

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1605/Mum/2021  
(Assessment Year: 2014-15)**

**&**

**ITA No.1612/Mum/2021  
(Assessment Year: 2015-16)**

Shri Yogesh P. Thakkar 31, Adarsh CHS Bawan Bunglow Panvel, Raigad-410 206	Vs.	The DCIT, CC-3(4) Aaykar Bhavan Maharshi Karve Road Mumbai – 400 020
<b>PAN/GIR No.AAPPT1825P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.1606/Mum/2021  
(Assessment Year: 2013-14)**

**&**

**ITA No.1608/Mum/2021  
(Assessment Year: 2014-15)**

Shri Harsha Nitin Thakkar 31, Adarsh CHS Bawan Bunglow Panvel, Raigad-410 206	Vs.	The DCIT, CC-3(4) Aaykar Bhavan Maharshi Karve Road Mumbai – 400 020
<b>PAN/GIR No.AAHPT2178D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.1607/Mum/2021  
(Assessment Year: 2015-16)**

Nisha Yogesh Thakkar 31, Adarsh CHS Bawan Bunglow Panvel, Raigad-410 206	Vs.	The DCIT, CC-3(4) Aaykar Bhavan Maharshi Karve Road Mumbai – 400 020
<b>PAN/GIR No.AAHPT2177N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.1610/Mum/2021  
(Assessment Year: 2013-14)**

&

**ITA No.1609/Mum/2021  
(Assessment Year: 2014-15)**

Shri Nitin Popatlal Thakkar 4, Jeswani House M.G.Road,Panvel Raigad-410 206	Vs.	The DCIT, CC-3(4) Aaykar Bhavan Maharshi Karve Road Mumbai – 400 020
<b>PAN/GIR No.AAHPT2179C</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.1611/Mum/2021  
(Assessment Year: 2015-16)**

Dineshchandra D Chhajer Rajanigandha CHS Room No.11, Sector-2 New Panvel 410206	Vs.	The DCIT, CC-3(4) Aaykar Bhavan Maharshi Karve Road Mumbai – 400 020
<b>PAN/GIR No.AABPC1376N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Nilkanth Khandelwal
Revenue by	Ms. Madhu Malti Ghosh
<b>Date of Hearing</b>	<b>07/11/2022</b>
<b>Date of Pronouncement</b>	<b>03/02/2023</b>

**आदेश / ORDER**

**PER BENCH:**

**ITA No.1605/Mum/2021 (A.Y.2014-15) &  
ITA No.1612/Mum/2021 (AY: 2015-16)**

These appeals in ITA Nos. 1605/Mum/2021 & 1612/Mum/2021 for A.Y.2014-15 & 2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-51, Mumbai in appeal Nos.CIT(A)-51, Mumbai/10643/2017-18 & CIT(A)-51, Mumbai/10648/2017-18 respectively dated 17/08/2021 & 26/08/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.153 r.w.s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2017 by the Id. Dy. Commissioner of Income Tax, Central Circle-3(4), Mumbai (hereinafter referred to as Id. AO).

**ITA No.1606/Mum/2021 (A.Y.2013-14) & ITA No.1608/Mum/2021 (AY: 2014-15)**

These appeals in ITA Nos. 1606/Mum/2021 & 1608/Mum/2021 for A.Y.2013-14 & 2014-15 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-51, Mumbai in appeal Nos.CIT(A)-51, Mumbai/10056/2017-18 & CIT(A)-51, Mumbai/10058/2017-18 dated 27/07/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/04/2017 by the Id. Dy. Commissioner of Income Tax, Central Circle-3(4), Mumbai (hereinafter referred to as Id. AO).

**ITA No.1607/Mum/2021 (A.Y.2015-16)**

This appeal in ITA No. 1607/Mum/2021 for A.Y.2015-16 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-51, Mumbai in appeal Nos.CIT(A)-51, Mumbai/10632/2017-18 dated 15/07/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act)

dated 29/12/2017 by the Id. Dy. Commissioner of Income Tax, Central Circle-3(4), Mumbai (hereinafter referred to as Id. AO).

**ITA No.1610/Mum/2021 (A.Y.2013-14) &  
ITA No.1609/Mum/2021 (AY: 2014-15)**

These appeals in ITA Nos. 1610/Mum/2021 & 1609/Mum/2021 for A.Y.2013-14 & 2014-15 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-51, Mumbai in appeal Nos.CIT(A)-51, Mumbai/10057/2017-18 & CIT(A)-51, Mumbai/10375/2016-17 dated 28/07/2021 & 30/07/2021 respectively (Id. CIT(A) in short) against the order of assessment passed u/s. 143(3) r.w.s 147 & 143(3) respectively of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 'Nil' by the Id. Dy. Commissioner of Income Tax, Central Circle-3(4), Mumbai (hereinafter referred to as Id. AO).

**ITA No.1611/Mum/2021 (A.Y.2015-16)**

This appeal in ITA No. 1611/Mum/2021 for A.Y.2015-16 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-51, Mumbai in appeal Nos.CIT(A)-51, Mumbai/10646/2017-18 dated 19/07/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2017 by the Id. Dy. Commissioner of Income Tax, Central Circle-3(4), Mumbai (hereinafter referred to as Id. AO).

2.With the consent of both the parties, the appeal of the assessee in the case of Shri Yogesh Thakkar for the Asst Year 2014-15 in ITA No. 1605/Mum/2021 was taken as the lead case. Both the parties fairly agreed that the decision rendered thereon would apply with equal force for the assessee for Asst Year 2015-16 and also for all the other

assessee listed along with him , in view of identical facts, except with variance in figures.

3. Though the assessee has raised several grounds before us, we find that the effective issue to be issued in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id. AO in denying the exemption claimed u/s 10(38) of the Act in respect of long term capital gain derived from sale of shares of Blazon Marbles Ltd and Radford Global Ltd, in the facts and circumstances of the case. The inter connected issue involved therein to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the addition made on account of estimated commission expenditure as unexplained u/s 69C of the Act in the facts and circumstances of the case.

4. The brief facts of this issue are that the assessee is an individual and working as director/partner in certain company/partnership firms and also engaged in trading of shares. The return of income was e-filed for the A.Y. 2014-15 u/s.139(1) of the Act on 30/09/2014 showing total income of Rs 1,67,47,875/-. Subsequently, a search u/s.132 of the Act has been carried out by the Department on 09/04/2015 at the residential premises of the assessee on the plea that he was indulged in evasion of income tax by introducing unaccounted money into the books of account in the grab of bogus Long term capital gains claimed to be exempt u/s.10(38) of the Act. In response to notice u/s.153A dated 08/08/2016, the assessee filed his return of income on 22/08/2016 showing total income of Rs 1,67,47,875/- which was the same as shown in the return of income furnished u/s.139(1) of the Act. In filing the return of income, the assessee has shown Long term capital gains (LTCG) of Rs 8,10,79,859/- on sale of shares of Radford Global Ltd. ("Radford") and Blazon Marble

Ltd. ("Blazon") which have been claimed to be exempt u/s.10(38) of the Act. Details of such LTCG are as under:-

<b>Sr. No. (1)</b>	<b>Name of the Company (2)</b>	<b>No. of Shares purchased (3)</b>	<b>Date of Purchase (4)</b>	<b>Purchase Amount (In. Rs.) (5)</b>
1	"Blazon"	97000	26.05.2011	24,250/-
2	"Radford"	1000000	07.02.2012	30,00,000/-
			Total :-	30,24,250/-

<b>Sr. No. (1)</b>	<b>Name of the Company (2)</b>	<b>No of Shares sold (6)</b>	<b>Date of Sale (7)</b>	<b>Sale Amount (In Rs) (8)</b>	<b>LTCG (In Rs) (8)-(5)</b>
1	"Blazon"	97000	10 & 11.02.2014	42,02,870/-	41,78,620/-
2	"Radford"	1000000	May-13 to Jul-13	7,99,01,239 /-	7,69,01,239/-
				<b>Total :-</b>	<b>8,10,79,859 /-</b>

4.1. The assessee was allotted 2,00,000 shares of M/s. Radford Global Ltd. on 12/02/2013 having a face value of Rs.10/- and a premium of Rs.5/- per share on preferential basis and consideration paid thereon was Rs 30,00,000/-. Subsequently, the shares having face value of Rs.10/- were split into 5 shares having face value of Rs.2/- per share. Post split, the total shares credited into demat account were 1000000 shares. During the year under consideration, the assessee has sold these 1000000 shares in the market. Similarly the assessee has also purchased 50,000 equity shares of Blazon Marble Ltd having face value of Rs.10/- per share on 26/05/2011 in off-market for Rs 62,500/-. Subsequently, the shares having face value of Rs.10/- were split into 5 shares having face value of Rs.2/- per share. Post split, the total shares credited into demat account were 250000 shares. During the current financial year 2013-2014, the assessee sold 97000 shares and the balance 153000 shares remain unsold as on 31/03/2022. For both the shares, the

payments for purchase of shares were made by the assessee by account payee cheques out of sources duly disclosed in the books of accounts.

4.2. The assessee furnished the following documents in support of his contentions before the lower authorities :-

- a) Complete details of bank accounts held by the assessee together with the bank statements evidencing the payments made for purchase of shares and sale proceeds credited in the bank account for sale of shares.
- b) Payments made by account payee cheques for purchase of shares and investment made in shares were duly reflected in the books of accounts of the assessee in the year of purchase. Invoice for purchase of shares was enclosed.
- c) Demat statement of the assessee for the relevant periods.
- d) Contract notes cum bills raised by the share broker.
- e) Securities transaction tax paid details
- f) Details of long term capital gains earned by the assessee.

4.3. The Id. AO issued a show cause notice to the assessee wherein he sought to deny the claim of exemption u/s 10(38) of the Act treating the transactions as bogus and merely accommodation entries and also adding some commission on an estimated basis thereon. In response to the said notice, the assessee furnished a detailed written submission vide letter dated 05/12/2017 and gist of those submissions were summarized by the Id. AO as under:-

- a. The assessee denies that any operator has approached him directly or indirectly. Securities and Exchange Board of India (SEBI in short) has investigated the allotment of preference shares by Radford Global Ltd, and has not found any adverse evidence/findings relating to the assessee. The shares of the said company were traded on the floor of the stock exchange and all the transactions were in the knowledge of stock exchange.
- b. The so-called price rigging in the shares of Blazon Marble Ltd. was never in the knowledge of the assessee The shares of the said

company were traded on the floor of the stock exchange and all the transactions were in the knowledge of stock exchange.

- c. From the computation of the capital gains in the show cause notice, it is seen that no adverse inference or observation has been made about discrepancy in any figures. The show cause carries no negative comment and is silent on the documents submitted in the course of the assessment proceedings. It implies that the documents have been perused, examined and the genuineness of the documents is not doubted.
- d. Data has been given in the show cause to establish that the increase in the share prices of Blazon Marbles Ltd & Radford Global Ltd was not commensurate with financial results. It is submitted that the shares on the bourses work on market sentiment rather than the financial results. The Stock Exchange is full of many such companies where inspite of weak financial results, the shares hold good prices.
- e. None of the people examined by the Investigation Wing have stated the name of the assessee in their depositions or that the investigation has revealed the name of the assessee to be the beneficiary of accommodation entries provided by the operator.
- f. The claim of the assessee is well backed by cheque payment reflected in the bank statement, delivery of shares reflected in the Demat Statement and the transaction reflected in the Balance Sheet for the year ended 31.03.2012 & 31.03.2013. The shares were held by the assessee for more than a year before sale transaction was executed.
- g. The department was not averse to the purchase transaction as no adverse inference was drawn with respect to the purchases in A.Y. 2012-2013. The return of income the A.Y. 2012- 2013 has attained finality and now the department cannot blow hot and cold where at one end drawing no adverse inference in A.Y. 2012-2013 but during A.Y. 2014-2015 doubting the genuineness of this Long Term Capital Gains and indirectly doubting the genuineness of the purchases

itself. The finding of the department is not only illogical but also ill founded.

- h. To the best of knowledge of the assessee, trading in the shares of Blazon Marbles Ltd was never suspected nor any penalty action was awarded on company for irregularities of price rigging by SEBI. This is a very crucial aspect where the watch dog does not find any abnormality in price change.
- i. SEBI has passed final orders that investigations did not find any adverse evidence / findings in respect of violations of provisions of SEBI (Prohibition of Fraudulent & Unfair Practices relating to security market) Regulations, 2003 in the case of Radford Global Ltd.
- j. It is known fact and a practice in general that whenever a person subscribes to an IPO, the investment is not done before perusing any financials. The investment is based purely upon market hear say. The assessee admits of having invested in the company inspite of weak financials but at the same time it needs to be appreciated that share market is known for fetching returns when the stock is weak and price & volume is bleak. It is therefore known as Market of Opportunities.
- k. During the course of search action not an inch of paper was found to suggest that the assessee has any unaccounted source of income to buy long term capital gains from accommodation providers. No evidence was found to show that the investment in Blazon Marble Ltd or Radford Global Ltd was bogus or in the nature of accommodation. The search action is the ultimate tool available with the department to discover evidence of unaccounted transaction and unaccounted assets. If in a search action no evidence was found of any wrong doing by an assessee, to bring to tax a genuine transaction by treating it as bogus based on assumptions and surmises will not only be unjust but also unfair.
- l. The assessee denies the allegation that the capital gain earned is bogus. The assessee denies involvement of any broker for facilitating bogus long term capital gain shares. The only brokerage

paid by assessee is on sale of shares duly documented by broker bills which has been placed on record. No link of the assessee has been established with any person who have engaged in providing LTCG to assessee.

4.3.1. There was an Ad Interim Ex-parte order dated 19/12/2014 passed by SEBI in case of Radford Global Ltd. wherein it was alleged that the LTCG earned by various allottees on preferential basis were not genuine. The assessee's name being preferential allottee, was also included in the said order vide serial number 57. Accordingly, the said company i.e Radford Global Ltd and the assessee together with various other parties were restrained from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner by SEBI, till their final investigation was completed. However, on completion of final investigation, the SEBI has passed a final order dated 20/09/2017 where it has been held that investigations did not find any adverse evidence/findings in respect of violation of provisions of SEBI (Prohibition of Fraudulent and unfair Practices relating to Securities Market) Regulations, 2003 in respect of 82 persons including the assessee herein and the company Radford Global Ltd. This final order of SEBI dated 20/09/2017 was also placed on record by the assessee before the Id. AO vide letter dated 23/09/2017 making a request not to take any adverse view on the issue of LTCG.

4.3.1. With regard to Blazon Marbles Ltd, SEBI vide its order dated 13.10.2017 had passed an order u/s 15I of SEBI Act read with Rule 5 thereon had levied penalty on certain persons for making some procedural violations and for non-appearance to the summons issued by SEBI. The name of the assessee or its registered share broker is not reflected in the said list.

4.4. The Id. AO while making the assessment u/s.143(3) r.w.s.153A of the Act did not heed to the aforesaid contentions of the assessee and proceeded to treat the sale proceeds of shares amounting to Rs 8,41,04,109/- as unexplained cash credit u/s 68 of the Act by treating the same as an accommodation entry and also added an amount of Rs 50,46,247/- on account of unexplained commission expenditure incurred u/s 69C of the Act at the rate of 6% of sale proceeds of Rs 8,41,04,109/- on the following reasons:-

*15. CONCLUSION :-*

*15.1 The following points summarise that Blazon Marbles Ltd. & Radford Global Ltd. are bogus penny stock companies:*

- ♦ The business profile and financials of Blazon Marbles Ltd. & Radford Global Ltd. show that the company was not engaged into any substantial activity, esp. when the preferential shares were allotted. It is also seen that the company was not having any future plans which could attract investors from all over India to invest in the company.*
- ♦ The whole process of preferential allotment was a prearranged and managed process so as to allot preferential shares to beneficiaries of bogus LTCG/STCG.*
- ♦ The reported profits were also not commensurate with the price rise. The shares were rigged on the Stock Exchange. The price of Blazon Marbles Ltd. & Radford Global Ltd. has moved in absolute disregard to the general market sentiments.*
- ♦ Various share brokers have confirmed the fact that the shares of Blazon Marbles Ltd. & Radford Global Ltd. have been used for providing entry of bogus LTCG/STCG.*
- ♦ During this period of price rigging, the volume of the shares traded on each trading day was very low and on each day just 1-2 trades have been done with a constant rise in the price of the shares which was kept just short of the circuit limit for price rise as per the exchange guidelines.*
- ♦ Various Exit Providers have confirmed that they have purchased the shares of Blazon Marbles Ltd. & Radford Global Ltd to provide entries of bogus LTCG/STCG.*
- ♦ The Statements on oath of Exit Providers constitutes a strong testimony in order to establish the manipulation of the said scrip leading to conversion of unaccounted income into bogus LTCG/STCG through accommodation entries by various beneficiaries including the assessee group.*

15.2 Reliance is placed on the recent judgement of the Nagpur Bench of the Hon'ble Bombay High Court in the case of Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain v. Pr. Commissioner of Income Tax-1, Nagpur & Another where the Hon'ble Bombay High Court vide its order dated 10.04.2017 in Income Tax Appeal No. 18 / 2017 observed that the assessee has not tendered cogent evidence to explain how the shares in an unknown company worth Rs.5 had jumped to Rs.485 in no time and the fantastic sale price was not at all possible as there was no economic or financial basis to justify the price rise. The Hon'ble Bombay High Court held 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 and that the gain has accordingly to be assessed as undisclosed credit u/s 68. Reliance is also paid on the decision of the Mumbai 'D' Bench of the ITAT dated 22.03.2017 in ITA No. 6398 / Mum / 2012 in the case of Disha N. Lalwani, Mumbai v. ITO, Ward-23 (2)(2), Mumbai wherein it was held that the mere contention that the monies have come through account payee cheques is at best neutral. In the statement given by Choksi it has been accepted to the practice of taking cash and issuing cheques in the guise of subscription to share capital. The question required a thorough examination and a superficial one. From the facts of the case, one fact is oozing out that merely a paper work was camouflaged by the assessee.

15.3 Thus, based on the above mentioned facts and circumstances, the revenue has sufficient, cogent, tangible, reliable, authenticated proof to show that Long term capital gains booked by assessee in his books were pre-arranged method to evade taxes and launder money which can be summarized as follows:

- a. **Failure of Assessee to discharge his onus:** assessee has been unable to provide any explanation or rationale behind the preferential/off-market allotment/purchase of the shares of the said penny stock. The assessee has not been able to prove the unusual rise and fall of share prices to be natural and based on the market forces. It is evident that such share transactions were closed circuit transactions and clearly structured one.
- b. **Ignorance of the assessee about shares and penny stock companies:** Assessee has failed to show of having any knowledge about the shares traded and having any knowledge about the fundamentals of the penny stock companies. Assessee is unable to satisfactorily explain the reasoning behind off-market acquisition of the shares of the said bogus company which lack any fundamentals, which he has never visited, whose promoters/directors she has never met, whose meetings she has not attended and whose business activities also are not known to him.
- c. **Financial analysis of the penny stock companies:** The net worth of the penny stock company is negligible. Even though the net worth of the company and the business activity of the company is negligible the share prices have been artificially rigged to unusual high. No genuine motive based on which assessee had decided to invest in the said penny stock which lacked any financial fundamentals.
- d. **Cash trail in the accounts of the entry providers:** The investigations in the fund flow analysed in the accounts of the entry providers have

*established that the cash has been routed from various accounts to provide accommodations to assessees.*

- e. **Arranged transactions:** The transactions entered by the assessee involve the series of preconceived steps, the performance of each of which is depending on the others being carried out. The true nature of such share transactions lacked commercial contents, being artificially structured transactions, entered into with the sole intent, to evade taxes.*

*15.4 Thus, it is beyond the possibilities of genuine transactions that the shares of Blazon Marbles Ltd. & Radford Global Ltd. were purchased by the assessee as a genuine investment decision. The price rigging was achieved by the bogus entry operators through manipulation.*

#### **15.5 Commission payment for accommodation entry of bogus LTCG**

*15.5.1 As it has been discussed in detail in this assessment order as to how the assessee invested in nondescript listed companies having such meager financials by preferential allotment and made huge capital gains in complete disregard of market movement, it is clear that the assessee brought back his own unaccounted income into his books of account in the form of bogus capital gains. Moreover, the statements of various accommodation entry providers recorded by the Investigation Wing further lend credence to the fact that the assessee took accommodation entries. Now since it has been established that accommodation entries were taken, it is only logical to assume that the assessee must have also paid commission to the accommodation entry providers for arranging the accommodation entry of bogus LTCG. As it has been admitted on oath by various accommodation entry providers that for accommodation entries in the nature of LTCG they charge commission ranging from 4% 6%, thus 6% of the sale consideration is being taken as the unexplained expenditure incurred by the assessee for arranging the accommodation entries.*

*15.5.2 In view of the above facts it is crystal clear that the assessee utilized his unaccounted cash to obtain the above said bogus LTCG. Since it has been admitted by various accommodation entry providers that for providing accommodation entries in the nature of bogus LTCG they charge a commission ranging from 4% to 6%, it is logical that the assessee also paid commission in cash to the accommodation entry providers. In light of the above facts and evidences, the said alleged LTCG and claim of exemption u/s 10(38) is hereby rejected.”*

*15.6.1. In the light of the facts & discussion in the preceding paragraphs, I am of the opinion that the transactions of purchase & sale of 97000 shares of Blazon Marble Ltd & 1000000 shares of Radford Global Ltd leading to generation of exempt long term capital gains are not genuine transactions. The transactions in the shares of Blazon Marble Ltd & Radford Global Ltd were purely operator driven where the share price was pushed up to a level by the operator where the beneficiary who bought the shares at a nominal price sold it to a dummy paper company of the operator and generated huge exempt long term capital gains for the beneficiary. The assessee has converted his undisclosed income into disclosed tax exempt income during the previous year relevant to the assessment year 2014-2015. Hence the entire*

*amount of Rs. 8,41,04,109/- purported to have been received by the assessee on sale of 97000 shares of Blazon Marble Ltd & 1000000 shares of Radford Global Ltd is treated as unexplained cash credits and charged to tax u/s 68 as the income of the previous year relevant to the assessment year 2014-2015. Alternatively, this amount is also chargeable to tax as the undisclosed income or income from undisclosed sources of the assessee for the previous year relevant to the assessment year 2014-2015. Penalty proceedings u/s 271(1)(c) are initiated as the assessee has furnished inaccurate particulars of his income.*

*15.6.2 There is a cost attached to getting undisclosed income converted into disclosed income without attracting penalty & prosecution and a much higher cost to convert undisclosed income into disclosed tax exempt income. As per the prevailing rate of conversion, it is held that the assessee has incurred an commission expenditure of 6% of the amount purported to have been received on sale of shares of Blazon Marble Ltd. & Radford Global Ltd. to get the accommodation entries of bogus long term capital gains. This commission payment has been made out of his undisclosed income and, hence, an amount of Rs. 50,46,247/- (6% of Rs. 8,41,04,109/-) is taxed as unexplained expenditure u/s 69C of the Income Tax Act, 1961. Alternatively, this amount also represents the undisclosed income or income from undisclosed sources of the assessee for the previous year relevant to the assessment year 2014-2015.”*

**4.5. The Id. CIT(A) confirmed the addition of unexplained cash credit u/s.68 of the Act of Rs 8,41,04,109/- giving finding as under:-**

*7.34. In the present case, it is noted that there are sufficient evidences of the scripts of these company having been manipulated during the period during which the assessee has held the shares of these companies. Further, these shares have been offloaded to exit providers and not genuine investors. In light of the fact that the transactions are managed through synchronised trading and are not genuine transactions even though conducted on the Stock Exchange, the gain made by the assessee is required to be taken as bogus Long Term Capital Gain.*

*7.35. In light of the above discussion, the claim by the assessee that the addition has been made merely on presumption and without any evidence is not found acceptable. The reliance placed by the AO on the decisions in case of SumatiDayal (supra) and Durga Prasad More 82 ITR 540 (SC) is found correct. In Sumati Dayal, the Hon'ble Supreme Court has discounted the existence of well-maintained documentation as against the normal human behaviour and preponderance of probability in certain case. The appellant's case indeed falls within the same parameters. Instead of explaining the plausibility of the transaction, the appellant has merely harped on the technicalities and his impeccable documentation. In light of the improbable nature of transaction of the appellant, the AO has correctly rejected the plea of correct documentation to hold that the appellant has failed to meet the onus cast u/s 68 and that the credits in the books remain unexplained. He has rightly treated the amount as the income of the appellant under section 68 of the Act.*

*7.36. In light of the above discussion, it is held that the amounts credited in the books of the assessee as long-term capital gains during the year arising out of the sale of scripts M/s. Blazon Marbles Ltd. and M/s. Radford Global Ltd. remain unexplained and the AO has rightly treated the amount as unexplained cash credit in the books of the assessee. The ground no. 3 is decided against the assessee and is dismissed.”*

4.5.1. The Id. CIT(A) confirmed the addition of unexplained commission expenses u/s.69C of the Act of Rs 50,46,247/- giving finding as under:-

*8.4. While dealing with ground no. 3 of the appeal, it has been held that the assessee has availed of accommodation entry from such entry providers in the form of tax-exempt long-term capital gains. It is natural that such entries are provided for a commission. The AO has estimated a rate of 6% which does not appear to be excessive or unreasonable. As such, I find no reason to interfere with the addition made by the AO on this issue. Ground no. 4 raised by the assessee stands dismissed.”*

5. We have heard the rival submissions and perused the materials available on record. We find that the Id. AO had relied on the findings of the investigation wing of Kolkata and an interim order dated 19/12/2014 passed by SEBI wherein assessee and the company Radford Global Ltd were prevented from accessing the securities market either directly or indirectly in any manner whatsoever, till the completion of final investigation by SEBI. Similarly an order dated 13/10/2017 u/s 15I of SEBI Act, 1992 was passed by SEBI levying penalties on certain persons for procedural violations and for non-appearance to the summons issued by SEBI. We find that assessee is not reflected in the said list of persons on whom penalties were levied. The main grievance of the Id. AO is that rise in share price of Radford Global Ltd and Blazon Marbles Ltd is devoid of commercial principle or market factors ; that transactions are based on mutual connivance on part of assessee and operators ; that assessee resorted to preconceived scheme to procure bogus long term capital gains and hence the transactions are not bonafide ; that SEBI also passed an interim order in the case of Radford Global Ltd holding that share prices were determined artificially by manipulations ; that these are close circuit

transactions and are pre-structured; that assessee had failed to discharge his onus cast on him ; that net worth of Radford Global Ltd and Blazon Marbles Ltd is negligible and that its share prices were artificially rigged ; that investigations prove that cash is routed through various accounts to provide these bogus long term capital gain entries. The Id. AO by making these observations proceeded to treat the sale proceeds of the shares as unexplained cash credit u/s 68 of the Act. Since the receipt of sale proceeds was treated as bogus, the Id. AO also proceeded to add estimated commission @ 2% for arranging the said bogus transaction as unexplained expenditure u/s 69C of the Act.

5.1. At the outset, we find that the documentary evidences submitted by the assessee were found to be genuine and no adverse inferences were drawn by the revenue on the same. The transactions were carried out by the assessee in the secondary market through a registered share broker at the prevailing market prices. Payments were received by the assessee by account payee cheques from the stock exchange through the registered broker. Amounts received on sale of shares were duly subjected to levy of Securities Transaction Tax (STT) at the applicable rates.

5.2. We find that no enquiries were carried out by the revenue either on the broker or with the stock exchange with regard to transactions carried out by the assessee. The revenue had merely relied on the Kolkata investigation report without linking the assessee with the various allegations leveled in the said investigation report.

5.3. We find that the revenue had not proved with any cogent evidence on record that assessee was involved in converting his unaccounted income into exempt long term capital gains by conniving with the so called entry operators and brokers who were involved in artificial price

rigging of shares. No evidence is brought on record to prove that assessee was directly involved in price manipulation of the shares dealt by him in connivance with the brokers and entry operators.

5.4. It is not in dispute that the assessee had made purchase of shares in off-market either through preferential allotment of shares by the concerned company or from purchasing from an existing shareholder, as the case may be. Now the next issue that arises for our consideration is as to whether an off market purchase of shares could be taken as a ground to declare the entire transaction as sham. In our considered opinion, the transactions could not be treated as sham merely because they are done in off-market, if the assessee had discharged his onus of proving the fact that shares purchased by him were dematerialized in the Demat account and held by the assessee till the same were sold from the Demat account of the assessee. The transaction of holding the shares are reflected in Demat account and sale of shares are through Demat account. More so , when there is no dispute regarding the purchase price and sale price of shares. Our view is further fortified by the decision of *Hon'ble Jurisdictional High Court in the case of CIT vs Jamnadevi Agarwal reported in 328 ITR 656 (Bom)* wherein it was held that -

*From the documents produced before the Court it was seen that the shares in question were, in fact, purchased by the assessee on the respective dates and the company had confirmed to have handed over the shares purchased by the assessee. Similarly, the sale of the shares of the respective buyer was also established by producing documentary evidence. It is true that some of the transactions were off-market transactions. However, the purchase and sale price of the shares declared by the assessee were in conformity with the market rates prevailing on the respective dates, as was seen from the documents furnished by the assessee. Therefore, the fact that some of the transactions were off-market transactions could not be a ground to treat the transactions as sham transactions.*

*On a perusal of those documentary evidences, the Tribunal had arrived at a finding of fact that the transactions were genuine. Nothing was brought to notice of the Court that the findings recorded by the Tribunal were contrary to the documentary evidences on record. Therefore, no substantial question of law arose from the order of the Tribunal.*

5.5. We find that independent enquiries were conducted by SEBI and SEBI had passed an interim order dated 19/12/2014 in the case of Radford Global Ltd , wherein the assessee and Radford Global Ltd were restrained from accessing the securities market, either directly or indirectly in any manner whatsoever, till the final investigation by SEBI is completed. After completion of the final investigation, SEBI had passed a final order dated 20/09/2017 in the case of Radford Global Ltd clearly acquitting 82 persons which admittedly included the assessee and the company Radford Global Ltd on the plea that they were not involved in artificial price rigging of shares. In the said order, SEBI had listed out the names and PAN of various persons who were involved in artificial price rigging of shares and the list of beneficiaries. Hence even SEBI does not allege any involvement of the assessee herein with the manipulation of share prices. The relevant operative portion of the SEBI order dated 20/09/2017 is reproduced hereunder:-

*10. Considering the fact that there are no adverse findings against the aforementioned 82 entities with respect to their role in the manipulation of the scrip of Radford, I am of the considered view that the directions issued against them vide interim orders dated December 19, 2014 and November 9, 2015 which were confirmed vide Orders dated October 12, 2015 , March 18, 2016 and August 26, 2016 are liable to be revoked.*

*11. 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 Confirmatory Orders dated October 12, 2015, March 18, 2016 and August 26, 2016 (qua aforesaid 82 entities (paragraph 9 above) with immediate effect.*

*12. The revocation of the directions issued vide the abovementioned orders (at paragraph 11) is only in respect of the entities mentioned at paragraph 9 of this order in the matter of Radford Global Limited. As regards remaining entities in the scrip of Radford, violations under SEBI Act, SCRA, PFUTP Regulations, etc., were observed and SEBI shall continue its proceedings against them. Hence, the directions issued vide Orders dated October 12, 2015, March 18, 2016 and August 26, 2016 against the remaining 24 entities shall continue. This revocation order is without prejudice to any other action SEBI may initiate as per law .*

5.5.1. We find that the name of the assessee is reflected in Serial Number 26 which is part of 82 entities acquitted by SEBI, on whom clean chit has been given. Further Radford Global Limited is reflected in Serial Number

1 which is also part of 82 entities acquitted by SEBI, on whom clean chit has been given.

5.5.2. With regard to Blazon Marbles Ltd, we find that though an order was passed u/s 15I of SEBI Act, 1992 by SEBI on 13/10/2017, the same was passed only for levying penalties on certain persons for making procedural violations and for non-appearance to the summons issued by SEBI. The said order of SEBI does not allege any involvement of the assessee herein with the manipulation of share prices.

5.6. We find that the assessee had held the shares in the instant case for 33 months in the case of Blazon Marbles Ltd and for 15 to 17 months in the case of Radford Global Ltd and then sold the shares in the open market at prevailing market prices. From the above order of SEBI, it is very clear that SEBI, based on its investigations and replies given by various parties, had ordered either to take action against certain parties or had acquitted certain parties on the ground that they are not involved in the price manipulation. In any case, the assessee's name or the broker, through whom assessee transacted had not figured in the said list either in the restraint list or in the acquitted list. Hence it could be safely concluded that the assessee herein is merely a gullible investor, who had resorted to make investment in the shares of Radford Global Ltd and Blazon Marbles Ltd based on market information and had sold the shares in the secondary market in prevailing market prices. It is not the case of the revenue that assessee herein had directly sold the shares in the secondary market with clear knowledge of the name of the person to whom the said shares were sold. In secondary market transactions, the buyer and seller are not supposed to know each other unless it is a case of 'block deals'. Same is the case of the assessee herein. Admittedly, the assessee's case does not fall under the category of 'block deals'.

5.7. We find that one of the findings of Id. CIT(A) in page 70 para 7.23 is that assessee does not have elaborate experience in share trading and that the isolated investment made by the assessee is in Radford Global Ltd and Blazon Marble Ltd. This is factually incorrect as assessee has been regular in making investments in various scrips which is evident from the demat statement furnished on record by the assessee. Infact the assessee had duly furnished the demat statement for the period 01/04/2012 to 31/03/2014 and also the holding statement as on 31/03/2022 before us. From the perusal of the same, we find that the assessee had been making investments in various scrips on long term basis. Hence the observation made by the Id. CIT(A) in this regard is dismissed as factually incorrect. Moreover, the assessee in his statement recorded u/s 132(4) of the Act had stated that he has been investing in share market since financial year 2004-05 in IPOs and also on preferential allotment of shares of particular companies based on his independent market study. Infact the assessee also gave details of investments made by him through IPOs and through preferential allotment in various companies in the statement u/s 132(4) of the Act itself. The assessee also explained the complete basis of he deciding to make investment in Radford Global Ltd in his statement u/s 132(4) of the Act. It is pertinent to note that no questions were even posed by the investigation wing at the time of search proceedings and also during recording of statement u/s 132(4) of the Act with regard to shares invested by the assessee in Blazon Marbles Ltd.

5.8. Hence the entire addition has been made merely by placing reliance on the Kolkata Investigation Wing report which are more general in nature and does not implicate the assessee herein in any manner whatsoever. We are unable to persuade ourselves to accept to the contentions of the Id. DR that Kolkata Investigation Wing had conducted a

detailed enquiry with regard to the scrip dealt by the assessee herein and hence whomsoever had dealt in this scrip, would only result in bogus claim of long term capital gain exemption or bogus claim of short term capital loss. Merely because a particular scrip is identified as a penny stock by the income tax department, it does not mean all the transactions carried out in that scrip would be bogus. So many investors enter the capital market just to make it a chance by investing their surplus monies. They also end up with making investment in certain scrips (read penny stocks) based on market information and try to exit at an appropriate time the moment they make their profits. In this process, they also burn their fingers by incurring huge losses without knowing the fact that the particular scrip invested is operated by certain interested parties with an ulterior motive and once their motives are achieved, the price falls like pack of cards and eventually make the gullible investors incur huge losses. In this background, the only logical recourse would be to place reliance on the orders passed by SEBI pointing out the malpractices by certain parties and taking action against them. Since assessee or his broker is not one of the parties who had been proceeded against by SEBI, the transaction carried out by the assessee cannot be termed as bogus. We find that the revenue had primarily relied SEBI interim order dated 19/12/2014 passed in the case of Radford Global Ltd. This SEBI Interim order is subsequently revoked on 20/09/2017 duly acquitting the assessee as stated supra. Before completion of assessment, the assessee had furnished the SEBI final order dated 20/09/2017 duly acquitting the assessee before the Id.AO, which was completely ignored by the Id. AO. We find that SEBI vide its final order dated 20/09/2017 acquitting certain persons including the assessee herein together with the company Radford Global Ltd was duly brought to the notice of the Id. AO which had been ignored by the Id. AO while framing the assessment. This aspect was subject matter of adjudication by the *Co-ordinate Bench of this Tribunal in*

*the case of Sunita Chaudhry vs ITO in ITA No. 143/Mum/2022 for A.Y. 2013-14 dated 13/10/2022 wherein it held as under:-*

*12. We find that despite the aforesaid interim order dated 06/09/2017 passed by SEBI being specifically mentioned by the assessee in her objections before the AO as well as in her submission before the learned CIT(A), the impugned addition was sustained. Since, the very transaction of the assessee in the scrips of First Financial Services Ltd, which resulted in long term capital gains to the assessee, has been found to be not violative of provisions of relevant Act and Rules by the SEBI upon necessary investigation and even the initial restraint order was revoked vide interim order dated 06/09/2017, therefore, we find no basis in sustaining the impugned addition made by the AO by treating the said transaction to be a penny stock transaction resulting in bogus long term capital gains. Accordingly, we direct the AO to delete the impugned addition of Rs 84,45,050. Further, since the other addition of Rs 22,712 by AO is also consequent to the aforesaid impugned addition, therefore, the said addition is also directed to be deleted.*

5.9. We hold that the entire addition has been made based on mere surmise, suspicion and conjecture and by making baseless allegations against the assessee herein. Now another issue that arises is as to whether the Id. AO merely on the basis of Kolkata investigation wing report could come to a conclusion that the transactions carried out by the assessee as bogus. In our considered opinion, the Id. AO is expected to conduct independent verification of the matter before reaching to the conclusion that the transactions of the assessee are bogus. More importantly, it is bounden duty of the Id. AO to prove that the evidences furnished by the assessee to support the purchase and sale of shares as bogus. This view of ours is further fortified by the decision of *Hon'ble Delhi High Court in the case of PCIT vs Laxman Industrial Resources Ltd in ITA No. 169/2017 dated 14/03/2017*. It is well settled that the suspicion however strong could not partake the character of legal evidence. Hence the greater onus is casted on the revenue to corroborate the impugned addition by controverting the documentary evidences furnished by the assessee and by bringing on record cogent material to sustain the addition. No evidence has been brought on record to establish any link between the assessee herein with the entry operators who were

allegedly involved in price rigging of shares artificially or any other person named in the assessment order being involved in any price rigging and also the exit provider. This onus is admittedly not discharged by the revenue in the instant case.

5.10. We find that the *Co-ordinate Bench of this Tribunal in the case of Mukesh Ratilal Marolia vs Additional CIT reported in 6 SOT 247 (Mum ITAT) dated 15/12/2005* had held that personal knowledge and excitement on events should not lead the Id. AO to a state of affairs where salient evidences are overlooked. When every transaction has been accounted, documented and supported, it would be very difficult to brush aside the contentions of the assessee that he had purchased shares and had sold shares and ultimately purchased a flat utilizing the sale proceeds of those shares and therefore, the co-ordinate bench chose to delete the impugned additions. We find that this tribunal decision was approved by the *Hon'ble Jurisdictional High Court in ITA No. 456 of 2007 dated 07/09/2011. It is pertinent to note that the Special Leave Petition preferred by the Revenue against this decision before the Hon'ble Supreme Court has been dismissed vide SLP No. 20146 of 2012 dated 27/01/2014.*

5.11. Further we find that the *Hon'ble Jurisdictional High Court in the case of CIT vs Shyam S Pawar reported in 54 taxmann.com 108 (Bom)*, it was held that where Demat account and contract note showed details of share transaction and the Id.AO had not proved the said transaction as bogus, the long term capital gain earned on said transaction could not be treated as unaccounted income u/s 68 of the Act. The relevant operative portion of the said judgement is reproduced below:-

*5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report*

*of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny. It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.*

**6.** *It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order*

*are not vitiated by any error of law apparent on the face of the record either.*

*7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.*

*8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.*

5.12. We find that the Id. CIT(A) relied on the decision of *Hon'ble Delhi High Court in the case of Suman Poddar vs ITO reported in 112 taxmann.com 329 dated 17/09/2019* where the decision was rendered in favour of the revenue. The Special Leave Petition filed by the assessee before the Hon'ble Supreme Court in this case was dismissed by the Hon'ble Apex Court vide its order dated 22/11/2019. But we find that there is yet another decision of *Hon'ble Delhi High Court in the case of PCIT vs Krishna Devi and others in ITA 125/2020 ; 130 & 131/2020 dated 15/01/2021 reported in 126 taxmann.com 80 (Delhi HC)* wherein similar issue of penny stock vis a vis long term capital gain exemption u/s 10(38) of the Act was subject matter of adjudication, in favour of the assessee. This decision rendered in the case of Smt Krishna Devi considers all the propositions laid out hereinabove and are squarely applicable to the facts before us. Infact the Hon'ble High Court duly endorses the elaborate findings given by the Delhi Tribunal on various facets of the issue. Moreover, in this decision, the Hon'ble Delhi High Court duly considered the decision of Suman Poddar referred to supra and also the decision of Hon'ble Supreme Court in the case of Sumati Dayal which was heavily relied upon by the Id. DR before us also herein. The relevant operative portion of the decision of Hon'ble Delhi High Court in the case of Smt Krishna Devi is reproduced hereunder:-

10. We have heard Mr. Hossain at length and given our thoughtful consideration to his contentions, but are not convinced with the same for the reasons stated hereinafter.

11. On a perusal of the record, it is easily discernible that in the instant case, **the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under section 10(38), in a preplanned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income-tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. **The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels."** The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. **Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person****

*provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.*

*12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on Suman Poddar case (supra) and Sumati Dayal case (supra) is of no assistance. Upon examining the judgment of Suman Poddar case (supra) at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of Sumati Dayal (supra) too turns on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.*

*13. The learned ITAT, being the last fact-finding authority, on the basis of the 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.*

*14. In this view of the matter, no question of law, much less a substantial question of law arises for our consideration.*

*15. Accordingly, the present appeals are dismissed.*

**(emphasis supplied by us)**

5.13. We find that the Id. CIT(A) relied on the decision of *Nagpur Bench of Hon'ble Jurisdictional High Court in the case of Sanjay Bimalchand Jain vide order dated 10/04/2017 reported in 89 taxmann.com 196* which is against assessee. In this regard, we find that in the facts of Sanjay Bimalchand Jain, that assessee had indulged in dubious share transactions and the broker through which shares were sold did not respond to the notices issued by the Id. AO. However, in the case of the assessee herein, all the materials in support of the share transactions were duly placed on record and are in order and the Id. AO had not

drawn any adverse inference on the said documents to treat them as false or fictitious. Hence this crucial distinguishing fact of Sanjay Bimalchand Jain makes it inapplicable to the facts of the case before us. Moreover, we find that the *Hon'ble Jurisdictional High Court in the recent case of PCIT vs Ziauddin A Siddique in Income Tax Appeal No. 2012 of 2017 dated 04/03/2022* had held as under:-

2. *We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramakrishna Fincap Ltd ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.*

3. *Therefore we find nothing perverse in the order of the Tribunal.*

4. *Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income Tax (Central)- 1 vs. NRA Iron & Steel (P) Ltd (2019) 103 taxmann.com 48 (SC) but that does not help the revenue in as much as the facts in that case were entirely different.*

5. *In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.*

6. *The appeal is devoid of merits and it is dismissed with no order as to costs.*

5.14. We find that the Id. DR had relied on the decision of *Hon'ble Calcutta High Court in the case of PCIT vs Swati Bajaj reported in 139 taxmann.com 352* which is an elaborate decision rendered after considering various decisions of various High Courts on the subject. In the said decision, it was held that assessee had to establish the genuineness of rise of price of shares within a short period of time that too when general market trend was recessive. But we find that when there are several decisions of Hon'ble Jurisdictional High Court as stated supra are already in favour of the assessee, the same would prevail over

this tribunal and this tribunal need not take cognizance of the Hon'ble Non-Jurisdictional High Court. The law is very well settled by the *Hon'ble Supreme Court in the case of Union of India vs Kamalakshi Finance Corporation Ltd reported in 55 ELT 43 (1991)* that the decision of Hon'ble Jurisdictional High Court would have higher precedence value than the decision of Hon'ble Non-Jurisdictional High Court on the Tribunal. The Hon'ble Supreme Court emphasised therein that the orders of the Tribunal should be followed by the authorities falling within its jurisdiction so that judicial discipline would be maintained in order to give effect to orders of the higher appellate authorities. The Hon'ble Apex Court has observed that utmost regard must be had by the adjudicating authorities and the appellate authorities to the requirement of judicial discipline. Hence we deem it fit and appropriate to follow the decisions of Hon'ble Jurisdictional High Court referred supra wherein the impugned issue is decided in favour of the assessee. Moreover, when there are two conflicting decisions of various High Courts, the *Hon'ble Supreme Court in the case of Vegetable Products reported in 88 ITR 192 (SC)* had held that Construction that is favourable to the assessee should be adopted. Hence by following this principle, the decision of Hon'ble Calcutta High Court and other decisions that are rendered against the assessee, need not be followed by this Court in the peculiar facts and circumstances of the instant case.

5.15. In any case, we find that the assessee had duly proved the nature and source of credit representing sale proceeds of shares of Radford Global Ltd and Blazon Marbles Ltd within the meaning of section 68 of the Act. The sale proceeds have been received by the assessee from the stock exchange through the SEBI registered share broker by account payee cheques through regular banking channels. Hence the three ingredients of section 68 of the Act are duly fulfilled by the assessee in

the instant case. Hence there is no question of making any addition as unexplained cash credit u/s 68 of the Act in the instant case.

5.16. Considering the totality of the facts and circumstances of the instant case and respectfully following the judicial precedents relied upon hereinabove, we are not inclined to accept to the stand of the Id. CIT(A) in sustaining the impugned additions on account of denial of exemption for long term capital gains u/s 10(38) of the Act and estimated commission @ 6% against the same. Accordingly, the ground nos. 1 & 2 raised by the assessee are allowed.

6. The Ground No. 3 raised by the assessee is challenging the levy of interest u/s 234B and 234C of the Act, which would be consequential in nature and does not require any specific adjudication.

7. The Ground No. 4 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c) of the Act, which would be premature for adjudication at this stage. Hence dismissed.

8. In the result, the appeal of the assessee Shri Yogesh Popatlal Thakkar in ITA No. 1605/Mum/2021 for A.Y. 2014-15 is partly allowed.

**Shri Yogesh Thakkar – ITA No. 1612/Mum/2021 – Asst Year 2015-16 - Assessee Appeal**

9. Though the assessee has raised several grounds before us, we find that the effective issue to be issued in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id.AO in denying the exemption claimed u/s 10(38) of the Act in respect of long term capital gain derived from sale of shares of Greencrest Financial Services Ltd and PS IT Infrastructure & Services Ltd, in the facts and circumstances of the case. The inter connected issue involved therein to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the

addition made on account of estimated commission expenditure as unexplained u/s 69C of the Act in the facts and circumstances of the case.

10. The brief facts of this issue are that the assessee is an individual and working as director/partner in certain company/partnership firms and also engaged in trading of shares. The return of income for the A.Y. 2015-16 was e-filed u/s.139(1) of the Act on 30/09/2015 showing total income of Rs 5,18,60,550/-. Subsequently, search u/s.132 of the Act was carried out by the Department on 09/04/2015 at the residential premises of the assessee on the plea that he was indulged in evasion of income tax by introducing unaccounted money into the books of account in the grab of bogus Long term capital gains claimed to be exempt u/s.10(38) of the Act. In response to notice u/s.153A of the Act dated 08/08/2016, the assessee filed his return of income on 22/08/2016 showing total income of Rs 5,18,60,550/- which was the same as shown in the return of income furnished u/s.139(1) of the Act. In the said return of income, the assessee has shown Long term capital gains (LTCG) of Rs 5,21,88,356/- on sale of shares of Greencrest Financial Services Ltd. ("Greencrest") and Crescent Digital Technologies Pvt. Ltd. (now known as PS IT Infrastructure & Services Ltd.)("PS IT") which have been claimed to be exempt u/s.10(38) of the Act. Details of such LTCG are as under:-

Sr. No. (1)	Name of the Company (2)	No. of Shares purchased (3)	Date of Purchase (4)	Purchase Amount (In. Rs) (5)
1	"Greencrest"	765000	06.02.2013	9,18,000/-
2	"PS IT"	10000	28.06.2012	1,00,000/-
			Total :-	10,18,000/-

Sr. No. (1)	Name of the Company (2)	No of Shares sold (6)	Date of Sale (7)	Sale Amount (In Rs) (8)	LTCG (In Rs) (8)-(5)
1	"Greencrest"	765000	Sep-14 to Oct-14	4,79,70,600/-	4,70,52,600/-
2	"PS IT"	10000	07.05.2014	52,35,756/-	51,35,756/-
			<b>Total :-</b>	<b>5,32,06,356/-</b>	<b>5,21,88,356/-</b>

10.1. The assessee was allotted 200000 shares of Greencrest Financial Services Ltd (formerly known as Marigold Glass Inds. Ltd.) on 12/02/2013 having a face value of Rs.10/- and premium of Rs.2/- per share and consideration paid thereon was Rs 24,00,000/-. Subsequently, the shares having face value of Rs.10/- were split into 10 share having face value of Re.1/-. Post split, the total shares credited into demat account were 2000000 shares. During the year under consideration, the assessee has sold 765000 shares after holding for a period of 18 months and balance share holding still remains unsold as on 31/03/2022. Similarly, the assessee purchased 10000 shares of Crescent Digital Technologies Pvt Ltd. of face value of Rs. 10 for a consideration of Rs.1,00,000/- on 28/06/2012 in off-market. Crescent Digital Technologies Pvt Ltd. subsequently amalgamated with Parag Shilpa Investment Ltd in accordance with a scheme of amalgamation and Parag Shilpa was subsequently renamed "PS IT Infrastructure & Services Ltd." or PS IT in short. These shares were sold during the F.Y.2014-15 after holding for a period of 2 years. For both the shares, the payments for purchase of shares were made by the assessee by account payee cheques out of sources duly disclosed in the books of accounts.

10.2. The Id. AO in the assessment framed u/s 143(3) r.w.s 153A of the Act in the same manner by making the same observations as was done in A.Y. 2014-15 in the case of the assessee herein by treating the sale proceeds of shares of Rs 5,32,06,356/- as unexplained cash credit u/s 68 of the Act and an estimated commission expenditure of Rs 31,92,381/- (53206356 \*6%) as unexplained u/s 69C of the Act at the rate of 6% of sale proceeds of shares.

10.3. When the appeal was pending before the Id. CIT(A) , SEBI had passed an order u/s 11(1), 11(4) and 11B(1) of SEBI Act, 1992 dated 05/06/2020 in the case of Greencrest Financial Services Ltd and PS IT Infrastructure Services Ltd, wherein certain parties were debarred for a period of 3 years from accessing the securities market and were further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner. In the said list of persons who were debarred, the name of the assessee or its registered share broker was not reflected. Accordingly, it was pleaded before the Id. CIT(A) that even as per SEBI investigation and its order dated 05/06/2020, the assessee cannot be stated to be involved in artificial price rigging of shares.

10.4. The Id. CIT(A) however did not heed to the contentions of the assessee and proceeded to confirm the order of the Id. AO in the same manner as was done by him in A.Y. 2014-15 in the case of the assessee herein.

11. We have heard the rival submissions and perused the materials available on record. The findings given by us hereinabove for the A.Y. 2014-15 in the case of the assessee shall apply mutatis mutandis to A.Y. 2015-16 also , save that during the A.Y. 2015-16, there was no interim order passed by SEBI on both the scrips ; that there was only final order passed by SEBI dated 05/06/2020 wherein the name of the assessee or his registered share broker was not reflected as defaulters or persons involved in artificial price rigging of shares. Hence the observations and findings recorded by us for A.Y. 2014-15 together with reliance placed on various case laws thereon shall apply for A.Y.2015-16 also. Accordingly, the Ground Nos. 1 & 2 raised by the assessee are allowed.

12. The Ground No. 3 raised by the assessee is challenging the levy of interest u/s 234B and 234C of the Act, which would be consequential in nature and does not require any specific adjudication.

13. The Ground No. 4 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c ) of the Act, which would be premature for adjudication at this stage. Hence dismissed.

14. In the result , the appeal of the assessee Shri Yogesh Popatlal Thakkar in ITA No. 1612/Mum/2021 for A.Y. 2015-16 is partly allowed .

**Smt Nisha Yogesh Thakkar – ITA No. 1607/Mum/2021 – Asst  
Year 2015-16 - Assessee Appeal**

15. Though the assessee has raised several grounds before us, we find that the effective issue to be issued in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id.AO in denying the exemption claimed u/s 10(38) of the Act in respect of long term capital gain derived from sale of shares of Greencrest Financial Services Ltd in the facts and circumstances of the case. The inter connected issue involved therein to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the addition made on account of estimated commission expenditure as unexplained u/s 69C of the Act in the facts and circumstances of the case.

15.1. The brief facts of this issue are that the assessee is an individual and working as partner in partnership firm of M/s Thakkar Exims. The return of income for the A.Y. 2015-16 was e-filed u/s.139(1) of the Act on 29/09/2015 showing total income of Rs 1,13,96,030/-. In the said return of income, the assessee has shown Long term capital gains (i.e. LTCG) of Rs 3,30,97,819/- after indexation on sale of shares of Greencrest Financial

Services Ltd. ("Greencrest") which have been claimed to be exempt u/s.10(38). Details of such LTCG are as under:-

Particulars	Amount (Rs)
1) Marigold Glass Industries Ltd. <b>(Greencrest Financial Service Ltd.)</b> Sale consideration 5,40,000 share sold on various dates	3,38,76,636
Less: <u>Indexed Cost of acquisition:</u> (Purchased on 06.02.2013) <u>Purchase cost * C.I.I. of F.Y.2014-15</u> C.I.I. of F.Y.2012-13 Rs.6,48,000 * 1024/852	7,78,817
Long Term Capital Gains	3,30,97,819
<b>Less: Exempt u/s.10(38) of the I.T. Act, 1961</b>	<b>3,30,97,819</b>
Taxable Long Term Capital Gains	NIL

15.2. The assessee was allotted 200000 shares of Greencrest Financial Services Ltd (formerly known as Marigold Glass Inds. Ltd.) on 06/02/2013 having a face value of Rs.10/- and premium of Rs.2/- per share on preferential basis and consideration paid thereon was Rs 24,00,000/-. Subsequently, the shares having face value of Rs.10/- were split into 10 share having face value of Re.1/-. Post split, the total shares credited into demat account were 2000000 shares. During the year under consideration, the assessee has sold 540000 shares after holding for a period of 18 months and balance share holding still remains unsold as on 31/03/2022. The payment for purchase of shares was made by the assessee by account payee cheques out of sources duly disclosed in the books of accounts.

15.3. The Id. AO in the assessment framed u/s 143(3) of the Act in the same manner by making the same observations as was done in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove by treating the sale proceeds of shares of Rs 3,38,76,636/- as unexplained cash credit u/s 68 of the Act and an estimated commission expenditure of Rs 20,32,598/- (33876636 \*6%) as unexplained u/s 69C of the Act at the rate of 6% of sale proceeds of shares.

15.4. When the appeal was pending before the Id. CIT(A) , SEBI had passed an order u/s 11(1), 11(4) and 11B(1) of SEBI Act, 1992 dated 05/06/2020 in the case of Greencrest Financial Services Ltd, wherein certain parties were debarred for a period of 3 years from accessing the securities market and were further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner. In the said list of persons who were debarred, the name of the assessee or its registered share broker was not reflected. Accordingly, it was pleaded before the Id. CIT(A) that even as per SEBI investigation and its order dated 05/06/2020, the assessee cannot be stated to be involved in artificial price rigging of shares.

15.5. The Id. CIT(A) however did not heed to the contentions of the assessee and proceeded to confirm the order of the Id. AO in the same manner as was done by him in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove.

16. We have heard the rival submissions and perused the materials available on record. The findings given by us hereinabove for the A.Y. 2015-16 in the case of Shri Yogesh Thakkar shall apply mutatis mutandis to assessee herein for A.Y. 2015-16 also. Accordingly, the Ground Nos. 1 & 2 raised by the assessee are allowed.

17. The Ground No. 3 raised by the assessee is challenging the levy of interest u/s 234B and 234C of the Act, which would be consequential in nature and does not require any specific adjudication.

18. The Ground No. 4 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c ) of the Act, which would be premature for adjudication at this stage. Hence dismissed.

19. In the result , the appeal of the assessee Smt Nisha Yogesh Thakkar in ITA No. 1607/Mum/2021 for A.Y. 2015-16 is partly allowed .

**Smt Harsha Nitin Thakkar – ITA No. 1606/Mum/2021 – Asst  
Year 2013-14 - Assessee Appeal**

20. The Ground No. 1 challenging the validity of reassessment proceedings was stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly the Ground No.1 raised by the assessee is hereby dismissed as not pressed.

21. Though the assessee has raised several grounds before us, we find that the effective issue to be issued in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id.AO in denying the exemption claimed u/s 10(38) of the Act in respect of long term capital gain derived from sale of shares of Confidance Finance and Trading Ltd in the facts and circumstances of the case. The inter connected issue involved therein to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the addition made on account of estimated commission expenditure as unexplained u/s 69C of the Act in the facts and circumstances of the case.

21.1. The brief facts of this issue are that the assessee is an individual and working as director in Thakkar Popatlal Velji Sales Ltd. The return of income for the A.Y. 2013-14 was originally e-filed on 27/07/2013 showing total income of Rs 37,90,814/- which was subsequently revised on 06/08/2013 with the same income. The assessment was originally completed u/s.143(1) on 29/01/2014 determining total income of Rs 37,90,814/-. Subsequently, the assessment was sought to be reopened

by issuing notice u/s 148 of the Act on 22/12/2016. In response to the notice u/s 148 of the Act , the assessee e-filed her return of income on 05/01/2017 showing total income of Rs 37,90,814/- which was same as assessed u/s.143(1) of the Act. In the said return of income, the assessee has shown Long term capital gains (i.e. LTCG) of Rs 3,33,38,324/- on sale of certain shares which have been claimed to be exempt u/s.10(38). Such LTCG has been earned on sale of shares of Confidance Finance and Trading Ltd. (i.e. "Confidance"), brief details of which are as under:-

No. of shares	Sale of shares		Cost of shares		LTCG (Rs )
	Date	Sale price	Date	Cost	
1,10,000	Various dates	3,49,88,324	23-8-2011	16,50,000	3,33,38,324

21.2. The assessee was allotted 200000 shares of "Confidance" on 27/09/2011 at a face value of Rs 10/- and premium of Rs.5/- per share on preferential basis and consideration paid thereon was Rs 30,00,000/-. These shares were duly dematted by the assessee. Out of these shares, she sold 110000 shares in the month of January and February 2013 for a consideration of Rs 3,49,88,324/- after holding for a period of 15 months and balance share holding remains unsold as on 31/03/2013. The payment for purchase of shares was made by the assessee by account payee cheques out of sources duly disclosed in the books of accounts.

21.3. The Id. AO in the assessment framed u/s 143(3) r.w.s 147 of the Act in the same manner by making the same observations as was done in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove by treating the sale proceeds of shares of Rs 3,49,88,324/- as unexplained cash credit u/s 68 of the Act and an estimated commission expenditure of Rs 20,99,300/- (34988324 \*6%) as unexplained u/s 69C of the Act at the rate of 6% of sale proceeds of shares.

21.4. When the appeal was pending before the Id. CIT(A) , SEBI had passed an order u/s 11(1), 11(4) and 11B(1) of SEBI Act, 1992 dated 31/12/2018 in the case of Confidance Finance and Trading Ltd, wherein certain parties were debarred from accessing the securities market and were further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner. In the said order, SEBI had disposed of the show cause notices issued to the following persons without any directions :-

<u>Noticee No.</u>	<u>Name of the Noticee</u>
1	Confidance Finance and Trading Ltd
2	Mr Manoj Kumar Naginlal Jain
3	Mr Amruth Jaochim Coutinho
4	Mr Lalitkumar Roshanlal Maroo
5	Ms.Swati Panchal

21.4.1. In the said list of persons who were debarred, the name of the assessee or its registered share broker was not reflected. Accordingly, it was pleaded before the Id. CIT(A) that even as per SEBI investigation and its order dated 31/12/2018, the assessee cannot be stated to be involved in artificial price rigging of shares.

21.5. The Id. CIT(A) however did not heed to the contentions of the assessee and proceeded to confirm the order of the Id. AO in the same manner as was done by him in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove.

22. We have heard the rival submissions and perused the materials available on record. The findings given by us hereinabove for the A.Y. 2015-16 in the case of Shri Yogesh Thakkar shall apply mutatis mutandis to assessee herein for A.Y. 2013-14 also. Accordingly, the Ground Nos. 2 & 3 raised by the assessee are allowed.

23. The Ground No. 4 raised by the assessee is challenging the levy of interest u/s 234B and 234C of the Act, which would be consequential in nature and does not require any specific adjudication.

24. The Ground No. 5 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c ) of the Act, which would be premature for adjudication at this stage. Hence dismissed.

25. In the result , the appeal of the assessee Smt Harsha Nitin Thakkar in ITA No. 1606/Mum/2021 for A.Y. 2013-14 is partly allowed .

**Smt Harsha Nitin Thakkar – ITA No. 1608/Mum/2021 – Asst Year 2014-15 - Assessee Appeal**

26. The Ground No. 1 challenging the validity of reassessment proceedings was stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly the Ground No.1 raised by the assessee is hereby dismissed as not pressed.

27. Though the assessee has raised several grounds before us, we find that the effective issue to be issued in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id.AO in denying the exemption claimed u/s 10(38) of the Act in respect of long term capital gain derived from sale of shares of Confidance Finance and Trading Ltd in the facts and circumstances of the case. The inter connected issue involved therein to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the addition made on account of estimated commission expenditure as unexplained u/s 69C of the Act in the facts and circumstances of the case.

27.1. The brief facts of this issue are that the assessee is an individual and working as director in Thakkar Popatlal Velji Sales Ltd. The return of income for the A.Y. 2014-15 was originally e-filed on 31/07/2014 showing total income of Rs 1,02,15,260/-. The assessment was originally completed u/s.143(1) on 04/03/2016 determining total income of Rs 1,02,15,260/-. Subsequently, the assessment was sought to be reopened vide issuance of notice u/s 148 of the Act on 22/12/2016. In response to the said notice u/s.148 of the Act, the assessee e-filed her return of income on 05/01/2017 showing total income of Rs 1,02,15,260/- which was same as assessed u/s.143(1) of the Act. In the said return of income, the assessee has shown Long term capital gains (i.e. LTCG) of Rs 2,65,74,138/- on sale of certain shares which have been claimed to be exempt u/s.10(38) of the Act. Such LTCG has been earned on sale of shares of Confidance Finance and Trading Ltd. (i.e. "Confidance"), brief details of which are as under:-

Particulars		Amount ( ` )
1)	Confidance Trading Co.) Sale consideration 90,000 share sold on April-13	2,85,47,832
Less:	<u>Indexed Cost of acquisition:</u> (Purchased on 23.08.2011) <u>Purchase cost * C.I.I. of F.Y.2013-14</u> C.I.I. of F.Y.2011-12 Rs.1350000 x 939/785	19,73,694
	Long Term Capital Gains	2,65,74,138
<b>Less:</b>	<b>Exempt u/s.10(38) of the I.T. Act, 1961</b>	<b>2,65,74,138</b>
	Taxable Long Term Capital Gains	NIL

27.2. The assessee was allotted 200000 shares of "Confidance" on 28/09/2011 at a face value of Rs 10/- and premium of Rs.5/- per share on preferential basis and consideration paid thereon was Rs 30,00,000/-. These shares were duly dematted by the assessee. Out of these shares, she sold 110000 shares in A.Y. 2013-14 and remaining 90000 shares in April 2013 for a consideration of Rs 2,85,47,832/- after holding for a period of 18 months. The payment for purchase of shares was made by

the assessee by account payee cheques out of sources duly disclosed in the books of accounts.

27.3. The Id. AO in the assessment framed u/s 143(3) r.w.s 147 of the Act in the same manner by making the same observations as was done in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove by treating the sale proceeds of shares of Rs 2,85,47,832/- as unexplained cash credit u/s 68 of the Act and an estimated commission expenditure of Rs 17,12,870/- (28547832 \*6%) as unexplained u/s 69C of the Act at the rate of 6% of sale proceeds of shares.

27.4. When the appeal was pending before the Id. CIT(A) , SEBI had passed an order u/s 11(1), 11(4) and 11B(1) of SEBI Act, 1992 dated 31/12/2018 in the case of Confidance Finance and Trading Ltd, wherein certain parties were debarred from accessing the securities market and were further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner. In the said order, SEBI had disposed of the show cause notices issued to the following persons without any directions :-

Noticee No. \_\_\_\_\_ Name of the Noticee

- 1 Confidance Finance and Trading Ltd
- 2 Mr Manoj Kumar Naginlal Jain
- 3 Mr Amruth Jaochim Coutinho
- 4 Mr Lalitkumar Roshanlal Maroo
- 5 Ms.Swati Panchal

27.4.1. In the said list of persons who were debarred, the name of the assessee or its registered share broker was not reflected. Accordingly, it was pleaded before the Id. CIT(A) that even as per SEBI investigation and its order dated 31/12/2018, the assessee cannot be stated to be involved in artificial price rigging of shares.

27.5. The Id. CIT(A) however did not heed to the contentions of the assessee and proceeded to confirm the order of the Id. AO in the same manner as was done by him in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove.

28. We have heard the rival submissions and perused the materials available on record. The findings given by us hereinabove for the A.Y. 2015-16 in the case of Shri Yogesh Thakkar shall apply mutatis mutandis to assessee herein for A.Y. 2014-15 also. Accordingly, the Ground Nos. 2 & 3 raised by the assessee are allowed.

29. The Ground No. 4 raised by the assessee is challenging the levy of interest u/s 234B and 234C of the Act, which would be consequential in nature and does not require any specific adjudication.

30. The Ground No. 5 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c ) of the Act, which would be premature for adjudication at this stage. Hence dismissed.

31. In the result , the appeal of the assessee Smt Harsha Nitin Thakkar in ITA No. 1608/Mum/2021 for A.Y. 2014-15 is partly allowed .

**Shri Nitin Popatlal Thakkar – ITA No. 1610/Mum/2021 – Asst  
Year 2013-14 - Assessee Appeal**

32. The Ground No. 1 challenging the validity of reassessment proceedings was stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly the Ground No.1 raised by the assessee is hereby dismissed as not pressed.

33. Though the assessee has raised several grounds before us, we find that the effective issue to be issued in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id.AO in denying the exemption claimed u/s 10(38) of the Act in respect of long term capital gain derived from sale of shares of Confidance Finance and Trading Ltd in the facts and circumstances of the case. The inter connected issue involved therein to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the addition made on account of estimated commission expenditure as unexplained u/s 69C of the Act in the facts and circumstances of the case.

33.1. The brief facts of this issue are that the assessee is an individual and working as director / partner in certain company / firms. The return of income for the A.Y. 2013-14 was originally e-filed u/s.139(1) of the Act on 28/07/2013 showing total income of Rs 1,25,18,500/-. The assessment was originally completed u/s.143(1) of the Act on 13/12/2013 determining total income of Rs 1,25,18,500/-. Subsequently, the assessment was sought to be reopened by issuing notice u/s. 148 of the Act on 22/12/2016. In response to the notice u/s.148 of the Act , the assessee e-filed his return of income on 05/01/2017 showing total income of Rs 1,25,18,500/- which was same as assessed u/s.143(1) of the Act. In the said return of income, the assessee has shown Long term capital gains (i.e. LTCG) of Rs 4,85,01,939/- on sale of certain shares which have been claimed to be exempt u/s.10(38) of the Act. Such LTCG has been earned on sale of shares of Confidance Finance and Trading Ltd. (i.e. "Confidance"), brief details of which are as under:-

No. of shares	Sale of shares		Cost of shares		LTCG ( ` )
	Date	Sale price	Date	Cost	
1,60,000	Various dates	5,09,01,939	28-9-2011	24,00,000	4,85,01,939

33.2. The assessee was allotted 200000 shares of "Confidance" on 27/09/2011 at a face value of Rs 10/- and premium of Rs.5/- per share on preferential basis and consideration paid thereon was Rs 30,00,000/-. These shares were duly dematted by the assessee. Out of these shares, she sold 160000 shares during the month of January and February 2013 for a consideration of Rs 5,09,01,939/- after holding for a period of 15 months. The payment for purchase of shares was made by the assessee by account payee cheques out of sources duly disclosed in the books of accounts.

33.3. The Id. AO in the assessment framed u/s 143(3) r.w.s 147 of the Act in the same manner by making the same observations as was done in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove by treating the sale proceeds of shares of Rs 5,09,01,939/- as unexplained cash credit u/s 68 of the Act and an estimated commission expenditure of Rs 30,54,120/- (50101939 \*6%) as unexplained u/s 69C of the Act at the rate of 6% of sale proceeds of shares.

33.4. When the appeal was pending before the Id. CIT(A) , SEBI had passed an order u/s 11(1), 11(4) and 11B(1) of SEBI Act, 1992 dated 31/12/2018 in the case of Confidance Finance and Trading Ltd, wherein certain parties were debarred from accessing the securities market and were further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner. In the said order, SEBI had disposed of the show cause notices issued to the following persons without any directions :-

Noticee No.                      Name of the Noticee

- 1              Confidance Finance and Trading Ltd
- 2              Mr Manoj Kumar Naginlal Jain
- 3              Mr Amruth Jaochim Coutinho

4 Mr Lalitkumar Roshanlal Maroo

5 Ms.Swati Panchal

33.4.1. In the said list of persons who were debarred, the name of the assessee or its registered share broker was not reflected. Accordingly, it was pleaded before the Id. CIT(A) that even as per SEBI investigation and its order dated 31/12/2018, the assessee cannot be stated to be involved in artificial price rigging of shares.

33.5. The Id. CIT(A) however did not heed to the contentions of the assessee and proceeded to confirm the order of the Id. AO in the same manner as was done by him in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove.

34. We have heard the rival submissions and perused the materials available on record. The findings given by us hereinabove for the A.Y. 2015-16 in the case of Shri Yogesh Thakkar shall apply mutatis mutandis to assessee herein for A.Y. 2013-14 also. Accordingly, the Ground Nos. 2 & 3 raised by the assessee are allowed.

35. The Ground No. 4 raised by the assessee is challenging the levy of interest u/s 234B and 234C of the Act, which would be consequential in nature and does not require any specific adjudication.

36. The Ground No. 5 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c ) of the Act, which would be premature for adjudication at this stage. Hence dismissed.

37. In the result , the appeal of the assessee Shri Nitin Popatlal Thakkar in ITA No. 1610/Mum/2021 for A.Y. 2013-14 is partly allowed .

**Shri Nitin Popatlal Thakkar – ITA No. 1609/Mum/2021 – Asst Year 2014-15 - Assessee Appeal**

38. Though the assessee has raised several grounds before us, we find that the effective issue to be issued in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id.AO in denying the exemption claimed u/s 10(38) of the Act in respect of long term capital gain derived from sale of shares of Confidance Finance and Trading Ltd and PS IT Infrastructure & Services Ltd in the facts and circumstances of the case. The inter connected issue involved therein to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the addition made on account of estimated commission expenditure as unexplained u/s 69C of the Act in the facts and circumstances of the case.

38.1. The brief facts of this issue are that the assessee is an individual and working as director / partner in certain company / firms. The return of income for the A.Y. 2014-15 was originally e-filed u/s.139(1) of the Act on 30/09/2014 showing total income of Rs 2,19,32,605/- which was processed u/s 143(1) of the Act accepting the returned income. In the said return of income, the assessee has shown Long term capital gains (i.e. LTCG) of Rs 1,73,13,488/- on sale of certain shares which have been claimed to be exempt u/s.10(38). Such LTCG have been earned on sale of shares of Confidance Finance and Trading Ltd. (i.e. "Confidance") and Crescent Digital Technologies Pvt. Ltd. (which has since amalgamated into PS IT Infrastructure Ltd.) (i.e. "PS IT"), brief details of which are as under:-

Sr. No.	Scrip/Property	Date of Purchase	Purchase Amount	Date of Sale	Sale Amount	No. of shares
1.	M/s. Confidance Trading Co. Ltd.	23-8-2011	Rs.6,00,000 @Rs.15/share	26-4-2013	Rs.1,27,01,915	40,000
2.	M/s. PS IT Infrastructure Ltd.	28-6-2012	Rs.1,00,000 @Rs.10/share	11-3-2014	Rs. 53,11,573	10,000

<b>Total</b>		<b>Rs.7,00,000</b>	<b>Rs.1,80,13,488</b>	
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38.2. The assessee was allotted 200000 shares of M/s Confidence Finance and Trading Ltd. on preferential basis on 27/09/2011, having a face value of Rs.10/- and premium of Rs.5/- per share and consideration paid thereon was Rs 30,00,000/-. All these shares were duly dematted in the demat account of the assessee. Out of this, 160000 shares were sold by the assessee in A.Y. 2013-14 and balance 40000 shares were sold in April 2013 for a consideration of Rs 1,27,01,915/-. Similarly, the assessee purchased 10000 shares of Crescent Digital Technologies Pvt Ltd. of face value of Rs. 10 for a consideration of Rs.1,00,000/- on 28/06/2012 in off-market. Crescent Digital Technologies Pvt Ltd subsequently amalgamated with Parag Shilpa Investment Ltd in accordance with a scheme of amalgamation and the Parag Shilpa was subsequently renamed "PS IT Infrastructure & Services Ltd." or PS IT in short. These shares were duly dematted in the demat account of the assessee. These shares were sold by the assessee on 11/03/2014 for Rs 53,11,573/- after holding for a period of 21 months. The payments for purchase of shares of both the companies were made by the assessee by account payee cheques out of sources duly disclosed in the books of accounts.

38.3. The Id. AO in the assessment framed u/s 143(3) of the Act in the same manner by making the same observations as was done in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove by treating the sale proceeds of shares of Rs 1,80,13,488/- as unexplained cash credit u/s 68 of the Act and an estimated commission expenditure of Rs 5,40,405/- (18013488 \*3%) as unexplained u/s 69C of the Act at the rate of 3% of sale proceeds of shares.

38.4. When the appeal was pending before the Id. CIT(A) , SEBI had passed an order u/s 11(1), 11(4) and 11B(1) of SEBI Act, 1992 dated

31/12/2018 in the case of Confidance Finance and Trading Ltd, wherein certain parties were debarred from accessing the securities market and were further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner. In the said order, SEBI had disposed of the show cause notices issued to the following persons without any directions :-

<u>Noticee No.</u>	<u>Name of the Noticee</u>
1	Confidance Finance and Trading Ltd
2	Mr Manoj Kumar Naginlal Jain
3	Mr Amruth Jaochim Coutinho
4	Mr Lalitkumar Roshanlal Maroo
5	Ms.Swati Panchal

38.4.1. In the said list of persons who were debarred, the name of the assessee or its registered share broker was not reflected.

38.4.2. Similarly in respect of scrip of PS IT Infrastructure Services Ltd, when the appeal was pending before the Id. CIT(A) , SEBI had passed an order u/s 11(1), 11(4) and 11B(1) of SEBI Act, 1992 dated 05/06/2020 in the case of PS IT Infrastructure Services Ltd, wherein certain parties were debarred for a period of 3 years from accessing the securities market and were further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner. In the said list of persons who were debarred, the name of the assessee or its registered share broker was not reflected.

38.4.3. Accordingly, it was pleaded before the Id. CIT(A) that even as per SEBI investigation and its order dated 31/12/2018 for "Confidance" and order dated 05/06/2020 for "PS IT" , the assessee cannot be stated to be involved in artificial price rigging of shares.

38.5. The Id. CIT(A) however did not heed to the contentions of the assessee and proceeded to confirm the order of the Id. AO in the same manner as was done by him in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove.

39. We have heard the rival submissions and perused the materials available on record. The findings given by us hereinabove for the A.Y. 2015-16 in the case of Shri Yogesh Thakkar shall apply mutatis mutandis to assessee herein for A.Y. 2014-15 also. Accordingly, the Ground Nos. 1 & 3 raised by the assessee are allowed.

40. The Ground No. 4 raised by the assessee is challenging the levy of interest u/s 234B and 234C of the Act, which would be consequential in nature and does not require any specific adjudication.

41. The Ground No. 5 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c ) of the Act, which would be premature for adjudication at this stage. Hence dismissed.

42. In the result , the appeal of the assessee Shri Nitin Popatlal Thakkar in ITA No. 1609/Mum/2021 for A.Y. 2014-15 is partly allowed .

**Shri Dineshchandra D Chhajer – ITA No. 1611/Mum/2021 – Asst Year 2015-16 - Assessee Appeal**

43. Though the assessee has raised several grounds before us, we find that the effective issue to be issued in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id.AO in denying the exemption claimed u/s 10(38) of the Act in respect of long term capital gain derived from sale of shares of PS IT Infrastructure & Services Ltd in the facts and circumstances of the case. The inter connected issue involved therein to be decided in this appeal is as to whether the Id.

CIT(A) was justified in upholding the addition made on account of estimated commission expenditure as unexplained u/s 69C of the Act in the facts and circumstances of the case.

43.1. The brief facts of this issue are that the assessee is an individual and working as director / partner in certain company / firms. The assessee e-filed his return of income for the A.Y. 2015-16 on 11/03/2016 showing total income of Rs 11,89,070/- which was duly processed u/s 143(1) of the Act accepting the returned income. In the said return of income, the assessee has shown Long term capital gains (LTCG) of Rs 2,75,97,092/- on sale of shares of PS IT Infrastructure & Services Ltd. ("PS IT") and the same have been claimed to be exempt u/s.10(38). Details of such LTCG on sale of the shares of "PS IT" are as under:-

<b>Scrip "PS IT" No. of shares 95,000 (i.e. 45,000 + 50,000)</b>			
<b>Sale price</b>	<b>Purchase Price</b>	<b>Transfer Expenses</b>	<b>Exempt u/s.10(38)</b>
2,80,97,839	5,00,000	747.20	2,75,97,092

43.2. The assessee purchased 50000 shares of face value of Rs 10/- of Crescent Digital Technologies Pvt. Ltd. (i.e. "Crescent") from Unisys Softwares & Holding Industries Ltd. on 12/06/2012 for consideration of Rs 5,00,000/- which was paid by account payee cheque in off-market. Thereafter, the company "Crescent" alongwith Swift IT Infrastructure & Services Ltd. got amalgamated with Parag Shilpa Investments Ltd. (i.e. "Parag Shilpa") in accordance with a scheme of amalgamation sanctioned by the Hon'ble Bombay High Court vide order dated 03/05/2013. Subsequently, the name of "Parag Shilpa" was changed to "PS IT Infrastructure & Services Ltd". Thus the assessee was holding 50000 shares of face value of Rs 10/- of "PS IT" after amalgamation of "Crescent" with "Parag Shilpa". The assessee first sold 45,000 shares of face value of Rs 10/- of "PS IT" in July 2014. Subsequently, there was stock split from face value of Rs 10/- per share of "PS IT" to face value of

Re 1/- per share in the month of September 2014 and thereby remaining 5000 shares of "PS IT" of face value of Rs 10/- became 50000 shares of "PS IT" of face value of Re 1/- per share. These 50000 shares were sold by the assessee for a consideration of Rs 34,26,551/-. The payment for purchase of shares was made by the assessee by account payee cheque out of sources duly disclosed in the books of accounts. The fact of original purchase of shares , partial sale thereon , fact of stock split and subsequent sale thereon were duly reflected in the demat account of the assessee.

43.3. The Id. AO in the assessment framed u/s 143(3) of the Act in the same manner by making the same observations as was done in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove by treating the sale proceeds of shares of Rs 2,80,97,839/- as unexplained cash credit u/s 68 of the Act and an estimated commission expenditure of Rs 16,85,870/- ( $28097839 * 6\%$ ) as unexplained u/s 69C of the Act at the rate of 6% of sale proceeds of shares.

43.4. When the appeal was pending before the Id. CIT(A), SEBI had passed an order u/s 11(1), 11(4) and 11B(1) of SEBI Act, 1992 dated 05/06/2020 in the case of PS IT Infrastructure Services Ltd, wherein certain parties were debarred for a period of 3 years from accessing the securities market and were further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner. In the said list of persons who were debarred, the name of the assessee or its registered share broker was not reflected.

43.4.1. Accordingly, it was pleaded before the Id. CIT(A) that even as per SEBI investigation and its order dated 05/06/2020 for "PS IT" , the

assessee cannot be stated to be involved in artificial price rigging of shares.

43.5. The Id. CIT(A) however did not heed to the contentions of the assessee and proceeded to confirm the order of the Id. AO in the same manner as was done by him in A.Y. 2015-16 in the case of Shri Yogesh Thakkar hereinabove.

44. We have heard the rival submissions and perused the materials available on record. The findings given by us hereinabove for the A.Y. 2015-16 in the case of Shri Yogesh Thakkar shall apply mutatis mutandis to assessee herein for A.Y. 2015-16 also. Accordingly, the Ground Nos. 1 & 2 raised by the assessee are allowed.

45. The Ground No. 3 raised by the assessee is challenging the levy of interest u/s 234B and 234C of the Act, which would be consequential in nature and does not require any specific adjudication.

46. The Ground No. 4 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c ) of the Act, which would be premature for adjudication at this stage. Hence dismissed.

47. In the result , the appeal of the assessee Shri Dineshchandra D Chhajed in ITA No. 1611/Mum/2021 for A.Y. 2015-16 is partly allowed .

**48. To sum up, all the appeals of the assessee are partly allowed.**

Order pronounced on 03/02/2023 by way of proper mentioning in the notice board.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
JUDICIAL MEMBER

Mumbai; Dated 03/02/2023  
KARUNA, *sr.ps*

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai