

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 249/JP/2022
निर्धारण वर्ष / Assessment Year : 2012-13

Smt. Manju Agarwal 41/405, New Mandi Station Road, Bharatpur	बनाम Vs.	The ITO Ward-1 Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGYPA 2553 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajendra Agarwal, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 22/11/2022
उदघोषणा की तारीख / Date of Pronouncement: 11 /01/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 28-09-2021, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

“On the facts and circumstances of the case:-

1. The ld. CIT(A) erred in dismissing the ground of appeal that ld. AO erred in reopening the assessment.

2. That the ld. CIT(A) erred in dismissing the ground of appeal that the ld. AO erred in making huge addition of Rs.6,12,367/- stating bogus LTCG claimed u/s 10(38) in the ROI held to be income from undisclosed sources.”

2.1 Apropos Ground No. 1 and 2 of the assessee, the facts as emerges from the order of ld. CIT(A) are as under:-

“ Ground No.1 & 2

3.0 These grounds of appeal are with regard to making addition of Rs. 612900/- by disallowing exemption u/s 10(38) of the Act so claimed by the appellant. I have carefully gone through the assessment order as well as submission of the appellant in this regard.

3.1 During the course of assessment proceedings, on verification, it was found by the AO that the appellant had sold shares through some specified securities. The appellant had earned capital gain on the said transactions and accordingly, had claimed exemption u/s 10(38) of the act.

3.2 It was also noticed that the appellant has made transaction of the penny stock company namely M/s Blue Print Securities Ltd amounting to Rs. 612900/-. In this scheme, the shares of the penny stock companies are used by the beneficiaries of LTCG/STCL (LTCG in this case) generally through the route of preferential allotment (private placement) or off market transaction. These shares have a lock in period of 1 year as per securities and Exchange Board of India Issue of capital and disclosure requirements Regulations, 2009. Another route to acquire the shares is through Amalgamation or merger. In this route, the beneficiaries of LTCG are allotted shares of a private limited company which is subsequently amalgamated with a listed penny stock and the beneficiaries receive shares of the listed penny stock in exchange of the shares of private limited company.

3.3 Thereafter, the prices of the shares of penny stock companies are rigged and are raised through circular trading. This is managed by the "operator" of the scrip. An "Operator" is a person who is managing the overall affairs of the scheme and he is the one who contacts the entities who wish to take entry of bogus LTCG/STCL in their books and arranges the same through the scripts of penny stock companies. The operator manages many paper/bogus companies and uses them to do circular transactions to rig the price of the shares. The shares of these penny stock companies although listed on exchange are always closely held and are controlled by the promoter of the penny stock company and the operator

who is arranging for the bogus LTCG/STCL. This is due to the fact that the general public is not interested in these shares as these companies have no credentials and this helps the operator to keep a control on the price movement of shares.

3.4 On going through the above information, it is crystal clear that the appellant had indulged in bogus long term capital gain and claimed the amount as exempt u/s 10(38) of the I.T. Act by way of taking accommodation entry. The purchase of shares is an off market transaction. The appellant had made investment through the derecognized broker and had earned excessive return within a shortspan of period which is extremely unusual.

3.5 In support of his view, the appellant had submitted its reply before the AO. The AO had found the reply not satisfactorily. What is at dispute is that whether this was really the Long Term Capital Gain earn from such scrip? As laid down by the Hon'ble Apex Court, apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. This abnormal gain can't be explained by applying the test of human probability. The reliance in this regard is being placed on Commissioner of Income Tax v. Durga Prasad More, (1971) 82 ITR 540 and Sumati Dayal Vs. CIT 1995 AIR 2109, 1995 SCC Suppl.(2) 453

3.6 The reliance is placed on the following judicial pronouncements:-

1. Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain Vs PCIT (ITA No.18/2017 Bombay High Court (Nagpur Bench)

The assessee had purchased shares of two penny stocks of Kolkata based companies i.e. 8000 shares at the rate of Rs.5.50 per share on 08.08.2003 and 4000 shares at the rate of Rs.4/-per share on 05.08.2003. The assessee sold 2200 shares at an exorbitant rate of Rs.485.55 per share on 07.06.2005 and 800 shares on 20.06.2005 at the rate of Rs.485.65. 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. Addition confirmed

2. Chandan Gupta Vs CIT (2015) 54 taxmann.com 10 (Punjab & Haryana)/[2015] 229 Taxman 173

"Hon'ble Punjab & Haryana High Court held that where assessee could not explain receipt of alleged share transactions profits credited in

his bank accounts, then sale proceeds had to be added as income of assessee under section 68"

3. Balbir Chand Maini Vs CIT (2011) 12 taxmann.com 276 (Punjab & Haryana)/[2011] 201 Taxman 94 (Punjab & Haryana) (MAG)/[2012] 340 ITR 161(Punjab & Haryana)/[2012] 247 CTR 468 (Punjab & Haryana)

"Section 69 of the Income-tax Act, 1961- Unexplained investments Assessment year 1998-99 - During assessment proceedings, Assessing Officer found that assessee had purchased certain shares of a company at rate between Rs 2.50 and Rs. 3.40 per share in month of April, 1997 and part of those shares were sold through a broker at Rs. 55 per share - He came to opinion that value of said shares could not be as high as Rs. 55 per share- He recorded statement of broker who admitted to have purchased shares in question but failed to produce books of account and other relevant documents -He also found that alleged sale of shares had not taken place through any stock exchange-On scrutiny of books of account of broker, it was found that there were cash deposits in its bank account preceding issue of cheques in name of assessee for purchase of shares claimed to be sale proceeds of same shares received in advance - Broker could not give details of purchaser of shares-Moreover, shares claimed to have been sold through broker had not been transferred even at time of making enquiry by Assessing Officer and same continued to be registered in name of assessee In those circumstances, Assessing Officer held that transaction of sale of shares was an ingenuine transaction and made addition of alleged sale consideration to assessee's income as income from undisclosed sources - Whether on facts, addition made by Assessing Officer was justified-Held, yes"

4. Usha Chandresh Shah Vs ITO [2014-TIOL-1459-ITAT-MUM

"where Hon'ble ITAT Mumbai held that in this case the assessee could not produce the copies of share certificates and copies of share transfer forms. The transaction of purchase of shares could not be cross verified. The shares of the company was declared as "Penny Stock" by SEBI and the broker Sanju Kabra, through whom the shares were sold by the assessee was indicted for manipulating the prices of penny stock shares. The tax authorities have rightly applied the test of human probabilities to examine the claim of purchase and sale of shares made by the assessee. The CIT(A) was justified in confirming the order of the AO by applying the test of human probabilities"

5. Ratnakar M Pujari VS ITO [2016-TIOL-1746-ITAT-MUM]

"where Hon'ble ITAT Mumbai held that a transaction of 'off market purchase of share' for which payments were made in cash and the brokers had issued predated contract notes, is liable to be treated as bogus transaction, and hence such cash receipts are liable to be treated as unexplained cash receipts"

3.7 Hence, it is clear from the above facts, judicial decisions so discussed above and circumstances that it was a sham transaction which cannot stand the test of human probability and therefore, the addition so made by the AO is hereby confirmed and accordingly, these grounds of appeal are dismissed.

4.0 As a result, this appeal is dismissed.”

2.2 During the course of hearing, the ld. AR of the assessee prayed that the ld. CIT(A) erred in dismissing the appeal of the assessee which should be allowed. To this effect, the ld.AR filed the following written submission.

SUBMISSIONS:

Ground No.1:-

On perusal of the reasons recorded u/s 148(2) it appears that before re-opening of the assessment the Ld.AO had not applied his mind and there was no information before him for any escaped assessment as in these reasons recorded the Ld.AO has stated that the assessee was beneficiary of receiving bogus short term/long term capital gain entries from the bogus/fake entry providers i.e., M/s Blue Prints Securities Ltd. as no transaction was made by the assessee with M/s Blue Prints Securities Ltd. and no bogus/ fake entry was provided by this company.

The re-opening of the assessment was made in suspicion and on whims only.

No needful enquiry or investigation was made by the Ld.AO before re-opening the assessment hence, the Ld.AO erred in re-opening the assessment, which is unjustified and bad in law.

During the course of assessment proceedings, detailed computation of income (PB-2) explaining all the sources of income and various activities done by the assessee, datewise statement of long term capital gain on sale of shares (PB-2) having the complete datewise details of purchases and sales of shares, copies of contract notes (PB-3) in support of sales and purchases, copy of bank statement (PB-6) alongwith copy of account payee cheque (PB-4) evidencing the receipt of sales consideration of sales of shares through banking channel,

complete details STT paid on sale of shares (PB-3) , party combined bill of settlement for sale of shares (PB-5) & purchase bill of shares were furnished before the Ld. AO.

Reliance has been placed on the following judgements:-

1. (JP-Trib) 2021 ITL 2057 Nilesh Agrawal HUF v.ITO ITA No.222-223/JP/2020 Dt. of Order 09.02.2021 wherein it has been decided by the Hon'le bench that "the mere suspicion cannot be a ground for treating the transaction as bogus in the absence of any evidence or material on record. Accordingly, in view of the facts and circumstances as discussed, when the assessee has produced all the relevant documentary evidences to establish the genuineness of the transaction and there is no contrary evidence to doubt the correctness of the evidences produced by the assessee then treating the transaction of purchase and sale as sham by the assessing officer is not justified. Therefore, all these facts established the genuineness of the transaction. Hence we do not find any error in assessee's claim of exemption of long term capital gains and the addition made by the assessing officer under section 68 of the Income Tax Act by treating the Long Term Capital Gain on sale of shares as unexplained cash credit is hereby directed to be deleted.

2. (Rajasthan High Court) DBIT No.209/2018 PCIT v. Pramod Jain Dt. of Order 24.07.2018 wherein the issue has been decided in favor of the assessee and against the department that the tribunal was justified in deletion the addition made by the AO and confirmed by CIT(A), made on account of bogus long term capital gain as the companies in which the investment was made were bogus.

3. (Delhi High Court) ITA No.125/2020 PCIT v. Smt.Krishna Devi Dt. of Order 15.01.2021 wherein it has been decided that the Ld.ITAT being the last fact finding authority, on the basis of evidence brought on record, has rightly come to the conclusion that the lower tax authorities are not able to sustain the addition without any cogent material on record, we thus find no perversity in the impugned order. In this case of the Ld.ITAT decided that "*A perusal of the assessment order clearly shows that the Assessing officer was carried away by the report of the Investigation Wing Kolkata. It can be seen that the entire assessment has been framed by the Assessing Officer without conducting any enquiry from the relevant parties or independent source or evidence but has merely relied upon the statements recorded by the Investigation Wing as well as information received from the Investigation Wing. It is apparent from the Assessment Order that the Assessing Officer has not conducted any independent and separate enquiry in the case of the assessee. Even, the statement*

recorded by the Investigation Wing has not been got confirmed or corroborated by the person during the assessment proceedings.

It is provided u/s. 142 (2) of the Act that for the purpose of obtaining full information in respect of income or loss of any person, the Assessing Officer may make such enquiry as he considers necessary. In our considered view the Assessing Officer ought to have conducted a separate and independent enquiry and any information received from the Investigation Wing is required to be corroborated and affirm during the assessment by the Assessing Officer by examining the concerned persons who can affirm the statements already recorded by any other authority of the department. Facts narrated above clearly show that the Assessing Officer has not made any enquiry and the entire assessment order and the order of the first Appellate Authority are devoid of any such enquiry. The report from the Directorate Income Tax Investigation Wing, Kolkata is dated 27.04.2015 whereas the impugned sales transactions took place in the month of March, 2014. The exparte ad interim order of SEBI is dated 29.06.2015 wherein at page 34 under para 50 (a) M/s. Esteem Bio Organic Food Processing Ltd was restrained from accessing the securities market and buying selling and dealing in securities either directly or indirectly in any manner till further directions. A list of 239 persons is also mentioned in SEBI order which are at pages 34 to 42 of the order the names of the appellants do not find any place in the said list. At pages 58 and 59 the names of pre IPO transferee in the scrip of M/s. Esteem Bio Organic Food Processing Ltd is given and in the said list also the names of the appellants do not find any place. At page 63 of the SEBI order-trading by trading in M/s. Esteem Bio Organic food Processing Ltd – a further list of 25 persons is mentioned and once again the names of the appellants do not find place in this list also. As mentioned elsewhere the brokers of the assessee namely ISG Securities Limited and SMC Global Securities Limited are stationed at New Delhi and their names also do not find place in the list mentioned here in above in the SEBI order. There is nothing on record to show that the brokers were suspended by the SEBI nor there anything on record to show that the two brokers of the appellants mentioned here in above were involved in the alleged scam. The Assessing Officer has not even considered examining the brokers of the appellants. It is a matter of the fact that SEBI looks into irregular movements in share prices on range and warn investor against any such unusual increase in shares prices. No such warnings were issued by the SEBI. There is no dispute that the statements which were relied by the Assessing Officer were not recorded by the Assessing Officer in the assessment proceedings but they were pre-existing statements recorded by the Investigation Wing and the same cannot be the sole basis of assessment without conducting proper enquiry and examination during the assessment proceedings itself. In our humble opinion, neither the Assessing Officer conducted any enquiry nor has brought any clinching evidences to disprove the evidences produced by the assessee. The report of Investigation Wing is much later than the dates of purchase / sale of shares and the order of the SEBI

is also much later than the date of transactions transacted and nowhere SEBI has declared the transaction transacted at earlier dates as void. Considering the vortex of evidences, we are of the considered view that the assessee has successfully discharged the onus cast upon him by provisions of section 68 of the Act as mentioned elsewhere, such discharge of onus is purely a question of fact and therefore the judicial decisions relied upon by the DR would do no good on the peculiar plethora of evidences in respect of the facts of the case in hand and hence the judicial decisions relied upon by both the sides, though perused, but not considered on the facts of the case in hand.”

4. (ITAT, Jaipur bench) in the case of M/s Shree Silika Product Pvt.Ltd. (JP-ITAT) 2020 ITL 162 dt.of order 07.01.2020 in which it has been decided that “*it is an admitted fact that the AO reopened the assessment on the basis of information received from the Investigation Wing that during the course of search & seizure operation of various premises of Sh. S.K. Jain Group of cases, money, books of accounts and documents belonging to M/s Singhal Securities Pvt. Ltd. were found and seized and the AO on this basis that the assessee received an accommodation entry from M/s Singhal Securities Pvt. Ltd. issued the notice u/s 148 of the Act while recording the reasons on 28.03.2013 that the assessee received accommodation entry from M/s Singhal Securities Pvt. Ltd. (copy of the said reasons recorded is placed at page no. 8 of the assessee's paper book). It is also noticed that on same date i.e. 28.03.2013, the AO of M/s Singhal Securities Pvt. Ltd., framed the assessment u/s 153C/153A of the Act at the same figure of the loss amounting to ₹ 51,528/- which was declared by the said assessee in its return of income. It is also noticed that Sh. S.K. Jain in whose premises search took place was not a shareholder of M/s Singhal Securities Pvt. Ltd. and was also not connected with the assessee. In the present case, when the assessment of M/s Singhal Securities Pvt. Ltd. from whom the assessee received share application money was assessed at the same figure of the loss which was declared by the said assessee, on the same date when the AO recorded the reasons that the income of the assessee escaped assessment for a sum of ₹ 14,00,000/- i.e. the amount received as share application money from M/s Singhal Securities Pvt. Ltd. In the present case, it cannot be said that the AO was having any material in his possession except the information received from the Investigation Wing. Therefore, the reopening was done by the AO only on the basis of the information received from Investigation Wing. In the present case also the AO in the reasons recorded mentioned that it had come to his knowledge that the persons from whom amount was received were entry operator and provided the entries to the assessee after receiving the amount in cash, however, nothing was brought on record that how and in what manner the persons from whom the assessee received the loans were entry operator and that as to how the cash was paid by the assessee. In fact the aforesaid conclusion of the A.O. is unhelpful in understanding as to whether the AO applied his mind to the*

material, particularly when he did not describe how and what manner it came to his knowledge that the assessee receive the accommodation entries. We, therefore, by keeping in view the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid referred to case of Principal Commissioner of Income-tax vs. G & G Pharma India Ltd., are of the view that the reopening done by the AO u/s 147 of the Act was not valid and accordingly the ITA No. 491/Del/2016 Layak Fabrics Pvt. Ltd. 16 subsequent assessment framed by the AO was void- ab-initio and therefore the same is quashed".

Similar decisions have also been made by hon'le ITAT, Jaipur bench in the following cases:-

- 1. CIT v/s Pooja Agrawal DB ITA No.385/2011 Hon'le Rajasthan High Court dt.of decision 11.09.2017**
- 2. Meghraj Shekhawat v/s DCIT in ITA No.443& 444/JP/2017 Hon'le ITAT, Jaipur bench 07.03.2018**
- 3. DICT v/s Saurabh Mittal in ITA No.16/JP/2018 Hon'le ITAT, Jaipur bench 29.08.2018**

But it is very unfortunate that the Ld.CIT(A) without considering the detailed written submissions and judicial pronouncements relied in the appeal, has very arbitrarily decided that "it was as sham transaction which cannot stand and the test of human probability and therefore, addition so made by the AO is hereby confirmed, but the Ld.CIT(A) has not decided the ground of appeal of the assessee that "the ld.AO erred in re-opening the assessment. The Ld.CIT(A) relied upon the various judgements of Bombay High Court, P & H High Court and ITAT, Mumbai as mentioned by him in his appeal order page No. 8 & 9 but the facts of these cases are different and not applicable when the issue is already covered by the various decisions of Hon'le ITAT bench and Hon'le Rajasthan High Court.

Ground No.2:-

The Ld.AO arbitrarily alleged that the humongous gains i.e., Rs.6,12,900/- (Rs.6,13,400/- minus Rs.500/-), which is around 1225.8 times of the original investment, made by the assessee in a penny scrip defies any logic or human probabilities and therefore cannot be genuine. Further the Ld.AO holds that the amount of Rs.6,12,900/- introduced/credited by the assessee out of these purported share sale receipts during the F.Y.2010-11 (A.Y.2011-12) as his income from other sources and added the same to the total income of the assessee.

During the course of assessment proceedings, detailed computation of income (PB-2) explaining all the sources of income and various activities done by the assessee, datewise statement of long term capital gain on sale of shares (PB-2) having the complete datewise details of purchases and sales of shares, copies of contract notes (PB-3) in support of sales and purchases, copy of bank statement (PB-6) alongwith copy of account payee cheque (PB-4) evidencing the receipt of sales consideration of sales of shares through banking channel, complete details STT paid on sale of shares (PB-3) , party combined bill of settlement for sale of shares (PB-5) & purchase bill of shres were furnished before the Ld. AO.

The Ld.AO examined the same in depth and no adverse inference was drawn by him. The assessee submitted all the documentary evidences and information in evidence of his claim which are probable and expected from a human being and proved his onus to prove.

But the Ld.AO arbitrarily disallowed the claim of the assessee and made a very huge addition of Rs.6,12,900/- stating bogus LTCG claimed u/s 10(38) in the return of income held to be income from other sources without any cogent evidence, inquiry, investigation or information, which is unjustified, bad in law and needs deletion.

Reliance has been placed on the following judgements:-

1. **(JP-Trib) 2021 ITL 2057 Nilesh Agrawal HUF v.ITO ITA No.222-223/JP/2020 Dt. of Order 09.02.2021**
2. **(Rajasthan High Court) DBIT No.209/2018 PCIT v. Pramod Jain Dt. of Order 24.07.2018**
3. **(Delhi High Court) ITA No.125/2020 PCIT v. Smt.Krishna Devi Dt. of Order 15.01.2021**
4. **(ITAT, Jaipur bench) in the case of M/s Shree Silika Product Pvt.Ltd. (JP-ITAT) 2020 ITL 162 dt.of order 07.01.2020**
5. **CIT v/s Pooja Agrawal DB ITA No.385/2011 Hon'le Rajasthan High Court dt.of decision 11.09.2017**
6. **Meghraj Shekhawat v/s DCIT in ITA No.443& 444/JP/2017 Hon'le ITAT, Jaipur bench 07.03.2018**

7. DICT v/s Saurabh Mittal in ITA No.16/JP/2018 Hon'le ITAT, Jaipur bench 29.08.2018

But it is very unfortunate that the Ld.CIT(A) without considering the detailed written submissions and judicial pronouncements relied in the appeal, has very arbitrarily decided that "it was a sham transaction which cannot stand and the test of human probability and therefore, addition so made by the AO is hereby confirmed.

We pray to your honor to please consider the above submissions and please allow the appeal."

2.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.4 The Bench has heard both the parties and perused the materials available on record. It is noted that as per information with the department, the assessee was beneficiary of receiving bogus long term capital gain on the transactions made in the scrips of M/s Blueprint Securities Limited through the broker M/s. Badri Prasad & Sons. On verification of the record, it was found that the assessee has shown exempt income from LTCG from transactions on which STT was paid amounting to Rs.6,12,900/-. During the course of assessment proceedings, the AO noted that the assessee had purchased 50 shares of unlisted company M/s. Ranisati Commottrade Pvt. Ltd. for a very meager amount of Rs.500/- in cash from M/s. Pushpanjali Commottrade Pvt. Ltd., Kolkata and then got converted these shares through amalgamation into shares of M/s Blueprint Securities Limited and received Rs.6,12,900/- as humongous long term capital gain. The AO observed that

the assessee has not dealt in any other trading activities in shares or made investment on other shares during the year under consideration and thus claimed capital gain as exempted u/s 10(38) of the Act which has been treated by the AO as undisclosed income of the assessee. Conclusively the AO held that the amount of Rs.6,12,900/- introduced/credited by the assessee out of these purported share sales receipts during the year under consideration as her income from undisclosed sources and thus computed the bogus LTCG claimed u/s 10(38) of the Act. In first appeal, the ld. CIT(A) confirmed the action of the AO holding as under:-

3.7 Hence, it is clear from the above facts, judicial decisions so discussed above and circumstances that it was a sham transaction which cannot stand the test of human probability and therefore, the addition so made by the AO is hereby confirmed and accordingly, these grounds of appeal are dismissed.’’

The Bench has taken into consideration the orders of the lower authorities and the decisions cited therein. The Bench noted that the issue raised by the assessee is covered by the order of ITAT Jaipur in the case of Nilesh Agarwal, HUF vs ITO (ITA No. 222-223/JP/2020 dated 9-02-2021) wherein the Bench has observed as under:-

“13. Similarly, in the instant case, the assessee is still holding 413,500 shares of M/s. Kailash Auto in his Demat account. The AO has treated the transaction of sale of 66,500 shares as bogus being accommodation entry but has not doubted the holding of the shares by the assessee to the tune of 4,13,500 shares in the

Demat account of the assessee. Once the assessee has produced all the supporting evidences which include purchase bill, bank statement showing the payment of purchase consideration, Demat account, holding of shares in the Demat account, sale of the shares through Stock Exchange which are also reflected in the Demat account of the assessee and receipt of the sale consideration in the bank account of the assessee as it is evident from the bank account, statement of the assessee, then in the absence of any contrary material or evidence brought on record by the AO, the transaction of purchase and sale of the shares in question cannot be held as bogus merely on the basis of the investigation carried out by the Department in some other cases where some persons were found indulged in providing accommodation entry. The AO in the entire assessment order has not made reference to single documentary evidence which can be said to be an incriminating material against the assessee to show that the assessee has availed accommodation entry of bogus Long Term Capital Gain. Therefore, the mere suspicion cannot be a ground for treating the transaction as bogus in the absence of any evidence or material on record. Accordingly, in view of the facts and circumstances as discussed above, when the assessee has produced all the relevant documentary evidences to establish the genuineness of the transaction and there is no contrary evidence to doubt the correctness of the evidences produced by the assessee then treating the transaction of purchase and sale as sham by the AO is not justified. Therefore, all these facts established the genuineness of the transaction. Hence we do not find any error in assessee's claim of exemption of long term capital gains and the addition made by the AO under section 68 of the IT Act by treating the Long Term Capital Gain on sale of shares as unexplained cash credit is hereby directed to be deleted. The matter is accordingly decided in favour of the assessee and against the Revenue. In the result, the ground no.1 is allowed.

Since the issue raised by the assessee is covered to the case of Nilesh Agarwal, HUF, vs ITO (supra), therefore, we do not concur with the findings of the Id. CIT(A) and thus the appeal of the assessee is allowed.

3.0 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 11 /01/2023.

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/01/2023

*Mishra

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

1. The Appellant- Smt. Manju Agarwal, Bharatpur
2. प्रत्यर्था / The Respondent- The ITO, Ward-1, Bharatpur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 249/JP/2022)

आदेशानुसार / By order,

Asstt. Registrar