

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.7812/Del/2018
Asstt. Year: 2014-15

Aditya Saraf B-45, Inder Puri, New Delhi - 110 012 PAN AWWPS1249K (Appellant)	Vs.	ITO, Ward-17(4) New Delhi. (Respondent)
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Assessee by:	None
Department by :	Shri Kanav Bali, Sr. DR
Date of Hearing	23.08.2022
Date of pronouncement	23.08.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 26.09.2018 of the Ld. Commissioner of Income Tax (Appeals) - 6, Delhi ("**CIT(A)**") pertaining to assessment year ("**AY**") 2014-15.

2. The assessee has taken the following grounds of appeal:-

1. *The action of the learned CIT(A) in not deleting the addition of Rs. 65,65,909/- made by the Assessing Officer u/s 68 of the Income Tax Act and Rs. 3,28,295/- made u/s 69C of the Income Tax Act based on suspicion, conjectures and without any evidence is unjust illegal arbitrary, illusory , unwarranted and deserve to be deleted.*

2. *That the action of the CIT(A) in not accepting the Long term capital gain of Rs 65,65,909/- as genuine in spite of all documentary evidences filed and still disallowing the claim of deduction u/s 10(38) is unjust illegal arbitrary, illusory unwarranted and deserve to be deleted.*
3. *That the action of the lower authorities in not accepting all the documents and evidences filed in relation to the purchase and sale of shares is unjust, illegal arbitrary and the addition of Rs 65,65,909/- and Rs. 3,28,295/- deserve to be deleted.*
4. *The action of the CIT(A) in holding that the assessee has failed to discharge the burden of proof of the transaction and the AO has made the addition of Rs.65,65,909/- and Rs 3,28,295/- on adequate proof is unjust, illegal, arbitrary illusory, unwarranted and the additions made deserve to be deleted.*
5. *The action of the lower authorities in not providing a copy of the investigating report based on which the addition has been made is unjust, illegal, arbitrary and the addition deserves to be deleted.*
6. *The action of the lower authority in not granting the opportunity of cross examination of the investigating authority in spite of several oral requests is unjust, illegal, arbitrary and addition deserves to be deleted.*
7. *Appellant craves leave to add, alter, modify or delete any ground of appeal either before or at the time of hearing of the appeal.*

3. The appeal of the assessee came up for hearing before the Tribunal on 09.11.2021, 05.01.2022, 14.03.2022, 23.05.2022 and lastly on 23.08.2022 but neither the assessee nor any authorised representative attended any hearing, though the Department has been represented by Ld. Sr. DR in all the hearings. We, therefore, proceeded to decide the appeal ex-parte on merits after hearing the Ld. Sr. DR.

4. Briefly stated, the assessee is an individual. For AY 2014-15, he filed his return on 31.07.2014 declaring income at Rs. 7,12,100/-. After initial processing under section 143(1) of the Income Tax Act, 1961 (**the "Act"**), his case was selected for complete scrutiny through CASS the reason being

“suspicious LTCG”. The Ld. Assessing Officer (**“AO”**) noticed from the return that the assessee declared long term capital gain (**“LTCG”**) of Rs. 65,65,909/- which he claimed exempt under section 10(38) of the Act. According to the Ld. AO, at the last stage of assessment proceeding i.e. on 16.12.2016, the assessee furnished the details of the transactions of purchase and sale of the shares of M/s. Dhanleela Investment Ltd. resulting in LTCG of Rs. 65,65,909/-. However, he examined the details of the transactions and found that the assessee has earned a return of 5722% (approx.) over a very short period of just over 16 months. This alerted the Ld. AO who went deeper into the impugned transactions. The assessee was summoned under section 131(1) of the Act and his statement on oath was recorded on 16.12.2016. Based on the facts emerging on the recorded statement of the assessee, details of which are given in para 4.5 of the assessment order, the Ld. AO required the assessee to show cause why LTCG of Rs. 65,65,909/- earned by the assessee from sale of scrip of M/s. Dhanleela Investment Ltd. be considered as non-genuine and added back to his income treating it as bogus accommodation entry to bring into book as income from undisclosed sources. As per the Ld. AO no justifiable reply has been filed by the assessee with regard to fictitious LTCG and whatever replies the assessee gave, he did not find them acceptable.

5. The Ld. AO obtained from the website of M/s. Dhanleela Investment and Trading Company, the nature of its businesses and financial results and graph showing increase of its share prices and recorded the finding that the assessee earned 5722% (approx.) of returns on its investments which do not match with the financial results of the said Company. In para 9 of his order the Ld. AO discussed in details the modus operandi which was followed by the assessee to generate bogus LTCG which modus operandi finds mention in the Third Special Investigation Team (**“SIT”**) report on black money submitted to the Government in 2012. A typical pattern observed by the SIT is that a company with very poor financial fundamentals in terms of past income or turnover is able to raise huge capital by preferential allotment of shares made to various entities. There is

a sharp rise in price of scrip once the preferential allotment is done. This is normally achieved through circular trading of shares among a select group of companies. These groups of companies often have common promoters / directors. The scrips with thus artificially inflated price are offloaded through companies whose funding is provided by the same set of people who want to convert black money into white. The Ld. AO observed that the company M/s. Dhanleela Investment Ltd. and various entities involved in circular trading and sale and purchase of the scrip have all been part of this edifice to convert unaccounted money into accounted one by following the above modus operandi.

6. The Ld. AO referred to the decision of the Hon'ble Supreme Court in Sumati Dayal vs. CIT 214 ITR 801 (SC) which laid down the "test of human probabilities" for drawing inference where chances of discovering direct and clinching evidence are remote. He also referred to several other judgments to arrive at the conclusion that the amount of Rs. 65,65,909/- introduced / credited by the assessee out of the purported share sale receipts in his capital account represents his income. This unexplained cash credit is taxable under section 68 of the Act @ 30% as provided under section 115BBE of the Act. The Ld. AO added Rs. 65,65,909/- to the income of the assessee alongwith brokerage / commission paid to the entry operator @ 5% on Rs. 65,65,909/- which worked out to Rs. 3,28,295/-. The Ld. AO completed the assessment accordingly on total income of Rs. 76,06,304/- on 29.12.2016 under section 143(3) of the Act.

7. The assessee appealed before the Ld. CIT(A) and made lengthy submission which is recorded by the Ld. CIT(A) in para 3 of his appellate order as under:-

"Assessee is an individual income from salary and also income from Capital gains. He is an investment advisor working as a whole time director for Narayan Securities Limited, which is a licensed brokerage firm with NSE, BSE and Commodity Exchange. Narayan Securities is a broking firm providing

services on investment and trading through stock exchange for the past 25 years. The assessee in Ins individual capacity is carrying on trading in shares and options from the past ten years or more. He has been declaring income from short and long term capital gains every year. In this year also he has declared income from Short term capital gains at Rs. 1,59,569/-

In the assessment of the assessee completed u/s 143(3) vide order dated 29.12.2016 the AO made the following two additions:-

1. *Addition of Rs. 65,65,909/- being Long Term Capital gain on sale of 32500 Equity Shares of a listed company being Dhanleela Investments Limited u/s 68 of the IT Act.*
2. *An addition of Rs. 3,28,295/- has been made based on the assumption that the assessee must have paid 5% commission on Rs. 65,65,909/- which has not been declared in the books of account.*
3. *The submission of the assessee are as under:-*
 - a) *The assessee had purchased 1300 shares of Dhanleela Investments Limited for a sum of Rs. 1,17,000/- on 12.09.2012 from Panchsheel Securities Pvt. Ltd. Panchsheel Securities Pvt. Ltd is a Company engaged in share trading activity only.*
 - b) *The Company Dhanleela Investments Limited issued the bonus shares in the ratio 1:4 on 14, Feb, 2013. Accordingly total shares held became 6500 shares (1300 shares+5200 bonus shares)*
 - c) *Subsequently the shares were split by the Company Dhanleela Investments Limited in the uitio of 1:5. Therefore, total holding of assessee became 32500 shares.*
 - d) *These 32500 shares were sold by the assessee for Rs. 66,82,909/-. Ranging from Rs. 205-206 per share. I.TCG of Rs. 65,65,909/- was earned by the assessee and claimed u/s 10(38) as exempt income.*
4. *The purchase and sale of equity shares by the Aditya Sarafwas backed by the following documents*
 - a) *Purchase Bills of 1300 shares from Panchsheel Securities Pvt. Ltd. @ Rs. 90 each for a sum of Rs. 1,17,000/- on 12.09.2012.*
 - b) *DEMAT Account showing the shares transferred to the assessee and subsequently sold.*

- c) *Bank account showing the payment made for purchase and payment received for sale of the shares.*
- d) *Copy of account of the broker reflecting the sales of shares.*
- e) *The brokers note showing STT paid, Stamp duty paid and Brokerage paid by the assessee.*
- f) *Complete address, confirmation, bills and receipts of the broker M/s. Narayan Securities for the transaction undertaken with them.*

5. *in-spite of all the above documents addition of Rs. 65,65,909/- has been made u/s 68 which relates to unexplained cash credits. The objection of the assessee is as under:-*

- i. *In view of the legal precedents submitted on the facts which are identical to the facts of the assessee, their decision should have been followed.*
- ii. *It cannot be said that the assessee was unable to explain with full evidence the source of Rs. 65,65,909/- received from the broker against sale of shares. Therefore, section 68 was fully complied and the AO has not given any reason or any deficiency by the assessee in complying with any condition laid down u/s 68 not given any reason or any deficiency by the assessee in complying with any condition laid down u/s 68.*
- iii) *He has not made any observation on the documents filed by the assessee during the course of assessment and as to why they have not been considered as adequate proof of the transaction. He has made the addition by giving very general observations by making conjecture, surmises, guesswork and basically based on the observations made by some other authorities in some other context. No direct comment has been made on the assessee or on the papers, documents, submissions fled by him. Therefore, without showing any defect or any wrong doing by the assessee, no addition can be made u/s 143(3).*
- iv) *After making the addition of Rs. 65,65,909/- he goes on to make another addition of Rs. 3,28,295/- being 5% of Rs. 65,65,909/- by treating the same as commission paid outside the books of account by the assessee to the broker. There is no justification, no reason or no*

circumstance which has led him to believe that this payment has been made by the assessee to the broker.

- v. *As per section 10(38) any income arising from an equity shares of a company which has been entered into after finance (no.2) Act 2004 came into force and the transaction is subject to securities transactions tax will be eligible for total exemption if the same is falling under long term capital gain.*

The assessee had claimed the sum of Rs. 65,65,909/- being the net long term capital gain after deduction of cost and transfer charges as exempted income u/s 10(38). The AO has not given any finding as to why assessee is not eligible to claim the deduction. In case all the conditions have been met as required u/s 10(38) then there is no reason to disallow the exemption, especially without giving any reason for the action. The addition made by the AO on conjecture, surmises and guesswork, without a single shred of evidence is bad in law and deserves to be deleted. The authority he is relying upon to make this addition has not pointed out the name of the assessee or the brokerage Company but related to investigation on other Companies and persons. The AO has assumed that the assessee Company, the broker Company, the Demat account operator, the Stock Exchange have all entered into collusion so that the assessee earns tax free capital gains. This assumption is totally illegal, unjust, arbitrary and thus deserves to be deleted.”

The assessee relied on numerous judicial precedents to support his case.

8. The contentions of the assessee were not acceptable to the Ld. CIT(A) who upheld both the additions by observing and recording his findings as under:-

“4.1.2 I have considered the facts of the case, the assessment order and the submissions of the appellant. It is noticed that prima facie, copies of all documents have been submitted substantiate the genuineness of transactions related to purchase and subsequent shares leading to long-term capital gain claim by the appellant. I find that these documents were also placed before the AO who, after detailed

examination and discussion and going beyond the said documents, has established that the said documents were a mere mask to hide the real nature of transactions. By analysing the Balance Sheet, Profit & Loss account and the trade pattern of Dhanleela Investment & Trading Company Ltd. during the period March, 2012 to March 2016, from the capital structure of Dhanleela Investment & Trading Company Ltd it is seen that the company had authorised & paid-up share capital of Rs. 20,00,000/- in the financial year 2011-12 and in the financial year 2012-13, the company has substantially increased its equity capital to Rs. 9,47,00,000/-. No particular reason can be deduced either from the financial results of the company or any other parameter in the annual report or disclosures made by the company which, raises suspicion that the increase was a predetermined action with the specific intention. It is also seen that in the balancesheet there were no fixed assets or any tangible assets having value to support that any business activities were ever conducted by the company and that the real worth of the company was negative. From these facts the AO has concluded that the pressure of Dhanleela Investment & Trading Company Ltd. skyrocketed without having any corresponding financial results and the parameters which are essential for increase of price of the share were not present. It was also concluded that in absence of any backing financial result of the company the increase is due to artificially increase by circular trading of shares. It is noticed that apart from being based on evidences gathered during search and survey operations, analysis of the material on record and analysis of information from various sources the findings of the AO are also based on strong surrounding circumstances, preponderance of probability and human conduct in the light of detailed analysis of the modus operandi, adopted by brokers and operators engaged in the business of providing entries of long term capital gains to the interested beneficiaries which has come to surface as a result of deep and wide investigation. Initial investment in a company of unknown credentials and subsequent jump in the share price of such a company cannot be an accident or windfall but was possible, as clearly brought on record by the AO, because of the manipulations in the price of shares in a pre-planned manner by the interested broker and entry operators.

4.1.3 The insistence of the appellant that the transactions leading to long-term capital gains are supported by documents such as sale and purchase invoices, bank statements, brokers notes etc. cannot be accepted in view of the fact and circumstances of the case brought on record by the AO after proper examination of the material facts and after taking into account the findings of SEBI and corroborating evidences gathered by the Directorate of Investigation, Kolkata against a network of brokers and operators engaged in manipulation of market price of shares of certain companies controlled and managed by such persons with a purpose to provide accommodation entries in the form of long term capital gains. Further, the contention of the appellant that long term capital gains cannot be treated as bogus merely because

some investigation with regard to certain company and broker or investigation has been carried out by the Directorate of Investigation, Kolkata only proves that the appellant wants to take shelter under such documentary evidences which themselves have been created as masks to cover up the true nature of transaction. A genuine transaction must be proved to be genuine in all respect. The onus was on the appellant to prove that the transaction leading to claim of long-term capital gains was distinctly genuine transaction and not bogus, premeditated transaction arranged with a view to evade taxes. The onus was on the appellant to contradict the findings that Dhanleela Investment & Trading Company Ltd. was a company whose scrip was capable of being traded at high price as it was the appellant who had traded in the shares of the this company which resulted into claim of long term capital gains which is exempt under section 10(38). Once the appellant was made aware of the result of the investigation which proved that trading of shares leading to long term capital gains was not genuine, as per section 101 of the Indian Evidence Act, 1972, the onus was on the assessee to prove that she had earned genuine long term capital gains as it was the assessee who has made a claim that she was engaged in genuine share transactions.

4.1.4 In the case of Shri Charan Singh vs. Chandra Bhan Singh (AIR 1988 SC 6370), the Hon'ble Supreme Court have clarified that the burden of proof lies on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. It has been further held that the party cannot, on failure to establish a prima facie case, take advantage of the weakness of his adversary's case. The party must succeed by the strength of his own right and the clearness of his own proof. He cannot be heard to say that it was too difficult or virtually impossible to prove the matter in question. In the case under consideration, since it is the appellant who had made the claim that he had earned genuine long-term capital gain, all the facts were especially within his knowledge. Section 102 of Indian Evidence Act makes it clear that initial onus is on person who substantially asserts a claim. If the onus is discharged by him and a case is made out, the onus shifts on to deponent. It is pertinent to mention here that the phrase "burden of proof" is used in two distinct meanings in the law of evidence viz, 'the burden of establishing a case', and the burden of introducing evidence'. The burden of establishing a case remains throughout trial where it was originally placed, it never shifts. The burden of evidence may shift constantly as evidence is introduced by one side or the others. In this case, once the evidence that assessee has claimed bogus long-term capital gain was introduced by the AO, the burden of evidence shifted to the assessee. During the assessment proceeding and even during the appellate proceeding, the assessee has failed to produce any evidence to prove that the long-term capital gain claimed by him was genuine.

4.1.5 In the present case, it is seen that the appellant has failed to discharge his burden of proof and the AO, on the other hand, has proved that the claim of the appellant was incorrect. The enquiry conducted by SEBI was further corroborated by the investigation carried out by the Directorate of Investigation, has been analysed by the AO to prove that the assessee has introduced bogus long-term capital gains in his books of account by routing his unaccounted income through a tax evasion scheme. The statement of brokers engaged in providing bogus long-term capital gains clearly proves that Dhanleela Investment & Trading Company Ltd. is one of such companies whose scrip has been manipulated to provide bogus long term capital gains.

4.1.6 It is noted that on similar facts and circumstances, Hon'ble ITAT A-Bench, Chandigarh in the case of Shri Abhimanyu Soin vs ACIT, Circle-7, Ludhiana in ITA No.951/Chd./2016 vide order dated 18/04/2018, have expressed the view that the undisclosed income in the garb of long term capital gain has to be assessed as unexplained. The Hon'ble ITAT have held as under:-

"14. The ratio laid down by the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT [1995] 214 1TR 801 = 2002-TIOL-885-SC-IT-LB is squarely applicable in this case. Though the assessee has received the amounts by the way of account payee cheques, the assessee could nowhere prove the purchase of shares as claimed to have been made on 02/12/2008 in cash and it was also not proved about the availability of the funds with the assessee as on the date of purchase of shares. The assessee was not in India as per the passport details available as per the record. Tins, coupled with the fact that the transfer of money in cash from Ludhiana to Delhi and a person representing the broker operating at Kolkata has collected the money at Delhi cannot be accepted. The tax authorities are entitled to look into the surrounding circumstances to find out the realities and the matter has to be considered by applying test of human probabilities as enunciated by the Hon'ble Supreme Court. The fact that inspite of earning 3072% of profits, the assessee never ventured to involve himself in any other transactions with the broker which gave him even much lower profits during the period which cannot be a mere coincidence or lack of interest or absence of advice from the financial institutions as done earlier.

15. In view of the detailed discussion above, and keeping in view the entirety of the facts and circumstances and specific peculiarity of the instant case and the Judgments quoted above, we decline to interfere in the order of the Ld. CIT (A).

16. In the result, appeal of the Assessee is dismissed."

4.1.7 On the issue of circumstantial evidence and in the matters related to the discharge of proof and the relevance of surrounding circumstances of the case, the Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More [(1972) 82 ITR 540], have observed as under:

" that though an appellant's statement must be considered real until it was shown that then reasons to believe that the appellant was not the real, in a case where the party relied on self-serving recitals in the documents, it was for the party to establish the transfer of those recitals, the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probability. Human minds may differ as to the reliability of piece of evidence but in the sphere, the decision of the final fact finding authority is made conclusive by law.

4.1.8 The ratio above as laid down by the Hon'ble Supreme Court has been reiterated and applied by the Hon'ble Apex Court in the case of Sumati Dayal vs. CIT (214 ITR 801). It is essential on the part of the AO to look into the real nature of transaction and what happens as the real word and contextualize the same to such transactions in the real market situation. Further, in the case of McDowell & Co. Ltd. [(1985) 154 ITR 148 (SC)], the Hon'ble Supreme Court have observed as under:

"Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

Every person is entitled to so arrange his affairs as to avoid taxation but the arrangement must be real and genuine and not a sham or make believe.

4 I 9 Reference is also invited to the decision of the Hon'ble ITAT Chandigarh in the case of ACIT vs Som Nath Maini [(2006) 100 TTJ Chd 917] confirming, which the Hon'ble Punjab & Haryana High Court has held that the transaction was genuine, cannot be taken as conclusive. Such evidence is required to be assessed by the AO in a reasonable way. Genuineness of the transaction can be rejected if the assessee leads evidence which is not trustworthy even if the Department does not lead any evidence on such an issue. In the present case, prima facie, the appellant has produced the documents showing the details of the transaction but miserably fails to satisfy the test of human probabilities as discussed by the AO in the assessment order.

4.1.10 Reliance is also place on the decision of the Hon'ble Supreme Court in the case of CIT vs P. Mohankala [(2007) 291 ITR 278 (SC)] wherein it has been held as under:

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

In this case the Hon'ble Supreme Court have reversed the decision of the Hon'ble Madras High Court and upheld the findings of the lower authorities regarding the transactions of gift received by assessee even though these were done through banking channels, to be though apparent but not be real one.

4.1.11 Further, in the case of *Hersh Win Chadha vs. DDIT, Circle 1(1), International Taxation [(2011 135 TTJ 513 (Delhi)]*, the Hon'ble ITAT, Delhi have held as under-

"6.13. It would, at this stage, be relevant to consider the admissibility and use of circumstantial evidence in income tax proceedings. Circumstantial evidence is evidence of the circumstances, as opposed to direct evidence. It may consist of evidence afforded by the bearing on the fact to be proved, of other and subsidiary facts, which are relied on as inconsistent with any result other than the truth of the principal fact. It is evidence of various facts, other than the fact in issue which are so associated with the fact in issue, that taken together, they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact. In the appreciation of circumstantial evidence, the relevant aspects, as laid down from, time to time are -

- "(1) the circumstances alleged must be established by such evidence, as in the case of other evidence;*
- (2) the circumstances proved must be of a conclusive nature and not totally inconsistent with the circumstances or contradictory to other evidence.*

- (3) *although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced ; some of these links may have to be inferred from the proved facts ;*
- (4) *in-drawing those inferences or presumptions, the Authorities must have regard to the common course of natural events, to human conduct and their relation to the facts of the particular case.*
- (5) *The circumstantial evidence can, with equal facility, be resorted to in proof of a fact in issue which arises in proceedings for the assessment of taxes both direct and indirect, circumstantial evidence can be made use of in order to prove or disprove a fact alleged or in issue. In fact, in whatever proceedings or context inferences are required to be drawn from the evidence or materials available or lacking, circumstantial evidence has its place to assist the process of arriving at the truth.”*

4.1.12 *On similar facts and circumstances, Hon’ble Bombay High Court (Nagpur Bench) while dismissing the appeal of the assessee in the case of Sanjay Bimalchand Jain vs. Pr. CIT-1, Nagpur {(2018) 89 taxmann.com 196 (Bombay)} have expressed the view that the undisclosed income in the garb of long term capital gains has to be assessed as undisclosed credit by holding as under:*

“.....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 has not tendered cogent evidence to explain as to how the shares in a 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 financial basis as 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 the fact based on proper appreciation of the material on record. While recording the said findings, the authorities have followed the test laid down by the Hon’ble Supreme Court and this court in several decisions.....”

4.1.13 *All these above-mentioned cases are applicable to the facts and circumstances of the present case in which the various judicial authorities have decided the cases in favour of revenue after going through the entirety of the facts and circumstances. The case laws relied upon by the appellant are apparently in favour of the assessee but probably the role of human conduct, surrounding circumstances and preponderance of probabilities were either not brought to the notice of the Hon’ble Judicial authorities or were not as dominant or deciding factors as these are found to be in the present case. In addition, the AO in this case, has very clearly segregated the apparent from the real by*

using various evidences gathered from reliable sources of information and report.

4.1.14 In view of the facts and circumstances borne out of the assessment order and legal precedents as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that purchase and sale of shares are arranged transactions to create bogus profit in the garb of tax exempt long term capital gain by well organised network of entry providers with the sole motive to sell such entries to enable the beneficiary to account for the undisclosed income for a consideration or commission.

4.1.15 In view of the discussion above, I am of the view that share transactions leading to long term capital gains by the appellant are sham transaction entered into for the purpose of evading tax. Accordingly, the addition of Rs. 65,65,909/- made by the AO is upheld. Since arranging such accommodation entry necessarily entails payment of commission to entry providers, the action of the AO in quantifying and adding such unexplained expenditure at Rs. 3,28,295/- based on statements of brokers/entry providers is also upheld for the reasons recorded in the assessment order. Grounds of appeal nos. 1 to 6 are dismissed.”

9. We have heard the Ld. DR and perused the order of the Ld. AO/CIT(A). The findings recorded by the Ld. AO/CIT(A) remain uncontroverted as no representation has been by the assessee before us. Having considered the overall facts and circumstances of the case, we decline to interfere. The order of the Ld. CIT(A) is sustained. Accordingly, we reject the appeal of the assessee.

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

**Order pronounced in the open court at the time of hearing itself
i.e. on 23rd August, 2022.**

sd/-

sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER
Dated: 24 /11/2022

(ASTHA CHANDRA)
JUDICIAL MEMBER

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	