

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 1999/Ahd/2018
Assessment Year : 2013-14

Smt. Paramadevi Tekriwal, D-143, Kaliyabid, Bhavnagar PAN : ADDPT 3030 F	Vs	The Income-tax Officer, Ward 1(5), Bhavnagar
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		None
Revenue by :		Shri Rakesh Jha, Sr. DR

सुनवाई की तारीख/Date of Hearing : 17/10/2022
घोषणा की तारीख /Date of Pronouncement: 17/10/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income-tax (Appeals)-6, Ahmedabad ("CIT(A)" in short) dated 09.07.2018.

2. The relevant facts of the case giving rise to this appeal are that the assessee is an individual who filed her return of income for the year under consideration originally on 16.03.2014. Although the said return was originally accepted under Section 143(1) of the Income-tax Act, 1961 ("the Act" in short), the assessment was subsequently reopened by the Assessing Officer on the basis of information received from Investigation Wing of the Income-tax Department that the Long Term Capital Gains of Rs.1,13,53,982/- arising from the sale of equity shares of KGN Enterprise Ltd. for a consideration of Rs.1,13,87,902/- claimed as exempt in the return of income was bogus and it was actually an accommodation entry. The Assessing Officer accordingly issued a notice under Section 148 of the Act to

the assessee on 30.11.2016 after recording the reasons. In reply, a letter was filed by the assessee stating that the return originally filed by her on 16.03.2014 be treated as a return filed in response to notice under Section 148 of the Act. During the course of assessment proceedings, a detailed notice was issued by the Assessing Officer on 07.12.2017 requiring the assessee to show-cause as to why sale consideration of Rs.1,13,87,902/- from the sale of equity shares of KGN Enterprise Ltd. should not be added to her income being unexplained cash credit under Section 68 of the Act. In reply, the following explanation was offered by the assessee in writing on 18.12.2017:-

“With reference to the above as regards your query as to why LTCG of Rs.1,13,53,982/- from sale of shares of M/s. KGN Enterprise Limited should not be treated as bogus and why the addition u/s. 68 of the Income-tax Act, should not be made by treating this as unexplained.

In this regard, I would like to submit as under :

(1) That I used to make occasional and small investments in stock market to purchase shares of existing companies on the advice of my husband.

(2) It was during such discussion at a party that it was suggested by someone, who might be having some inside information about the company or may be some expert in stock market, that good returns are expected if we make investment in shares of KGN Enterprise Limited. It was on this suggestion that we decided to make a small investment in the shares of M/s. KGN Enterprise Limited and we made an application to the company for 35000 shares of rupees 1 each.

(3) There after I received an allotment letter allotting me 35000 shares of KGN Enterprise Limited by issuing 70 share certificates.

Copy of allotment letter is enclosed herewith.

(4) After this shares were dematerialized and were transferred in de-mat on 19-04-2011.

A copy of demat account showing shares of KGN Enterprise Limited in demat account is enclosed herewith.

(5) *During the year under consideration I sold shares of KGN Enterprise Limited through Kunverji Finstock Private Limited.*

Copies of contract note cum tax invoice of Kunverji Finstock Private Limited for sale of said shares on recognized stock exchange giving full particulars of sale and evidencing payment of share transaction tax are enclosed herewith.

(6) *Sale proceeds of these shares was received from Kunverji Finstock Private Limited is deposited in my account with IDBI Bank Limited,*

Copies of ledger of Kunverji Finstock Private Limited evidencing the payment of sale proceeds and copy of bank account showing receipt of payment in bank account are enclosed herewith.

(7) *As can be seen from the above documents that the purchase and sale of shares were as per law and transaction for sales have been entered into a recognized stock exchange and at the price prevailing in the market on the date of sales. It cannot be considered as bogus merely on the basis of statements of CEO and Company Secretary which has not been cross examined.*

Considering the above facts I request your good self following aspects may be taken into consideration.

o The shares were purchased by me on 09-04-2009 and sold on Aug- 12 and Sept. - 12. Thus the shares were held by me for more than 1 year

o Shares have come in to my demat account and they were sold after being dematerialized

o The sale of shares were made Through recognized stock security transaction tax was duly paid.

In view of the above, we request your good-self not to treat the transaction as bogus and make addition u/s 68 of the Act as LTCG of Rs.1,13,53,982/- earned by sales of shares of KGN Enterprise Limited is my genuine long term capital gain under the law and exemption claimed under Section 10(38) of I.T. Act is validly claimed by us."

3. After taking into consideration the submission made by the assessee and the material available on record including the information received from the Investigation Wing of the Income-tax Department as well as the

result of inquiries conducted by him, the Assessing Officer recorded his findings/observations on the issue as under:-

“i) That some unscrupulous operators in the capital market were running a scheme of providing entries of LTCCG for a commission. ii) The financial result of the Penny Stocks used for the purpose clearly indicate that its quoted price at the peak was the result of rigging. iii) The above mentioned facts have been independently also been confirmed by SEBI. iv) That such schemes are prevalent for converting black money into white is common knowledge, independently confirmed by SEBI v) That a large number of individuals availed of the benefits of the scheme and took entries of LTCCG amounting to several crores. vi) Many such individuals have voluntarily without any enquiry by any authority have voluntarily withdrawn their claim and filed revised return. vii) statements of brokers, operators and key persons of paper companies that has bought these shares, directors of Penny stock companies all confess to such a scheme with detailed modus operandi which tallies with actual transactions viii) The assessee is one such beneficiary who has taken entry of LTCCG. ix) As the trading in these shares are at a pre-determined time between predetermined brokers at a pre-determined price; there is virtually no scope of any genuine trader in share to buy or sell these shares. x) Thus whoever has benefitted from transaction in these shares have transacted in accordance with the scheme and has admittedly converted his unaccounted cash equal to the sale proceeds of share in to white in the guise of exemption under section 10(38) of the Income Tax Act, 1961. xi) With so much of evidence against the assessee, the onus was on assessee to prove that his transactions were genuine and that he had not availed benefit of the aforementioned scheme to convert black money into white. xi) In Sumati Dayal vs. Commissioner of Income tax – the Supreme Court observed as under: "It is no doubt true that in all cases in which a receipt is sought to be taxed as income,, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. [See. Panmisetti Seetharamamma (supra) at P. 5361. But, in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to rebut, the said evidence being un-rebutted, can be used against him by holding that it was a receipt of an income nature.”

4. On the basis of the above findings/observations recorded by him and by relying on the various judicial pronouncements including the decisions of Hon'ble Supreme Court in the case of (i) Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC), (ii) CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC), (iii) Mc. Dowell & Co. Ltd. vs. CTO (1985) 154 ITR 148 (SC) as well as the decision of Mumbai Bench of this Tribunal in the case of Shamim M. Bharwani (ITA No.4906/Mum/2011 dated 27.03.2015), the Assessing Officer held that KGN Enterprise Ltd. was a paper company and its shares were floated to provide accommodation entries in the form of bogus Long Term Capital Gains so that investors could route their unaccounted money without any tax incidence. He accordingly treated the sale consideration of Rs.1,13,53,982/- claimed to be received by the assessee from the sale of equity shares of KGN Enterprise Ltd. as unexplained cash credit under Section 68 of the Act and addition to that extent was made by him to the total income of the assessee in the assessment completed under Section 147 r.w.s. 143(3) of the Act vide an order dated 22.12.2017.

5. Against the order passed by the Assessing Officer under Section 147 r.w.s. 143(3) of the Act, an appeal was preferred by the assessee before the learned CIT(A) challenging the validity of the said assessment as well as disputing the addition made therein under Section 68 of the Act by treating the sale consideration of equity shares of KGN Enterprise Ltd. as unexplained cash credit. After considering the submission made by the assessee as well as the material available on record, the learned CIT(A) did not find merit in the preliminary issue raised by the assessee challenging the validity of the assessment made by the Assessing Officer under Section 147 r.w.s. 143(3) of the Act; and, rejecting the same, he upheld the validity of the

said assessment made by the Assessing Officer for the following reasons given in his impugned order:-

"It is seen that the AO had credible information that the KGN Enterprise Ltd. was a paper company which was involved in providing accommodation entries in the form of Long Term Capital Gains to various persons. The appellant too had claimed Long Term Capital Gains (LTCG) of Rs.1,13,53,982/- earned on shares of KGN Enterprise and claimed the same as exempt u/s 10(38) of the Act. Accordingly, the AO had reason to believe that income to the extent of Rs.1,13,53,982/- had escaped assessment. Accordingly, the AO after recording the reasons to do so reopened the assessment u/s 147 of the Act and issued notice u/s 148 of the Act. The objections of the appellant to re-opening are twofold. Firstly, that the appellant had not purchased but sold shares of KGN Enterprise during the year under consideration. The appellant submitted that the AO had mentioned that "Information received from DIT(Investigation)/ Ahmedabad that the assessee has made bogus purchase totalling of Rs.1,13,53,982/- ." It is clear from this that the AO is referring to the transaction of sale and purchase of shares of KGN Enterprise. The use of "purchase" instead of LTCG could at best be typographical error. The appellant has not denied that she had made transaction in shares of KGN Enterprise. Second objection of the appellant is that the re-opening cannot be made merely on the basis of information received from DIT(Investigation) and relying on statement recorded and search carried out in the premises of the third party. There is no substance in this contention of the appellant. There is no bar on the AO re-opening assessment based on information received from Investigation Wing of the Department. It is settled law that at the time of re-opening the AO needs to have a reason to believe that income has escaped assessment. Information for having this reason could be from any credible and authentic source. Hence there is no substance in this contention of the appellant. Ratio of judgments relied on by the appellant in support of her contentions is not applicable to the present case as the facts are different.

In view of above discussion it is held that there is no infirmity in the action of the AO in re-opening the assessment. Accordingly, this ground of appeal is rejected."

6. The learned CIT(A) also did not find merit in the submission made on behalf of the assessee on the issue of addition made by the Assessing Officer under Section 68 of the Act by treating the sale consideration of the equity

shares of KGN Enterprise Ltd. as unexplained cash credit and proceeded to confirm the addition made by the Assessing Officer on this issue after discussing all the relevant facts and the judicial pronouncements on the issue in his impugned order as under:-

“It is a settled position of law that Section 68 of the Act puts onus of proof on the taxpayer. If an amount has been credited in the books of the appellant, the onus is on the taxpayer to prove the nature and source of the same to the satisfaction of the AO. Section 68 reads as follows:-

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the public money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless –

(a) the person, being a resident in whose name such credit is recorded in the books such company also offers an explanation about the nature and source-of such sum so credited: and

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:
(emphasis added).*

Thus the onus is on the taxpayer to explain to the satisfaction of the AO the nature and source of any sum credited in his/her books. In this case, the AO based on information in his possession had reason to believe that the transaction of shares was bogus, hence the onus was on the appellant to rebut this presumption which she has failed to do miserably. Thus the appellant failed to discharge the onus cast on her to prove the presumption of AO wrong. Thus there is no substance in various contentions of the appellant.

Further, there are several other peculiar aspects/facts in respect of transaction by the appellant of this scrip which cast a huge shadow of doubt

over the genuineness of this transaction. Some of these facts/aspects are detailed below :

(i) It is mentioned in the assessment order that as per information on public domain, flagship companies of KGN group namely KGN Enterprises and KGN Industries are defunct for the last many years. Further, that main promoter Arif Ismail was arrested on 19.11.202 in relation to some corporate fraud. Still the appellant decided to make investment in shares of KGN Enterprises.

(ii) Shares are allotted on 09.04.2010 but no payment is made. Only journal entry is passed.

(iii) As brought out by the AO in the assessment order, all shares sold by the appellant are bought by a set of people only. In today's scenario where shares are sold on electronic platform how is it possible that only a fixed set of people buy shares sold during a wide range of dates. It is possible only if trades are pre-decided and manipulated.

(iv) The appellant is a resident of Bhavnagar, Gujarat. From here the appellant invests in a Vadodara based company. In the normal course this would not raise any suspicion. But here it is a totally non-descript company with hardly any business activity and any significant performance. So it raises suspicion as to why would the appellant invest a huge amount in such a company.

(v) Further, as per statement of the appellant before the AO, he didn't know anything about the company KGN Enterprises. As per the appellant he bought shares on the advice of someone whom she met in a social function. Despite this the appellant applies for and gets 35,000.

(vi) The appellant is a resident of Bhavnagar. She buys shares of a Vadodara based company through a Mumbai based share broker Ami Securities, who is not the regular broker of the appellant. Regular broker of the appellant is Kunvarji Finstock through whom shares are dematerialized and through whom shares are sold. Why were these shares not bought through this broker?

(vii) During the period of holding of share by the appellant between 8.4.09 and August-September, 2012, the price of the share rises very high. So much so that it reaches Rs.800/- per share on 16.01.2012. Once the shares have been sold, the price starts falling and reaches the price of Rs.9/- per share in F.Y.2015-16. After this there is practically no movement in the share price.

All this is mentioned by the AO in the assessment order. It is clear that both the rise and fall in share price are sudden and abnormal.

(viii) Financials of the company as detailed by the AO in assessment order were not such that it would attract any investor to invest in the company. It defies logic as to why a person would invest in such a company with such poor financials. Also such poor financials do not warrant any spectacular rise in share price especially in the absence of any corporate announcements regarding big business deals etc.

(ix) Poor financials of the company do not warrant price of Rs.800/- on opening for trading when the company is listed on the stock exchange.

(x) SEBI had established that the price of the share was manipulated by a cartel comprising of various entities.

All the above aspects/facts mentioned above lead to the conclusion that transaction in question was rigged in order to garner huge LTCG and claim the same as exempt. Hon'ble Supreme Court in Sumati Dayal v. Commissioner of Income-tax [1995] 80 TAXMAN 89 (SC) held as follows ;

"4. If is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it fails within exemption provided by the Act lies upon, the assessee - Parimiseti Seetharamamma's case (supra) at p. 536. But, in view of section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source (hereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is, prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to rebut, the said evidence being unrequited, can be used against him by holding that it was a receipt of an income nature. While considering the explanation of the assessee the department cannot, however, act unreasonably- Sreelekha Banerjee's case (supra) at p. 120.

12. The matter has to be considered in the light of human probabilities.... An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn

statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence."

Thus as laid down by the hon'ble Apex Court the matter has to be considered in the light of human probabilities and after considering surrounding circumstances. In the present case, preponderance of probabilities casts serious doubts on the contention of the appellant and points towards the transaction being bogus.

Hon'ble Supreme Court in CIT vs Durga Prasad More, (1971) 82 ITR 540(SC) has held as follows :

"...it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.

Further, Hon'ble ITAT, Ahmedabad in Pawankumar M. Sanghvi vs ITO in ITA No.2447/Ahd/2016, A.Y: 2007-08 has held as follows ;

"As a final fact finding authority, this Tribunal cannot be superficial in its assessment of genuineness of a transaction, and this call is to be taken not only in the light of the face value of the documents sighted before the Tribunal but also in the light of all the surrounding circumstances, preponderance of human probabilities and ground

realities. Genuineness is a matter of perception but essentially a call on genuineness of a transaction is to be taken in the light of well settled legal principles. There may be difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidences... As the things stand now, genuineness of transactions is to be examined in the light of the prevailing ground realities, and that is precisely what I have done."

Ratio of all the above judgments is applicable to the facts of the present case.

Further, hon'ble Bombay High Court, Nagpur Bench in Income Tax Appeal No. 18/2017 in the case of Sanjay Bimalchand Jain L/H Shantidevi Bimlchand Jain vs Pr. CIT-I, Nagpur & Another has confirmed addition on account of bogus LTCG on penny stock shares. Hon'ble Court has held as follows :

"The assessee had on the advice of an income tax consultant purchased shares of two penny stock Kolkata based companies i.e., 8000 shares at the rate of Rs.5.50 per share on 08.08.2003 and 4-000 shares at the rate of Rs.4/- per share on 05.08.2003 from Syncom Marketing Pvt. Ltd. and of kyzoom Distributors Pvt. Ltd. the payments were made by the assessee in cash for acquisition of shares of both the companies. The address of both the companies was interestingly, the same. The authorized signatory of both the companies was also the same person. The purchase of shares of both the companies was done by the assessee through Global Stock and Securities Ltd and the address of the said broker was incidentally the address of the two companies. Both the companies intimated the assessee on 07.04.2004 regarding the merger of the companies with another company, viz. Khoobsurat Limited, Kolkata and the assessee received the shares of the new company in the ratio of 1:4 of the number of shares of the previous two companies held by the assessee. The assessee sold 2200 shares at an exorbitant rate of Rs.486.55 per share on 07.06.2005 and 800 shares on 20.06.2005 at the rate of Rs.485.65. The shares were sold through another broker, viz. Ashish Stock Broking Private Limited. The proceeds from the aforesaid sale transaction were directly credited by the broker in the Savings Bank Account of the assessee in the Union Bank of India. The assessing officer did not accept the case of the assessee that she was entitled to exemption under Section 10(38) of the Income Tax Act. The assessing officer held that the aforesaid transactions of purchase of two

penny stock shares for Rs.60,000/-, the merger of the companies with a new company and the sale of the shares for Rs.11,58,930/- fell within the ambit of adventure in the nature of trade and the assessee had profited by Rs.13,98,930/-. The assessing officer, therefore, brought the aforesaid amount to tax under the head 'business income'. Being aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The appeal filed by the assessee was dismissed and so was the subsequent appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals) before the Income Tax Appellate Tribunal. On hearing the learned counsel for the assessee and on a perusal of the orders of the income tax authorities, it appears that there is no scope for interference with the said orders in this appeal. By referring to the aforesaid facts, which are narrated in the earlier part of this order, the authorities found that the assessee had made investment in two unknown companies of which the details were not known to her. It was held that the transaction of sale and purchase of shares of two penny stock companies, the merger of the two companies with another company, viz. Khoobsurat Limited did not qualify an investment and rather it was an adventure in the nature of trade. It was held by all the authorities that the motive of the investment made by the assessee was not to derive income but to earn profit. Both the brokers, i.e. the broker through whom the assessee purchased the shares and the broker through whom the shares were sold, were located at Kolkata and the assessee did not have an inkling as to what was going on in the whole transaction except paying a sum of Rs.65,000/- in cash for the purchase of shares of the two penny stock companies. The authorities found that though the shares were purchased by the assessee at Rs.5.50 Ps. Per share and Rs.4/- per share from the two companies in the year 2003, the assessee was able to sell the shares just within a year's time at Rs.486.55 Ps and Rs.485.65 Ps per share. The broker through whom the shares were sold by the assessee did not respond to the assessing officer's letter seeking the names, addresses and the bank accounts of the persons that had purchased the shares sold by the assessee. The authorities have recorded a clear finding of fact that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing, the authorities held that the assessee had not tendered cogent evidence to explain as to how the shares in an unknown company worth Rs.5/- had jumped to Rs.485/- in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no economic or financial basis as to how a share

worth Rs.5/- of a little known company would jump from Rs.5/- to Rs.485/-. The findings recorded by the authorities are pure findings of facts based on a proper appreciation of the material on record. While recording the said findings, the authorities have followed the tests laid down by the Hon'ble Supreme Court and this Court in several decisions. The findings do not give rise to any substantial question of law. The judgments reported in (2012) 20 Taxman.com 529 (Bombay) (CIT Versus Jamnadevi Agrawal), (1957) 31 ITR 294 (Bombay) (Puranmal Radhakishan Versus CIT), (1970) 77 ITR 253 (SC) (Raja Bahadur Versus CIT) and (2015) 235 Taxman 1 (Bom) (CIT Versus Smt. Datta M. Shah) and relied on by the learned counsel for the assessee are distinguishable on facts and cannot be applied to the case in hand. Since no substantial question of law arises in this appeal, the appeal is dismissed with no order as to costs."

Facts in the present case are identical to the facts of the above case. Hence ratio of decision in the above case is squarely applicable to the present case.

Further, hon'ble ITAT, Mumbai in CIT vs Shamim M. Bharwani in ITA No. 4906/Mum/2011 (A.Y.2006-07) in order dated 27.03.2015 has held identical transactions as bogus and confirmed action of the AO in treating these as unexplained and adding the same u/s 68 of the Act. Ratio of the above judgment is fully applicable to the present case.

Further, hon'ble Guwahati High Court in CIT vs. Sanghamitra Bharali (361 ITR 481) has held similar transactions to be bogus and sham.

Case laws relied on by the appellant are not applicable to the present case as the same are distinguished on facts.

In view of discussion above and relying on the above cited judgments, I uphold the action of the AO in holding the transaction in shares of KGN Enterprises Ltd. as bogus and adding the amount of Rs.1,13,53,982/- to the income of the appellant u/s 68 of the Act. Accordingly, addition of Rs.1,13,53,982/- is upheld. This ground of appeal is dismissed."

7. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal on the following grounds:-

"1. The Hon'ble CIT(A) has erred in facts and in law in upholding the action of Assessing Officer of reopening of the assessment u/s 147.

2. *The Hon'ble CIT(A) has erred in facts and in law in confirming addition of Rs.1,13,53,982/- on account of LTCG treated as bogus by Assessing Officer invoking the provisions of Section 68."*

8. At the time of hearing fixed in this case today, none has appeared on behalf of the assessee; even the notice sent to the assessee at the address given in From No.36 by RPAD has come back undelivered from the Postal Authorities with the remarks "Left/Expired". It is observed that there was similar non-compliance on the part of the assessee when this appeal was fixed for hearing earlier on 18.02.2020, 04.01.2021, 10.03.2021, 13.09.2021, 24.05.2022, 30.06.2022 and 23.08.2022. This appeal of the assessee is, therefore, being disposed of *ex-parte* after hearing the arguments of learned Departmental Representative and perusing the relevant material available on record.

9. As regards the preliminary issue raised by the assessee in ground No.1 challenging the validity of reopening of assessment under Section 147/148 of the Act, it is observed that substantial Long Term Capital Gains arising from the sale of shares of KGN Enterprise Ltd. was claimed to be exempt by the assessee in the return of income filed for the year under consideration. As per the specific information received by the Assessing Officer from Investigation Wing of the Income-tax Department- Ahmedabad, KGN Enterprise Ltd. was a paper company and the shares of the said company were used for providing accommodation entries by showing purchase and sale transactions in such a way that the same resulted in Long Term Capital Gains to the concerned parties which was exempt from tax. Since the assessee was one of such beneficiaries who received the bogus Long Term Capital Gains in the scrip of KGN Enterprise Ltd. which was claimed to be exempt in the return of income, the Assessing Officer, in our opinion, had a reason to believe on the basis of tangible

material that the income of the assessee in the form of bogus Long Term Capital Gains had escaped assessment as rightly held by the learned CIT(A) vide his impugned order. The reopening of assessment thus was in accordance with law and the learned CIT(A), in our opinion, was fully justified in upholding the validity of reopening of assessment by the Assessing Officer under Section 147/148 of the Act. In that view of the matter, we uphold the order of the learned CIT(A) on this issue and dismiss Ground No.1 of the assessee's appeal.

10. As regards the issue raised in Ground No.2 relating to the addition made by the Assessing Officer under Section 68 of the Act by treating the sale consideration of shares of KGN Enterprise Ltd. claimed to be received by the assessee as unexplained cash credit, it is observed that this issue is squarely covered *inter alia* by the decisions of this Tribunal in the case of Pawankumar M. Sanghvi (supra) as well as in the case of Shamim M. Bharwani (supra) which have been relied upon by the learned CIT(A) in his impugned order to decide the issue against the assessee. Moreover, the learned CIT(A) has also relied on the decision of Hon'ble Guwahati High Court in the case of Sanghamitra Bharali (supra) wherein similar transactions were held to be bogus and sham. He has also relied on the decision of Hon'ble Bombay High Court in the case of Sanjay Bimalchand Jain, L/H Shantidevi Bimlchand Jain (supra) wherein the order of the Tribunal confirming the addition made by the Assessing Officer on account of bogus Long Term Capital Gains arising from sale of penny stock was upheld by the Hon'ble Bombay High Court. As submitted by the learned Departmental Representative at the time of hearing before us, Hon'ble Calcutta High Court has also taken a similar view in the case of PCIT Vs. Swati Bajaj (IA NO. GA/2/2022 dated 14.062022) after discussing in details

all the relevant aspects of the matter. Keeping in view all the judicial pronouncements, we find no infirmity in the impugned order of the learned CIT(A) confirming the addition made by the Assessing Officer under Section 68 of the Act by treating the sale consideration received by the assessee on sale of shares of KGN Enterprise Ltd. as unexplained cash credit. Ground No. 2 of the assessee's appeal is accordingly dismissed.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 17th October, 2022 at Ahmedabad.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad, Dated 17/10/2022

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Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

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

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

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad