirmed by Ld CIT-A (refer cit-apage 6 etc).

3.1 That order passed by Ld AO dated 30/12/2016 and further order passed by Id CIT A dated 13/02/2018 are bad in law in as much as addition of Rs 103,46,835 is made inter-alia on basis of statement which have no evidentiary value as cross examination of person recording that statement is also not offered as per law.

3.2 That order passed by Ld AO dated 30/12/2016 and further order passed by Id CIT A dated 13/02/2018 are bad in law in as much as addition of Rs 103,46,835 is made inter-alia on basis of statements, which have no evidentiary value as:

- i) firstly they are recorded primarily during survey operation and u/s 133A/131 which statements are not at par with search statements recorded u/s 132(4) and cannot straightway justify adverse inference even against the statement giving person;*
- ii) secondly these statements are not equivalent to "material" much less "incriminating material" in eyes of law and they are not corroborated by any iota of independent material;*
- iii) thirdly, these statements cannot bind assessee who was not subject matter of any parallel survey operation etc;*
- iv) fourthly these statements are pre-existing as were recorded by investigation wing and no where independently re-examined by Ld AO;*
- v) fifthly, these statements are not put to acid test of cross-examination;*
- vi) sixthly, statements recorded after expiry of extant financial year cannot be extra-polated;*
- vii) seventhly how these statements are procured and reed by Ld AO in present case is not discernible;*
- viii) eighthly assessee never made the transaction through persons whose statements are recorded and relied;*
- ix) lastly it is no body's case that these general statements talk about assessee's particular transaction*

4. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of Rs 103,46,835 without appreciating that burden to prove that transaction is bogus/sham has remained un-discharged from side of revenue.

5. That on the facts and in the circumstances of the case and in law, both Id CIT-A and Id AO erred in making subject additions without appreciating that the modus operandi relied extensively in impugned orders is never co-related even remotely to the facts of the

present case as there is no iota of evidence brought on record which can display that assessee herein has inducted certain cash at the time of sale to certain unidentified broker/middleman/syndicate member who has in turn introduced certain identified artificial paper company for alleged parking of said cash to buy the shares sold by the assessee which theoretical trail has remained inchoate completely nullifying the entire basis of the addition.

6. That on the facts and in the circumstances of the case and in law, Id AO erred in making subject additions without appreciating that law gives discretion to the assessing officer in applying deeming fictions u/s 68 etc which discretion has not been judiciously exercised in facts are present case as assessee has no economic capacity and source to generate given amount of unaccounted income. Further law requires that additions under said deeming fiction cannot be made sans incriminating material brought on record which is completely lacking in present case.

7. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of Rs 103,46,835 /- without appreciating that basis of findings of the lower authorities is "suspicion" and "human probabilities" only which is never converted to reliable and trustworthy material and entire assessment order is passed on sole basis of "borrowed satisfaction " and without any independent application of mind (like a rubber stamp order).

8. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of Rs 103,46,835/- without appreciating that no opportunity is given to the assessee to be confronted with back material relied extensively in impugned orders like investigation wing report etc and no opportunity to cross examine the revenue's witness was given despite detailed reply in this regard made to Ld AO/CIT-A.

9. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of Rs 103,46,835 /- without appreciating that section 68 is not applicable

to sale of shares as mentioned in impugned assessment order.

10. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of Rs 103,46,835 without appreciating that in identical facts in various orders relief has been granted to assessee accepting LTCG (long term capital gains) as genuine.

11. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the action of Id AO in making addition of Rs 103,46,835 without appreciating spirit of law contained in section 10(38) and section 43 (5) (d) where statutory status is provided to evidences generated from stock exchange system treating the same to be impeccable and only from finance act 2017 with prospective effective from AY 2018- 2019, amendment is made in section 10(38), prior to which such gains would remain exempt.

12. That addition of Rs 20,694 made by Ld AO as confirmed by Ld CIT-A on a/c of alleged commission paid to entry provider is not based on any material/evidence barring assumption and presumptions.

13. That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.

Humble Prayer:

- i) To delete the addition of Rs.103,46,835 on a/c of alleged bogus LTCG;*
- ii) To quash assessment order and Id CIT-A order for being passed in serious violation of audi altrem partem*
- iii) To hold section 68 etc. does not apply to sale of shares*
- iv) To delete the addition of Rs.20,694*
- v) To restore returned income*
- vi) Any other appropriate relief*

4. The assessee is an individual. During the year under consideration, the assessee had filed a return of income on 30.07.2014 declaring a total income of Rs 17,26,593/- for the financial- year 2013-14 relevant to assessment year 2014-15. The case was selected for scrutiny and notice U/s 143(2) of the Act was issued upon the assessee. The assessment proceedings culminated in an order of assessment framed u/s 143(3) of the Act dated 30.12.2016 by Deputy Commissioner of Income Tax Circle-1, Meerut, determining the income of the assessee at Rs.1,20,94,122/- against the returned income of Rs. 17,26,593/- by making addition of Rs. 1,03,67,529/- which includes a sum of Rs. 1,03,46,835/- being the long term capital gain accrued to the assessee which was claimed exempt u/s 10(38) of the Act and also a sum of Rs. 20,694/- being the alleged sum paid to provide accommodation entry.

5. The detailed background of the acquisition of shares in consequent sale is as under:

The assessee through stock broker M/s Bonanza Portfolio Ltd. had purchased 1,00,000 shares of M/s Empower Ltd on 07.01.2011 i.e. during the financial year 2010-11 relevant to assessment year 2011-12 for a total consideration of Rs 7,28,211/-. Subsequently on 13.07.2011, aforesaid shares were sold to M/s Anandloke Suppliers & Traders Pvt. Ltd. for a total consideration of Rs. 9,90,000/- and in lieu of the aforesaid consideration, 800 shares of M/s Pinnacle Vintrade Pvt. Ltd. For a total consideration of Rs. 10,00,000 @ 1250/- per shares were purchased, and balance consideration of Rs. 10,000/- was paid in cash. It was said that on 23.02.2012, appellant received the share certificates issued by M/s Pinnacle Vintrade Pvt. Ltd. Further on 20.07.2012, appellant was issued 72000 bonus

shares of M/s Pinnacle Vintrade Pvt. Ltd. Later, M/s Pinnacle Vintrade Pvt. Ltd. and M/s Basukinath Realestae Ltd and Baviscon Vincom Ltd got amalgamated with M/s Unno Industries Ltd. and the assessee got shares of M/s Unno Industries Ltd. The said shares of M/s Unno Industries Ltd. were sold from 17.07.2014 to 04.02.2015 through stock broker M/s Zuari Investments Ltd. at a price quoted on the stock exchange and consideration for the same was through banking channels, resulting in long term capital gain ("LTCG") of Rs 1,03,46,835/- which was claimed exempt u/s 10(38) of the Act.

6. Income Tax Department has conducted detailed enquiries into operation of low value stocks without any fundamentals. The Assessing Officer after duly considering the enquiry report as well as the statement of the people and involved in the operation and also of the statement of the assessee recorded u/s 131 came to a conclusion that the capital gains earned by the assessee are not genuine and hence brought the amounts taxed u/s 68 of the Income Tax Act, 1961. The reasons given by the Assessing Officer while making the addition are as under:

- i) That during the course of the investigation done by the department, the brokers namely Shri. Anil Khemka who was involved in the trading of the penny stocks of "UNNO Industries" and other scripts have admitted in his statement on oath in survey u/s 133A of the Act that they have provided accommodation entries to different beneficiaries.
- ii) That Shri. Narendra Kumar Balasia, director of M/s SMC Comtrade Private Ltd. has admitted that sub brokers use penny stock companies for providing bogus long

term capital gain to their clients, they have provided bogus long term capital gain of M/s Unno Industries to their clients.

- iii) The financial of the penny stock M/s Unno Industries Ltd. and movement of the price is abrupt, unrealistic and not based upon any realistic parameters.
- iv) The assessee is unaware about the share market but has earned profit of Rs. 1,03,46,835/- by investing very low amount without having any information or knowledge of stock market.
- v) That all the activities regarding longterm capital gain were completed by the broker but it is interesting to note that he do not know the name, address and phone number of broker.
- vi) The shares sold by the assessee were purchased by six companies and out of six, in respect one company M/s Galore Suppliers Pvt. Ltd. one Shri. Navneet Kumar Singhania in his statement has admitted that such company is a paper company and has been used to provide accommodation entry.
- vii) In respect of providing opportunity of cross examination, it has been stated that in the statement recorded on 19.12.2016 assessee was informed about the enquiries made by the income tax department, Kolkata and he has not made any comment.
- viii) Assessment proceedings are administrative and AO is entitled to make private enquiries and same cannot be objected.

7. Aggrieved the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) confirmed the order of the Assessing Officer mainly reiterating the points of view of the Assessing Officer.

8. Aggrieved with the order of the Id. CIT(A), the assessee filed appeal before us. During the hearing, the Id. AR submitted that,

- The assessee has purchased shares through stock broker Bonanza Portfolio Ltd. of M/s Empower Ltd.
- The shares were sold to Anandlok Suppliers and Traders and exchanged with shares of M/s Pinnacle Vintrade Pvt. Ltd. and the balance consideration has been paid in cash.
- M/s Pinnacle Vintrade Ltd. amalgamated with M/s Unno Industries Ltd.
- The shares of M/s Unno Industries were sold through the broker Zuari Investment Ltd.
- The Id. AR has appraised through the documents submitted before the revenue authorities which are as under:

1. Copy of the ledger account of M/s Zuari Investment Ltd
2. Details of shares held by the assessee in various companies.
3. Copy of demat account
4. Copy of statement showing the purchase of shares of Empower India Ltd.
5. Copy of the sale bill of M/s Anandloke Suppliers & Traders Pvt. Ltd. Showing the purchase of shares of M/s Pinnacle Vintrade Pvt. Ltd.

6. Copy of the letter in respect of issuance of share certificate in the name of the appellant of M/s Pinnacle Vintrade Pvt. Ltd.
 7. Outcome of board meeting held on 02.12.2013 of M/s Pinnacle Vintrade Pvt. Ltd.
 8. Copy of the contract notes in respect of sale of the shares
 9. Copy of the trade information obtained from the BSE.
 10. Copy of the transaction statement issued by the Broker M/s Bonanza Portfolio Ltd for the period 01.04.2010 to 16.08.2016.
 11. Financial Ledger of Unno Industries for the period 01.04.2011 to 31.03.2014
 12. Copy of the transaction statement of Unno Industries Ltd. For the FY.2013-14.
 13. Copy of the demat account issued by Kantilal Chhaganlal Securities P Ltd. Showing transaction of Empower India Ltd.
 14. Statement of affairs of assessee for the period ended 31.03.2013 and 31.03.2014.
- The Id. AR argued that it is not in dispute that the assessee has purchased the shares and purchase consideration has been paid and finally the shares of M/s Unno Industries have been sold at the rate quoted on the Stock Exchange and the amounts have been received which are rightfully eligible for exemption u/s 10(38).
 - The doubting of the revenue authorities is purely on the grounds of suspicion and the statement of people recorded who are unconnected with the transaction.
 - Further, he relied on the order of the Co-ordinate Bench ITAT Kolkata in the case of Sumaysh Agarwal

Vs. ITO, Ward-29(1), Kolkata ITA No.1790/Kol/2018 and argued that the SEBI has exonerated and the final enquiry about the trade of the shares. At this juncture, we would like to clarify that the order of SEBI dealt with the shares of M/s Kailash Auto Finance Ltd. but not with the shares of M/s Unno Industries Ltd. which are involved in this case. Hence the arguments of the Ld.AR cannot be held to be valid in these scrips.

- The Id. AR argued that the contentions of the revenue were general in nature and none of the statement nor specific material gathered by the revenue was pertaining to the case of the assessee. The reliance placed by the report of the Investigation Wing, Kolkata is misplaced and much reliance has been placed by the revenue authorities in this report rather than the specifics of the case.
- The Id. AR reiterated the arguments and the judgments quoted at page nos. 6 to 20 of the order of Id. CIT(A) which have been duly perused.

9. On the other hand, the Id. DR relied on the orders of the authorities below.

10. Heard the arguments of both the parties and perused the entire material and the judgments available on record.

11. We have perused the statement of Sh. Anil Kumar Khemka recorded u/s 131 of the Income Tax Act, 1961 wherein the *modus operandi* of providing accommodation of Long Term Capital Gain has been explained.

Q.2 Please state whether you are well aware of the implications of giving or furnishing false or wrong statements/misleading information that has just been explained to you?

Ans. Yes, I have fully understood. I may be prosecuted as per law for giving false statement under oath.

Q.17 Please provide modus operandi of providing accommodation of Long Term Capital Gain.

Ans. Generally, there are few companies engaged in providing accommodation entries in the form of long term capital gains who used to allot preferential shares of these listed companies to beneficiaries, to whom entry of long term capital gain has to be provided. After holding these shares for one year, clients used to sell such shares on very higher, rates. Such shares are bought from beneficiary clients by our companies mentioned at question no. 14. When party/beneficiary, come to us for having accommodation entry, we used to get cash from them, get it deposited in various bank accounts and then finally, we used to transfer it to party/beneficiary's bank account. For doing so, we used to get a commission income in cash from party @ 0.10 paisa per 100 rupees of cheque amount. Our companies buy the shares after the prices of a scrips are raised through artificial synchronized trading.

12. Further, apart from the above statement, the statement of Sh. Narendra Balasia, director of SMC Com Trade Pvt. Ltd. has mentioned that the scrips namely Kailash - 511357, Unno - 519279 have been used for operation to provide the long term capital gains. We would like to mention here that the scrips of Kailash Auto finance have been exonerated by the enquiries conducted by SEBI. No information has been brought before us regarding the exoneration by the SEBI in the case of Unno Industries Ltd. which have been dealt by the assessee in the instant case.

13. Further, evidences are also available on record with regard to the purchase of shares sold by the assessee. The shares of Unno Industries Ltd. have been purchased by a company named Galore Suppliers Pvt. Ltd. The sub-broker/entry operator Sh. Navneet Kumar Singhanian in the statement recorded on oath u/s 131 of the IT Act on 18.03.2014 undisputedly submitted that the company Galore Suppliers Ltd. has been used for providing accommodation entries.

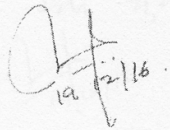
14. Further, the statement of the assessee has been recorded on oath u/s 131 of the IT Act on 19.12.2016 could not submit any details about the method he transacted in the shares. The entire facts have been specifically confronted to the assessee on 19.12.2016. The assessee could not through any light with regard to the transactions entered with the brokers namely Bonanza Portfolio Ltd. or Zuari Investments Ltd. He could not through light even on Anandlok suppliers and Traders Pvt. Ltd. located at Akola to whom 800 equity shares of Pinnacle Vintrade Pvt. Ltd. have been sold.

15. The entire statement of the assessee recorded by the Assessing Officer on oath u/s 131 on 19.12.2016 is as under:

5012 क्या आपको याद है कि आपने ये Shares कितने दिनों तक अपने पास रखे ?
उ जी मुझे याद नहीं है। क्योंकि लगभग 3 वर्ष पुरानी बात है।

5015 आपकी share market का क्या अनुभव है ? क्या आप share खरीदते-बेचते रहते हैं ?

उ हमारा कोई अनुभव नहीं है। Broker के माध्यम से खरीदते न बेचते रहते हैं।


19/12/16

19/12/16

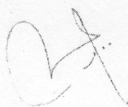
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5016 क्या आपको याद है कि share को preferential allotment क्या होता है तथा कैसे होता है ?

उ हमारा कोई अनुभव नहीं है, जैसा हमें broker परामर्श देता है वैसा करते हैं।

5017 क्या आपको कोई preferential allotment हुआ है ?

उ क्योंकि broker की सलाह से कार्य करते हैं और यह प्रक्रिया कई वर्षों पुरानी है। अतः इसे याद नहीं है।



Q18 क्या बताएँ कि क्या आप वर्तमान समय में
शेयर ट्रेडिंग कर रहे हैं?

उ० मैं प्रेसently में कोई शेयर ट्रेडिंग का
कार्य नहीं कर रहा हूँ।

Q19 क्या UNNO Industries के shares के अलावा
आपने किसी और shares में रतना का
प्राप्त हुआ है?

उ० मुझे याद नहीं है।

Q20 क्या बताइये कि पूरे share market में
प्रत्येक कम्पनी में जो आपने UNNO
Industries का share ही investment के
लिए क्यों चुना?

11/12/16

11/12/16

cont... 6

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उ० मुझे इस बारे में कुछ याद नहीं है। मैं
broker ने बताया था कि मुझे कार्य किया।

Q21 क्या broker का पूरा नाम, पता तथा
phone no. बताएँ। जिसने आपको UNNO Indust
ries के shares दिलवाए।

उ० मैं दो broker - Zhan और Bananza
नामक दो broker के सम्पर्क में रहा हूँ।
मुझे याद नहीं है कि UNNO Industries
के share किस broker ने दिलवाए।

11/12/16

5022 इन ब्रोकर के Address तथा Phno Number प्राप्त नहीं करता। कृपया बताएं।

30 इनके पते तथा फोन Nos मुझे मिलाना था नहीं है।

5023 कृपया बताइये इन ब्रोकर से आपकी गुलाबगल के डी ड्रॉप 1 तथा फंड ड्रॉप 3

30 Internet के माध्यम से उपरोक्त ब्रोकर के बारे में जानकारी ड्रॉप तथा उनके साथ कार्य किया।

5024 कृपया बताइये कि आपने Unno Industries के Share कितने रुपये के खरीदे तथा कितने रुपये के बेचे ?

11/12/16

11/12/16

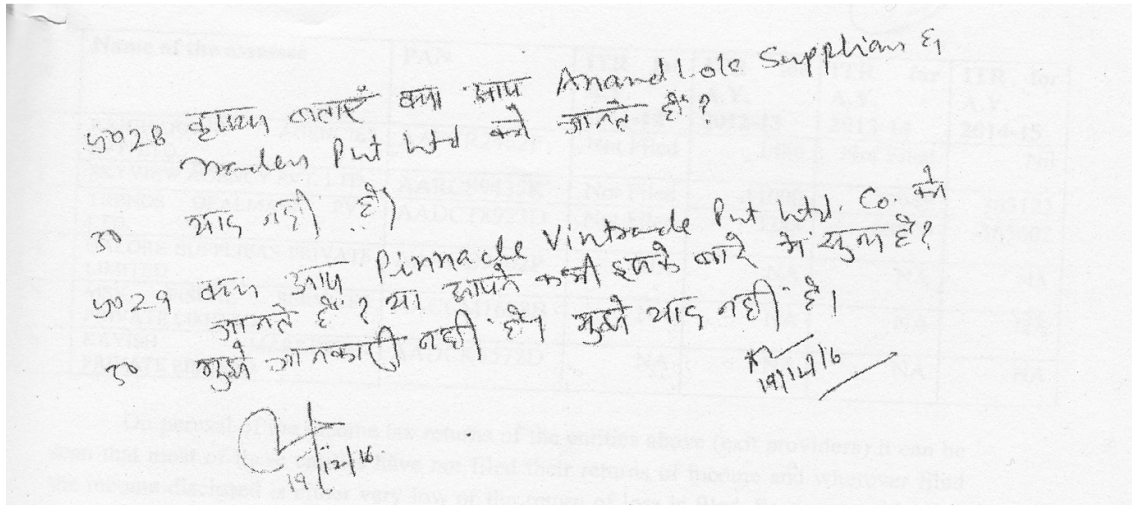
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30 Share कितने के खरीदे मुझे थाद नहीं है। बेचते समय जो share market का मूल्य रहा होगा, उतने मूल्य के बेचे।

5025 कृपया बताएं कि क्या आपने investment करने की पहल Unno Industries के Financial credentials अर्थात् इसकी आय, इसकी capital, net worth एवं व्यापार की प्रकृति का अध्ययन किया था ?

30 मुझे थाद नहीं है।

11/12/16



15.1 The aforesaid statement of the assessee himself corroborates the information and material available with the Assessing Officer that shares of M/s Unno Industries Ltd. was used for accommodation entries. The key points of his statement are as under:

- a. In reply to various questions asked by the AO, he admitted that he doesn't remember that how long he has kept the shares and doesn't have any experience of the share market.
- b. Despite having no exposure of share market, he was dependent upon advice of the broker who he has found from internet. The broker advised him only for shares of M/s Unno Industries Ltd. without even knowing the credentials of the said company or prospectus of the company that this company had huge credentials for multiplying the investments in shares more than five times in less than year.
- c. He could not even recollect the name and details of the broker through whom he had sold the shares.
- d. He could not even recollect on what price he has purchased the shares and had sold them nor he was

aware of any transaction as to which company's share he has bought and how he got the merged shares of M/s Unno Industries Ltd.

15.2 Thus, the assessee was in complete oblivion of the share market or the credentials of the shares he purchased nor he appears to be any regular investor in shares. Thus, the statement of the assessee itself negates the so called documentary evidences and the arguments put forth by the Id. Counsel for the assessee.

16. In this background of the facts, the skeletal structure of operation of accommodation entry for LTCGs and its relevance and applicability to the facts of the case are examined. For the sake of convenience and ready reference, a brief of *modus operandi* is mentioned below:

17. Before the actual transaction starts taking place there are brokers in different towns who contact prospective clients and take paper booking for entries. The commission to be paid to the operators is decided at this stage however, no money is paid. Once the booking is complete the operators have a reasonably good idea of how much LTCG is to be provided along with the break-up of individual beneficiaries. This data is essential to decide which penny stock or companies to use for the job and which beneficiary to buy how many shares. Types of Penny stock companies.

18. Broadly speaking there are two types of companies.

- i) An old already listed company, the entire shareholding of which is bought by the syndicate to provide LTCG entries.

These are generally dormant company with no business and with accumulated losses.

- ii) A new company which is floated just for the purpose giving LTCG entries. Such new companies are often floated after the initial booking is complete and the capital base is decided keeping in mind the entries to be provided. The entities involved in the transactions.

19. There are three categories of individuals who are involved in the transactions

- i) **Syndicate Members:** They are the promoters of the Penny Stock companies who own the initial shareholding mostly in the name of paper companies either in a fresh IPO or purchased from the shareholders of a dormant company. They are usually a group of 4-5 individuals who also referred to as Syndicate Members and are sometimes also referred to as Operators. Their nominees are directors of the Penny Stock companies which is indirectly controlled by them through such dummy directors. The whole operation is managed by them. They get the net commission income from the transactions. Their name however, seldom appears in the actual transactions.
- ii) **The Brokers:** They are registered brokers through whom shares are traded both online and off-line. They are fully aware of the nature of transactions and get paid a commission over and above their normal brokerage. Some of the big broking houses are also indulging in such transactions mostly through sub-brokers. Even Calcutta Stock Exchange has registered itself as a broker with BSE and has given a large number of terminals to sub-brokers who are dealing into this type of transactions.

- iii) **The Entry Operators:** They are individuals who control a large number of paper/shell companies which are used for routing cash for the transactions as well as buying and selling shares during the process of price rigging. They work for commission to be paid by the Syndicate Members. To cut cost sometimes in smaller operations, the same group performs more than one function.

20. **The Transaction** The transaction involves three legs.

- i) **Purchase of share by the beneficiary:** In this the beneficiary is sold a fixed number of shares at a nominal rate. The price and the number of shares to be purchased are decided on the basis of the booking taken and the value up to which price would be rigged. This leg of the transaction mostly is off-line.
- ii) **Price rigging:** After the shares have been purchased by the beneficiaries, the syndicate members starts rigging the price gradually through the brokers. In these transactions the volume is almost negligible. Two fixed brokers who are in league with the Syndicate buy shares at a fixed time and at a fixed price. These low volume transactions are managed through paper companies of entry operators.
- iii) **Final sale by the beneficiary:** This is done after the beneficiary has already held the share for one year. The period of holding may be a little more to match the amount of booking with the final rate. The paper company issues cheque to the beneficiary.

21. The above mentioned methodology is referred to as Conventional Method. Another method which also used quite often is called Merger Method.

Merger method : In this method the operators first form a Private Limited Company and the shares at par are allotted to beneficiary individuals. This private limited company is then amalgamated / merged with a listed penny stock company by a High court order. Depending on the capital of the amalgamating and amalgamated companies, the investors are allotted stock of the listed companies in the same proportion. The prices of shares are thus manipulated at 20 to 25 times the face value. The investors hold these shares the penny stock listed company which it got as a result of merger for one year (statutory lock-in period for exemption under IT Act) and then sell it to one of the shell private limited companies of the operator. The investor thus makes a LTCG of 25 are more times its original investment. A typical chart of share price verses date and the volume of a 'Penny stock' would see the bell curve peak as one shown on the left.

Snapshot of Basic modus of providing bogus LTCG

22. Merger of Unlisted companies with Listed Entity:

This is the most preferred option for the persons willing to operate for the purpose of doing Long Term capital Gains. In case of the mergers with listed companies, the merger petition has to be filed with concerned stock exchange under clause 24F of the Listing Agreement, which gives its permission to go ahead with the merger scheme in consultation with SEBI. Here the main catch is valuation of shares of the companies. Since

the Act provides for the valuation of shares at book value and the same has been approved by the Supreme Court in various decisions which has been discussed below after this para. Since, the Stock Exchange and SEBI keep close watch on price movement of shares, these people adopted the route of merger of private limited companies having huge premium thereby increasing their book value whereas the book value of the shares of listed companies were still Rs. 10/ despite the fact that they were trading at considerably higher price.

23. It can be understood by following example:

Listed company trading at 250/- per share (having book value of Rs. 10/- per share) in Unlisted companies allotted shares at a premium of 240/- per share thereby the increasing the book value of Rs. 250/- per share. Now the swap ratio will be 1:25 i.e. holder of one share of unlisted company will get 25 shares of listed company according to scheme of amalgamation.

24. Preferential Allotment of Equity Shares:- A preferential issue is an issue of shares or of convertible securities by listed companies to a select group of persons under Section 81 of the Companies Act, 1956 which is neither a rights issue nor a public issue. This is a faster way for a company to raise equity capital. The issuer company has to comply with the Companies Act and the requirements contained in Chapter pertaining to preferential allotment in SEBI guidelines which inter-alia include pricing, disclosures in notice etc. Since it does not require any prior approval of SEBI, the operators chose to adopt this route for raising the capital as an alternate to the merger and chose to provide gain to a close group of people. The shares are bound to be in lock-in-period for a tenure of one year from the date of allotment, the

operators chose to allot the shares to ultimate beneficiary only. During the tenure of this gap of one year they rig the price to promised level and reroute the transactions through shell companies.

25. Allotment of Bonus Shares:- This method can only be adopted by the companies having free reserves in their books in form of accumulated profits or Share Premium Account. The purpose of a company in issuing bonus shares is to reward or acknowledge the shareholders for being investors in the company. By issuing bonus shares, the company tries to increase the morale of the shareholders. It is a financial reward that the company gives to its shareholders. However in the cases of above type, the main purpose of issuing the bonus shares to the shareholders is to reduce their cost of acquisition, thereby increasing the quantum of Long Term Capital Gain. For Example, if a person buys the shares of a particular company at a price level of 100 and receives 9 shares as bonus, his cost of acquisition stands to Rs. 10/- per share.

26. Splitting the shares:- It is the most effective way to camouflage the price of shares. The shareholder does not get affected by any of such proceeding adopted by the company except the effect of Corporate Action of NSDL/CDSL thereby releasing old shares and getting the splitted shares in Demat Account. After split of shares the price of shares on the exchange goes down automatically in proportion with the ratio of split and one doesn't see anything adverse happening in the scrip.

27. In the background of the operation, the facts of the instant case have been juxtaposed with regard to the allotment and subsequent sale. The following facts emerge,

- Step 1 – The assessee initially purchased 1,00,000 shares of Empower Ltd. @ Rs.7.28.
- Step 2 – 800 shares were sold to M/s Anandlok Suppliers and Traders Pvt. Ltd. situated at Nasik.
- Step 3 - In lieu of these 800 shares the assessee gets shares of M/s Pinnacle Vintrade Ltd.
- Step 4 – Along with 800 shares of M/s Pinnacle Vintrade Ltd. the assessee was issued 72000 bonus shares taking the total to 80000 shares.
- Step 5 – M/s Pinnacle Vintrade Ltd. merges with M/s Unno Industries Ltd. The shares of M/s Unno Industries Ltd. were sold at the rate ranging from Rs.31.00, Rs.34.96, Rs.35.95, Rs. 36.95

28. When examined along with the statement recorded of the brokers and operators involved, the entire operation found to be a mirror image of the typical market manipulation. Not only that, the specifics of the instant case have been examined independently as to whether the action of the revenue was purely on suspicion, surmises, rumor and pure guess.

29. We find that,

The scrips involved is – M/s Unno Industries Ltd. The brokers were – M/s Bonanza Portfolio Ltd. and M/s Zuari Investments Ltd.

The assessee was not aware of the entire transactions and could not substantiate the purchase and sale in the statement

recorded on oath u/s 131 of the IT Act. The statements of the brokers could not be controverted nor retracted by them. The enquiries of the SEBI have inducted the involvements of the said scrips in the market operation, not only that, the financials of the said scrips and the movement of its price is abrupt, unrealistic and beyond the market fundamentals. The earnings per share of the scrips was Rs.0.0024. The reserves & surplus range from (-) Rs.59,64,000/- to (-) Rs.53,64,000. The five years financials from March 2010 to March 2014 hardly show any turnover of the company and also any profit. The turnover and profits are meager over the entire five years period except the spurt in the short period in which the value of the shares jumped to Rs.30 to Rs.35 and plummeted and settled at Rs.0.40. It has been undisputedly proved that the scrips of M/s Unno Industries Ltd. has been used to operate the market through a preferential allotment of shares at Rs.1.79. BSE in a circular inform the Members, the trading of securities of M/s Unno Industries Ltd. has been suspended after exchange had noticed substantial increase in manipulation/abrupt movement in the price of securities. The name of the company finds place among the 31 companies suspended by the BSE:

513333	Bhuwarka Steel Industries Ltd	19 Jul 2016	Due to Penal Reasons
531674	Indo-Asian Projects Ltd	19 Jul 2016	Due to Penal Reasons
519586	Smilax Industries Ltd	19 Jul 2016	Due to Penal Reasons
531217	Western India Shipyard Ltd	19 Jul 2016	Due to Penal Reasons
517496	Ricoh India Ltd.	26 May 2016	Due to Penal Reasons
519273	Unno Industries Ltd	26 May 2016	Due to Penal Reasons
531937	Beckons Industries Ltd.	26 May 2016	Due to Penal Reasons
590063	Duncans Industries Ltd.	26 May 2016	Due to Penal Reasons
512375	Innoventive Venture Ltd.	04 May 2016	Due to Penal Reasons
519323	Murli Industries Ltd.	28 Apr 2016	Due to Penal Reasons
531382	Jayavant Products Ltd.	28 Apr 2016	Due to Penal Reasons
511638	Madhur Capital & Finance Ltd	20 Apr 2016	Due to Penal Reasons
506041	Mahesh Agriculture Implements & Steel Forqe Ltd.	20 Apr 2016	Due to Penal Reasons
512465	Santowin Corporation Ltd	20 Apr 2016	Due to Penal Reasons
530487	Vibros Organics Ltd.	20 Apr 2016	Due to Penal Reasons
511361	Vishwamitra Financial Services Ltd	20 Apr 2016	Due to Penal Reasons
517286	Autopal Industries Ltd	31 Mar 2016	Due to Surveillance measure

30. The brokers M/s Bonanza Portfolio Ltd. has been found to be involved in various irregularities and monetary penalties have been levied by the adjudicating authorities of the SEBI Adjudication Order: EAD-9/VKV/GSS/2020-21/ 9143 Under Section 15-I Of Securities And Exchange Board Of India Act, 1992 Read With Rule 5 Of SEBI (Procedure For Holding Inquiry And Imposing Penalties) Rules, 1995. In respect of: M/s. Bonanza Portfolio Ltd. (CIN No.: U65991DL1993PLC052280) (Stock Broker bearing registration no. INZ000081033) PAN: AAACB0764B

31. Further, the broker M/s Zuari Investments Ltd. has also been found to be involved in various infringements with regard

to conduct of business in connivance with other parties which can be found in the Order No. EAD-3/JS/GSS/1400-1402 /2018-19 September 28, 2018. Thus, it is proved beyond doubt that the brokers and the trade in the scrips are manipulated and hence the assessee cannot absolve himself canvassing that the amounts have been received through cheques and hence nothing can be viewed adversely against him.

32. All these enquiries conclusively proved that the trades have been manipulated and the gains or the losses made by the beneficiaries cannot be said to be genuine.

33. Reliance is also placed on the judgment of Hon'ble Jurisdictional High Court in the case of SEBI Vs CRB Capital markets vide order dated 05.12.2019 held that clearly given the manner in which fraudulent acts are undertaken under deceit and camouflage with an affairs of the company/trust etc., the standards of proof required to prove such fraudulent conduct would necessarily be less stringent.

34. This ratio of the Hon'ble High Court is squarely applicable to the facts of this case where every action of the assessee is pointed out to the violations of the provisions of laws of stock market as well as Income Tax. The mere fact that payments have been received through cheque cannot give any credence so as to genuineness of the transactions.

35. Taking cue from the judgment of the Hon'ble Delhi High Court in the case of PCIT-7 Vs. Bikram Singh in ITA No. 55/2017 order dated 25.08.2017, we hold that the transactions in the present appeal are yet another example of the constant use of the deception of stock market transaction to bring unaccounted money into banking channels. This device of stock

transactions of unworthy stocks with no profits continues to plague the legitimate economy of our country. As seen from the facts narrated above, the transactions herein clearly do not inspire confidence as being genuine and are shrouded in mystery, as to why the so-called transactions lead to exorbitant returns which are made tax free.

36. The Hon'ble Calcutta High Court in the case of CIT Vs Korlav Trading Company Ltd. 232 ITR 280 and CIT Vs Precision finance P. Ltd. 208 ITR 495 had observed and held that mere filing of confirmation and transaction through the banking channel is not enough to prove the genuineness.

37. The Hon'ble High Court in the case of CIT Vs. Maithan International 375 ITR 123 (Cal) has held that "Assessing Officer could not accept genuineness merely on the basis of bank statement.

38. Further, the Hon'ble Delhi High Court in the case of CIT Vs. Vikram Singh 85 Taxmann 104 observed that even if the transaction is made through cheque it cannot be presumed to be genuine. These observations are more so valid when weighed against the plethora of evidences and incongruence brought out by the revenue to prove the not so genuine of these transactions entered by the assessee.

39. With regard to the arguments of the Id. AR that how strong ever is the suspicion it cannot be a reason to make addition. The Id. AR also argued that the strong suspicion cannot overtake the facts on record and the judicial pronouncements.

40. On this issue we hold that preponderance of the evidence is one type of evidentiary standard used in a burden of proof analysis. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater chance that the claim is true. This is the burden of proof in a civil trial. The theory of "preponderance of probability" is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favourable factors in his side. The conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of facts that might go against assessee. In situations like this case, one may fall into realm of "preponderance of probability" where there are many probable factors, some in favour of the assessee and some may go against the assessee, but the probable factors have to be weighed on material facts so collected. Prima facie, it may appear to be a case made on preponderance of probabilities but not beyond reasonable doubt. However, in this case a deeper examination of the facts reveal that in a scam of such massive scale many players and layers involved hence the judgments of Hon'ble Apex Court that the standards of proof required to prove such fraudulent conduct would necessarily be less stringent is squarely applicable and in the instant case the evidences cannot be said to be even less stringent rather they more strong.

41. We are certainly not on the probability theory while dealing the issue before us and certainly we have not been carried away by the single point of profits earned. The facts have been examined holistically with reference to enquiries and the entire operation of the stocks, method of investment, regularity of the investments, enquiries conducted by SEBI ,

evidences produced by the assessee to support the claim. While we examine the enormous evidences, we find that the only evidence submitted by the assessee was that the amounts have been received by cheque and hence the genuinity of the transactions have proved beyond doubt. Keeping in view the judgments of Hon'ble Delhi High Court in the case of CIT Vs. Vikram Singh 85 Taxmann 104, CIT Vs. Maithan International 375 ITR 123 (Cal) (supra), Hon'ble Delhi High Court in the case of PCIT-7 Vs. Bikram Singh in ITA No. 55/2017 order dated 25.08.2017 (supra), Hon'ble Calcutta High Court in the case of CIT Vs Korlav Trading Company Ltd. 232 ITR 280 and CIT Vs Precision finance P. Ltd. 208 ITR 495 (supra), in the instant case where they have been multiple evidences collected by the revenue, the claim of the assessee that she is a passive beneficiary of the entire operation without her involvement or role cannot be accepted. At this juncture, it is worthwhile to mention, the Hon'ble Apex Court judgment dated 08.02.2018 in the case of SEBI Vs Rakhi Trading Pvt. Ltd. wherein it was observed that based on the huge price variation of the transactions it will be too naïve to hold that the transactions are through screen based trading and hence anonymous. The Hon'ble Court held that such conclusion would be overlooking the prior meeting of minds involving synchronization of buy and sale orders and not negotiated deals. The Hon'ble Apex Court held that such impugned transactions are manipulative, deceptive device to create loss or profit. Thus, on going through the entire factum of the case, we hold that on merits also the profits earned by the assessee cannot be said to be genuine.

42. In light of the above facts and material brought on record by the AO and the statement of the assessee himself goes to

prove that the case of the AO is not based on any suspicion or surmises. One very important fact which is clearly distinguishable from the judgments relied upon by the Id. Counsel of the assessee that, not only in the case of M/s Unno Industries Ltd. the SEBI has suspended the trading of the shares in BSE but also the two brokers through whom the assessee has purchased shares have been found doing irregularities by the SEBI. Another important fact is that, the Director of one of the company, [Galore Suppliers Pvt. Ltd.](#) who has bought the shares of M/s Unno Industries Ltd. from the assessee had categorically admitted that not only the M/s Unno Industries Ltd. was penny stock but also involved in providing accommodation entries in this share. This fact alone demolishes the argument of the Id. Counsel that entire transaction of sale of shares was genuine.

43. Thus, on going through the entire facts and circumstances of the case, it can be concluded based on the following snapshot that transactions entered by the assessee are not genuine.

1. From the sales of shares to M/s Anandlok Suppliers and Traders Pvt. Ltd. to sale of shares of M/s Unno Industries Ltd., the assessee could not discharge his onus against the overwhelming evidences that have been brought about by the revenue authorities.
2. The price of shares has been risen Rs.36.50 (average) in a short span.
3. The company had no profit/ meager profit to demand such price.
4. In the entire period of 5 years, there was only highest spurt for the smallest period wherein the sale took place

in the entire period between 2010 to 2015 as depicted in the graph above showing typical bell shape.

5. No iota of due diligence viz. the advisor, the analysis of fundamentals, the profits, the assets undertaken by the assessee.
6. Failure of the assessee to prove the genuinenity of the transactions at Akola based entities.
7. The order of the SEBI indicated the manipulation in trading of the scrips.
8. The undeniable proof of involvement of the broker Sh. Navneet Kumar Singhania has been proved by the revenue who has purchased the shares from the assessee in a synchronized manner.

44. Hence, we find no merit on the arguments of Id. AR on merits of the issue. In the result, the appeal of the assessee is dismissed.

45. In the result, both the appeals of the assessee are dismissed.

Order Pronounced in the Open Court on 04/01/2022.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 04/01/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR