

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'B' BENCH, KOLKATA**

**Before Dr. Manish Borad, Accountant Member  
&  
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 2175/KOL/2019  
Assessment Year: 2015-2016**

**Rajendra Kumar Gupta,.....Appellant**  
**C/o. Subash Agarwal & Associates, Advocates,**  
**Siddha Gibson,**  
**1, Gibson Lane, Suite-213, 2<sup>nd</sup> Floor,**  
**Kolkata-700069**  
**[PAN:ADYPG0112C]**  
**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-36(1), Kolkata,**  
**Aayakar Bhawan Poorva, 9<sup>th</sup> Floor**  
**110, Shantipally, Kolkata-700107**

**Appearances by:**

*N o n e*, appeared on behalf of the assessee

*Smt. Ranu Biswas, Addl. CIT(DR)*, appeared on behalf of the Revenue

**Date of concluding the hearing : 3<sup>rd</sup> August, 2022**

**- A N D -**

**I.T.A. No. 2467/KOL/2019  
Assessment Year: 2015-2016**

**Anil Kumar Agarwal,.....Appellant**  
**C/o. Calcutta Trading Company,**  
**10, Sevoke Road, Siliguri-734001,**  
**Darjeeling, West Bengal**  
**[PAN:ADAPA0214F]**  
**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-1(1), Siliguri,**  
**Aayakar Bhawan,**  
**Paribahan Nagar,**  
**Matigara, Siliguri-734010**

**Appearances by:**

*N o n e*, appeared on behalf of the assessee

*Smt. Ranu Biswas, Addl. CIT(DR)*, appeared on behalf of the Revenue

**Date of concluding the hearing : 3<sup>rd</sup> August, 2022**

- A N D -  
I.T.A. No. 2468/KOL/2019  
Assessment Year: 2015-2016

**Mamta Devi Agarwal**,.....**Appellant**  
**C/o. Calcutta Trading Company,**  
**20, Sevoke Road, Siliguri-734001,**  
**Darjeeling, West Bengal**  
**[PAN:ACLPA2412K]**  
-Vs.-

**Income Tax Officer**,.....**Respondent**  
**Ward-2(1), Siliguri,**  
**Aayakar Bhawan,**  
**Paribahan Nagar,**  
**Matigara, Siliguri-734010**

**Appearances by:**

*N o n e*, appeared on behalf of the assessee  
*Smt. Ranu Biswas, Addl. CIT(DR)*, appeared on behalf of the Revenue

**Date of concluding the hearing : 3<sup>rd</sup> August, 2022**

- A N D -  
I.T.A. No. 362/KOL/2019  
Assessment Year: 2015-2016

**Sekh Rabiul Haque**,.....**Appellant**  
**C/o. S.N. Ghosh & Associates, Advocates,**  
**"Seven Brothers" Lodge, P.O. Buroshibtala,**  
**P.S. Chinsurah, Hooghly-712105**  
**[PAN:ABNPH5985R]**  
-Vs.-

**Assistant Commissioner of Income Tax**,.....**Respondent**  
**Circle-1, Burdwan,**  
**Aayakar Bhawan, Burdwan,**  
**Kachari Road, Court Compound,**  
**P.O. & P.S. Burdwan, Purba Bardhaman-713101**

**Appearances by:**

*Shri S. Ghosh, Advocate*, appeared on behalf of the assessee  
*Smt. Ranu Biswas, Addl. CIT(DR)*, appeared on behalf of the Revenue

**Date of concluding the hearing : 3<sup>rd</sup> August, 2022**

- A N D -  
I.T.A. No. 2593/KOL/2018  
Assessment Year: 2014-2015

**Sushila Devi Mundhra**,.....**Appellant**  
**18B, Brabourne Road, 2<sup>nd</sup> Floor,**

**Kolkata-700001**  
**[PAN:AEZPM1250M]**  
**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-36(2), Kolkata,**  
**Aayakar Bhawan Poorva, 9<sup>th</sup> Floor**  
**110, Shantipally, Kolkata-700107**

**Appearances by:**

*N o n e*, appeared on behalf of the assessee  
*Smt. Ranu Biswas, Addl. CIT(DR)*, appeared on behalf of the Revenue

**Date of concluding the hearing : 3<sup>rd</sup> August, 2022**

**- A N D -**

**I.T.A. No. 2456/KOL/2018**  
**Assessment Year: 2015-2016**

**Arun Roy,.....Appellant**  
**C/o. Advocate Pradip Lakhota, 2<sup>nd</sup> Floor,**  
**Metro Plaza, SF Road, Siliguri-734005**  
**[PAN:ADGPR8147J]**  
**-Vs.-**

**Deputy Commissioner of Income Tax,.....Respondent**  
**Circle-1, Siliguri,**  
**Aayakar Bhawan,**  
**Paribahan Nagar,**  
**Matigara, Siliguri-734010**

**Appearances by:**

*N o n e*, appeared on behalf of the assessee  
*Smt. Ranu Biswas, Addl. CIT(DR)*, appeared on behalf of the Revenue

**Date of concluding the hearing : 3<sup>rd</sup> August, 2022**

**- A N D -**

**I.T.A. No. 2553/KOL/2018**  
**Assessment Year: 2014-2015**

**Sumit Bajaj,.....Appellant**  
**C/o. Subash Agarwal & Associates, Advocates,**  
**Siddha Gibson,**  
**1, Gibson Lane, Suite-213, 2<sup>nd</sup> Floor,**  
**Kolkata-700069**  
**[PAN:AECPB1211Q]**  
**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-36(2), Kolkata,**

**Aayakar Bhawan Poorva,  
110, Shantipally, Kolkata-700107**

**Appearances by:**

*N o n e*, appeared on behalf of the assessee

*Smt. Ranu Biswas, Addl. CIT(DR)*, appeared on behalf of the Revenue

**Date of concluding the hearing : 3<sup>rd</sup> August, 2022**

- A N D -

**I.T.A. No. 2606/KOL/2018  
Assessment Year: 2014-2015**

**Shruti Mundhra,.....Appellant**  
**18B, Brabourne Road, 2<sup>nd</sup> Floor,**  
**Kolkata-700001**  
**[PAN:AFMPM9500N]**  
**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-36(2), Kolkata,**  
**Aayakar Bhawan Poorva, E.M. Bypass,**  
**110, Shantipally, Kolkata-700107**

**Appearances by:**

*N o n e*, appeared on behalf of the assessee

*Smt. Ranu Biswas, Addl. CIT(DR)*, appeared on behalf of the Revenue

**Date of concluding the hearing : 3<sup>rd</sup> August, 2022**

**Date of pronouncing the order: 31<sup>st</sup> October, 2022**

**O R D E R**

**Per Bench:-**

These captioned eight appeals filed by different assesseees are against the separate orders of Id. CIT(Appeals) passed against respective separate assessment orders by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

2. Since common issue is involved in both the appeals relating to the disallowance of claim of exemption u/s. 10(38) of the Act in respect of long-term capital gains (LTCG) arising from sale of shares and in some cases challenging the additions for commission expenditure for arranging such LTCG, we dispose of both the captioned appeals by this consolidated order for the sake of convenience and brevity.

3. Briefly stated, facts are narrated hereunder for each of the ITA No. Captioned above, in seriatim:

**3.1. ITA No. 2175/KOL/2019 (AY 2015-16):** Brief facts of the case are that the assessee is an individual and filed e-return of income on 16.03.2016 declaring total income of Rs.13,95,870/-. The assessee has claimed exempt income under section 10(38) of the Income Tax Act at Rs.37,96,000/- from sale of equity shares of CCL International Limited. The case of the assessee was selected for scrutiny assessment under CASS. During the course of assessment proceeding, the Id. Assessing Officer based on the information received from the Directorate of Income Tax (Investigation), Kolkata examined the financial transactions of CCL International Limited and found that there was abnormal increase in the prices which was not supported by financials of the listed companies and came to the conclusion that with the help of entry operators and the promoters, there has been a systematic management of increase in the prices of equity shares found to be the penny stock companies through which bogus long-term capital gain entries were taken in large numbers by the beneficiaries. The assessee failed to file any satisfactory reply to justify the genuineness of sudden increase and decrease of the prices of equity shares. The Id. Assessing Officer finally assessed the income of the assessee at Rs.52,43,090/- vide order dated 28.12.2017 dismissing the claim of exempt income under section 10(38) of the Act and made an addition under section 68 of the Act for bogus long-term capital gain as unexplained cash credit along with an addition in respect of unexplained commission expenditure at Rs.18,980/- and disallowance under section 14A of the Act at Rs.32,243/-. Appeal against this addition before the Id. CIT(Appeals) did not get any relief to assessee. Aggrieved, the assessee is now in appeal before the Tribunal.

**3.2. ITA No. 2467/KOL/2019 (A.Y. 2015-16):** Brief facts of the case are that the assessee is an individual and filed e-return of income on

25.01.2016 declaring total income of Rs.6,56,100/-. The assessee has claimed exempt income under section 10(38) of the Income Tax Act at Rs.46,30,805/- from sale of equity shares of GCM Securities and Kailash Auto Finance. The case of the assessee was selected for scrutiny assessment under CASS and statutory notices under section 143(2) of the Act was issued on 03.08.2016 and further notice under section 142(1) along with questionnaire was issued and duly served upon the assessee. During the course of assessment proceedings, ld. Assessing Officer based on the information received from the Directorate of Income Tax (Investigation), Kolkata observed that the long-term capital gain claimed exempt at Rs.46,30,805/- is suspicious and seems to be an accommodation entries since both the companies i.e. GCM Securities and Kailash Auto Finance were found to be penny stock companies by DDIT. The assessee failed to file any satisfactory reply before the ld. Assessing Officer to explain the said transactions. The addition made by the ld. Assessing Officer was challenged by the assessee before the ld. CIT(Appeals), but no relief was granted by the ld. CIT(Appeals) to the assessee. The ld. CIT(Appeals) placing reliance on various decisions came to the conclusion that the alleged transaction is obviously made for tax evasion, therefore, such transactions are not genuine but pre-conceived resulting in creation of bogus claim and, therefore, are sham transactions. Being aggrieved, the assessee is now in appeal before the Tribunal.

**3.3. ITA No. 2468/KOL/2019 (A.Y. 2015-16):** Brief facts of the case are that the assessee is an individual and filed e-return of income on 14.01.2016 declaring total income of Rs.5,04,140/-. The case of the assessee was selected for scrutiny assessment under CASS followed by serving of statutory notices. While through the details filed by the assessee, the ld Assessing Officer noticed that the assessee has claimed long-term capital gain from sale of equity shares of GCM Securities Limited. After examining the details, the ld. Assessing Officer came to the conclusion that M/s. GCM Securities Limited is a penny stock company and the assessee with the help of entry operators has converted the

unaccounted money into bogus LTCG. The assessee also failed to explain the genuineness of the claim of long-term capital gain. The Id. Assessing Officer accordingly made the addition under section 68 of the Act at Rs.68,95,668/- and assessed income at Rs.73,63,969/-. The addition made by the Id. Assessing Officer was challenged by the assessee before the Id. CIT(Appeals), but no relief was granted. Being aggrieved, the assessee is now in appeal before the Tribunal.

3.4. **ITA No. 362/KOL/2019 (A.Y. 2015-16)**: Brief facts of the case are that the assessee is an individual and filed e-return of income on 15.03.2016 declaring total income of Rs.1,07,45,240/-. The assessee has claimed exempt income under section 10(38) of the Income Tax Act at Rs.33,21,721/- from sale of equity shares of Surabhi Chemical and Investment Limited. Ld. Assessing Officer observed that the prices of shares of Surabhi Chemical and Investment Limited were rigged off artificially from August, 2012 @ Rs.2.52 to December, 2014 @ Rs.109/-. The shares of Surabhi Chemical were suspended from trading from 07.01.2015 onwards. Ld. Assessing Officer based on the information and report of the Directorate of Income Tax (Investigation), Kolkata, Mumbai and Ahmedabad and is a part of 84 penny stock companies found that the Surabhi Chemical and Investment Limited is a penny stock company. Thus the benefit of exemption under section 10(38) of the Act was denied by the Id. Assessing Officer and added the same as income of the assessee under section 68 as unexplained cash credit and income assessed at Rs.1,40,66,960/-. The addition made by the Id. Assessing Officer was challenged by the assessee before the Id. CIT(Appeals), but no relief was granted by the Id. CIT(Appeals) to the assessee. Being aggrieved, the assessee is now in appeal before the Tribunal.

3.5. **ITA No. 2593/KOL/2018 (A.Y. 2014-15)**: Brief facts of the case are that the assessee is an individual and filed e-return of income on 23.07.2014 declaring total income of Rs.11,32,370/-. The assessee has claimed exempt income under section 10(38) of the Income Tax Act at

Rs.42,90,468/- from sale of equity shares of M/s. Nikky Global Finance Limited, Alembic Pharma Limited, Satyam Computer Limited. The case of the assessee was selected for scrutiny assessment under CASS and statutory notices under section 143(2) of the Act was issued and further notice under section 142(1) along with questionnaire was issued and duly served upon the assessee. Thereafter, the Id. Assessing Officer based on the information received from the Directorate of Income Tax (Investigation), Kolkata observed that the prices of shares of certain companies including M/s. Nikki Global Finance Limited were rigged artificially to provide bogus long term capital gain. All the features of the companies which were used for providing bogus LTCG are clearly matching with the trend of the shares of M/s. Nikki Global Finance Limited. Id. Assessing Officer considering the surrounding circumstances and applying the test of human probabilities coupled with the report of the Directorate of Investigation held that the assessee had entered into pre-designed modes of transactions and invested in the shares of M/s. Nikki Global Finance Limited just to convert his unaccounted cash in the guise of long-term capital gain. Id. Assessing Officer also mentioned that the share brokers/entry operators charging @.10 to .50 per 100 ruppees of cheque amount. The Id. Assessing Officer also observed that these companies have no business at all and share prices of the company are not supported by any fundamental of the company or any other genuine factor. The Id. Assessing Officer possessed the information from the Directorate of Income Tax (Investigation), Sikkim and NER mentioning the details of various penny stock companies. Details and information filed by the assessee could not satisfy the Id. Assessing Officer and he assessed the income considering the long-term capital gain at Rs.42,90,868/- as unexplained cash credit being an unaccounted money converted by the assessee into LTCG and further added the unexplained commission expenditure at Rs.21,454/- and finally assessed the income of the assessee at Rs.54,44,690/- vide order dated 22.12.2016. The addition made by the Id. Assessing Officer was challenged by the assessee before

the Id. CIT(Appeals), but no relief was granted by the Id. CIT(Appeals). Being aggrieved, the assessee is now in appeal before the Tribunal.

3.6. **ITA No. 2456/KOL/2018 (A.Y. 2015-16)**: Brief facts of the case are that the assessee is an individual and filed e-return of income on 29.09.2015 declaring total income of Rs.53,91,940/-. The assessee has claimed exempt income under section 10(38) of the Income Tax Act at Rs.43,05,625/- from sale of equity shares of GCM Securities. The case of the assessee was selected for scrutiny assessment under CASS and statutory notices under section 143(2) of the Act was issued on 03.08.2016 and further notice under section 142(1) along with questionnaire was issued and duly served upon the assessee. Thereafter, the Id. Assessing Officer based on the information received from the Directorate of Income Tax (Investigation), Kolkata observed that the GCM Securities Ltd. is a penny stock company as the price of shares increased from Rs.20/- to Rs.571/- during the period 04.03.2013 to 25.06.2014 and long-term capital gain claimed exempt at Rs.43,05,625/- is suspicious and unrealistic and seems to be an accommodation entries and the assessee with the help of broker and other entry operators has arranged bogus long-term capital gain so as to convert the unaccounted income into the exempt income since the company. The assessee failed to file any satisfactory reply before the Id. Assessing Officer to explain the said transactions. The Id. Assessing Officer after examining the issue in detail placing reliance on the various judicial pronouncements held that long-term capital gain is bogus and made the addition of Rs.43,05,625/- as unexplained cash credit alongwith other additions. The Id. Assessing Officer finally assessed income under section 143(3) of the Act at Rs.1,24,00,703/- vide orde dated 29.12.2017. The addition made by the Id. Assessing Officer was challenged by the assessee before the Id. CIT(Appeals), but part relief was granted by the Id. CIT(Appeals) to the assessee. The Id. CIT(Appeals) placing reliance on various decisions came to the conclusion that the alleged transaction of LTCG is obviously made

for tax evasion, therefore, such transactions are not genuine but preconceived resulting in creation of bogus claim and, therefore, are sham transactions. Being aggrieved, the assessee is now in appeal before the Tribunal.

3.7. **ITA No. 2553/KOL/2018 (A.Y. 2014-15)**: Brief facts of the case are that the assessee is an individual and filed e-return of income on 28.07.2014 declaring total income of Rs.10,69,110/-. The assessee has claimed exempt income under section 10(38) of the Income Tax Act at Rs.55,86,964/- from sale of equity shares of Surabhi Chemical and Investment Limited. The prices of shares of Surabhi Chemical and Investment Limited were rigged off artificially just to convert his unaccounted cash in the guise of long-term capital gain. Ld. Assessing Officer found that the Surabhi Chemical and Investment Limited is a penny stock company based on the information and report of the Directorate of Income Tax (Investigation), Kolkata that the share brokers/entry operators charging @ .10 to .50 per 100 rupees of cheque amount, hence total unexplained expenditure towards commission charged by the operators applying the rate of .50 per rupees worked out at Rs.27,935/- on Rs.55,86,964/- and added to the total income of the assessee. Thus the benefit of exemption under section 10(38) of the Act was denied by the ld. Assessing Officer and added the same as income of the assessee under section 68 as unexplained cash credit and income assessed at Rs.66,84,010/-. The addition made by the ld. Assessing Officer was challenged by the assessee before the ld. CIT(Appeals), but no relief was granted by the ld. CIT(Appeals) to the assessee. Being aggrieved, the assessee is now in appeal before the Tribunal.

3.8. **ITA No. 2606/KOL/2018 (A.Y. 2014-15)**: Brief facts of the case are that the assessee is an individual and filed e-return of income on 23.07.2014 declaring total income of Rs.10,65,730/-. The assessee has claimed exempt income under section 10(38) of the Income Tax Act at Rs.43,18,017/- from sale of equity shares of M/s. Nikky Global Finance

Limited. The case of the assessee was selected for scrutiny assessment under CASS and statutory notices under section 143(2) of the Act was issued and further notice under section 142(1) along with questionnaire was issued and duly served upon the assessee. Thereafter, the Id. Assessing Officer based on the information received from the Directorate of Income Tax (Investigation), Kolkata observed that the prices of shares of certain companies including M/s. Nikki Global Finance Limited were rigged artificially to provide bogus long term capital gain. All the features of the companies which were used for providing bogus LTCG are clearly matching with the trend of the shares of M/s. Nikki Global Finance Limited. Ld. Assessing Officer considering the surrounding circumstances and applying the test of human probabilities coupled with the report of the Directorate of Investigation held that the assessee had entered into pre-designed modes of transactions and invested in the shares of M/s. Nikki Global Finance Limited just to convert his unaccounted cash in the guise of long-term capital gain. Ld. Assessing Officer also mentioned that the share brokers/entry operators charging @.10 to .50 per 100 rupees of cheque amount. The Id. Assessing Officer also observed that these companies have no regular business and share prices of the company are not supported by any fundamental of the company or any other genuine factor. The Id. Assessing Officer possessed the information from the Directorate of Income Tax (Investigation), Sikkim and NER mentioning the details of various penny stock companies. Details and information filed by the assessee could not satisfy the Id. Assessing Officer and he assessed the income considering the long-term capital gain at Rs.42,96,534/- as unexplained cash credit being an unaccounted money converted by the assessee into LTCG and further added the unexplained commission expenditure at Rs.21,483/- and finally assessed the income of the assessee at Rs.53,83,750/-. The addition made by the Id. Assessing Officer was challenged by the assessee before the Id. CIT(Appeals), but no relief was granted by the Id. CIT(Appeals) to the assessee. The Id. CIT(Appeals) placing reliance on various decisions came to the conclusion that the alleged transaction is obviously made for tax evasion, therefore,

such transactions are not genuine but preconceived resulting in creation of bogus claim and, therefore, are sham transactions. Being aggrieved, the assessee is now in appeal before the Tribunal.

4. When the cases were called for hearing None appeared on behalf of the assessee except in ITA No. 362/KOL/2019. Per contra, the ld. D.R. vehemently supported the order of ld. CIT(Appeals) and submitted that the issue stands squarely covered by the judgment of the Hon'ble *Jurisdictional High Court in the case of Swati Bajaj & Others (2022) 139 taxmann.com 352(Cal.)* pronounced on 14.06.2022.

5. We have heard the ld. D.R. as well as the ld. A.R. appeared on behalf of the assessee (ITA No. 362/KOL/2019) and perused the relevant material available on record. The common issue placed before us with regard to genuineness of the claim of exempt income under section 10(38) of the Act in respect of long-term capital gain arising from sale of equity shares from the listed companies, which were held to be the penny stock companies by both the lower authorities and the long-term capital gain so claimed being bogus in nature and additions for undisclosed commission expenditure incurred for arranging bogus LTCG. We find that recently this Tribunal has adjudicated the similar issue under identical facts (except change of figures) in the case of *Shyam Sunder Bajaj in ITA No. 2552/KOL/2018 and others vide order dated 17<sup>th</sup> October, 2022* and after placing reliance on the judgment of Hon'ble *Jurisdictional High Court in the case of Swati Bajaj & Others (2022) 139 taxmann.com 352(Cal.)* pronounced on 14.06.2022, observed as under:-

"4. All the present cases were selected for scrutiny u/s. 143(3) through CASS and the issue in all of them for selection relates to 'suspicious long term capital gain on shares'. In all the above appeals, according to the ld. AO, LTCG reported by the assessee in respective return was bogus and the entire transactions were done with the objective to introduce unaccounted money of the assessee in the books by using the route of LTCG which was exempt from tax u/s 10(38) of the Act, except in one case, where the assessee has booked trading loss on transaction of shares of two Companies, which have been treated as penny

*stock. Thus, Id. AO held that the said LTCG/loss are fabricated/engineered transactions by the respective assessees, sale of which falls under the category of penny stocks and the same were treated as bogus which were added in the total income by treating it as unexplained cash credit u/s. 68 of the Act. Ld. AO based his decision of treating the impugned transaction of sale of shares as bogus transaction by relying on the report of Investigation Wing of the Department wherein the Investigation Wing of the Department had studied the modus operandi of rigging the prices of penny stocks and generation of capital gain /trading loss there from. On appeal, Id. CIT(A) confirmed the action of the Id. AO. Aggrieved, assessees are in appeal before the Tribunal.*

*5. Recently on 14.06.2022, the Hon'ble jurisdictional High Court of Calcutta passed a judgment in the case of Swati Bajaj and others [2022] 139 taxmann.com 352 (Cal) dealing with set of cases with similar fact patterns as narrated above for the present appeals under consideration before us. Hon'ble jurisdictional High Court by taking the report of the Directorate of Investigation of the Department as the basis, gave its observations and findings, which are summarized hereunder.*

*5.1. There are two category of cases dealt with by the Hon'ble High Court, viz. first category being those arising out of the order of Tribunal dated 26.06.2019 in which 90 appeals filed by the assessees were allowed and second category is of those cases where1 assessee has challenged the assumption of jurisdiction by CIT under section 263 of the Act. In the present set of appeals before us, we are concerned with the first category whose relevant observations and findings by the Hon'ble High Court are noted below:*

*a) From the assessment order passed in the case of the assessee Smt. Swati Bajaj, we find that the genesis of the issue commenced from an investigation report submitted by the Directorate of Income Tax, Investigation, Kolkata (DIT). The investigation report has been prepared by the Deputy Director of Income Tax, Investigation Unit -II and III, Kolkata. [para 43]*

*b) The assessee were conscious of the fact that they have not been named in the report, therefore made a vague and bold statement that the non-furnishing of report would vitiate the proceedings. Therefore, merely by mentioning that statements have not been furnished can in no manner advance the case of the assessee. If the report was available in the public domain as has been downloaded and produced by the revenue, nothing prevented the assessees who are ably defended by the Chartered Accountants and Advocates to download such reports and examine the same and thereafter put up their defence. Therefore, the based on such statements of violation of principles of natural justice the assessees have not made out any case. [para 65]*

*c) The test to be applied is the test of preponderance of probabilities to ascertain as to whether there has been violation of the provisions of the Income-tax Act. In such a circumstance, the*

*conclusion has to be gathered from various circumstances like the volume from trade, period of persistence in trading in the particular scrips, particulars of buy and sell orders and the volume thereof and proximity of time between the two which are relevant factors. Therefore, the methodology adopted by the revenue cannot be faulted. [para 69]*

*d) Test of preponderance of probabilities have to be applied and while doing so, the court cannot lose sight of the fact that the shares of very little known companies with in-significant business had a steep rise in the share prices within the period of little over a year. [para 73]*

*e) The assessee was not named in the report and when the assessee makes the claim for exemption, the onus of proof is on the assessee to prove the genuinity. [para 73]*

*f) It is incorrect to argue that the assesseees have been called upon to prove the negative in fact, it is the assesseees duty to establish that the rise of the price of shares within a short period of time was a genuine move that those penny stocks companies had credit worthiness and coupled with genuinity and identity. [para 73]*

*g) The assessee cannot escape from the burden cast upon him and unfortunately in these cases the burden is heavy as the facts establish that the shares which were traded by the assesseees had phenomenal and fanciful rise in price in a short span of time. [para 75]*

*h) The exercise that was required to be done by the Tribunal is to consider the totality of the circumstances because the transactions are shown to be very complex, the meeting of minds of the 'players' can never be established by direct evidence and therefore the surrounding circumstances was required to be taken note of by the Tribunal which exercise has not been done. [para 99]*

*i) The assessee had opportunity to prove that there was no manipulation at the other end and whatever gains the assessee has reaped was not tainted. This has not been proved or established by any of the assessee. [para 99]*

*j) The tribunal being the last fact finding authority was required to go deeper into the issue as the matter have manifested large scale scam. Thus, the orders of the tribunal are not only perfunctory but perverse as well. The exercise that was required to be done by the tribunal is to consider the totality of the circumstances because the transactions are shown to be very complex, the meeting of minds of the "players" can never be established by direct evidence and*

*therefore the surrounding circumstances was required to be taken note of by the tribunal which exercise has not been done. [para 99]*

*k) In such factual scenario, the Assessing Officers as well as the Commissioner (Appeals) have adopted an inferential process which is found to be a process which would be followed by a reasonable and prudent person. The Assessing Officers and the Commissioner (Appeals) have culled out proximate facts in each of the cases, took into consideration the surrounding circumstances which came to light after the investigation, assessed the conduct of the assessee, took note of the proximity of the time between the buy and sale operations and also the sudden and steep rise of the price of the shares of the companies when the general market trend was admittedly recessive and thereafter arrived at a conclusion which is a proper conclusion. [para 99]*

*l) For all the above reasons, we hold that the Tribunal committed a serious error in setting aside the orders of the CIT(A) who had affirmed the orders of the Assessing Officer. [para 101]*

*m) In the result, these appeals are allowed and the substantial questions of law framed/suggested are answered in favour of the revenue and against the assessee restoring the orders passed by the respective Assessing Orders as affirmed by the CIT(A). [para 102]*

*6. In the context of factual matrix of the present appeals before us narrated above, the position of law as enunciated by the Hon'ble jurisdictional High Court of Calcutta in Swati Bajaj (supra) carrying force of binding nature on the issue under consideration for us, was confronted to the respective Id. Counsels of the assessee who appeared before us. Id. Counsels were fair enough to state that issue involved in these appeals is squarely covered against the assessee by the said decision as the fact involved are identical to that which were before the Hon'ble High Court. For cases where none appeared before us on behalf of the assessee, the relevant factual matrix was captured with the assistance of Ld. Sr. DR / CIT DR (already narrated above). Since the matter is squarely covered by the decision of Hon'ble jurisdictional High Court of Calcutta in the case of Swati Bajaj & others (supra), we have taken up these also for adjudication ex parte, qua the assessee.*

*7. After hearing both the sides and taking into consideration the factual matrix of the cases before us vis-à-vis the decision of Hon'ble jurisdictional High Court of Calcutta in Swati Bajaj & others (supra), we respectfully following the said decision carrying the force of binding nature, being the jurisdictional High Court, dismiss the appeals of the assessee and restore the order of the respective Id. AO as affirmed by the respective Id. CIT(A)".*

6. We, therefore, respectfully following the decision of this Tribunal dated 17.10.2022 as well as in the light of ratio laid down by the Hon'ble Jurisdictional High Court in the case of Swati Bajaj & Others (supra) find no infirmity in the orders of the Id. CIT(Appeals) holding the alleged LTCG for sale of equity shares as bogus and not eligible to exemptions under section 10(38) of the Act and also confirming the addition of commission expenditure incurred for arranging bogus LTCG and dismiss the appeals of the assesses.

7. **In the result, all the appeals of all the captioned assesseees are dismissed.**  
Order is pronounced in the open court on October 31<sup>st</sup>, 2022

**Sd/-  
(Sonjoy Sarma)  
Judicial Member**

**Sd/-  
(Manish Borad)  
Accountant Member**

***Kolkata, the 31<sup>st</sup> day of October, 2022***

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(13) **Commissioner of Income Tax- , Kolkata;**  
(14) **The Departmental Representative**  
(15) **Guard File**

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By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata

Laha/Sr. P.S.