

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 563/MUM/2023  
(Assessment Year: 2010-11)**

**M/s Usha Vinod Parekh  
(LR of Late Shri Vinodkumar  
Sheshmal Parekh)**

22-Ä"Wing, 2<sup>nd</sup> Floor, Todi Estate,  
Sunmill Compound, Lower Parel (W),  
Mumbai - 400013  
[PAN:AAEPP2049N]

..... **Appellant**

**The Deputy Commissioner of Income  
Tax, Circle 22(1), Mumbai  
(Erstwhile The Assistant  
Commissioner of Income Tax,  
Circle 21(3), Mumbai –**

Piramal Chambers, DR. S.S. Rao Marg,  
Parel, Mumbai - 400012

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri M B Sanghvi  
For the Respondent/Department : Ms. Naina Krishnakumar

**Date**

Conclusion of hearing : 27.06.2023  
Pronouncement of order : 21.09.2023

---

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Legal Representative of the Assessee has challenged the order, dated 13/01/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2010-11, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated

20/12/2016, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised the following grounds of appeal:

- "1. *The Hon'ble CIT(A)-NFAC erred in passing the order u/s.250 of the Income Tax Act, 1961 in the name of deceased person and hence the same is void and against the provisions of law. The assessee had informed before the commencement of reassessment proceedings and the assessment is done on his legal representative Smt. Usha. Vinod Parekh;*
- 2.1 *Without prejudice to above; The Hon'ble CIT(A)-NFAC erred in confirming the validity of issue of notice u/s.148 of the Income-tax Act, 1961 and passing the order u/s.143(3) r.w.s. 147 of the Income-tax Act, 1961. The reopening is bad, illegal, void and against the provision of law and natural justice;*
- 2.2 *The CIT(A)-NFAC ought to have appreciated that the appellant has disclosed fully and truly all material facts necessary for the assessment during first assessment*
- 2.3 *Without prejudice to above; The Hon'ble CIT(A)-NFAC erred in confirming the addition u/s.68 of the Act of Rs.16,09,340/- which is the sales consideration received towards sale of shares of M/s. Compact Disc Ltd and on which long term capital gain earned is Rs.9,91,813/-;*  
*The addition is bad, illegal, void and against the provision of law;*
- 3.2 *The Hon'ble CIT(A)-NFAC failed to appreciate that the transaction of purchase and sale of shares as carried out by the appellant was genuine transaction and not bogus entry as alleged;*
- 3.3 *The Hon'ble CIT(A)-NFAC failed to appreciate that the Appellant was not confronted with the material, evidences, etc. which were relied upon by the AO while framing the assessment; It is submitted that in the facts and the circumstances of the case, and in law, the assessment so framed be held as bad and illegal, as the same is framed in flagrant breach of the principles of natural justice.*
- 3.4 *The Hon'ble CIT(A)-NFAC failed to appreciate that the AO has relied on irrelevant facts, conjectures, surmises and assumptions and is arbitrary; The Hon'ble CIT(A)-NFAC failed to appreciate that there is no evidence on record conclusively*

*proving that the transaction is bogus as alleged.*

*3.5 The Hon'ble CIT(A)-NFAC failed to appreciate that there is no evidence on record conclusively providing that the transaction is bogus as alleged."*

3. The relevant facts in brief are the original assessment in the case of the Assessee was completed vide order, dated 28/02/2013, passed under section 143(3) of the Act determining total income of the Assessee at INR 36,74,000/- for the assessment year 2010-11. Subsequently, on the basis of report of the Investigation Wing, Kolkata the assessment for the Assessment Year 2010-11 was reopened as the Assessee had earned long-term capital gain income arising from sale of shares of Compact Disc Limited (hereinafter referred to as 'the Company') which was claimed to be exempt by the Assessee.
4. Notice under Section 148 of the Act was issued to the Assessee on 31/03/2016. The Assessee filed return in response to the aforesaid notice on 15/04/2016 declaring total income of INR 36,74,003/-. The legal heirs of the Assessee subsequently, vide letter dated 18/04/2016, objected to the reopening of the assessment. The information about the demise of (i.e. Sh. Vinod Parekh) was also communicated to the Assessing Officer. The Assessing Officer rejected the objections to reopening of the assessment and proceeded with the reassessment. The Assessing Officer noted that the Assessee was a proprietor of Vinod Textiles and Body Graph Fashions. During the relevant previous year the Assessee had received INR 16,09,340/- from sale of 15,376 shares of the Company. Relying upon the report of the Kolkata Investigation, Wing the Assessing Officer formed an opinion that the Assessee had booked bogus long-term capital gains and therefore, a show because notice, dated 30/11/2016 whereby the Assessee was asked to show

cause why transaction should not be treated as bogus and entire receipt of INR 16,09,340/- should not be treated as unexplained credits under section 68 of the Act. In reply, the legal heirs of the Assessee filed reply letter, dated 08/12/2016, stating that the Assessee was a regular investor in shares. The Assessee used to purchase shares of listed companies routinely on the basis of tips received from the friends and relatives and did not make any detailed inquiry into the financials of the listed companies. The shares of the Company were also purchased on the basis of such tips. It was stated that in the preceding assessment years also the Assessee had earned short term capital gains from the sale of share of the Company and the capital gains disclosed in the return were accepted as short-term capital gains. The Assessee had over the years made investment in shares of listed companies. These investments were of nominal amount spread over many scripts and mutual funds. However the Assessing Officer was not convinced. According to the Assessing Officer the Assessee had made investment of INR 3,38,727/- in the shares of the Company. This was a substantial investment made in a company which did not have financial strength. The Assessing Officer, referring to various judicial precedents, made an addition of INR 16,09,340/- vide assessment order dated 20/12/2016, passed under Section 143(3) reads with Section 147 of the Act.

5. In appeal preferred against the above Assessment Order, the CIT(A) agreed with the Assessing Officer and confirmed the addition on merits vide order, dated 13/01/2023. The CIT(A) also rejected the jurisdictional challenge to initiation proceedings by holding that the reassessment proceedings were validly initiated.
6. Being aggrieved, the Legal Representative of the Assessee are not in

appeal before the Tribunal against the order, dated 13/01/2023 passed by CIT(A).

7. The Ld. Authorised Representative, at the outset, stated he does not wish to pursue Ground No. 1, 2.1 and 2.2 dealing with the Assessee challenge to the jurisdiction of initiating the reassessment proceedings at this stage. Challenging the addition on merits, the Ld. Authorised Representative submitted that the Assessing Officer and the CIT(A) failed to appreciate the facts and made/confirmed the addition merely on the basis of the report of the Investigation Wing, Kolkata without carrying out any examination into the facts of the present case. Relying upon summary of purchase and sale transaction undertaken, the Learned Authorised Representative submitted that the Assessee was regular trader having no idea about the modus operandi of bogus capital gains. He submitted that it was not the case of the Assessing Officer that the Assessee was in any manner involved in the process of price manipulation. He invited our attention to the fact that Assessee had purchased 5,000 shares of the Company on 16/01/2007 which were sold in 7 tranches. The short-term capital gain arising from the same was offered to tax and accepted by the Revenue. There has been no change in the facts, the subsequent purchase/sales of the share of the Company have also been made in the identical manner through stock-exchange. Since the period of holding was more, the capital gains earned by the Assessee were in the nature of long term capital gains. Merely because the long term capital gains were exempt cannot be the basis to term the transaction as bogus and invoke the provisions of Section 68 of the Act. The Learned Authorised Representative also invited attention to the facts that 34,401 Share of the Company with aggregate purchase cost of INR 10,32,914/- were lying unsold. On

the strength of the aforesaid, the Learned Authorised Representative submitted that transactions under consideration cannot be regarded as bogus. The judicial precedents relied upon by the Assessing Officer and the CIT(A) have no application in the facts of the present case. Further, finding returned by the Assessing Officer that the Assessee has introduced unaccounted or unexplained income in the books by the aforesaid transactions is also without any basis. Thus, the addition of the INR 16,09,340/- cannot be sustained.

8. Per contra, the Learned Departmental Representative relied upon the order passed by the Assessing Officer and the CIT(A). It was submitted that the Company was one of the companies identified as penny stock by the Investigation Wing, Kolkata in its report. Detailed inquiry was conducted by the Investigation Wing, Kolkata before returning the finding. The Assessing Officer has returned a finding that substantial investment was made in the share of a penny stock company which did not have any financial strength. The price at which share were traded at stock exchange was manipulated to book bogus gains/losses. Therefore, the addition of INR 16,09,340/- made by the Assessing Officer was rightly sustained by the CIT(A).
9. We have considered the rival submissions and perused the material on record.
10. On perusal of the Assessment Order, we find that some of the findings returned by the Assessing Officer are contrary to the material on record.
11. In paragraph 4.1 of the Assessment Order, the Assessing Officer has recorded as under:

*"4. Claim of bogus Long term capital gain on sale of shares of M/s Compact Disc Ltd.:*

*4.1 Facts Involved*

*The assessee was a proprietor of Vinod Textiles and Body Graph Fashions. The assessee has for the year shown receipts from sale of 15,376 shares of M/s Compact Disc Ltd. at Rs. 16,09,339.85. The assessee had purchased the said shares in FY 2007-08 and sold the same in FY 2009-10. It was seen from records that no such gain were shown earlier or subsequently and the assessee had shown only nominal Capital gain over the years except in this year. On the basis of the same the Investigation conducted by the Income Tax department Kolkata it was ascertained that the said scrip was of a company which did not have any activity and had limited liquidity consequent to which certain entry providers manipulated the transactions in the said scrip to enable the beneficiaries to book substantial long term capital gain as the scrip was sold on the Stock Exchanges and STT paid whereby the gain was exempt u/s. 10(38) of the Act. The investigation carried out by the department has proved that a scheme was hatched by various players to obtain/provide accommodation entry of bogus long term capital gain through manipulation of stock market. As per the provisions of IT Act, any Capital Gain arising out of transfer of Long Term Capital Asset being an equity share in a company or a unit of an equity oriented fund, on which STT is paid, is exempt from taxation point of view. This means that if shares of any company are held for more than a period of 12 months and are then sold on any recognized Stock Exchange (on which STT is paid on the transactions), then the capital gain arising out of this transaction is exempt u/s. 10(38). Various syndicates had arranged accommodation entry of bogus long term capital gain, bogus short term capital gains and bogus short term capital loss/ bogus business loss through trading of shares of penny stocks." (Emphasis Supplied)*

- 11.1. In paragraph 4.1 above, the Assessing Officer has noted that the Assessee purchased the shares of the Company during the Financial Year 2007-08 and sold the same in Financial Year 2009-10; that no such gain were shown earlier or subsequently; and that the Assessee had shown only nominal capital gain over the years except during the previous year relevant to the Assessment Year 2010-11. However, the aforesaid finding in contrary to the material on record. The Assessee had undertaken following purchase/sale transactions:

Details of purchase	No. Of Shares Sold	Date of sale	Sale Value (INR)	Gain (INR)	Profit earned as (LTCG/STCG)	Taxed in Assessment Year
50,000 shares were purchased on 16/01/2007 at the cost of INR 8,58,610/- (at the rate of INR 17.17 per Share)	6,000	17-07-2007	2,60,220	1,57,187	STCG	2008-09
	15,000	09-08-2007	9,02,550	6,44,967	STCG	2008-09
	10,000	11-12-2007	7,48,248	5,76,526	STCG	2008-09
	599	12-12-2007	47,060	36,774	STCG	2008-09
	5,000	14-12-2007	3,76,367	2,90,507	STCG	2008-09
	5,000	17-12-2007	3,93,815	3,07,954	STCG	2008-09
	8,401	01-06-2007	4,89,147	3,44,883	LTCG	2010-11
Total Shares Sold	50,000					
Details of purchase	No. Of Shares Sold	Date of sale	Sale Value (INR)	Gain (INR)	Profit earned as (LTCG/STCG)	Taxed in Assessment Year
50,000 shares were purchased on 14/06/2007 at the cost of INR 13,94,000/- (at the rate of INR 27.88 per Share)	6,599	01-06-2009	3,84,225	2,00,245	LTCG	2010-11
	376	24-07-2009	26,991	16,508	LTCG	2010-11
	10,000	20-08-2009	7,08,977	4,30,177	LTCG	2010-11
Total Shares Sold	16,975					
Balance Stock in Hand	33,025					
Details of purchase	No. Of Shares Sold	Date of sale	Sale Value (INR)	Gain (INR)	Profit earned	Taxed in Assessment Year
10,000 shares were purchased on 25/07/2007 at the cost of INR 5,55,600 (at the rate of at the rate of INR 55.56 per Share)	10,000	25-07-2007	5,80,500	24,900	Sp. Profit	2008-09
Total Shares Sold	10,000					
Details of purchase	No. Of Shares Sold	Date of sale	Sale Value (INR)	Gain (INR)	Profit earned as	Taxed in Assessment Year
1,376 shares were purchased on 05/10/2007 at the cost of INR 1,12,174 (at the rate of at the rate of INR 81.52 per Share)	Stock in Hand	-	-	-	-	-

11.2. Thus, as rightly averred by the Learned Authorised Representative,

the Assessee had undertaken 3 purchase transactions and 11 sale transactions during the Financial Years 2006-07, 2007-08 and 2008-09. The short term capital gains offered to tax in the return of income for the Assessment Year 2008-09 by the Assessee were accepted without casting any doubts about the genuineness of the transactions.

- 11.3. The Assessment Order does not contain any reference to independent inquiry, if any, conducted by the Assessing Officer and records general 'modus operandi' as stated in the report of Investigation Wing, Kolkata without any specific reference to the fact of the present case in the following manner:

*"4.2 Modus Operandi:*

*The basic aim of the scheme is to route the unaccounted money of LTCG Beneficiaries into their account/books in the garb of Long Term Capital Gain. This entry of LTCG is taken by selling the shares on the stock exchange and registering the proceeds arising out of the sale of shares into the books as LTCG. For implementing this scheme, shares of some Penny Stock Company are used. The same modus is adopted for providing accommodation entry of bogus loss.*

- 4.3 In this scheme, the shares of the penny stock companies are acquired by the beneficiaries of LTCG at very low prices generally through the route of preferential allotment (private placement) or off market transaction. These shares have a lock-in period of 1 year as per Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. Another route to acquire the shares is through Amalgamation or merger. In this route, the beneficiaries of LTCG are allotted shares of a private limited company which is subsequently amalgamated with a listed penny stock and the beneficiaries receive shares of the listed penny stock in exchange of the shares of private limited company.*

- 4.4 Thereafter, the price of the shares of the penny stock companies are rigged and are raised through circular trading. This is*

*managed by the "operator" of the scrip. An "Operator" is a person who is managing the overall affairs of the scheme and he is the one who contacts the entities who wish to take entry of bogus LTCG/ STCL in their books and arranges the same through the scrips of penny stock companies. The Operator manages many paper/bogus companies and uses them to do circular transactions to rig the price of the shares. The shares of these penny stock companies, although listed on exchange, are always closely held and are controlled by the promoter of the Penny Stock Company and the Operator who is arranging for the bogus LTCG / Loss. This is due to the fact that the general public is not interested in these shares as these companies have no credentials and this helps the operator to keep a control on the price movement of the shares*

4.5 xx xx

4.6 *The scrip of M/s. Compact Disc Ltd was also one of the scrips which was utilized by unscrupulous elements to circumvent the tax liability and bring into the books of the beneficiary income in the nature of long term capital gain claimed to be exempt from tax."*

- 11.4. On perusal of the above, it can be seen that the Assessment Order also does not mention the name of the share broker/sub-broker or exit providers involved in the transactions.
- 11.5. The fact that the shares the Company were purchased and sold through stock exchange and that the sale proceeds were received through banking channel have not been refuted. According to the Assessing Officer till December 2006, the shares of the Company were traded below INR 10 per share and therefore, the quoted price of shares climbed till 17/01/2008. The price and volume movement of the shares of the Company mentioned in paragraph 4.7 of the Assessment Order, reproduced herein below, are for the period between 01/04/2010 and 31/12/2014.

*"4.7 Till December 2006 the scrip was trading at below Rs 10/- and*

*then it started climbing till 17.01.2008 when it touched 124 and then there was a steady decline till September, 2009 when on 18.09.2009 it touched Rs.73 per share. This company was having market price of share at around Rs. 78 for the share having face value of Re. 1 in April, 2010. The price was maintained in the range of Rs. 50 to Rs. 78, so that the interested beneficiaries were able to book the long term gains. After that the price was made to fall freely so that interested beneficiaries who had booked at high market price can avail bogus short Term Capital Loss. Thereafter the prices have gone down to merely Rs. 1.56. The daily trading details in shares of the company are given below. The price & volume movement of the shares of the company from 01.04.2010 to 31.12.2014 is given below in a graphical from ....”*

- 11.6. None of the purchase/sale transactions were undertaken by the Assessee during the aforesaid period between 01/04/2010 and 31/12/2014. On perusal of details of purchase and sale transaction it emerges that the shares of the Company were purchased on 16/01/2007, 14/06/2007 and thereafter, on 25/07/2007. Thus, while the price of the shares was rising the Assessee was purchasing the shares. However, at the same time, the Assessee was booking short term capital gains by selling the shares purchased earlier.
- 11.7. According to the Assessing Officer, the price touched peak of INR 124 per share on 17/01/2008. We note that the sales transactions have been undertaken in December 2007, before the peak was reached in January, 2008 or in June/July/August, 2008 when the price was falling from the peak of INR 124 per share. Further, no purchase/sale transactions were undertaken by the Assessee between 01/04/2010 and 31/12/2014. For the Year 2009-10, the Company has earning per share of INR 30.56 per share. Thus, it cannot be said that when the share of the Company were sold during the Financial Year 2009-2010 relevant to Assessment Year 2010-11, the company did not have any financial strength whatsoever. In

paragraph 4.9 of the Assessment Order, the Assessing Officer has recorded as under:

*"4.9 The financial health of the company is taken out from the data available in public domain and which is used by the investors is as follows:*

<i>FY</i>	<i>Share Capital</i>	<i>Gross Turnover</i>	<i>Expenses</i>	<i>PAT</i>	<i>Earnings Per Share</i>
<i>2009-10</i>	<i>9.57</i>	<i>228.16</i>	<i>198.20</i>	<i>29.25</i>	<i>30.56</i>
<i>2010-11</i>	<i>9.57</i>	<i>0.00</i>	<i>1.59</i>	<i>-1.13</i>	<i>-1.18</i>
<i>2011-12</i>	<i>12.72</i>	<i>0.00</i>	<i>1.74</i>	<i>-0.07</i>	<i>-0.04</i>
<i>2012-13</i>	<i>12.72</i>	<i>0.00</i>	<i>0.36</i>	<i>-0.37</i>	<i>-0.29</i>
<i>2013-14</i>	<i>12.72</i>	<i>0.00</i>	<i>0.54</i>	<i>0.56</i>	<i>-0.44</i>
<i>2014-15</i>	<i>NA</i>	<i>N.A.</i>	<i>N.A.</i>	<i>N.A</i>	<i>N.A</i>

*4.10 Thus it is clear that the networth of the above 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 by the group of operators to accommodate beneficiaries seeking long term capital gain and losses. No prudent businessman and particularly trader or investor in stock will invest in such penny scrip which is defunct and inoperative."*

While the observation made in paragraph 4.10 above that the Company had negligible financial strength may hold good for the Financial Year 2010-11 and subsequent financial years, the same cannot be said with respect of Financial Year 2009-10.

11.8. We note that vide, letter dated 08/12/2016, it was contended on behalf of the Assessee that the Assessee had routinely purchased/sold shares on the basis of tips received from friends and relatives. The trades were done through stock market and the payments were made/received through banking channel. Contract notes and bank statements were also filed to support the aforesaid. However, the Assessing Officer rejected the aforesaid contention holding as under:

"4.12 The legal heir of the assessee had in reply vide letter dated 08.12.2016 stated that he was a regular investor in shares and the purchases were routinely on the basis of tips from friends and relatives. It was further stated that the said purchases of shares of Compact Disc Ltd was also on the basis of such tips and he does not verify the financials of a company before investing. The assessee contended that as soon as the prices rose he gave instructions to the broker for sale of the shares and did not know whether at that point of time the shares were quoted at the lowest or highest. It was further contended that he was not aware of the purchaser of the shares and as per the mechanism of the stock market the buyer or seller never interact. It was also contended that in the past also he had gains and even in earlier years the gains have shown from sale of such shares and accepted as short term capital gain. It has also been contended that the trading has been done on the stock market and all relevant documents have been filed including the contract notes and bank statement highlighting the payments and receipts.

4.13 The assessee's contention has been examined alongwith the facts involved, the supporting filed and the findings on the basis of investigation conducted by the Department and other agencies. It is seen that the assessee had over the years made investment in shares but they were nominal amounts spread over many scrips and mutual funds. It is however seen that the assessee had made investment of Rs.3,38,727/- in the said shares and the financials indicate that in the normal course none would invest such substantial amount in a scrip which did not have any major activity to justify its valuation. It is only in the case of an assured deal can a person make an investment of such amount in a stock which does not have any financial soundness. The amount of Rs.3,38,727/- is substantial amount in F.Y. 2007-08 and it cannot be accepted that it was a regular transaction. Merely due to the fact that the transaction has taken place on the bourses does not grant any sanctity to the transaction. The scams detected and proved over the years including the Harshad Mehta scam, Ketan Parekh scam and the recent NSEL scam is indicative of the extent of manipulation that is possible and done on these exchanges which are mostly private entities and are not insulated from other gainful

*indulgence factors. The market dynamics are simple and are governed by the age old parameters of supply and demand. It cannot be accepted that the value of a scrip shall increase substantially without any financial indications to support and justify the same and with nominal volumes and that as the rate peaks there should be a manifold increase in sellers and buyers. It is seen from the movement of the scrips under consideration that it has increased (considerably with minimal volume and also maintained the levels for a substantial time which defies the market dynamics. The main question that emerges is should the said unusual and improbable results and movements be ignored merely as the transactions were done on the stock exchanges. Is it acceptable that the movements cannot be manipulated*

4.14 *It is not the case of this office whether purchase of shares through preferential placement did actually took place or shares were sold on the exchange at the prevalent market rates after paying STT or not. What this office has come to conclude on the basis of above analysis, documentary evidences, circumstantial evidences, human conduct and preponderance of probabilities is that what is apparent in this case is not real, that these financial transactions were sham ones and that this entire edifice was only a colourable device used to evade tax."*

4.15 to 5.5 xx xx

6. *The detailed analysis of evidences available on record and the case laws quoted above provide enough support against the argument of the assessee regarding assessment being based on mere suspicion or presumption. The assessee has introduced/credited capital of Rs. 16,09,340/- during the year in his books the source of which he explained as proceeds from these share sale transactions. Since the explanation offered by the assessee in respect of the source of this capital introduced being share sale transactions has been held to be not satisfactory in view of the elaborate discussion made herein, section 68 is squarely applicable in this case.*
7. *In view of all the facts as observed hereinabove and the investigation done by the Department on a large scale to unearth the true nature of the transactions which has clearly proved the*

*manipulative practice which was accepted by the majority involves therein there is no evidence to the contrary in the case of the assessee to certify the transaction to be a genuine sale of asset the income wherefrom would fall under the head "Long term Capital Gain". Accordingly the receipt shown by the assessee purportedly from sale of shares of Compact Disc Ltd. is treated as Unexplained Credits u/s 68 and the said amount of Rs. 16,09,340/- is brought to tax under the head income from Other sources". (Emphasis Supplied)*

- 11.9. On perusal of the above, we note that the Assessing Officer had concluded that the investment of INR 3,38,727/- made in purchase of shares of the Company by the Assessee was substantial and therefore, it cannot be accepted that it was a regular transaction. The fact that the transaction has taken place on the stock exchange does not grant any sanctity to the transaction. Finally, the Assessing Officer has concluded that the transactions undertaken by the Assessee were sham transactions – a colorable device to evade taxes. The aforesaid conclusion has been drawn by the Assessing Officer on the basis of the findings of the Investigation Wing, Kolkata as well as the analysis of price and volume movement. However, nothing has been brought on record by the Assessing Officer to support the conclusion in respect of the transaction undertaken by the Assessee. The addition has been made on the basis of conjecture and surmises. The Assessing Officer has failed to point out any defect or infirmity in the documents/explanation given by the Assessee. The Assessment Order is silent about the brokers and exit providers involved. There is no reference to any inquiry having been conducted by the Assessing Officer. There is no direct evidence or circumstantial evidence to support the conclusions drawn by the Assessing Officer. There is not even any allegation that the Assessee had any unaccounted income or any undisclosed source of income. Further, in our view, the facts as emanating from material on record

demonstrate that the conduct of the Assessee in the present case does not fit into the 'modus operandi' as stated in the report of Investigation Wing, Kolkata. The Assessee has offered to tax Short Term Capital Gains and speculative profit earned on 25/07/2007 earned on sale of Share of the Company in the return for the Assessment Year 2008-09. The aforesaid gains/profits were accepted without questioning the genuineness of the transactions. During the course of hearing that the Learned Authorised Representative stated that 34,401 shares of the Company are lying unsold till date. This was not disputed by the Revenue. As pointed out by the Learned Authorised Representative, in case the cost of the shares held is written off, then the short terms capital gains offered to tax would be more than overall profits made from purchase/sale of shares of the Company by the Assessee.

12. In view of the above, we hold that in the facts and circumstances of the present case the addition of INR 16,09,340/- made by the Assessing Officer under Section 68 of the Act cannot be sustained and is, therefore, deleted. Ground No. 3.1, 3.2, 3.4 and 3.5 raised by the Assessee are allowed. In view of the aforesaid, Ground No. 3.3 is dismissed as being infructuous.
13. Before parting we would like to observe that a number of judicial precedents have been referred to by the Assessing Officer and the CIT(A). However, in absence of the factual support/basis, the same cannot be invoked to draw any adverse conclusion against the Assessee. As observed by the Hon'ble Delhi High Court in the case of PCIT-12 Vs. Krishna Devi: (2021) 431 ITR 361 (Del), the theory of human behaviour and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by an

Assessee.

14. In result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 21.09.2023.

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 21.09.2023  
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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