

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.2334/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2014-15)

Srichand Chatrumal HUF 5-B, Elegant Apartment, 3 Sobhani Road, Colaba, Mumbai-400005.	बनाम/ Vs.	ACIT-17(2) Bandra Kurla Complex, Bandra (E), Mumbai- 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAHS9693F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं/ I.T.A. No.6537/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2014-15)

Mrs. Rashmi Sukesh Malik Alias of Jyoti Srichand Bathija 5B, Elegant Apartment, 3, Sobhani Road, Cuffe Parade, Colaba, Mumbai- 400005.	बनाम/ Vs.	ITO, Ward-16(1)(2) Aayakar Bhavan, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPB6002D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Hari Raheja
Revenue by:	Ms. Nayana K. Kumar (Sr. DR)

सुनवाई की तारीख / Date of Hearing: 02/12/2022
घोषणा की तारीख /Date of Pronouncement: 13/01/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee's against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 25.10.2021 for the assessment year 2014-15; and that of Ld. Commissioner of Income Tax (Appeals)-04, Mumbai dated 25.09.2018 for AY. 2014-15 respectively.



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2. Both the parties agree that both the appeals are identical except that of figures (sum of money). Therefore, the appeals of the assessee [Srichand Chatrumal (HUF)] ITA. No. 2334/Mum/2021 is taken up as the lead case and the result of which will be followed in the other case (Mrs. Rashmi Sukesh Malik ITA. No. 6537/Mum/2018) but the facts of this case will also be discussed after discussion of facts in the lead case.

3. **ITA. No. 2334/Mum/2021 (Srichand Chaturmal HUF)**:- Brief facts are that the assessee had e-filed return of income of AY. 2014-15 on 24.07.2014 declaring total income of Rs.22,97,160/-. Thereafter, the case of the assessee was reopened u/s 147 of the Income Tax Act, 1961 (hereinafter "the Act") by issuing of notice u/s 148 of the Act on 29.03.2017. The reasons for reopening the assessment was because the AO received information that assessee's claim of Long Term Capital Gain (LTCG) in respect of sale of shares of M/s. Kailash Auto Finance Ltd. (hereinafter "M/s KAFL") to the tune of Rs.19,08,000/- and investment of Rs.50,000/- (i.e. purchase value of shares of M/s. Panchshul Marketing Ltd.) are bogus; and thereafter re-opened the assessment and gave show cause as to why the same should not be added pursuant to which the assessee filed the relevant documents to prove that the purchase of shares of M/s. Panchshul Marketing Ltd and thereafter the merger of this company took place with M/s. KAFL as per the order of Hon'ble Allahabad High Court and consequent to that



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event of amalgamation, assessee was allotted shares of M/s. KAFL which was later sold through the electronic platform of the stock exchange and assessee HUF received the sale consideration also through banking channel and the assessee filed the following documents to discharge its burden to prove the genuineness of the transaction which yielded the LTCG to it;-

- (a) Copy of Demat account statement reflecting the corporate action giving effect to the merger whereby the assessee has received shares of Kailash Auto Finance Ltd. in lieu of shares of Panchshul Marketing Ltd. held by him:
- (b) Copy of contract-cum-sale bills for sale of Kailash Auto Finance Ltd. on the Bombay Stock Exchange through Edelweiss Securities Ltd;
- (c) Copy of Demat Statement showing the pay-in of shares to the relevant settlement account of the assessee's broker.
- (d) Copy of ledger account of the assessee with the assessee's broker Edelweiss Securities Ltd.
- (e) Copy of Bank passbook of the assessee reflecting the receipt of sale proceeds of the shares.”

4. However, the AO did not agree and after taking note of the suspicious rise of share prices as well as taking note of the statement given by Shri Narendra Balasia (in the case of SMC Global Securities Ltd, Shri Alok Harlalka who is broker of M/s. SMC Global Securities Ltd), the AO was of the opinion that the assessee's LTCG claim on sale of M/s. KAFL was bogus. And the AO took note of the Investigation Report of Directorate, Kolkata and as well as the SEBI



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interim order dated 29.03.2016 against certain entry operators in respect of transaction in scrip of M/s. KAFL, wherein the SEBI opined that certain operators were involved in rigging the price of this share whereby the beneficiaries have made huge LTCG and he expressed his strong suspicion in respect of the assessee's LTCG claim. The assessee contested the allegation given in the investigation report about the scrip of M/s. KAFL and pointed out that it cannot be used against the assessee because neither the investigation report nor the statement of 3rd parties which was the base of the ibid report have anything incriminating against the assessee or its broker indulging anything wrong, and it were recorded behind the back of assessee. And also submitted that it invested in share market in various scrips and investment in shares of M/s. Panchshul Marketing Ltd was also one among them and that it was not aware when it purchased the shares of M/s. Panchshul Marketing Ltd that said company was going to get amalgamated with M/s. KAFL. Assessee produced the documents to prove that assessee had subscribed for shares of M/s. Panchshul Marketing Ltd and was allotted the shares, in normal course and that all transaction had evidence like bill of contract, allotment letter of shares, bank statements, De-mat statements etc. And also it was brought to the notice of AO that the broker through whom assessee had transacted/sold the shares (M/s. Edelweiss Securities Ltd.) was active [even after SEBI interim order dt 29.03.2016] doing regularly its professional service as broker in the BSE & NSE, which shows that there was no restrictions placed by SEBI on its activities. Therefore,



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assessee pleaded before the AO that no adverse view be taken against the LTCG claim since it was a genuine investor. However, the AO did not agree and after taking note of the suspicious rise of share prices as well as taking note of the statement given by entry operators, SEBI interim order dt 29.03.2016 and investigation report against the scrip M/s KAFL, the AO was of the opinion that the assessee's LTCG claim on sale of M/s. KAFL was bogus. And therefore he made an addition of Rs.19,58,000/- u/s 68 of the Act by disallowing the LTCG claim and added of Rs.58,740/ as unexplained investment u/s 69C of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who dismissed the same. Aggrieved, the assessee is before this Tribunal.

5. ITA. No. 6537/Mum/2018 (Mrs. Rashmi Sukesh Malik): - Brief facts are that the assessee had e-filed return of income of AY. 2014-15 on 17.07.2014 declaring total income of Rs.19,89,850/-. Thereafter, the case of the assessee was selected for scrutiny by issuing of notice u/s 143(2) of the Act on 21.09.2015. The AO noted that that assessee has claimed of Long Term Capital Gain (LTCG) in respect of sale of shares of M/s. Kailash Auto Finance Ltd. (hereinafter "M/s KAFL") to the tune of Rs.19,51,000/- and had invested Rs.50,000/- (i.e. purchase value of shares of M/s. Panchshul Marketing Ltd.) and thus the assessee has made bogus claim of LTCG of Rs.19,51,000/-. So the AO issued show cause notice (SCN) to the assessee as to why the LTCG claim of assessee should not be allowed. The assessee



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pursuant to the SCN filed documentary evidence to prove that she had purchased on 20.10.2012 shares of M/s. Panchshul Marketing Ltd for Rs.50,000/- from M/s. Over flow Merchandise Pvt. Ltd. and filed supporting documents to prove the purchase i.e. bill, proof of amount paid by cheque & delivery proof and confirmation (refer page 8-12). It was brought to the notice of AO that Hon'ble High Court of Allahabad approved the scheme of arrangement and amalgamation of M/s. Panchshul Marketing Ltd with M/s. KAFL and as per the scheme of arrangement assessee was allotted 50,000/- shares of M/s. KAFL. Demat statement of holding of shares of M/s. KAFL has been filed (page no. 18 PB). Thereafter, the assessee sold the shares on 02.12.2013, 03.12.2013 & 09.12.2013 through broker M/s. Edelweiss Securities Ltd. and claimed LTCG of Rs.19,51,000/-. Assessee in order to prove the sale of shares of M/s. KAFL has filed sale bill generated on those dated of sales, which shows the number of shares sold, sale prices, their brokerage and STT charges respectively found placed at page 19,20 & 21 of PB. The sale transaction has taken place through SEBI regulated broker M/s. Edelweiss Securities Ltd, (account statement with details of payment is found placed at page 22 PB). Assessee had filed her bank statement which evidence that purchase and sale of shares took place through banking channel and that assessee is also into investment in several shares including this scrips of M/s. KAFL. The main basis for disallowing the claim of assessee regarding LTCG on sale of shares of M/s. KAFL was due to the interim order of SEBI dated 29.03.2016 wherein the SEBI restrained



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246 entities from securities market for dealing with shares of M/s. KAFL & M/s. Panchshul Marketing Ltd. And the AO taking note of the Investigation Report of Directorate, Kolkata was of the opinion that certain operators were involved in rigging the price of this share whereby the beneficiaries have made huge LTCG, therefore, the AO gave notice to the assessee vide letter dated 21.09.2015, 18.04.2016 & 01.07.2016 the assessee filed the following documents to support its claim of LTCG from sale of M/s. KAFL such as under: -

- “(a) bills, contract for purchases of shows of M/s. Panchshul Marketing Ltd through M/s. Overflow Merchandise
- (b) Demat staff of holding of shares of M/s. Panchshul Marketing Ltd
- (c) High Court order approving scheme of amalgamation of M/s. Panchshul Marketing Ltd with M/s. KAFL.
- (d) Copy of Demat account statement reflecting the corporate action giving effect to the merger whereby the assessee has received shares of Kailash Auto Finance Ltd. in lieu of shares of Panchshul Marketing Ltd. held by him:
- (e) Copy of contract-cum-sale bills for sale of Kailash Auto Finance Ltd. on the Bombay Stock Exchange through Edelweiss Securities Ltd;
- (f) Copy of Demat Statement showing the pay-in of shares to the relevant settlement account of the assessee’s broker.
- (d) Copy of ledger account of the assessee with the assessee’s broker Edelweiss Securities Ltd.
- (g) Copy of Bank passbook of the assessee reflecting the receipt of sale proceeds of the shares.”



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6. The assessee on the strength of the aforesaid documents submitted that its transaction was genuine. However, the AO did not agree and after taking note of the suspicious rise of share prices as well as taking note of the statement given by Shri Narendra Balasia (in the case of SMC Global Securities Ltd., Shri Alok Harlalka who is broker of M/s. SMC Global Securities Ltd., the AO was of the opinion that the assessee's LTCG claim on sale of M/s. KAFL is bogus. And therefore he made an addition of Rs.19,51,000/- u/s 68 of the Act by taking the LTCG claim and added of Rs.58,350/- (commission @ 3%) as unexplained investment u/s 69C of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who dismissed the same by passing the impugned order dated 25.09.2018. Aggrieved, the assessee is before us.

7. Coming back to the lead case, the Ld. AR of the assessee Shri Hari Raheja assailing the action of the Ld. CIT(A)/NFAC, drew our attention to the facts that both the assessee's have purchased shares of M/s. Panchshul Marketing Ltd. on 18.10.2012 (50,000 shares) at the cost of Rs.50,000/- through broker M/s. Overflow Merchandise Pvt. Ltd. on 18.10.2012 (AY. 2013-14). For proving the same, the Ld. AR drew our attention to the page no. 6 to 13 of the PB wherein the proof of payment by cheque, documents to prove delivery of the shares are found placed; and confirmation is found placed as well as bills from broker is also found in the PB. And thereafter, the shares were dematerialized and the Ld. AR drew our attention to the Demat



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account statements dated 31.10.2012, 31.03.2012 & 31.03.2013 showing that the assessee was holding 50,000/- shares of M/s. Panchshul Marketing Ltd (refer page no. 14 to 16 of the PB).

8. The Ld. AR also brought to my notice the Hon'ble Allahabad High Court order dated 09.05.2013 which allowed the Scheme of arrangement and amalgamation and by virtue of it M/s. Kailash Auto Finance Ltd. allotted 50,000/- shares of its shares (M/s. KAFL) in lieu of 50,000/- shares of M/s. Panchshul Marketing Ltd (refer page no. 17 of the PB). Thereafter, the Ld. AR drew our attention to Demat statement for the period from 01.07.2013 to 31.07.2013 showing the allotment of 50,000/- shares of M/s. KAFL in lieu of 50,000/- shares of M/s. Panchshul Marketing Ltd. (refer page no. 18 of the PB). The Ld. AR also brought to my notice the sale bill dated 22.11.2013 of Edelweiss Securities Ltd. for sale of 20,000/- shares of M/s. KAFL showing the sale price, their brokerage and STT charges etc. (refer page no. 19 of the PB). Thereafter, he drew my attention dated to sale bill dated 25.11.2013 of M/s. Edelweiss Securities Ltd. evidences sale of 35,000/- shares of M/s. KAFL a perusal of which shows the sale price, their brokerage and STT charges etc. (refer page no. 20 of the PB). The Ld. AR also brought to my notice the sale bill dated 26.11.2013 of M/s. Edelweiss Securities Ltd. for sale of 10,000/- shares of M/s. KAFL showing the sale price, their brokerage and STT charges etc. (refer page no. 21 of the PB). The Ld. AR also brought to my notice, the account statement of assessee from the ledger of M/s.



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Edelweiss Securities Ltd. with details of payment (refer page no. 22 to 26 of the PB). The Ld. AR also brought to the notice, Demat statement dated 31.11.2013 showing debit of shares of M/s. KAFL (refer page no. 27 of the PB). The Ld. AR also brought to my notice, relevant Bank statement showing receipt of sale consideration from M/s. Edelweiss Securities Ltd. (refer page no. 28 to 30 of the PB).

9. According to the Ld. AR, the assessee had submitted all these relevant documents to prove that the LTCG claim of assessee in respect of sale of shares of M/s. KAFL was genuine. However, the AO without finding any infirmity in these basic documents submitted (supra) held the claim of assessee as bogus on the strength of Interim Order passed by SEBI against M/s. KAFL and M/s. Panchshul Marketing Ltd. as well as M/s. Overflow Merchandise Pvt. Ltd. (broker through whom assessee purchased M/s. Panchshul Marketing Ltd). And also pointed out even in the interim report of SEBI, there is no prohibition/restriction on the broker (M/s. Edelweiss Securities Ltd.) through whom both the assessee's sold the shares of M/s. KAFL through the stock exchange. In this context, the Ld. AR brought to my notice the crucial fact/evidence/document which was the **final** order of the Security and Exchange Board of India (SEBI) dated 21.09.2017 wherein the SEBI has **exonerated** M/s. KAFL, M/s. Panchshul Marketing Ltd. and broker M/s. Overflow Merchandise Pvt. Ltd. from the suspect list and have held as under: -



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“6. Considering the fact that there are no adverse findings against the aforementioned 244 entities with respect to their role in the manipulation of the scrip of Kailash Auto, I am of the considered view that the directions issued against them vide interim order dated March 29, 2016 and confirmatory orders dated June 15, 2016, September 30, 2016, October 21, 2016, October 27, 2016 and July 13, 2017 are liable to be revoked.

7. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4) and 11B of the SEBI Act, hereby revoke the interim order dated March 29, 2016 and confirmatory orders dated June 15, 2016, September 30, 2016, October 21, 2016, October 27, 2016 and July 13, 2017 qua aforesaid 244 entities (paragraph 5 above) with immediate effect.

8. The revocation of the directions issued vide the abovementioned orders (at paragraph 7) is only in respect of the entities mentioned at paragraph 5 of this order in the matter of Kailash Auto. As regards remaining entities in the scrip of Kailash Auto, violations under SEBI Act, PFUTP Regulations, etc., were observed and SEBI shall continue its proceedings against them. Hence, the directions issued vide confirmatory order dated June 15, 2016 against the remaining 2 entities shall continue. This revocation order is without prejudice to any other action SEBI may initiate as per law.”



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10. The Ld. AR also drew our attention to the various Tribunal orders which has given relief to the assessee and mainly the decision to Mumbai Tribunal order ITA. No.390/Mum/2020 for AY. 2014-15 dated 07.06.2021 wherein the Tribunal was pleased to allow the appeal of the assessee and deleted the addition made u/s 68 of the Act LTCG claim of assessee on sale of shares of M/s. KAFL. He drew our attention to the page no. 101-117 of the PB which I note to be correct.

11. The Ld. A.R. therefore submitted that the addition in both cases may be deleted following the decisions of the coordinate bench of the Tribunal (supra) on identical facts dealing with the LTCG claim of M/s. KAFL. The Ld. A.R. further submitted that in both the shares (M/s. KAFL & M/s. Panchshul Marketing Ltd.), the assessee has filed the following documents evidencing the purchase and sale of shares which are noted as under: -

- a) Detailed Summary chart of Purchase and Sale
- b) Contract notes/Broker notes for the sale of shares through stock exchange, in which no of shares sold, rate, date etc. has been duly mentioned.
- c) Copy of Demat/ Transaction Statement for the period 01.04.2013 to 31.03.2014.
- d) Copy of Purchase bills of shares (Page no. 19 & 26 of paper book).
- e) Ledger copy of share broker.
- f) Ledger copy of parties from whom shares were purchased.
- g) Bank statement duly highlighting the Payment for purchase



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h) Bank statement duly highlighting the receipt of sale consideration from shares.

i) Computation of Income

j) Copy of High Court Order of Merger of the Company

12. From perusal of the aforesaid documents, especially the contract-cum-bill which contains the details of the order no, trade no., name of shares, quantity, rate, etc is discerned. And the transaction of purchase as well as sale took place through banking channel. The shares were dematerialized the sale transaction of shares of M/s. KAFIL was through broker M/s. Edelweiss Securities Ltd. in the electronic platform of stock exchange. Thus, according to the Ld. A.R. despite all the relevant evidences were filed before the authorities below, but the AO as well as Ld. CIT(A) have proceeded on surmises and presumption based solely on the investigation report and interim-order of SEBI report which suggested that these are accommodation entries and prices of shares were manipulated without doing any verification on the evidences produced by the assessee. The Ld. A.R., therefore, prayed that the addition as made by the AO may be deleted.

13. The Ld. D.R., on the other hand, relied heavily on the order of authorities below and does not want this Tribunal to interfere with the impugned order of Ld CIT(A).

14. I have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that the assessee has earned a capital gain of Rs. 19,08,000/- on the sale of



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scrip namely M/s. Kailash Auto Finance Ltd [M/s KAFL]. The facts qua the purchase and sale of shares and necessary evidences were already discussed hereinabove and are not being repeated for the sake of brevity. It is noted that assessee has filed all the relevant evidences comprising summary of sale and purchase of shares, contract notes/broker notes, details of Demat account/transaction statement, copies of purchase bills, evidences of payment through banking channels along with bank statements etc. It is noted that the authorities below have relied merely on the report of investigation wing and interim-report of SEBI by ignoring the relevant facts on record. In this case, it is a matter of record that when called upon by AO, the assessee had furnished all the primary evidences in the form of bills, contract notes, Demat statement and bank accounts statement to prove the genuineness of the transactions relating to purchase and sale of shares resulting in LTCG. These evidences were neither found by the AO nor the Ld. CIT(A) to be false or fabricated. The only basis on which the AO has drawn adverse inference against the assessee in the respect of the claim of LTCG was since the assessee had received the LTCG from sale of shares of M/s KAFL and since SEBI interim order dated 29.03.2016 wherein it has found the actions of various entities dealing with this scrip (M/s KAFL) was in violation of provisions of SEBI Act 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practice (PFUTP Regulation) and had passed the interim order dated 29.03.2016, wherein 246 entities/persons were restrained from accessing the securities market until the investigation is over. And



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along with the interim order dt 29.03.2016 SEBI had given the list of 246 entities which included the scrip of M/s KAFL and M/s. Panchshul Marketing Ltd and the initial broker from whom the assessee purchased shares of M/s. Panchshul Marketing viz M/s. Overflow Merchandise Pvt. Ltd. However, by order dated 21.09.2017, the SEBI was pleased to pass the **final order** u/s 11, 11(4) & 11B of the SEBI Act, 1922 in the case of M/s KAFL wherein barring two (2) entities out of 246 entities (M/s. Bholebaba Suppliers Pvt. Ltd. and M/s. Overall Vincom Pvt. Ltd.) all other persons/entities [including the scrip M/s KAFL and M/s Panchsheel Marketing and broker M/s. Overflow Merchandise Pvt. Ltd.] were exonerated because upon completion of investigation by SEBI it did not find any adverse evidence in respect of violation of provisions of PFUTP Regulation and took note of this fact as under:-

“5. Pursuant to the interim order, SEBI conducted a detailed investigation into the role of various entities in price manipulation in the scrip of Kailash Auto so as to ascertain the violation of securities laws. Upon completion of investigation by SEBI, investigation did not find any adverse evidence/adverse findings in respect of violation of provisions of the PFUTP Regulations in respect of the following 244 entities (against whom directions were issued vide the interim order and/or confirmatory orders) warranting continuation of action under section 11B r/w 11(4) of the Act.”

And has given the details of 244 entities exonerated, wherein the scrip of M/s KAFL and M/s. Panchshul Marketing Ltd is given as item no. 1



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and 106 respectively and the broker through whom the assessee purchased the scrip of M/s. Panchshul Marketing Ltd i.e. M/s. Overflow Merchandise Pvt. Ltd (item no. 123) is found in this 244 entities names. Further, as asserted by the Ld. AR that broker through whom assessee's (both) sold the shares was not even in the interim list of SEBI. I examined this fact and note from a perusal of the list of entities debarred from securities market vide interim order dated March, 2016, that the name of the broker through whom both the assessees had sold the shares of M/s KAFL i.e. M/s. Edelweiss Securities Ltd has not figured even in the initial interim order itself. Thus, it was not debarred from accessing the securities market while the SEBI interim order was in force against 246 persons/entities. Thus, I note that the main/foundational basis on which the AO had drawn adverse inference against the LTCG claim on sale of shares of M/s KAFL is not existing as per the final order of the SEBI (supra).

15. The AO has also relied on the report of the investigation wing and/or the statement of the several third party/persons recorded by the investigation wing in connection with the alleged bogus transaction in the shares of M/s KAFL. It is noted in this context that there is no material even in these statements directly implicating the assessee or the brokers M/s. Overflow Merchandise Pvt. Ltd or M/s. Edelweiss Securities Ltd. in any wrong doing; and it is undisputed that even though the investigation wing report is based on statement of several persons it cannot be relied upon because firstly it has been recorded behind the back of assessee; secondly a copy of the same has not been



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fully given to assessee; and thirdly assessee has not been given an opportunity to cross-examine the maker of such statement on the basis of which the investigation report has been made [refer case of Andaman Timber Industries 127 DTR 241) (SC)] wherein the Hon'ble Supreme Court has held that the assessment based on third party statement without giving an opportunity to the assessee to cross-examine the maker of adverse statement is not sustainable in law. Thus, anyway the investigation report based on third party statement cannot be the basis to draw adverse inference against the assessee, even though undisputedly there is no statement which incriminates assessee or the broker directly or in-directly in any manner. Therefore, the investigation report cannot be the basis for drawing any adverse inference against the assessee as wrongly relied upon by the AO. Therefore, the AO erred in relying on the investigation report of the investigation wing to disallow the claim of LTCG.

16. Thus, considering the facts of the case and the evidences in support of the LTCG claim clearly support the claim of the assessee that the transactions of the assessee were bonafide and genuine and therefore the AO was not justified in rejecting the assessee's claim of exemption under section 10(38) of the Act. As discussed (supra), the adverse order against the scrip (M/s KAFL and M/s. Panchshul Marketing Ltd) as well as the initial broker M/s. Overflow Merchandise Pvt. Ltd has been over-ruled by SEBI final order dated 21.09.2017 as discussed (supra). And the investigation report as discussed (supra) cannot be the basis for drawing adverse view against



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the claim of LTCG. When these two documents are kept aside, then only aspect surviving is the suspicious rise of share price of M/s KAFL, which cannot be the sole basis to discard the evidence given by assessee to substantiate the LTCG claim. True, the suspicious rise/fall of share price of M/s KAFL raises doubt in the mind, but Hon'ble Supreme Court held that suspicion cannot take the place of evidence. And it is noted that when called upon by the AO to prove the claim of LTCG from the transaction of M/s KAFL, the assessee have filed the best evidence to prove the transaction in question viz, bills, contract notes, demat Statement and the bank accounts statements to prove the genuineness of the transaction relating in the purchase of M/s. Panchshul Marketing Ltd and thereafter sale of shares [after amalgamation] of M/s KAFL which resulted in LTCG claim of Rs.19,51,000/-. Therefore, by applying the test of preponderance of probability, the LTCG cannot be disallowed without AO pointing out any infirmities in the evidences produced by assessee, which unfortunately AO could not point out. So the assessee's claim of LTCG need to be allowed. And the commission added to the tune of Rs.5870/- also is based on surmises & conjectures. So it is also ordered to be deleted. Likewise on same reasoning, the LTCG claim of Rs.19,58,000/- in the case of Mrs. Rashmi Sukesh Malik Alias Jyoti Srichand Bathija (ITA. No.6537/Mum/2018) need to be allowed and is ordered so. And the commission of Rs.58,350/- added was based on surmises & conjecture which need to be deleted. Thus, I am of the opinion that in the facts and circumstances discussed supra, no



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addition u/s 68 and 69C of the Act was warranted and so it is ordered to be deleted in both cases.

17. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on this 13/01/2023.

**Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 13/01/2023.
Vijay Pal Singh, (Sr. PS)

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**