

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH, RAIPUR  
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM  
आयकर अपील सं./ITA No.151/RPR/2019**

(निर्धारण वर्ष / Assessment Year :2014-2015)

Nand Kishore Bagree, C/o Bagree Enterprises, Near City Kotwali, Chotapara, Raipur	Vs.	ITO-4(4), Raipur
PAN No. : <b>ADEPB 7650 C</b>		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri R.B. Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri G.N. Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing	:	25/07/2022
घोषणा की तारीख/Date of Pronouncement	:	25/07/2022

**आदेश / ORDER**

**Per Arun Khodpia AM:**

The assessee has filed this appeal arising out of the order passed by the Id. CIT(A)-II, Raipur, dated 04.04.2019 for the assessment year 2014-2015.

2. The sole ground raised by the assessee in this appeal is as under :-

1. *Ld. CIT(A) erred in confirming addition of Rs.3,55,854/- made by AO on account of long term capital gain claimed exempt by appellant u/s.10(38). The addition made by the AO and sustained by the CIT(A) is arbitrary, baseless not justified.*

3. Brief facts of the case are that the assessee is an individual having income from business or profession and also having income from other sources. The assessee filed its return of income on 30.03.2015 showing total income at Rs.10,72,090/-. Thereafter the AO issued statutory notices to the assessee and in response to which the assessee appeared before the AO. Subsequently, the AO framed the assessment assessing total income of the assessee at Rs.10,72,090/- making addition of

Rs.3,55,854/- treating the same as unaccounted and unexplained amount credited to the bank of account of the assessee invoking provisions of section 68 of the Act. Against which, the assessee preferred appeal before the CIT(A), but again the CIT(A) upheld the view of the AO, confirmed the above addition made by the AO and dismissed the appeal of the assessee. Now, the assessee is in further appeal before the Tribunal.

4. Before us, Id. AR submitted the contentions of the assessee on the grievance rose by this appeal and demonstrated the same with documentary evidence as described here under, that:

1. *Shares of Sunbright Stock Broking Services Ltd. purchased for Rs. 3.40 per share through registered broker.*
2. *Purchase price paid through bank account on 10.07.2009, bank statement at PN 13 of PB.*
3. *Shares of Rs. 10/- were sub-divided into shares of Rs. 5/- each and in place of 1 1,000. shares, assessee received 22,000 shares.*
4. *Shares held in demat account for 4!2 years. Sold on 18.12.2013 at Rs. 16.17 per share through share broker in online transaction, paying STT. Sale contract note at PN 14 of PB.*
5. *Sale proceeds received through banking channel, reflected in the bank passbook at PN 15 of PB.*
6. *These evidences establish genuineness of the transaction. Absolutely nothing brought on record to dispute any of these evidences.*
7. *Evidences rejected arbitrarily, on presumption and surmises.*
8. *No enquiry whatsoever earned out by the AO at any stage.*
9. *Nothing brought on record to demonstrate as to how the alleged modus operandi etc. is present in the transaction of assessee. SEBI report neither reproduced in assessment order nor contents made available to the assessee at any time. Nobody knows what is the investigation carried out by SEBI and what are the findings: -*

*It is not known:*

- i) *What are the findings of SEBI.*

- ii) *Whom all the report of SEBI mentions.*
- iii) *In what context the enquiries were conducted.*  
*Unless any investigation was carried out in the context of Income Tax Act, findings of any such enquiry could not be used in Income Tax proceedings without any further enquiry by the AO.*
- iv) *Whether the AO had the report of SEBI in his records.*
- v) *Whether name of scrip is mentioned in the report of SEBI or whether name of the assessee or his broker is appearing therein.*

10. *Alleged report of DIT(Inv.)*

- i) *Copy of the report neither provided to the assessee nor contents reproduced in assessment order. Nobody knows what does it contain and whether it has any reference of the scrip, the assessee, the broker, assessee's transaction etc.*
- ii) *AO simply adopted borrowed conclusion; not permissible.*

11. *Material utilized by AO not confronted; nor provided to the assessee*

- i) *Such material is liable to be ignored. If it is so ignored then there is nothing on record.*
- ii) *AO violated the principles of natural justice. Reliance on: -*

*Case laws referred to in the last para on PN 6 of PB (5 Cases).*

12. *Apparent to be considered to be real unless proved otherwise. Reliance on CIT vs Bedi & Co. P. Ltd. (1998) 230 ITR 580 (SC).*

13. *If any of the reports had specific reference of assessee, AO would have referred to it. AO did not conduct any enquiry either from SEBI or from the concerned broker.*

14. *Assessee regular investor in shares. Holding as on 15.03.2010 at PN 10 & 11 of PB.*

15. *Addition made on the basis of general observations. Nothing specific against the assessee.*

16. *AO has not made out a case as to how the lengthy observations made by him are present or applicable in the case of the assessee.*

17. *No case made out that either the assessee or his broker were party to any manipulation. Even if there was any price rigging, in absence of involvement of assessee, it was not relevant.*

18. *Business, turnover, profitability etc. of the company may not be significant but investment decisions are taken by investor not on the basis of present or past achievement but on market tips, credibility of the management, future plans etc. The market does not depend only upon the past and present figures.*

19. *Reliance on: -*

- i) *ITO vs Kedar Agrawal in ITA no. 117/RPR/2014 dt. 02.02.2018, relevant finding in para 24 and 19.*
- ii) *DCIT vs Rakesh Saraogi & Sons HUF in ITA no. 93 to 99/RPR/2014 dt. 16.04.2018. PN 26 to 41, relevant findings on 31, 32, 34 & 40 of PB.*
- iii) *Navneet Agarwal in ITA no. 2281 /Kol./2017 dt. 20.07.2018, PN 42 to 68 of PB. Relevant observations on para 11 & 12. Relevant findings in para 15 & 16.*
- iv) *Summary of some other cases at PN 20 to 25 of PB.*

20. *Reply on general observations of AO at PN 16 to 19 of PB.*

5. Ld DR, on the other hand, has vehemently supported the orders of the revenue authorities. He drew our attention to the orders of Ld AO and Ld CIT(A), where in from para 5.1 to 5.11 bogus share purchase and unaccounted money of LTCG transaction has been described in detail under heads (1) Modus Operandi, (2) Role of Share brokers and (3) Action by SEBI. Ld DR further read para 5.11 and 6 of the AO's order which reads as under:-

*5.11 Another fact that is to be noted in this scam is that the buyers of these manipulated shares are either paper companies which have no business/office/employees or they are good profit making entities who have profit in their profit & loss account and want to set off this profit against the short term loss that would appear to have been incurred when shares of these companies are sold after their prices are made to crash on the floor/portal of the Stock Exchange.*

*Another fairly common phenomenon noticed in LTCG scam is that often the operators split the face value of shares after manipulating the market prices of the shares to a reasonably high level and repeat the operation to manipulate the prices again after splitting. The major reaping of bogus LTCG is generally done only after the split of face value of the shares.*

6. *Information available with this office through the Income Tax Department portal confirms the investments in penny Stocks Company. The information on record was based on various surveys u/s 133A and statement recorded u/s 131, in a countrywide*

*operation by the Income Tax Department which also gave rise to above mentioned information. Due diligence and careful extrapolation of this country-wide "Bogus LTCG" exercise, revealed names of BSE/NSE listed companies where manipulation of shares had taken place in order to benefit few individual and companies/entities through penny stock.*

6. Based on above observations of the AO, which were further substantiated by the Ld CIT(A) by upholding the same, Id DR has submitted that the transaction are proved to be unexplained and orders of revenue authorities are based on facts and circumstantial evidences with a plausible view hence deserves to be sustained.

7. We have heard the rival contentions, perused the material available on record and have considered the citations relied upon. Prima facie, the order of AO was focused on general description of process with respect to unaccounted and unexplained money routed to the account of beneficiary / assessee in the garb of Long term capital gain. The Ld AO has relied upon the investigation report of investigation wing, Calcutta and suspension of trading of Sunbright Stock Broking Ltd due to surveillance measures, the same aspect has further demonstrated by the AO by affixing screen shots of the suspension of the said company on account surveillance by the SEBI. Contention of the AO was accepted by the Ld CIT(A) reiterating the same facts, transaction was considered as a sham transaction.

8. We have observed that the assessment was entirely based on the report of the Investigation Wing of the Calcutta. No independent enquiry was made for the case of assessee. AO's assumption, that the broker has done some manipulation in the transaction and thereby the assessee was

benefitted, was based on surmises, have no documentary evidence to prove that the assessee was involved in such bogus transaction or that the assessee has given any cash to the broker. Admittedly, transactions are substantiated with the documentary evidences by the assessee that these were done through proper banking channel, shares purchased were credited in the Demat account of the assessee, shares sold through an authorised broker details of which are shared with the AO by the assessee. Payment of sale of shares was received by the assessee in its bank account and STT was duly charged.

9. It is observed that the AO and the Ld CIT(A) are guided by the report of the investigation wing but no part of the report of the investigation wing could be brought out which observe something against the assessee under reference. A vicious circle showing the assessee's collusion with the persons investigated such as stockbrokers, entry operators or any other persons could not be extracted by the Ld AO and thus no wrong involvement of the assessee in such sham transactions could be established by the department.

10. In this regard, case law relied upon by the Id AR in the case of Navneet Agarwal Vs ITO, Ward -35(3), Kolkata in ITA 2281/Kol/2017 is relevant where in it is observed that:

*17. The Hon'ble Supreme Court way back in the case of Lalchand Bhagat Ambica Ram vs. CIT [1959] 37 ITR 288 (SC) held that assessment could not be based on background of suspicion and in absence of any evidence to support the same. The Hon'ble Court held:*

*"Adverting to the various probabilities which weighed with the Income-tax Officer we may observe that the notoriety for smuggling food grains and other commodities to Bengal by*

country boats acquired by Sahibgunj and the notoriety achieved by Dhulian as a great receiving centre for such commodities were merely a background of suspicion and the appellant could not be tarred with the same brush as every arhatdar and grain merchant who might have been indulging in smuggling operations, without an iota of evidence in that behalf. The cancellation of the food grain licence at Nawgachia and the prosecution of the appellant under the Defence of India Rules was also of no consequence inasmuch as the appellant was acquitted of the offence with which it had been charged and its licence also was restored. The mere possibility of the appellant earning considerable amounts in the year under consideration was a pure conjecture on the part of the Income-tax Officer and the fact that the appellant indulged in speculation (in Kalai account) could not legitimately lead to the inference that the profit in a single transaction or in a chain of transactions could exceed the amounts, involved in the high denomination notes,--- this also was a pure conjecture or surmise on the part of the Income-tax Officer. As regards the disclosed volume of business in the year under consideration in the head office and in branches the Income-tax Officer indulged in speculation when he talked of the possibility of the appellant earning a considerable sum as against which it showed a net loss of about Rs. 45,000. The Income-tax Officer indicated the probable source or sources from which the appellant could have earned a large amount in the sum of Rs. 2,91,000 but the conclusion which he arrived at in regard to the appellant having earned this large amount during the year and which according to him represented the secreted profits of the appellant in its business was the result of pure conjectures and surmises on his part and had no foundation in fact and was not proved against the appellant on the record of the proceedings. If the conclusion of the Income-tax Officer was thus either perverse or vitiated by suspicions, conjectures or surmises, the finding of the Tribunal was equally perverse or vitiated if the Tribunal took count of all these probabilities and without any rhyme or reason and merely by a rule of thumb, as it were, came to the conclusion that the possession of 150 high denomination notes of Rs. 1,000 each was satisfactorily explained by the appellant but not that of the balance of 141 high denomination notes of Rs. 1,000 each".

The observations of the Hon'ble Apex Court are equally applicable to the case of the assessee. In our view, the assessing officer having failed to bring on record any material to prove that the transaction of the assessee was a collusive transaction could not have rejected the evidences submitted by the assessee. In fact, in this case nothing has been found against the assessee with aid of any direct evidences or material against the assessee despite the matter being investigated by various wings of the Income Tax Department hence in our view under these circumstances nothing can be implicated against the assessee.

18. We now consider the various propositions of law laid down by the Courts of law. That cross-examination is one part of the principles of natural justice has been laid down in the following judgments:

a) *Ayaaubkhan Noorkhan Pathan vs. The State of Maharashtra and Ors.*

"23. A Constitution Bench of this Court in *State of M.P. v. Chintaman Sadashiva Vaishampayan* AIR 1961 SC1623, held that the rules of natural justice, require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. (See also: *Union of India v. T.R. Varma*, AIR 1957 SC 882; *Meenglas Tea Estate v. Workmen*, AIR 1963 SC 1719; *M/s. Kesoram Cotton Mills Ltd. v. Gangadhar and Ors.*, AIR 1964 SC708; *New India Assurance Co. Ltd. v. Nusli Neville Wadia and Anr.* AIR 2008 SC 876; *Rachpal Singh and Ors. v. Gurmit Singh and Ors.* AIR 2009 SC 2448; *Biecco Lawrie and Anr. v. State of ITA No.2281/Kol/2017 Navneet Agarwal A.Yr.2014-15 West Bengal and Anr.* AIR 2010 SC 142; and *State of Uttar Pradesh v. Saroj Kumar Sinha* AIR 2010 SC 3131).

24. In *Lakshman Exports Ltd. v. Collector of Central Excise* (2005) 10 SCC 634, this Court, while dealing with a case under the Central Excise Act, 1944, considered a similar issue i.e. permission with respect to the cross-examination of a witness. In the said case, the Assessee had specifically asked to be allowed to cross-examine the representatives of the firms concern, to establish that the goods in question had been accounted for in their books of accounts, and that excise duty had been paid. The Court held that such a request could not be turned down, as the denial of the right to cross-examine, would amount to a denial of the right to be heard i.e. *audi alteram partem*.

28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. He can therefore, do so by cross-examining the witnesses produced against him. The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses

*proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross-examination.*

*29. In Rajiv Arora v. Union of India and Ors. AIR 2009SC 1100, this Court held: Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Indian Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation. The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the Appellant by such non- examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review.*

*30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross- examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice."*

*b) Andaman Timber Industries vs. Commissioner of C. Ex., Kolkata-II wherein it was held that:*

*"4. We have heard Mr. Kavin Gulati, learned senior counsel appearing for the Assessee, and Mr. K.Radhakrishnan, learned senior counsel who appeared for the Revenue.*

*5. According to us, not allowing the Assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the Assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the Assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the Assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the Assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable.*

*The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the Appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the Appellant wanted to cross-examine those dealers and what extraction the Appellant wanted from them.*

*6. As mentioned above, the Appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17-3-2005[2005 (187) E.L.T. A33 (S.C.)] was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.*

*7. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show cause notice."*

*19. On similar facts where the revenue has alleged that the assessee has declared bogus LTCG, it was held as follows:*

*a) The CALCUTTA HIGH COURT in the case of BLBCABLES & CONDUCTORS[ITA No. 78 of 2017] dated 19.06.2018. The High Court held vide Para 4.1:*

*".....we find that all the transactions through the broker were duly recorded in the books of the assessee. The broker has also declared in its books of accounts and offered for taxation. In our view to hold a transaction as bogus, there has to be some concrete evidence where the transactions cannot be proved with the supportive evidence. Here in the case the transactions of the commodity exchanged have not only been explained but also substantiated from the confirmation of the party. Both the parties are confirming the transactions which have been duly supported with the books of accounts and bank transactions. The Id. AR has also submitted the board resolution for the trading of commodity transaction. The broker was expelled from the commodity exchange cannot be the criteria to hold the*

*transaction as bogus. In view of above, we reverse the order of the lower authorities and allow the common grounds of assessee's appeal." [quoted verbatim] This is essentially a finding of the Tribunal on fact. No material has been shown to us who would negate the Tribunal's finding that off market transactions are not prohibited. As regards veracity of the transactions, the Tribunal has come to its conclusion on analysis of relevant materials. That being the position, Tribunal having analyzed the set of facts in coming to its finding, we do not think there is any scope of interference with the order of the Tribunal in exercise of our jurisdiction under Section 260A of the Income Tax Act, 1961. No substantial question of law is involved in this appeal. The appeal and the stay petition, accordingly, shall stand dismissed."*

b) *The JAIPURITAT in the case of VIVEKAGARWAL[ITA No.292/JP/2017]order dated 06.04.2018 held as under vide Page 9 Para 3:*

*"We hold that the addition made by the AO is merely based on suspicion and surmises without any cogent material to controvert the evidence filed by the assessee in support of the claim. Further, the AO has also failed to establish that the assessee has brought back his unaccounted income in the shape of long term capital gain. Hence we delete the addition made by the AO on this account."*

c) *The Hon'ble Punjab and Haryana High Court in the case of PREMPAL GANDHI[ITA-95-2017(O&M)] dated 18.01.2018 at vide Page 3 Para 4 held as under:*

*"..... The Assessing Officer in both the cases added the appreciation to the assessee's' income on the suspicion that these were fictitious transactions and that the appreciation actually represented the assessee's' income from undisclosed sources. In ITA-18-2017 also the CIT (Appeals) and the Tribunal held that the Assessing Officer had not produced any evidence whatsoever in support of the suspicion. On the other hand, although the appreciation is very high, the shares we retraded on the National Stock Exchange and the payments and receipts were routed through the bank. There was no evidence to indicate for instance that this was a closely held company and that the trading on the National Stock Exchange was manipulated in any manner."*

*The Court also held the following vide Page 3 Para 5 the following:*

*"Question (iv) has been dealt with in detail by the CIT (Appeals) and the Tribunal. Firstly, the documents on which the Assessing Officer relied upon in the appeal were not put to the assessee during the assessment proceedings. The CIT (Appeals) nevertheless considered them in detail and found that there was no co-relation between the amounts sought to be added and the*

*entries in those documents. This was on an appreciation of facts. There is nothing to indicate that the same was perverse or irrational. Accordingly, no question of law arises."*

d) The BENCH "D" OF KOLKATA ITAT in the case of GAUTAMPINCHA [ITA No.569/Kol/2017] order dated 15.11.2017 held as under vide Page 12 Para 8.1:

*"In the light of the documents stated i.e. (I to xiv) in Para 6(supra) we find that there is absolutely no adverse material to implicate the assessee to have entered gamut of unfounded/unwarranted allegations leveled by the AO against the assessee, which in our considered opinion has no legs to stand and therefore has to fall. We take note that the Id. DR could not controvert the facts supported with material evidences which are on record and could only rely on the orders of the AO/CIT (A). We note that in the absence of material/evidence the allegations that the assessee/brokers got involved in price rigging/manipulation of shares must therefore also fail. At the cost of repetition, we note that the assessee had furnished all relevant evidence in the form of bills, contract notes, demat statement and bank account to prove the genuineness of the transactions relevant to the purchase and sale of shares resulting in long term capital gain. These evidences were neither found by the AO nor by the Id. CIT (A) to be false or fictitious or bogus. The facts of the case and the evidence in support of the evidence clearly support the claim of the assessee that the transactions of the assessee were genuine and the authorities below was not justified in rejecting the claim of the assessee that income from LTCG is exempted u/s 10(38) of the Act."*

Further in Page 15 Para 8.5 of the judgment, it held:

*"We note that the Id. AR cited plethora of the case laws to bolster his claim which are not being repeated again since it has already been incorporated in the submissions of the Id. AR (supra) and have been duly considered by us to arrive at our conclusion. The Id. DR could not bring to our notice any case laws to support the impugned decision of the Id. CIT (A)/AO. In the aforesaid facts and circumstances of the case, we hold that the Id. CIT (A) was not justified in upholding the addition of sale proceeds of the shares as undisclosed income of the assessee u/s 68 of the Act. We, therefore, direct the AO to delete the addition."*

e) The BENCH "D" OF KOLKATA ITAT in the case of KIRAN KOTHARI HUF [ITA No. 443/Kol/2017] order dated 15.11.2017 held vide Para 9.3 held as under:

*"..... We find that there is absolutely no adverse material to implicate the assessee to the entire gamut of unfounded/unwarranted allegations leveled by the AO against*

*the assessee, which in our considered opinion has no legs to stand and therefore has to fall. We take note that the Id. DR could not controvert the facts which are supported with material evidences furnished by the assessee which are on record and could only rely on the orders of the AO/CIT(A). We note that the allegations that the assessee/brokers got involved in price rigging/manipulation of shares must therefore consequently fail. At the cost of repetition, we note that the assessee had furnished all relevant evidence in the form of bills, contract notes, demat statement and bank account to prove the genuineness of the transactions relevant to the purchase and sale of shares resulting in long term capital gain. Neither these evidences were found by the AO nor by the Id. CIT(A) to be false or fictitious or bogus. The facts of the case and the evidence in support of the evidence clearly support the claim of the assessee that the transactions of the assessee were genuine and the authorities below was not justified in rejecting the claim of the assessee exempted u/s 10(38) of the Act on the basis of suspicion, surmises and conjectures. It is to be kept in mind that suspicion how so ever strong, cannot partake the character of legal evidence.*

*It further held as follows:*

*"We note that the Id. AR cited plethora of the case laws to bolster his claim which are not being repeated again since it has already been incorporated in the submissions of the Id. AR (supra) and have been duly considered to arrive at our conclusion. The Id. DR could not bring to our notice any case laws to support the impugned decision of the Id. CIT(A)/AO. In the aforesaid facts and circumstances of the case, we hold that the Id. CIT(A) was not justified in upholding the addition of sale proceeds of the shares as undisclosed income of the assessee u/s 68 of the Act. We therefore direct the AO to delete the addition."*

f) The BENCH "A" OF KOLKATA ITAT in the case of SHALEENKHEMANI [ITA No.1945/Kol/2014] order dated 18.10.2017 held as under vide Page 24 Para 9.3:

*"We therefore hold that there is absolutely no adverse material to implicate the assessee to the entire gamut of unwarranted allegations leveled by the Id AO against the assessee, which in our considered opinion, has no legs to stand in the eyes of law. We find that the Id DR could not controvert the arguments of the Id AR with contrary material evidences on record and merely relied on the orders of the Id AO. We find that the allegation that the assessee and / or Brokers getting involved in price rigging of SOICL shares fails. It is also a matter of record that the assessee furnished all evidences in the form of bills, contract notes, demat statements and the bank accounts to prove the genuineness of the transactions relating to purchase and sale of*

*shares resulting in LTCG. These evidences were neither found by the Id AO to be false or fabricated. The facts of the case and the evidences in support of the assessee's case clearly support the claim of the assessee that the transactions of the assessee were bonafide and genuine and therefore the Id AO was not justified in rejecting the assessee's claim of exemption under section 10(38) of the Act."*

g) The BENCH "H" OF MUMBAIITAT in the case of ARVINDKUMAR JAINHUF [ITA No.4682/Mum/2014] order dated 18.09.2017 held as under vide Page 6 Para 8:

*".....We found that as far as initiation of investigation of broker is concerned, the assessee is no way concerned with the activity of the broker. Detailed finding has been recorded by CIT (A) to the effect that assessee has made investment in shares which was purchased on the floor of stock exchange and not from M/s Basant Periwal and Co. Against purchases payment has been made by account payee cheque, delivery of shares were taken, contract of sale was also complete as per the Contract Act, therefore, the assessee is not concerned with any way of the broker. Nowhere the AO has alleged that the transaction by the assessee with these particular broker or share was bogus, merely because the investigation was done by SEBI against broker or his activity, assessee cannot be said to have entered into ingenuine transaction, insofar as assessee is not concerned with the activity of the broker and have no control over the same. We found that M/s Basant Periwal and Co. never stated any of the authority that transactions in M/s Ramkrishna Fincap Pvt. Ltd. On the floor of the stock exchange are ingenuine or mere accommodation entries. The CIT (A) after relying on the various decision of the coordinate bench, wherein on similar facts and circumstances, issue was decided in favour of the assessee, came to the conclusion that transaction entered by the assessee was genuine. Detailed finding recorded by CIT (A) at para 3 to 5 has not been controverted by the department by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the findings of CIT (A)."*

h) The Hon'ble Punjab and Haryana High Court in the case of VIVEK MEHTA [ITA No. 894 OF 2010] order dated 14.11.2011 vide Page 2 Para 3 held as under:

*"On the basis of the documents produced by the assessee in appeal, the Commissioner of Income Tax (Appeal) recorded a finding of fact that there was a genuine transaction of purchase of shares by the assessee on 16.3.2001 and sale thereof on 21.3.2002. The transactions of sale and purchase were as per the valuation prevalent in the Stocks Exchange. Such finding of fact has been recorded on the basis of evidence produced on record. The Tribunal has affirmed such finding. Such finding of fact is sought to be disputed in the present appeal. We do not*

*find that the finding of fact recorded by the Commissioner of Income Tax in appeal, gives give rise to any question(s) of law as sought to be raised in the present appeal. Hence, the present appeal is dismissed."*

*i) The Hon'ble Jurisdictional Calcutta High Court in the case of CIT vs. Bhagwati Prasad Agarwal in I.T.A. No. 22/Kol/2009 dated 29.04.2009 at para 2 held as follows:*

*"The tribunal found that the chain of transaction entered into by the assessee have been proved, accounted for, documented and supported by evidence. The assessee produced before the Commissioner of Income Tax(Appeal) the contract notes, details of his Demat account and, also, produced documents showing that all payments were received by the assessee through bank."*

*j) The Hon'ble Supreme Court in the case of PCIT vs. Teju Rohit kumar Kapadia order dated 04.05.2018 upheld the following proposition of law laid down by the Hon'ble Gujrat High Court as under:*

*" It can thus be seen that the appellate authority as well as the Tribunal came to concurrent conclusion that the purchases already made by the assessee from Raj Impex were duly supported by bills and payments were made by Account Payee cheque. Raj Impacts also confirmed the transactions. There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that the assessee the trader had also shown sales out of purchases made from Raj Impex which were also accepted by the Revenue, no question of law arises."*

*20. Applying the proposition of law as laid down in the above-mentioned judgments to the facts of this case we are bound to consider and rely on the evidence produced by the assessee in support of its claim and base our decision on such evidence and not on suspicion or preponderance of probabilities. No material was brought on record by the AO to controvert the evidence furnished by the assessee. Under these circumstances, we accept the evidence filed by the assessee and allow the claim that the income in question isa bona fide Long Term Capital Gain arising from the sale of shares and hence exempt from income tax.*

*21. Under the circumstances and in view of the above discussion, we uphold the contentions of the assessee and delete the addition in question.*

11. This bench of the Tribunal in assessee's wife's case i.e. in the case of Smt. Durga Devi Bagree, in ITA No.104/RPR/2019, vide order dated

20.07.2022 decided the similar issue in favour of the assessee directing the AO to delete the addition made u/s.68 of the Act.

12. Since law laid down by the hon'ble courts and observations of coordinate bench of the ITAT in the similar facts and circumstances are in favour of the assessee, therefore, it is our considered view that the contentions of department are not acceptable, which are based on general practices of the entry operators, their modus operandi, report of the investigation wing without having any specific observation on the transactions by the assessee. Such observation of the revenue authorities are based on presumptions having no specific evidence against the assessee, thus is not sustainable and deserves to be set aside. Accordingly, we set aside the orders of authorities below and direct the AO to delete the addition. Thus, we allow the appeal of the assessee.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 25/07/ 2022.

**Sd/-**  
**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

Raipur; दिनांक Dated 25/07/2022

Prakash Kumar Mishra, Sr.P.S.(on tour)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Raipur / DR,  
ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य /ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

(Assistant Registrar)  
ITAT Raipur Bench, Raipur