

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad

Before Shri R. K. PANDA, ACCOUNTANT MEMBER

Appeal in ITA No	Assessee	Department	A.Y
188/Hyd/2022	Smt.Sunita Devi, Hyderabad PAN:ADPPD6447C	ACIT, Central Circle 1(2) Hyderabad	2016-17
189/Hyd/2022	-do-	-do-	2017-18
190/Hyd/2022	Smt.Anita Jain, Hyderabad PAN:ABJPJ1532C	-do-	2016-17
191/Hyd/2022	Smt.Premalata, Hyderabad PAN:ACUPP5966A	-do-	2016-17
192/Hyd/2022	Sh. Prakash Chand Jain (HUF) Hyderabad PAN:AADHP6992D	-do-	2016-17
194/Hyd/2022	Shri Sajjan Raj Jain (HUF) Hyderabad PAN:AAGHS6338K	-do-	2016-17
195/Hyd/2022	Sh.Sajjanraj Jain & Wife (HUF) Hyderabad	-do-	-do-
Assessee by:		Shri K.C.Devdas	
Revenue by:		Sri B. Ravinder,DR	
Date of hearing:		27/06/2022	
Date of pronouncement:		30/06/2022	

ORDER

The above batch of 7 appeals filed by the respective assesseees are directed against the separate orders dt.7.4.2022 of the learned CIT (A)-11, Hyderabad, relating to the respective A.Ys mentioned therein. Since identical grounds have been raised by the above assesseees in all these appeals, therefore, these were

heard together and are being disposed of by this common order for the sake of convenience.

ITA No.188/Hyd/2022 – A.Y 2016-17

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income for the A.Y 2016-17 on 15.10.2016 declaring total income of Rs.25,00,050/-. Consequent to search & seizure action in the case of M/s. Nanesh Finance Corporation on 30.01.2019, the case of the assessee was centralized to Central Circle 1(2). The assessee is a partner in M/s Nanesh Finance Corporation and had purchased 30, 000 shares of M/s. Jackson Investments Ltd at Rs.10/- each per share through M/s. Badri Prasad & Sons (Stock Exchange Broker) on 23.04.2014. Thereafter, the face value of the shares was brought down to Rs.1/- per share from Rs.10/- and the assessee sold 70,000 shares through M/s. Axis Securities Ltd and received an amount of Rs.8,38,953/- on sale of such shares. The assessee treated the receipts as Long Term Capital Gains (LTCG) which is exempt from tax u/s section 10(38) of the I.T. Act. During the course of search proceedings, the assessee voluntarily submitted a letter to withdraw the LTCG claimed u/s 10(38) of the Ac and to offer the same to income returned.

3. Subsequently, the case was reopened by recording reasons and notice u/s 148 of the Act was issued on 12.02.2021. In response to the same the assessee filed return of income on 10.3.2021 declaring total income at Rs.33,39,003/-. Thereafter, the Assessing Officer issued a notice u/s 143(2) of the Act on 10.06.2021 which was duly served on the assessee. The reasons for reopening were also communicated to the assessee along with notice u/s 143(2) of the Act. Further, notice u/s 142(1) of the Act was issued on 11.10.2021 seeking specific information. During

the course of assessment proceedings, the Assessing Officer issued a show cause letter to the assessee on 12.11.2021, which reads as under:

“During the course of search and seizure proceeding in the case of M/s. Nanesh Finance Corporation, it was noticed that the assessee had used stock exchange mechanism to route her unaccounted money by using scrip of the company M/s. Jackson Investment Ltd and claimed bogus L TCG u/s. 10(38) of the I T Act. It was found that the assessee has claimed L TCG exemption u/s. 10(38) of the Act of Rs. 8,38,953/- for the A. Y.2016-17. It was noticed that M/s. Jackson Investment Ltd is penny stock company. The manner in which L TCG claimed are bogus in nature. During the course of search proceedings, the assessee voluntarily submitted letter stating to withdraw the L TCG claimed u/s. 10(38) of the Act and to offer the same to income. The ass’s bogus claim of exemption u/s 10(38) of the Act has come to light during the course of search. The assessee has not disclosed true affairs thereby there is failure on the part of the assessee to disclose material facts”.

4. In response to the above, the assessee submitted that she has filed revised computation offering the income, though the assessee is right in claiming exemption u/s 10(38) of the I.T. Act only to buy peace with the Department to avoid protracted litigation. It was submitted that offering the income to tax cannot be used as an evidence that they are involved in bogus purchase and sale of shares. For the above preposition, the assessee relied on various decisions. It was also submitted that the shares under question were purchased in the earlier years and are genuine and cannot be said that the sale of shares are bogus shares. It was argued that the purchase and sale of shares were transferred through broker account which proves that the transactions are genuine.

5. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee by recording the following reasons:

“1. It is noticed during the course of search and seizure proceedings in the case of M/s. Nanesh Finance Corporation, that the assessee had used stock exchange mechanism by routing unaccounted money of the assessee by using scrip of the company M/s. Jacksop Investment Ltd and claimed bogus L TCG u/s.10(38) of the IT Act. It was found that the assessee has claimed L TCG exemption u/s.10(38) of the Act of Rs.8,38,953/- for the A.Y.2016-17. It was also noticed that M/s. Jackson Investment Ltd is penny stock company. Thus, it is clearly evident that the manner in which L TCG exemption claimed is bogus in nature.

2. During the course of search proceedings, the assessee voluntarily submitted a letter stating that the assessee will withdraw the L TCG claimed u/s. 10(38) of the Act and to offer the same as income. The letter is attached to this order as an attachment.

3. The transactions involving buying and selling of shares have been affected through the authorised channels, involving registered brokers, stock exchanges and the banks. Though the transactions showing exempt L TCG u/s 10(38) appears to be real, but as a fact are sham transactions as the surrounding circumstances prove the facts.

4. Though the assessee has produced the documents to substantiate the transaction, going beyond the documents establishes that the documents were a smoke screen to hide the real nature of transactions.

5. The contention of the assessee that the transactions leading to L TCG are supported by documents and bank statements cannot be accepted in view of the facts and circumstances.

6. Also the case laws relied by the assessee cannot be accepted, as the same are not relevant to the issue under question in the instant case.

7. Further the assessee cannot take shelter under the documentary evidences furnished, which themselves have been created as masks to cover up the true nature of transactions and are only self-serving documents. A genuine transaction must be proved to be genuine in all respect. Thus, onus was on assessee to prove that the transaction leading to claim of L TCG was distinctly genuine transaction and not sham, premeditated transaction arranged with view to evade taxes.

8. In the case of Rajkumar B. Agarwal vs DCIT, ITAT Pune held that “the assessee completed the paper trail by producing contract notes for purchase and sale of

shares of PIL. Mere furnishing of contract notes does not inspire any confidence in the light of facts. Test of Human Probability should be applied and apparent should be ignored to unearth the harsh reality ...

... in our considered opinion mere furnishing of contract notes etc. and more specifically when seen in' the background of the above noted facts, does not inspire any confidence and cannot be ... ground to delete an addition, which is otherwise made-on the solid bedrock of detailed enquiries "

6. Relying on various decisions, the Assessing Officer held that the assessee failed to prove the genuineness of the transactions except for the document produced. According to the Assessing Officer, it cannot be said that a transaction which takes place by way of cheques is invariably sacrosanct. Relying on the decisions of the Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More reported in (1971) 82 ITR 540 and in the case of Sumati Dayal vs. CIT reported in (1995) 214 ITR 801, the Assessing Officer held that the apparent must be considered as real until it is shown that there are reasons to believe that the apparent is not real and that taxing authorities are entitled to look into surrounding circumstances to find the reality and the matter has to be considered applying the test of human probabilities. The Assessing Officer accordingly made addition of Rs.8,38,953/- to the total income of the assessee treating the same as "income from other sources" and applied the provisions of section 115BBE of the Act.

7. In appeal, the learned CIT (A) upheld the action of the Assessing Officer by observing as under:

"6. Decision:

In the instant case, the assessment was completed by holding the appellant's investment in shares of M/ s Jackson Investments Ltd (JIL) as bogus and thereby treating the amount of Rs.8,38,953/- as 'Income from Other Sources' as against appellant's claim of LTCG in response to notice u/s

148, which was earlier claimed as exempt u/s 10(38) and taxed the same as per provisions of Section 115BBE at 30% without giving benefit of slabs.

Going into facts of the case, it is seen that the appellant has purchased shares of M/s Jackson Investments Ltd and had claimed an exemption u/s 10(38) on account of sale of shares of M/s Jackson Investments Ltd during the year under consideration. It is further observed that the appellant along with other entities of the family also had claimed similar exemption. The appellant and the other related entities purchased the shares of M/s Jackson Investments Ltd at a face value of Rs.10/- per share and subsequently the face value was reduced to Re.1/- per share, thus resulting 10 times more number of shares received by the appellant than what were originally purchased. The shares were sold at prices varying between Rs. 11.981/- to Rs.23.52/- per share, except for the present appellant wherein the shares were sold at Rs.59/- per share during AY 2017-18.

During the course of Search proceedings u/s 132 when enquired about the transactions, the appellant along with other related entities agreed to withdraw the claim u/s 10(38) and to offer the same to income. In the return of income filed subsequently in response to notice u/s 148, the appellant offered the same to tax as long term capital gains and withdrew the exemption u/s 10(38).

The details of purchase of shares made by the appellant and others of M/s. Jackson Investment Ltd and allotment of shares subsequent to reduction in face value are brought out as under:

S.No	Name	Date of purchase of shares of JIL	Cost price per share (in Rs.)	No.of shares purchased	Cost of purchase (a)	No.of shares of JIL recd.reduction in face value (b)	Effective cost price per share of JIL (a/b) (in Rs.)
1	Premlata	23.4.2014	10	30,000	3,00,000	3,00,000	1
2	Sunita Devi A.Y 2016-17	23.4.2014	10	30,000	3,00,000	3,00,000	1
3	Sunita Devi (A.Y)2017-18	23.4.2014	10	30,000	3,00,000	3,00,000	1
4	Anita Jain	23.4.2014	10	30,000	3,00,000	3,00,000	1
5	Vishan Raj Jain (HUF)	23.4.2014	10	30,000	3,00,000	3,00,000	1
6	Sajjan Raj Jain (HUF)	23.4.2014	10	30,000	3,00,000	3,00,000	1
7	Sajjan Raj Jain & Wife (HUF)	23.4.2014	10	30,000	3,00,000	3,00,000	1
8	Prakash Chand Jain (HUF)	23.4.2014	10	30,000	3,00,000	3,00,000	1

Subsequently, the shares were sold by them during A.Y 2016-17 and 2017-18 and the details are as under:

S.No	Name	No.of shares of	Consideration recd.	Average sale price	Effective cost of	Net Profit	Profit %
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		JIL sold		per share	purchase		
1	Premlata	70,000	10,61,341	15.16	70,000	9,91,341	1416
2	Sunita Devi A.Y 2016- 17	70,000	8,38,953	11.98	70,000	7,68,853	1098
3	Sunita Devi (A.Y)2017- 18	70,000	3,21,500	4.59	70,000	2,51,500	359
4	Anita Jain	70,000	13,91,000	19.87	70,000	13,21,000	1887
5	Vishan Raj Jain (HUF)	70,000	14,82,635	21.18	70,000	14,12,635	2018
6	Sajjan Raj Jain (HUF)	70,000	16,46,502	23.52	70,000	15,76,502	2252
7	Sajjan Raj Jain & Wife (HUF)	70,000	11,48,322	16.40	70,000	10,78,322	1540
8	Prakash Chand Jain (HUF)	70,000	13,28,342	18.97	70,000	12,58,342	1797

It is worthwhile to note that all the above persons of the family including the appellant have been bestowed with abnormally high profits in the present year under consideration. The cumulative claim u/s. 10(38) of the appellant and the related parties cumulates to Rs. 86.58 lakhs (approx.) on an investment of Rs.5.60 lakhs, thus getting almost 1446% returns in approximately a period of two years. These persons have shown no prior investments in the share market or have any activity. From the above, it can be concluded that the appellant and the other family members are effectively acting together considering the timing of purchase and sale of these shares. All the family members investing almost at the same time and exiting also implies that these are people acting together in concert with an entry operator with regard to these transactions and it will be not be unfair to conclude that this appears to be an organised manufactured effort, to have exempt income among the family members.

Further, the appellant itself has clearly admitted to withdraw the claim of exempt income u/s 10(38), which itself proves that the entire apparatus of purchase and sale of shares was used to route the unaccounted income of the appellant.

The appellant has merely stated that the transaction has happened through banking channel and further claimed that the transactions have happened in the stock market and the appellant has been benefitted by the investment in a bonafide manner and no attribution can be made of any nature of the regard which the AO has alleged in the assessment order.

In this regard, it is to be noted that the Investigation Wing, Kolkata has identified "MI s Jackson Investments Limited" as a penny stock operated by the Khemka group with the motive and intend to provide accommodation entries of long term capital gains which were exempt from tax.

Thus, this whole structure was to misuse and abuse the beneficial provision of law through an organized mafia kind of persons acting in concert and the appellant also is one of the participants in the said activity. The appellant has not been able to rebutt the Assessing Officer's observations with any cogent justification, but for claiming banking channels.

While confirming the decision of ITAT Chandigarh Bench (SOM NATH MAINI vs. CIT, Hon'ble P &H High Court has held regarding the bonafides and genuineness of transactions to be considered while assessing an income as under-

"The assessee incurred capital loss on account of sale of gold jewellery and also had short-term capital gain of almost equal amount. The AD observed that short-term gain was not genuine inasmuch as the assessee had purchased 45,000 shares of M/ s Ankur International Ltd. at varying rates from Rs. 2.06 to Rs, 3.1 per share and sold them within a short span of six-seven months at the rate varying from Rs. 47.75 poise to Rs. 55. These shares were purchased through a broker, Munish Arora & Co. and sold through another broker, M/ s SK Shanna & Co. The AD was taken by surprise by the astronomical rise in share price of a company from Rs. 3 to Rs. 55 and started further enquiry. The AD after enquiry made addition to the income of the assessee, which was upheld by the err (A) as well as by the Tribunal.

4. Learned counsel for the assessee submitted that the view taken by the Tribunal is perverse. The assessee having discharged the burden of proving the transactions of sale and purchase of the shares to be genuine, burden of proving that the said transactions were not genuine, was on the Department and in the absence of any material on record, holding the transactions to be not genuine, was not permissible. We are unable to accept the submission made. The burden of proving that income is subject to tax is on the Revenue but on the facts, to show that the transaction is genuine, burden is primarily on the assessee. The AD is to apply the test of human probabilities for deciding genuineness or otherwise of a particular transaction. Mere leading of evidence that the transaction was genuine, cannot be conclusive. Such evidence is required to be assessed by the AO in a reasonable way. ~ Genuineness of the transaction can be rejected even if the assessee leads evidence which is not trustworthy, even if the Department does not lead any evidence on such an issue. In view of the above, we are of the view that the finding recorded by the Tribunal is a finding of fact and cannot be held to be perverse. No substantial question of law arises. The appeal is dismissed"

As stated by the Hon'ble P&H High Court in the above mentioned case, mere leading the evidence that-the transaction was genuine, cannot be taken as conclusive. Such evidence is required to be assessed by the AO in a reasonable way. Genuineness of the transaction can be rejected if the assessee

leads evidence which is not trustworthy, even if the Department does not lead any evidence on such an issue. In the present case, on account of the same, the appellant itself admitted to withdraw the claim of exempt income u/s 10(38).

Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of CIT vs P. Mohankala (15/05/2007) wherein the SC held that mere banking transactions are not sufficient to consider the transaction bonafide and observed as under-

"The question is what is the true nature and scope of Section 68 of the Act? When and in what circumstances Section 68 of the Act would come into play? That a bare reading of Section 68 suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessee offers no explanation about the nature and source of such credit found in the books; or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory, it is only then the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The expression "the assessee offers no explanation" means where the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion."

In this case the Hon'ble Supreme Court has reversed the decision of the Hon'ble Madras High Court and upheld the findings of the lower authorities regarding the transactions of gift received by assessee even though these were done through banking channels, to be though apparent but not be real one. In the present case also, the appellant has not justified the transactions indulged along with other related parties of this particular scrip and the justification of such a rise as such defying the probability and financials of the scrip.

Further, in a recent decision, the Hon'ble ITAT, D Bench, Chennai, {in ITA No. 2016/Chny/2017 dated 15.05.2018 (Mrs.Vidya Reddy VsITO(IT))}, held as under:-

"6. We heard the rival submissions and gone through relevant material. The facts found by the AO are that the assessee, an Individual settled in USA, has purchased 6000 shares of face value of Rs.1 01- each @ Rs.25/ - per share of MI s. Surabhi Chemicals & Investments Limited, offline , on 04.09.2012 from M/s. Akriti Advisory Services Private Limited, Mumbai when they were traded in the market @ Rs.0.26 poise. Further, as mentioned in detail in the assessment order, the financial

results of the company from F. Y. 2011-12 to F. Y. 2015-16 do not show any prospective growth in the net- worth of the company to purchase share at Rs.251-. The price of share of M/ s. Surabhi Chemicals & Investments Limited was sky rocketed without having any awesome profit, EBIDTA margin, EPS bonus, dividend etc. None of the parameters, which are essential for increase of price of share was present. In spite of this, if the share price is increased multi folded, then it is definitely due to artificial increase. The table in the assessment order clearly indicates that there is manipulation in trading of MI s. Surabhi Chemicals & Investments Limited} which clearly establishes that the share of the said company is a penny stock only. Further, the assessee had sold 60,000 shares of MI s. Surabhi Chemicals &. Investments Limited. The trades have been executed with mutual understanding by placing simultaneous synchronized orders. This is also evident from the chart extracted in the assessment order. Successive bidding of order placed for large volume of shares like 18000 on 28-01-2014, 18000 on 03-02- 2014, 7000 on 10-02-2014 & 9000 in Feb., 2014 indicate that buyers are in collusion. Otherwise, execution of order placed is not possible particularly when trade price is static for various trades executed. All the trades have been executed at fraction of second. All these trading patterns show that LTCG admitted by the assessee is an arranged one. The payment of Security Transaction Tax was to paint creditworthiness to the transaction and claim exemption u/s 10(38). In view of the information provided by the Investigation Wing, Kolkatta, the recommendations of SIT on Black money etc, the AO required the assessee to prove her claim of exemption. After considering her reply etc., held, inter alia, that it is clear that the assessee has manipulated the sale of shares within a short span of time In collusion with the brokers in order to earn tax free exempt long term capital gains on sale of shares u/ s. 10(38) etc. It is clear from the orders of the Lower authorities that the assessee has not placed any material to prove that her transactions are genuine. She has also not placed any material to prove that her claim of exemption u/ s 10 (38) is genuine and valid. Since, the right to exemption must be established by those who seek it, the onus therefore, lies on them. In order to claim the exemption from payment of income tax, the assessee had to put before the Income Tax authorities proper materials which would enable them to come to a conclusion. (35 IT'R 312 (SC)). No part of the concurrent findings recorded by the AO and the Ld. CIT(A), is disputed by the assessee. Further, she has not placed any material before us to dislodge the findings recorded by the Lower authorities. Thus, the above actions of the assessee are nothing, but a premeditated, contumacious conduct, surreptitiously done for specific reasons for converting unaccounted money of the assessee under the guise of long term. share transactions, that too without paying the requisite tax on the same. This is clearly in the realm of tax evasion. Hence, we do not find any reason to interfere with the order of the Ld. CIT(A). On the other hand, from the above facts and surrounding circumstances, human

conduct , preponderance of probabilities etc, the AO has clearly established that the impugned transaction is not made for an investment, le the motive is not to derive income but to earn a profit that too by an arrangement one and it is manipulated transaction in collusion with the brokers to paint creditworthiness to the transaction and claim exemption u/». 10(38). This is in accordance with the ratio laid by the Hon'ble Apex Court in Sumati DayalVs Commissioner Of Income-Tax, 214 ITR 801 (SC), that" the apparent must be considered the real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. (See : CIT v. Durga Prasad More [1971] 82 ITR 540 SC (at pages 545, 547). Further, the Hon'ble Apex Court in Kale Khan Mohammad Hanif. Vs Commissioner of Income-Tax, M. P. And Bhopal in SO ITR 1 (SC) held that" it is well established that the Onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat it as taxable income see A. Govindarajulu Mudaliar v. Commissioner of Income-tax 34 ITR 807 Se. On the above facts and circumstances, it is dear that the assessee has not established her case . Though it did cross in our minds, that the assessee could be granted another opportunity to produce evidences in the form of producing the books involved in the transactions, their contemporary records} share transfer forms, the records of the company whose shares has been dealt with etc., for examination before the A O, we are not inclined to restore this issue to the A O as the assessee has not produced any convincing evidence to justify such re-adjudication by the A O. In the circumstances, the assessment made by the AO and confirmed by the Ld. CIT(A) is in accordance with the ratios of the Hon'ble Apex Court (supra) and hence we dismiss all the grounds of the assessee's appeal. "

The above cases are applicable to the facts and circumstances of the present case in which the various judicial authorities have decided the cases in favour of revenue after going through the entirety of the circumstances and not getting influenced by the picture shown by the appellant which is colored by the use of sham devices.

The apparatus of brokers and the shares of the company were a tool for tax evasion. The company M/ s JIL is only part of the network and not the network. The appellant resorted to a readymade scheme for purchase and sale of shares which was floated by some Entry Operators. Such transactions are not genuine and natural transactions, but preconceived transactions, resulting in creation of bogus profits which are tax

exempt. Such transactions are mutually self-serving to the parties to the transactions.

Thus, conclusion is drawn on the basis of above discussion that what is apparent in this case is not real, that these financial transactions were not genuine and that this entire edifice was only a colourable device used to evade tax. Moreover, the impugned transactions of shares are preordained one, not for legitimate purpose in view but for the purpose of creating nongenuine and artificial profits, with a view to reduce valid tax liability. Therefore, the action of the AO as stated in the assessment order that the said transactions are non-genuine/fictitious transactions. It is important to note that the appellant has withdrawn the claim u/s 10(38) and offered it as long term capital gains.

The transaction as per the appellant happened through banking channels and the stock market network with SIT being paid. These are all ingredients for claiming exemption u/s 10(38), but when confronted, the appellant realised and withdrew its claim, but rather than offering the same as income from other sources, the appellant chose to still take a tax break by offering it at lower rates under the head 'Long term Capital gains'. The admission of the appellant is selective and as per convenience and it is very clear that the above discussed apparatus and methodology was used to convert the unaccounted money into capital gains and this when confronted, the appellant withdrew the claim. The issue of pressure is not valid and sustainable, as even after the Search, there was enough time with the appellant and the appellant withdrew its claim in response to notice u/s 148 along with the other related entities. Thus, as far as appellant is concerned, there is no dispute regarding the usage of structure to convert the unaccounted money into a profit of share market transactions.

In view of the above admission and the discussion above, it is very clear that the transaction is not bonafide or genuine but it was to convert unaccounted money into exempt income which was later admitted by the appellant as LTCG in the return of income. This unaccounted money has to be taxed as Income from other sources and not as capital gains, as the share transactions were sham and a structure for converting unaccounted money into share profit and thus cannot be given the benefit of concessional rate under Long term Capital gains and the action of the Assessing Officer to tax the same as unaccounted money under the head 'Income from other sources' at the higher rate is confirmed accordingly and in agreement with the analysis and findings of the Assessing Officer in the assessment order, the addition made by the Ao in the assessment order is confirmed and accordingly the ground no.2, 3 and 5 are dismissed.

The ground no. 4 pertains to taxation as per Section 115BBE, as per which the said tax applicable is 30% in that year and as the same being unaccounted money brought into the bank as share profit, therefore the action of the Assessing Officer is upheld accordingly and the ground no. 4 is dismissed.

The ground no. 1 and 6 are general in nature and need no separate adjudication.

To sum up the appeal is dismissed”.

8. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. The Hon'ble Commissioner of Income Tax (Appeals) has erred both on facts of the case and in law involved in so far as it is prejudicial to the interest of the Appellant.

2. The Hon'ble CIT(A) without taking into consideration the information filed before him proceeded to complete the appeal u/s.250 of the IT Act and the same is not sustainable.

3. The Hon'ble CIT(A) ignored the explanations given by the appellant and proceeded to confirm the income arbitrarily and such action of the Hon'ble CIT(A) has no basis and therefore the same is liable to be deleted.

4. The Hon'ble CIT(A) ought to have observed that the assessing officer computed income from other sources, which actually accrued in respect of sale of shares, which ought to have charged as long term capital gain as per the provisions of the IT Act and not as income from other sources u/s 115BBE and therefore the addition made was not sustainable.

5. To modify the Grounds raised or to raise any other Ground(s) not raised with the permission of the Honorable Members of the Income Tax Appellate Tribunal.”

9. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in upholding the action of the Assessing Officer in treating the long term capital gain as “income from other sources” and applying the provisions of section 115BBE of the Act. He submitted that without giving sufficient reasons the Assessing Officer cannot change the head of

income from LTCG to “Income from other sources”. For the above proposition, the learned Counsel for the assessee relied upon the decision in the case of CIT and Cadell Weaving Mill Co. P. Ltd. v. CIT reported in [2001]249 ITR 265 (Bom.), CIT v. D. P. Sandhu Bros. Chembur (P.) Ltd. (2005) 273 ITR 1 (S.C), and Commissioner of Income Tax Vs. Meghalaya Steels Ltd. reported in 383 ITR 217 (SC). The learned Counsel for the assessee submitted that merely because the assessee had voluntarily offered the income to tax, the same cannot be treated as income from other sources as against the LTCG. Further, the Assessing Officer has not allowed the cost of shares from the sale value and made the entire addition by applying the provisions of section 115BBE of the I.T. Act. Referring to the amended provisions of section 115BBE, he submitted that the above provisions were brought to the statute book w.e.f. 1.4.2017 i.e. A.Y 2017-18 and therefore, cannot be applicable to the facts of the present case

10. The learned DR, on the other hand, strongly relied on the order of the Assessing Officer and the learned CIT (A). He submitted that there may be some difference or error in figures in computing the taxable income but the intention of the Assessing Officer is very clear. It is a clear case of penny stock. He submitted that if the assessee gets the benefit of LTCG, then there will be no other option left to the Assessing Officer but to allow the benefit of section 10(38) of the Act. He submitted the assessee during the course of search has not voluntarily withdrew the claim but upon noticing that the assessee had used the Stock Exchange Mechanism to route unaccounted money by using scrips of the company M/s. Jackson Investment Co Ltd, which is a Penny Stock company, submitting a letter stating to withdraw

the LTCG claim u/s 10(38) of the I. T. Act and to offer the same to income.

11. So far as the arguments of the learned Counsel for the assessee that the Assessing Officer cannot change the head of income is concerned, he submitted that only if the computational machinery fails, the submission of the learned Counsel may be accepted. However, in the instant case, there is no failure of computational machinery. The assessee has withdrawn the exemption claim u/s 10(38) of the Act. Therefore, the argument of the learned Counsel for the assessee is self-contradictory. Referring to the provisions of section 68 of the I.T. Act, he submitted that it has two components i.e. source/receipt and nature. Here the nature is bringing of unaccounted money. Therefore, character of the receipt is no longer capital gain because the claim has already been withdrawn. He accordingly submitted that the order of the learned CIT (A) be upheld and the grounds raised by the assessee be dismissed.

12. The learned Counsel for the assessee in his rejoinder, submitted that the addition, if any, can be made u/s 68 of the I.T. Act but the provisions of section 115BBE cannot be made.

13. I have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT (A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the assessee, in the instant case had filed the original return of income declaring total income of Rs.25,00,050/- on 15.10.2016 and had claimed exemption of Rs.8,38,953/- u/s10(38) of the I.T. Act on account of sale of 70,000 shares of M/s. Jackson

Investment Ltd. I find search and seizure operation u/s 132 of the I.T. Act was conducted in the case of M/s. Nanesh Finance Corporation where the assessee was a partner and on being noticed that the assessee had used the stock exchange mechanism to route her unaccounted money, the assessee voluntarily submitted a letter stating to withdraw the LTCG claim u/s 10(38) of the I.T. Act and to offer the same as income. Subsequently, the Assessing Officer after recording the reasons issued notice u/s 148 of the Act. In response to the notice u/s 148, the assessee filed the return of income declaring total income at Rs.33,39,006/- wherein she declared the income of Rs.8,38,9512/- as long term capital gain. I find the Assessing Officer rejecting the claim of LTCG made by the assessee treated the same as income from other sources and applied the provisions of section 115BBE of the I.T. Act. I find the learned CIT (A) upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that without giving sufficient reasons, the Assessing Officer cannot change the head of income from LTCG to "income from other sources". It is the alternate contention of the learned Counsel for the assessee that the addition, if any, can be made u/s 68 of the I.T. Act but the provisions of section 115BBE cannot be applied to the facts of the present case.

14. I do not find any force in the above arguments of the learned Counsel for the assessee. It is an admitted fact that the assessee in the original return of income had claimed the exemption u/s 10(38) of the I.T. Act on account of sale of 70000 shares of Jackson Investment Ltd. I find during the course of search when it was noticed that the assessee had used the stock

exchange mechanism for routing unaccounted money by using scrips of the company, which is a penny stock company, the assessee submitted a letter withdrawing the LTCG claim u/s 10(38) of the I.T. Act and offered the same as income. Therefore, once the assessee had withdrawn her claim, now the assessee cannot claim the same as long term capital gain and the income in my opinion has to be treated as “income from other sources”. If the contention of the learned Counsel for the assessee that the same is to be allowed as LTCG is accepted, then the natural corollary will be to allow the same as exempt u/s 10(38) of the I.T. Act and the very nature of the declaration will be defeated.

14.1 So far as the arguments of the learned Counsel for the assessee that the Assessing Officer cannot change the head of income is concerned, the same also is without any force especially when the assessee withdrew her claim of exemption u/s 10(38) of the Act and offered the same as income of the assessee. So far as the various decisions relied upon by the learned Counsel for the assessee are concerned, the same in my opinion are distinguishable and not applicable to the facts of the present case especially when the assessee in the instant case has herself withdrew the claim and accepted the income from sale of shares of the penny stock company as her income.

14.2 So far as the alternate argument of the learned Counsel for the assessee that the same should be added u/s 68 of the Act and the provisions of section 115BBE should not be attracted is concerned, the same in my opinion, is without any force. The Assessing Officer as well as the learned CIT (A) in this case has correctly applied the provisions of section 115BBE of the I.T. Act. Therefore, the alternate contention of the learned Counsel

for the assessee does not have any force and accordingly, the same is dismissed.

15. In the result, appeal filed by the assessee is dismissed.

ITA Nos.189/Hyd/2022 (A.Y 2017-18) and ITA Nos.190 to 195/Hyd/2022 (A.Y 2016-17)

16. After hearing both the sides, I find the grounds raised by the respective assesseees in the above appeals are identical to the grounds raised by the assessee in ITA No.188/Hyd/2022. I have already decided the issue and the grounds raised by the assessee are dismissed. Following similar reasonings, the grounds raised in the above appeals by the respective assesseees are dismissed.

17. In the result, all the appeals filed by the respective assesseees are dismissed.

Order pronounced in the Open Court on 30th June, 2022.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Hyderabad, dated 30th June, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	The assesseees C/o B. Narsingh Rao & Co. C.A. Plot No.554, Road No.92, Jubilee Hills, Hyderabad 500096
2	A.C.I.T. Central Circle 1(2) Aayakar Bhavan, Opp: LB Stadium, Basheer Bagh, Hyderabad 500004
3	CIT (A)-11, Hyderabad
4	Pr. CIT -Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order