

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'H' DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.1518 and 1519/Del/2021
Assessment Years: 2016-17 and 2017-18**

Sanjeev Agarwal 1, Maharaja Lal Lane Civil Lines New Delhi-1100 54 (PAN:ABOPA4675N)	Vs.	ACIT, Central Circle-15 New Delhi
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Gautam Jain & Ms. Monika Aggarwal, Adv.
Respondent by : Shri Ramdhan Meena, Sr. DR

Date of Hearing : 05.07.2023
Date of Pronouncement : 20.09.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

Thesetwo appeals filed by the assessee are against the two separate orders of learned Commissioner of Income-tax(Appeals) - 26, New Delhi vide AppealNo.10491/2018-19and 10497/2018-19, both dated 27.09.2021, against the order under Sections 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 22.12.2018and 25.12.2018, passed by ACIT, Central Circle-15, New Delhi,for the assessment years2016-17 and 2017-18, respectively.

2. Common issues are involved in both the appeals; difference is only on account of quantum of addition/disallowance. Accordingly, both the appeals are being disposed off with this consolidated order. We take appeal for AY 2016-17 to understand the facts and contentions raised. Observations made and findings arrived at for this year shall apply *mutatis mutandis* to the other year also i.e. AY 2017-18.

3. We take up grounds of appeal raised by the assessee in AY 2016-17 which are reproduced as under:

1. That the learned Commissioner of Income Tax (Appeals)-26, New Delhi has erred both in law and, on facts in upholding the determination of income made by the learned Assistant Commissioner of Income Tax, Central Circle-15, New Delhi of the appellant at Rs. 6,61,40,343/- as against declared income of Rs. 3,58,34,630/- by the appellant in an order of dated 22.12.2018 u/s 143(3) of the Act.
2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining an addition of Rs. 3,03,05,713/- representing long term capital gain on sale of listed shares of M/s Capital Trade Links Ltd., as income of the appellant for the instant assessment year despite the fact that the said sum was exempt under u/s 10(38) of the Act.
3. That while sustaining the aforesaid addition and denying the exemption learned Commissioner of Income Tax (Appeals) has failed to appreciate that appellant was owner of equity shares of a listed company which had been held by it for a period exceeding 12 months and the same were sold on recognized stock exchange after payment of STT, resulting into a long term capital gain and therefore the long term capital gain accrued to 'the assessee on transfer of long term 'capital asset' was not includible in total income of the assessee in view of section 10(38) of the Act.

3.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the evidence tendered by the appellant during the assessment proceedings to support the purchase and sale of shares and hence, findings mechanically recorded on borrowed inference in disregard of evidence and based on irrelevant and extraneous considerations are misconceived and, misplaced.

3.2 That the learned Commissioner of Income Tax (Appeals) has confirmed the above addition and denied exemption without confronting the material/investigation to appellant and also providing cross examination of the parties on who's statement reliance has been placed in impugned order of assessment and therefore order so made is in disregard of principles of natural justice and hence vitiated.

3.3. That furthermore the learned Commissioner of Income Tax (Appeals) has sustained the addition on mere speculation, generalized statements, theoretical assumptions and allegations and assertions, without there being any supporting evidence and is therefore not in accordance with law.

3.4 That learned Commissioner of Income Tax (Appeals) has failed to appreciate that the broker of the assessee had neither denied and nor disputed the genuineness of transaction, the conclusion arrived in the order is highly whimsical, arbitrary, illogical and wholly untenable.

3.5 That the learned Commissioner of Income Tax (Appeals) while sustaining the above addition has arbitrarily and, mechanically rejected the explanation and evidence tendered by the appellant and made the addition denying exemption by drawing subjective, premeditated and preconceived inferences therefore the same is not sustainable.

3.6. That the learned Commissioner of Income Tax (Appeals) has erred in concluding without any basis held that assessee has introduced his unaccounted income in the form of long term capital gain by manipulating the penny stock.

3.7. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that in absence of books of accounts maintained by the

appellant, section 68 of the Act has no application to the case of the appellant.

4. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts by making an addition of Rs. 9,09,171/- representing presumptive commission alleged to be paid by appellant @ 3% to operator for providing long term capital gain and taxed as unexplained expenditure u/s 69C of the Act.

4.1. That aforesaid enhancement by learned Commissioner of Income Tax (Appeals) in the impugned order is beyond the scope of powers vested u/s 251 (2) of the Act and thus in excess of jurisdiction.

5. That both the authorities below have framed the impugned order without granting sufficient proper opportunity to the appellant and therefore the same are contrary to principles of natural justice and hence vitiated.

Prayed it is therefore, prayed that addition sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted. It be further held that enhancement made by the learned Commissioner of Income Tax (Appeals) is in excess of jurisdiction and appeal of the appellant be allowed.

4. Twin issues involved are in respect of additions made and sustained of Rs.3,03,05,713/- by denying the claim of exemption u/s 10(38) and alleged payment of presumptive commission @ 3% to the entry operator for providing long term capital gain (LTCG) by treating it as unexplained expenditure u/s 69C of the Act.

5. Brief fact as culled out from records are that assessee inter-alia has claimed exemption u/s 10(38) of the Act of Long Term Capital Gain for Rs.3,03,05,713/- on sale of 3,94,343 shares of public listed company Capital Trade Links Ltd (CTL). Detail of the same is tabulated as under:-

Sr. No.	Name of Share	No. of shares	<u>Sale of Shares</u>		<u>Cost of Shares</u>		LTCG (In Rs.)
			Date (In Rs.)	amount (In Rs.)	Date (In Rs.)	amount (In Rs.)	
1	Capital Trade Links Ltd.	3,94,343	22.06.2015 to 28.12.2015	30,699,056	13.06.2014	3,93,343	3,03,05,713
	Total	3,94,343		3,06,99,056		3,93,343	3,03,05,713

5.1. Assessee had purchased 5,00,000 shares of CTL for a total consideration of Rs. 5,00,000/- i.e. @ Re. 1 per share on 13.06.2014, during the FY 2014-15 relevant to AY 2015-16 from Venus Insec (P) Ltd., in an off-market transaction. Assessee claimed about furnishing of documentary evidence in respect of purchase of shares, which are as under:

Sr. No.	Document Particulars
1.	Copy of transaction statement
2.	Copy of bank statement evidencing payment through banking channel
3.	Copy of confirmation of accounts from Venus Insec (P) Ltd. confirming payment of Rs. 5,00,000/- by assessee against purchase of 5,00,000 shares of CTL on 13.06.2014

5.2. The said shares were sold by the assessee through Rajgul Securities Pvt. Ltd. (Share Broker) by online trading platform of Bombay Stock Exchange (BSE). Assessee claimed that all the taxes i.e. Securities Transaction Tax (STT), Service Tax, Brokerage, Stamp Charges, Education Cess and Transaction Charges were paid on the impugned sale transaction. Assessee submitted that payment from Rajgul Securities Pvt. Ltd. (Share Broker) was received through proper banking

channel. It was also submitted that the transaction of sale of shares of CTL is evidenced by various documents/evidences which is tabulated as under:

Sr. No.	Particulars
1.	Copy of contract notes issued by Rajgul securities (P) Ltd., dated 22.06.2015 to 28.12.2015 for sale of 3,94,343 shares
2.	Copy of financial ledger account of assessee in the books of Rajgul Securities (P) Ltd. from 01.04.2015 to 31.03.2016
3.	Copy of bank book and bank statement of Punjab National Bank account number 1120000100154913 showing receipt from sale of shares from 28.03.2015 to 31.03.2016
4.	Copy of transaction statement of assessee in the books of Rajgul Securities Ltd from 01.04.2011 to 15.07.2014

5.3. Assessee furnished all the required details and documents in response to notices issued u/s 142(1) and show cause notices which are placed on record. However, ld. AO proceeded to complete the assessment by making the addition of Rs.3,03,05,713/- towards LTCG on the sale transaction of shares of CTL. The finding and conclusion drawn by ld. AO in this respect is reproduced as under, for ease of reference:

"2.4. Findings of the AO: The long term capital gain claimed on the sale of the shares of the above noted company prima facie appears as bogus.

Thus, it is amply clear that the stake holders involved in these transactions were either bogus or devoid of any financial capabilities to make such investment and were conscious parties in this entire scheme and provided exit to the beneficiaries of the scheme i.e. the persons who were allotted shares.

Thus, it is clear that these share price movements and sale purchase transactions were not genuine, were result of meticulously planned circular trading and the entities involved in these were part of this exercise in an effort to create documentary evidences for a pre-planned scheme for converting unaccounted money into tax exempt income.

3 Further examination revealed that the assessee was allotted shares of Capital Trade Links (Exempt u/s 10(38)) is also an entity engaged in the scam as revealed by the Investigation Wing as well as SEBI As such, the whole transaction of purchase & sale by the assessee is Sham transaction with an intention to evade taxes.

3.1 Thus this entire scheme gets revealed after the above analysis:

Conclusion: On the basis of all these facts discussed above it is clear that the huge capital gains earned by the assessee within a very short period of time by investing in a penny stock i.e. Capital Trade Links (Exempt u/s 10(38)) whose fundamentals, had no support for the premium it commanded, was neither the result of a coincidence nor of a genuine investment activity but were created through well planned and executed scheme in which the company, the brokers and the buyers and sellers of the scrip worked in tandem to achieve the predetermined objectives.

7. In view of the elaborate discussion made above, I hereby hold the amount of Rs. 3,03,05,713/- introduced/credited by the assessee in the shape of Long Term Capital Gain out of these purported share sale receipts during the financial year 2015-16 (A.Y. 2016-17) in his computation of total income (taxable at the rate of 60% as provided u/s 115BBE). This would result in addition of Rs. 3,03,05,713/- in the total income of the assessee. Penalty proceedings u/s 271AAC of the Income Tax Act, 1961 are initiated separately for furnishing inaccurate particular of income.”

5.4. Aggrieved, assessee went in appeal before the Id. CIT(A) who confirmed the addition made by the Id. AO. Further, Id. CIT(A) resorted to enhancement of total income by making an addition of Rs.9,09,171/- towards brokerage/commission expenses @ 3% of alleged bogus LTCG u/s 69C. He drew his conclusion by holding that ‘accommodation entry do entail certain brokerage/commission expenses’. Aggrieved, assessee is in appeal before the Tribunal.

6. Ld. Counsel for the assessee, at the outset referred to the order of Ld. CIT(A) who had recorded the finding of facts in para 4.2 of his order which is noted as under:

“4.2 The appellant has relied on following evidences:

- *Shares were directly purchased from M/s Venues Insec Pvt. Ltd.*
- *Payment for purchase of shares was made through Banking Account of the assessee*

- *The shares have been held by appellant for more than 12 months.*
- *Shares were dematerialized and sold through stock exchange at the prevailing market prices where the assessee has no control over prices as well the purchasers.*
- *STT was duly paid on the sale of shares as sold through recognize Stock Brokers and contract notes were submitted.*
- *Payment was received against sale through Brokers and in the Bank account of the assessee*
- *The Contract documents evidencing purchase & sales have been submitted as evidences of transactions.”*

6.1. According to the ld. Counsel, investment and disinvestment in share of CTL cannot be treated as accommodation entry in the garb of LTCG as the issue is no longer *res integra* for which he relied on the decision of Coordinate Bench of ITAT Agra in the case of ITO vs Rakesh Khetarpal in ITA No. 226/Agra/2010, dated 18.01.2013.

6.2. He contended that no addition can be made on the basis of doubts and suspicion which are based merely on the information from Investigation Wing of the Department and SEBI. These have never been confronted to the assessee, till date.

6.3. According to him, ld. AO did not conduct any independent enquiry to falsify the evidences filed by assessee in support of transaction of sale of shares undertaken. In this regard, reliance was placed on the decision of Hon'ble Delhi High Court in the case of CIT vs Krishna Devi 431 ITR 361 (Del). This decision was further referred and relied by Hon'ble Delhi High Court in Pr. CIT vs Karuna Garg in ITA No. 477/2022 dated 23.11.2022. Reliance is also placed by the ld. Counsel on below mentioned judicial pronouncements:

- i. Pr. CIT vs. Jatin Investment Pvt. Ltd.in ITA No. 43/2016 & 44/2016
- ii. CIT vs. Smt. Sumitra Devi 268 CTR 351 (Raj)
- iii. Pr. CIT vs Ritu Agarwal Shreeram Bhawan 453 ITR 520 (Raj)

6.4. On the allegation that assessee executed offline purchase of shares of CTL to book bogus LTCG, ld. Counsel submitted that such a view is misconceived and without any basis, much less, off- market transactions are not illegal transaction as held in the decision by Hon'ble Bombay High Court in the case of CIT vs. Mukesh Ratilal Marolia in ITA No. 45612007 (Bom). According to the ld. Counsel, this decision by Hon'ble Bombay High Court has been affirmed by Apex Court in SLP No. 20146/2012 dated 27.01.2014.

6.5. Ld. Counsel contended that during the period under consideration, there was no requirement for payment of Securities Transaction Tax (STT) on purchase of shares. Requirement of payment of STT even on purchase of equity shares was brought in by virtue of section 112A, inserted by Finance Act, 2018, w.e.f. 01.04.2019.

6.6. He further elucidated that assessee is a habitual investor having portfolio of investment in shares and has earned capital gain both in preceding and succeeding years. Ld. Counsel referred to the details of investment and capital gain in preceding and succeeding years which is extracted below.

Sr. No.	Assessment Year	Particulars	Date of Sale	Sale Price	Date of Purchase	Purchase price	Indexed Cost	Capital Gain	Nature of Gain
1	2010-11	Adisht Garment Ltd	30.06.2009	3,200,000		160,000		3,040,000	Long Term
2	2010-11	Fortis Investment Fund	01.10.2009	5,438,068	11.06.2008	5,100,000	5,538,144	(100,076)	Long Term
3	2010-11	UTI MF	19.06.2009	5,469,200	11.06.2008	5,000,000	5,429,553	39,647	Long Term
4	2010-11	Adisht Garment Ltd	30.09.2009	41,680,000	25.05.2009	41,680,000		-	Short Term
5	2010-11	Khaitan Weaving Ltd EQ	11.05.2009	6,508,900	28.02.2008	701,090		5,807,810	Long Term-Exempt
6	2011-12	Global Capital Finance	22.09.2010	8,025,356	31.03.2009	1,640,140		6,385,216	Long Term-Exempt
7	2011-12	SBI MF	25.03.2011	516,221	16.03.2011	500,000		16,221	Short Term
8	2011-12	Coal India Equity Share	04.11.2010	2,919,085	30.10.2010	2,372,169		546,916	Short Term
9	2012-13	Shares & MF (Multiple)		11,430,330		10,990,006		440,324	Short Term
10	2012-13	Birla Sun Life Mutual Fund	05.10.2011	4,867,650	01.10.2020	4,500,000		367,650	Long Term-Exempt
11	2012-13	KGN Industries Ltd-EQ	24.11.2011	780,615	01.04.2002	50,000		730,615	Long Term-Exempt
12	2013-14	Cubical Financial Services Ltd-EQ	03.12.2012	2,883,685	26.03.2009	300,836		2,582,849	Long Term-Exempt
13	2014-15	Mutual Fund		231,877		2		231,875	Long Term
14	2014-15	Vikas Globalone	Mar-14	40,109,958	Mar-12	10,961,687		29,148,271	Long Term-Exempt
15	2015-16	Future Consumer - Equity	09.07.2014	1,433,096	11.03.2013	900,000		533,096	Long Term-Exempt
16	2015-16	Future Lifestyle - Equity	09.07.2014	493,918	11.03.2013	558,961		(65,043)	Long Term-Exempt
17	2015-16	Superior Industrial - Equity	17.06.2014	20,341,709		1,209,640		19,132,069	Long Term-Exempt
18	2015-16	Vikas Globalone	04.04.2014	9,913,540	27.03.2012	2,513,616		7,399,924	Long Term-Exempt
19	2016-17	Capital Trade Link Ltd-Equity	Mar-16	30,699,056	13.06.2014	394,343		30,304,713	Long Term-Exempt
20	2016-17	Maya Promoters Pvt Ltd	18.11.2015	71,600,000		50,000	108,753	71,491,247	Long Term
21	2016-17	TV 18 -Equity	20.07.2015	995,375	15.07.2015	1,024,184		(28,809)	Short Term
22	2016-17	Infosys Ltd - Equity	15.06.2015	58,321,360	11.06.2015	119,775,484		(61,454,124)	Short Term
23	2016-17	Kotak Mahindra Bank-Equity	30.07.2015	10,986,923	06.07.2015	22,159,785		(11,172,862)	Short Term
24	2016-17	Other Shares						(126,107)	Short Term
25	2016-17	Mutual Fund						17,901	Short Term
26	2017-18	Capital Trade Link Ltd-Equity	10.08.2016	7,889,342	13.06.2014	105,657		7,783,685	Long Term-Exempt
27	2017-18	Infosys Ltd - Equity	19.07.2016	63,508,007	18.06.2015	-		63,508,007	Long Term-Exempt
28	2017-18	Kotak Mahindra Bank-Equity	23.08.2016	11,774,743	10.07.2015	-		11,774,743	Long Term-Exempt

29	2017-18	Multiple Equity Shares		32,275,501		29,771,955		2,503,546	Short Term
30	2018-19	DLF - Equity	20.04.2017	4,308,949	30.11.2015	2,833,540		1,475,409	Long Term-Exempt
31	2018-19	ICICI Prudential FMP	23.05.2017	6,695,600	24.10.2013	5,000,000	6,181,818	513,782	Long Term
32	2018-19	Kotak FMP	30.05.2017	39,022,566	28.03.2014	30,000,000	37,090,909	1,931,657	Long Term
33	2018-19	Jasgold Offshore Pvt Ltd-EQ	05.03.2018	100,000	28.03.2003	50,000	129,524	(29,524)	Long Term
34	2018-19	Multiple Equity Shares		116,735,524		119,542,816		(2,807,292)	Short Term

6.7. For the aforesaid contention of assessee being a habitual investor, he placed reliance on the following judicial precedents:

i. Anoop Jain vs ACIT[2020] 114 taxmann.com 550 (Del Trib)

29. In his written submissions, the ld. DR has referred to various judgments and heavily relied upon the decision of the Hon'ble High Court of Delhi in the case of Suman Poddar v. ITO [2019] 112 taxmann.com 330/[2020] 268 Taxman 320 and in the case of Udit Kalra v. ITO [IT Appeal No. 220 of 2019, dated 8-3-2019] and several other decisions of the coordinate bench.

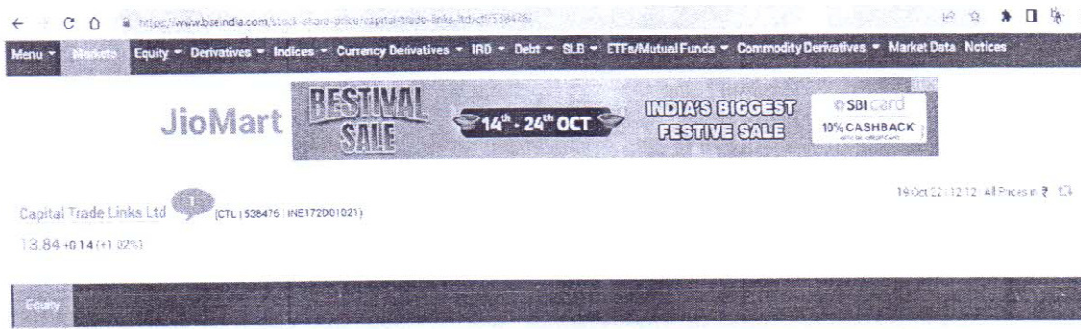
30. We have given thoughtful consideration to the orders of the authorities below and have carefully perused the judicial decisions relied upon by the ld. DR. We find that in all those cases, either the assessee entered into solitary transaction resulting into long term capital gain or prior to the solitary transaction, the assessee was neither engaged in the purchase and sale of shares nor subsequent to earning of long term capital gain, the assessee was found to be engaged in the purchase and sale of shares. These facts are clearly distinguishable from the facts of the case in hand. As mentioned elsewhere, the assessee is a habitual investor having portfolio of investment in shares in crores and is still holding investment in shares in several crores and is constantly engaged in investing in shares of various companies.

ii. Riaz Munshi vs ACIT in ITA No. 8314/Del/2018 dated 11.03.2020 by ITAT Delhi

“6.1.The authorities below have not rebutted the explanation of assessee that he has indulged in dealing in scrips in earlier year as well as in subsequent years. It would, therefore, show that assessee is regularly dealing in scrips. The A.O. has not brought any adverse material against the assessee so as to make the above additions. Considering the totality of the facts and circumstances of the case and financials of M/s EBFL as reproduced above and other years [PB-76], we set aside the Orders of the authorities below and delete both the additions.”

6.8. Ld. Counsel referred to the vital fact that neither the trading in shares of CTL is suspended as on date nor the share is delisted by the stock market regulator SEBI. To corroborate the same, he referred to the extract from the website of BSE which demonstrates that trading in

shares is not suspended as on date. He referred to a screenshot from the website of www.bseindia.com, confirming its non-suspension by SEBI as on date which is as under:



6.9. In order to demonstrate the difference between information displayed by BSE for a suspended scrip and an active trading scrip, Id. Counsel furnished a screenshot for another company whose trading is suspended on the platform of the stock exchange. The same is reproduced for the sake of comparison and reference.

Previous Close	118.75	52 Wk High	734.75	TTC	76	EPS (TTM)	-	Category	Listed
Open	112.85	52 Wk Low	112.85	Turnover (Lakh)	0.09	CEPS (TTM)	-	Group	XT
High	112.85	Upper Price Band	118.45(5%)	Mcap Full (Cr)	268.14	P/E	-	Index	-
Low	112.85	Lower Price Band	107.25(5%)	Mcap FF (Cr)	268.14	P/B	-	Industry	Pharmaceuticals
WAP	112.84	7W Avg Qty (Lakh)	0.29	Face Value	10.00	RCE	-0.15		

6.10. On the financial viability of CTL, Id. Counsel referred to its financial statement as downloaded from the website of BSE which reflects fixed

assets together with high amount involved in inventories, cash and cash equivalents and short-term loans and advances together with incremental revenue from operations, running in several crores and incremental profit before taxes since 2013 onwards. Details of assets held and revenue from operations as reported by CTL for the period from AY 2013-14 to FY 2019-20 is extracted below.

BALANCE SHEET DETAILS							
Particulars	Amount						
	2019	2018	2017	2016	2015	2014	2013
I. EQUITY AND LIABILITIES							
I. Shareholders Fund							
Share Capital	5,09,80,000	5,09,80,000	5,09,80,000	5,09,80,000	4,99,80,000	4,99,80,000	4,99,80,000
Reserve and Surplus	12,27,52,552	10,98,54,930	10,04,23,145	9,73,09,334	25,84,010	5,00,535	25,189
2. Non Current Liabilities							
Deferred Tax Liability	1,06,050	98,542	98,838	13,603	18		255
Long Term Provisions	7,91,114	6,25,294	55,197	1,25,451	2,09,013	1,43,648	
3. Current Liabilities							
Short Term Borrowing	7,88,88,039	7,23,59,701	4,69,18,535	9,23,00,575	4,92,62,630	1,46,00,544	4,42,85,000
Short Term Provision	60,44,495	44,22,026	77,89,630	16,49,933	14,19,549	2,87,583	1,27,000
Other Current Liabilities	16,05,384	8,99,765	6,98,843	10,55,396	11,12,149	1,92,216	19,663
	26,11,67,634	23,92,40,258	20,69,64,188	24,34,34,292	10,45,67,369	6,57,04,526	9,44,37,107
II. ASSETS							
1. Non Current Assets							
Fixed Assets	33,91,838	34,92,162	33,66,008	29,95,385	24,426		847
Non Current Investments	91,000	28,97,472	2,72,00,000				
2. Current Assets							
Inventories	30,93,160	74,17,826	23,40,379	2,99,36,594	9,97,381		3,43,63,450
Trade Receivables	16,900	310	70,530				3,00,000
Cash and Cash Equivalents	3,95,878	70,43,931	1,54,51,907	90,98,831	53,13,360	4,49,794	18,33,938
Short-term loans and advances	25,37,78,941	21,83,54,100	15,85,35,364	20,14,03,482	8,46,70,969	5,64,54,732	5,79,38,877
Other Current Assets	3,99,918	34,457			1,35,61,233	88,00,000	
	26,11,67,635	23,92,40,258	20,69,64,188	24,34,34,292	10,45,67,369	6,57,04,526	9,44,37,107

Particulars	STATEMENT OF PROFIT & LOSS						
	Amount						
	2019	2018	2017	2016	2015	2014	2013
INCOME							
Revenue From Operation	42,728,522	38,375,815	92,232,482	172,238,859	1,55,33,670	43,301,382	25,614,515
Other Income	123,585	3,166,026	30,869	10,534,368	28,42,393		
	4,28,52,107	4,15,41,841	9,22,63,351	18,27,73,227	1,83,76,063	4,33,01,382	2,56,14,515
EXPENDITURE							
	24,708,602	27,787,012	81,274,674	177,384,385	1,48,69,359	4,25,38,708	2,52,05,572
Profit / (Loss) Before Tax	1,81,43,505	1,37,54,829	1,09,88,677	53,88,842	35,06,704	7,62,674	4,08,943
Tax Expense:							
Current Tax	52,94,183	41,00,655	31,90,184	16,49,933	14,19,549	2,87,583	1,27,000
Deferred Tax Liability/Assets	7,508	-296	85,236	13,585	18	-255	-164
Tax Adjustment for prior years	-55,809	2,22,685			3,661		
Profit / (Loss) After Tax	1,28,97,623	94,31,785	77,13,257	37,25,324	20,83,476	4,75,346	2,82,107

6.11. Ld. Counsel placed reliance on the decision of Coordinate Bench of ITAT Delhi in the case of Reeshu Goel vs ITO in ITA No.1691/Del/2019 dated 07.10.2019 which has dealt with similar issues relating to financial worth of the scrip, adverse inference based on inquiry report of Investigation Wing Kolkata, reference to any material or evidence of assessee found indulged in manipulating or rigging the share price, generalized approach on the modus operandi and reliance on statement of certain brokers. This decision has been affirmed by the Hon'ble jurisdictional High Court of Delhi in PCIT vs Reeshu Goel in ITA No. 173/2021 dated 14.12.2021. Relevant observations and finding arrived by the Coordinate Bench of ITAT Delhi are extracted below:

“18. The entire premise of the Assessing Officer for treating the entire transaction to be a bogus Long Term Capital Gain and making addition u/s. 68 is that, firstly, M/s. CCL I.T.A. No.1691/DEL/2019 20 International Ltd. did not have much financial worth to justify such a price rise; secondly, the SEBI had suspended the trade of the share for a brief period; thirdly, he has pointed out the history of price rise between 06.02.2010 to 25.11.2014 and then has drawn adverse inference that price of these shares were manipulated and rigged in the stock exchange which was solely to provide accommodation entries to the various parties; and lastly, he has also referred to certain inquiry report of Investigation Wing Kolkata during the course of which certain brokers have admitted that they had provided accommodation entries in the scrip of M/s. CCL International. But nowhere in the entire assessment order, there is any reference to any material or

evidence that assessee or assessee's broker have been found to be indulged in any kind of accommodation entry in this scrip. No inquiry whatsoever has been made from the broker of the assessee. Further, during the period in which assessee had purchased the shares and had sold them whether the SEBI had suspended the trading has not been mentioned, in fact, Assessing Officer himself mentions that there was brief suspension in the year 2010, whereas the assessee has purchased shares in the year 2011 and sold them in the year 2012. Coming to the financials, as culled out from the records, the revenue from the operation of M/s. CCL International Ltd. from March, 2010 to March, 2012 was between Rs. 55.25 crore to Rs. 79 crore. Thus, it cannot be held that it was mere a paper entity. From a bare perusal of I.T.A. No.1691/DEL/2019 21 the history of listing and trading of shares and the quote of Bombay Stock Exchange as quoted in the assessment order, it clearly reflects that as on 06.02.2010, the closing price was Rs. 50 and there was a steady increase and within the period of 4 years the price had reached up to Rs.609 on 25.11.2014. Nowhere, it has been pointed out that the rise was beyond the cap laid down by the SEBI, because the price of the scrip cannot rise beyond the cap prescribed by the SEBI. If the shares have been purchased and sold from the stock exchange on a quoted price with proper contract number, trade time and after paying STT, then it is very difficult to assume that the sale proceeds received from sale of such shares is bogus, especially when purchase of shares are not in dispute. This inter alia means assessee was in possession of shares which were also dematerialised. To prove that such a transaction was in the nature of bogus or colourable transaction, there has to be some inquiry or material to nail the assessee that she was some kind of a beneficiary in some accommodation entry operation. No defect has been pointed out in the documents submitted by the assessee nor has the broker of the assessee been inquired upon. Simply relying upon the general modus operandi and statement of some brokers recorded by the Kolkata Investigation Wing does not mean that all the transactions undertaken of the scrip M/s. CCL International Ltd. through the country by millions of subscribers are bogus. Thus, in absence of any material or evidence against the assessee, we do not find any reason as to I.T.A. No.1691/DEL/2019 22 why the claim of Long Term Capital Gain from sale of such share should be denied. Consequently, the addition on account of commission is also deleted. Accordingly, we delete the addition made by the Assessing Officer. 19. In the result, the appeal of the assessee is allowed".

6.12. Ld. Counsel also referred to the decision of Hon'ble Rajasthan High Court in the case of PCIT vs Gaurav Bagaria 453 ITR 513 which has upheld the finding of Tribunal that once the assessee has produced all the relevant documentary evidences to establish the genuineness of transaction which are not rebutted and also the financial statements to show that company has earned handsome profit, such facts establish the genuineness of transaction.

6.13. Ld. Counsel asserted on the facts relating to the range bound movement in the share price of CTL. The said share got listed with Bombay Stock Exchange at Rs. 98 in June 2014 which reached to highest of Rs. 132 within a period of 2 years. Such range bound movement of the share price does not reflect any abnormal increase or volatility. According to him, assessee sold his investments in the month of July to August 2016 at selling rate ranging between Rs.69/- to Rs.95/- per share which is not the highest price. Therefore, it cannot be alleged that the assessee has sold the shares at highest price to claim bogus pre-arranged LTCG. He further submitted that merely because the sale of shares fetched a handsome price which is supported by official quotation cannot be any reason to doubt the genuineness of the sale transaction of the shares. He referred to the price trend of CTL as obtained from the official website of BSE which reveals that there is range bound movement in the share price and there was no sharp increase and/or decline. Further, according to him, share price was not moving in single direction of upward or downward and therefore, pre-arrangement of bogus Long Term Capital Gain in this share was not possible.

6.14. On the observation of the Id. AO on name of CTL scrip appearing in the list of penny stock of income tax department used to book bogus LTCG, Id. Counsel submitted that merely mention of name of share would not make a genuine transaction, bogus. Ld. Counsel contended that no independent inquiries were conducted by the Id. AO either from SEBI of stock exchange or broker or CTL to arrive at the adverse conclusion which is mechanical and pre-conceived. To support his case, he placed reliance on the decision of Suresh Kumar Agarwal vs ACIT [2020] 117 taxmann.com 678 (Del Trib), wherein it is held that no addition can be made merely on the basis of information received from

Investigation Wing without verifying / correlating the details furnished by the assessee. Relevant extracts in this respect from Para 31 are as under:

“31.In such circumstances to prove that the assessee has obtained the bogus long-term capital gain. The learned assessing officer should have examined:—

i.	<i>The assessee by issue of summons u/s 131 of the act to know about the basic facts about these investments such as the business of the company, how assessee came to know about investment credentials of these company, history of the investments made by the assessee in earlier years and subsequent years,</i>
ii.	<i>Examination of the brokers of the assessee with the screen shot of the time and date stamp of transactions, liquidity of the stock, when the order from purchases and sales were entered by the broker and when it was executed on online platform</i>
iii.	<i>Obtaining the details of the transaction from stock exchange and details of counter parties purchasing these shares and selling those shares. It would have given ld AO lead to the accommodation entry providers and exit providing companies</i>
iv.	<i>Where from in the Demat account of the assessee the shares of the above-alleged company has entered into. This information would have been available to the assessing officer had he examined the depository in which the shares are held in the Demat account.</i>
v.	<i>When the assessee has sold shares there has to be date and time stamped transaction at the respective stock exchange. Time and date stamped transaction would have shown that the broker of the assessee has entered into a synchronized trade with the broker of the buyer. If the synchronized trade showed that the shares have been purchased by any of the 18 exit providers mentioned in the list of the investigation wing, it would have been conclusively proved that assessee has obtained bogus long-term capital gain.</i>
vi.	<i>When the assessee has purchased the shares, the AO could have examined identically by verifying the date and time stamp transactions to know from where the assessee has purchased those shares. Hence the assessee purchased the shares from any of the entry operators mentioned in the investigation wing report it would have thrown a light that whether the assessee has purchased a bogus long-term capital gain or not.</i>
vii.	<i>The AO could have further examined the receipt of shares in the Demat account of the assessee as to whose account is debited for transferring the shares in the Demat account of the assessee. He should have also examined whether the shares are transferred in the Demat account of the assessee are from the same person who has sold the shares on online trading platform of the Bombay stock exchange. This information could have been availed from the depository.</i>

viii.	<i>We have also been informed that there is standard operating procedure set up by the department for the guidance of assessing officer to investigate the penny stock cases. None of those steps were found in this case</i>
-------	---

All these information could have been obtained by the assessing officer by issue of 133 (6) notice to the depository as well as to the stock exchange and the respective broker. However, despite having the basic information available with the assessing officer he has chosen to sit and become a mute spectator. When the assessee has provided the complete information, which would have been available with the assessee in the documentary format, the role of the assessing officer starts as an investigator of the information furnished by the assessee, when he recorded the reason, he formed a prima facie reason to believe that there is an escapement of income. He should have converted his reason into the fact by making an investigation on the information provided by the assessee. For the reasons best known to the assessing officer, he did not do anything on the information provided by the assessee. He merely made the addition holding that assessee has not shown justification for purchase of shares at a very high price....”

6.15. Reference is also made by the Id. Counsel to provisions of section 142(2) which empowers the Id. AO conduct necessary inquiries as he deem fit for the purpose of making the assessment. Reliance is also placed on the decision of Karuna Garg vs ITO [2019] 109 taxmann.com 403 (Del Trib), wherein it is held as under:

“20. 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.

21. A perusal of the assessment order clearly shows that the Assessing Officer was carried away by the report of the Investigation Wing Kolkata. It can be seen that the entire assessment has been framed by the Assessing Officer without conducting any enquiry from the relevant parties or independent source or evidence but has merely relied upon the statements recorded by the Investigation Wing as well as information received from the Investigation Wing. It is apparent from the Assessment Order that the Assessing Officer has not conducted any independent and separate enquiry in the case of the assessee. Even, the statement recorded by the Investigation Wing has not been got confirmed or corroborated by the person during the assessment proceedings.

22. Section 142 of the Act contains the provisions relating to enquiry before assessment.

23. It is provided u/s. 142 (2) of the Act that for the purpose of obtaining full information in respect of income or loss of any person, the Assessing Officer may make such enquiry as he considers necessary. In our considered view the

Assessing Officer ought to have conducted a separate and independent enquiry and any information received from the Investigation Wing is required to be corroborated and reaffirm during the assessment by the Assessing Officer by examining the concerned persons who can affirm the statements already recorded by any other authority of the department. Facts narrated above clearly show that the Assessing Officer has not made any enquiry and the entire assessment order and the order of the first Appellate Authority are devoid of any such enquiry.”

6.16. In the case of Karuna Garg (supra), Department went into appeal before the Hon'ble High Court of Delhi vide appeal no. ITA No.477/2022, order dated 23.11.2022 wherein it was held that “*no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.*” In this respect, Hon'ble Court based its decision by relying on the earlier decision of its coordinate bench in the case of PCIT vs Krishna Devi vide ITA 125/2022 dated 15.01.2021 wherein it was held as under:

“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."

6.17. Ld. Counsel also submitted that purported list of the Income-tax Department and statement of entry operators relied upon by the ld. AO for making the addition has neither been referred in the impugned order nor confronted or supplied to the assessee. Further, there is no positive evidence brought on record by the ld. AO that money changed hands between the assessee and broker or any other person to convert unaccounted money by availing LTCG. He also contended that reliance placed by the ld. AO on the purported statements is bad in law since no opportunity was afforded to assessee to cross examine such persons which is gross violation of principles of natural justice. According to the ld. Counsel, impugned order does not reflect the name of the person whose statement has been relied upon against the assessee and also no specific name of the entry operator is known with whom assessee had undertaken the alleged accommodation entry. In support of this submission, he placed reliance on the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries vs CCE 314 ELT 641 (SC).

6.18. On the issue relating to addition made towards brokerage/commission as unexplained expenditure u/s 69C on the aforesaid alleged bogus LTCG accommodation entry, ld. Counsel submitted that it is based on surmises, conjectures and suspicion. There is nothing brought on record to establish as to who is the entry operator to whom assessee paid the alleged brokerage/commission and how and when such sum was paid. This addition is made the ld. CIT(A) by way of enhancement of total income, which according to the ld. Counsel does not arise from the impugned assessment order and is outside the scope of powers of the ld. CIT(A) to this effect. It is submitted that the power of enhancement cannot extend to issues which were neither the subject matter of order appealed against nor could possibly arise from the order

appealed. He placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC) wherein it held as:

“The principle that emerges as a result of the authorities of this court is that the Appellate Assistant Commissioner has no jurisdiction, under section 31(3) of the Act, to assess a source of income which has not been processed by the Income-tax Officer and which is not disclosed either in the returns filed by the assessee or in the assessment order, and therefore the Appellate Assistant Commissioner cannot travel beyond the subject-matter of the assessment. In other words, the power of enhancement under section 31(3) of the Act is restricted to the subject-matter of assessment or the source of income which have been considered expressly or by clear implication by the Income-tax Officer from the point of view of the taxability of the assessee.

.....

As we have already stated, it is not open to the Appellate Assistant Commissioner to travel outside the record, i.e., the return made by the assessee or the assessment order of the Income-tax Officer with a view to find out new sources of income and the power of enhancement under section 31(3) of the Act is restricted to the sources of income which have been the subject-matter of consideration by the Income-tax Officer from the point of view of taxability. In this context "consideration" does not mean "incidental" or "collateral" examination of any matter by the Income-tax Officer in the process of assessment. There must be something in the assessment order to show that the Income-tax Officer applied his mind to the particular subject-matter or the particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection.”

7. Per contra. Ld. CIT DR strongly relied on the order of the authorities below for the additions made as it is a clear case of accommodation entry arranged by the assessee in the form of LTCG on the penny stock of CTL. According to him, mere furnishing of plethora of documents by the assessee does not in any way absolve him from the responsibility to prove such a huge increase in the share price resulting in LTCG when the Department is seized of the report from its Investigation Wing on the conduct of such a scam involving several such penny stock companies, beneficiaries, brokers and entry operators. He pressed for sustaining the additions made.

7.1. Ld. DR has placed on record a compilation dated 30.06.2023 containing the following documents, received by him from the office of DCIT, Central Circle – 15, New Delhi:

- (i) Copy of CASS reasons
- (ii) Copy of information received from Investigation Wing, Delhi
- (iii) Copy of assessment order for AY 2016-17 & 2017-18
- (iv) Copy of CIT(A)'s order for AY 2016-17 & 2017-18

7.2. Item at serial no. (ii) above includes copy of a note from the Directorate of Income Tax (Invest) New Delhi, titled as "*Tax Evasion through bogus Long Term Capital Gains/Short Term Capital Loss (LTCG/STCL) by way of Manipulated Trading*". In Para 4.2 of this note, titled as "*BSE Surveillance measure*", for the table containing name of scrips, it is stated that "*most of the subject scrips are either delisted/suspended or put under surveillance*". Name of CTL is included in the table at serial no. 26. In the column "*Scrip Group*", there is a mark of 'X' against CTL. For this 'X', it is stated: "*In order to classify equity securities of companies that are only listed/traded at BSE and satisfy certain parameters into separate sub-segments called "X", and "XT". At the time of review any securities falling in Trade-for-Trade segment (DT' or T' groups) are classified under "XT" sub-segment. XT includes all the stocks which are exclusively listed on BSE and settled on the trade-to-trade basis.*" Ld. DR thus submitted that CTL is a penny stock and forms part of the report of the Investigation Wing and therefore LTCG claimed by the assessee is bogus.

7.3. The above stated para 4.2 along with Table is extracted below for ready reference:

"4.2 BSE Surveillance measures

SEBI in order to enhance market integrity and safeguard interest of investors, have introduced Graded Surveillance Measures (GSM) wherein certain identified securities shall be subjected to enhanced monitoring and surveillance actions. The GSM (Graded Surveillance measure) is a system designed by SEBI to keep a check on shares which see an abnormal price rise not commensurate with the financial health or fundamentals. These companies are often illiquid, have low market capitalizations and poor fundamentals. Thus, SEBI's intention is to identify and protect investors from dealing in such shares at an early stage. Such shares are monitored for sudden changes in earnings, book value, fixed assets, net worth, and price to earnings multiples, among other factors. Once a company is identified, it goes in to one of the six stages of the GSM, attracting the corresponding surveillance action. There are total of six stages in GSM where the restrictions on trading in the securities get progressively higher. Most of the subject scrips are either delisted/suspended or put under surveillance as produced below.

S. No.	Scrip Name	Scrip Code	Current Status	Scrip Group
1	Action Financial Services (India) Ltd.	511706	ACTIVE	X
2	Associated Finileasing (Midas Infra Trade Ltd.)	531192	ACTIVE	XT
3	Florence Investech Ltd.	532518	DELISTED	X
4	Gini Silk Mills Ltd.	531744	ACTIVE	X
5	Global Capital Markets Limited	530263	ASM STAGE I	X
6	Innovative Tech Pack Ltd.	523840	ACTIVE	X
7	JRI Industries and Infrastructure Limited	506016	Suspended	Z
8	Looks Health Services Ltd.	534422	ACTIVE	T
9	Mahanivesh (India) Ltd.	530441	ACTIVE	XT
10	Mudit Finlease Ltd.	531919	LELISTED	X
11	Neha International	519560	Suspended	Z
12	Odyssey Corporation Ltd.	531996	ACTIVE	X
13	Pradip Overseas Ltd.	533178	ACTIVE	B
14	Presha Metallurgical	513613	Suspended	XT
15	Riba Textiles Ltd.	531952	ACTIVE	X
16	Syncom Formulations Ltd.	524470	ACTIVE	X
17	Transgene Biotek Ltd.	526139	ACTIVE	XT
18	Unisys Softwares and Holding Industries Ltd.	531831	Suspended	XT
19	Vertex Securities Ltd	531950	ACTIVE	X
20	VMS Industries Limited	533427	ACTIVE	X
21	Anuh Pharma Ltd	506260	ACTIVE	X
22	Florence Investech LTD	532518	ACTIVE	X
23	International Conveyors	509709	ASM STAGE I	X

	<i>LTD</i>			
24	<i>Lactose (India) Ltd</i>	<i>524202</i>	<i>ASM STAGE I</i>	<i>X</i>
25	<i>RICHO INDIA LTD</i>	<i>517496</i>	<i>IRP STAGE O</i>	<i>Z</i>
26	<i>Capital Trade Link LTD</i>	<i>538476</i>	<i>ASM STAGE I</i>	<i>X</i>
27	<i>Classic Global Finance And Capital</i>	<i>538433</i>	<i>GSM STAGE 2</i>	<i>XT</i>
28	<i>Goenka Business & Finance Ltd</i>	<i>538787</i>	<i>ACTIVE</i>	<i>XT</i>
29	<i>Inceptum Enterprises LTD</i>	<i>538541</i>	<i>LISTING FEE NOT PAY</i>	<i>Z</i>
30	<i>Smiths & Founders (India) Limited</i>	<i>513418</i>	<i>Trading Restricted</i>	<i>XT</i>
31	<i>Toyam Industries Ltd</i>	<i>538607</i>	<i>ASM STAGE I</i>	<i>X</i>
32	<i>Virtual global Education Ltd.</i>	<i>5347441</i>	<i>ACTIVE</i>	<i>Xt</i>
33	<i>Nutrapius India Ltd</i>	<i>524764</i>	<i>SUSPENDED</i>	<i>Z</i>
34	<i>Panafic Industrials Ltd.</i>	<i>538860</i>	<i>GSM STAGE I</i>	<i>XT</i>
35	<i>Apoorva Leasing Finance and Investment Company Ltd.</i>	<i>539545</i>	<i>TRADING RESTRICTED</i>	<i>XT</i>
36	<i>Negotium International Trade Ltd.</i>	<i>537838</i>	<i>ANNUAL LISTING FEE DUE</i>	<i>Xt</i>
37	<i>Tarang Projects & Consultant Ltd.</i>	<i>538287</i>	<i>Suspended</i>	<i>X</i>

Further, BSE Groups for Scrip categorization in T, X and Z also need to be understood in order to fully understand the status of subject scrips.

'Z' Group:-Companies which have failed to comply with its listing requirements and/or have failed to resolve investor complaints and/or have not made the required arrangements with both the depositories, viz., Central Depository Services (I) Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) for dematerialization of their securities.

"T" Group:- Securities which are settled on a trade-to-trade basis as a surveillance measure.

"X" Group:- In order to classify equity securities of companies that are only listed/traded at BSE and satisfy certain parameters into separate sub-segments called "X", and "XT". At the time of review any securities falling in Trade-for-Trade segment (DT' or T' groups) are classified under "XT" sub-segment. XT includes all the stocks which are exclusively listed on BSE and settled on the trade-to-trade basis.

Above findings and conclusion of the specialized agencies has further substantiated the findings of the undersigned vis a vis the subject scrips."

8. We have heard the rival contentions and perused the material on record. We have also given our thoughtful consideration to several contentions raised by the Id. Counsel along with judicial precedents referred by him. Fact of the case and detailed arguments made by the parties are all captured in the above paragraphs which are not repeated for the sake of brevity. We first look to the chronology of events which transpired in the present case, the same is extracted below:

CHRONOLOGICAL SEQUENCE OF EVENTS

Sr. No.	Date	Particulars (Page of Paper Book)
1	16.10.2016	Return of income filed declaring an income of Rs. 3,58,34,630/- for financial year 2015-16 relevant to assessment year 2016-17 (pages 1-15 of Paper Book)
2	07.07.2017	Notice issued u/s 143(2) of the Act. (16-19)
3	14.08.2018	Notice issued u/s 142(1) of the Act along with Questionnaire. (20-23)
4	14.09.2018	Reply filed in response to notice dated 14.08.2018. (24-25)
5	05.10.2018	Show Cause Notice issued u/s 142(1) of the Act. (26-29)
6	18.10.2018	Reply filed in response to notice dated 14.08.2018. (30-59)
7	06.11.2018	Reminder - Show Cause Notice issued u/s 142(1) of the Act on 05.10.2018 (61)
8		Reply filed before Assessing Officer. (64-72)
9		Reply before before Assessing Officer submitting entire details of long term capital gain earned in respect of shares of capital trade links. (73-263)
10		Reply filed before Assessing Officer clarifying that shares of Capital Trade Link purchased outside the Stock Market from Venus Insec Private Limited on 13.06.2014. (264, 280-284)
11		Reply filed before Assessing Officer. (285-310)
12		Reply filed before Assessing Officer alongwith copy of chart showing price history of share on the Stock Exchange. (311-317)
13	22.12.2018	Order passed u/s 143(3) of the Act assessing income at Rs. 6,61,40,343/- after making addition of Rs. 3,03,05,713/- disallowing exemption u/s 10(38) of the Act.
13	16.01.2019	Aggrieved by an order of learned Assessing officer assessee filed an appeal before First Appellate Authority.
14	11.01.2021	Additional ground filed by assessee (318-320) along with

		written submission. (321-374)															
15		Copy of show cause notice for enhancement. (375)															
16	11.01.2021	Further written submission filed by assessee before First Appellate Authority. (376-385)															
17	27.09.2021	Order passed by first appellate authority disposing the various grounds raised by appellant as under: <table border="1"> <thead> <tr> <th>Ground No.</th> <th>Particulars</th> <th>Page no of CIT(A) order</th> </tr> </thead> <tbody> <tr> <td>1,6-7</td> <td>General</td> <td>---</td> </tr> <tr> <td>2-5</td> <td>Addition of Rs. 3,03,05,713/- disallowing exemption u/s 10(38) of the Act is bad in law</td> <td>Dismissed (43-56)</td> </tr> <tr> <td></td> <td>Enhancement of expenditure incurred u/s 69C of the Act of Rs. 9,09,171/-</td> <td>(56-57)</td> </tr> <tr> <td>Additional Ground</td> <td>That the Ld AO has erred in law and on facts in levying the tax @77.25% invoking the provisions of S. 115BBE of the Act as against the lower tax rate of 20% as prescribed u/s 112 of the Act.</td> <td>Dismissed (67-69)</td> </tr> </tbody> </table>	Ground No.	Particulars	Page no of CIT(A) order	1,6-7	General	---	2-5	Addition of Rs. 3,03,05,713/- disallowing exemption u/s 10(38) of the Act is bad in law	Dismissed (43-56)		Enhancement of expenditure incurred u/s 69C of the Act of Rs. 9,09,171/-	(56-57)	Additional Ground	That the Ld AO has erred in law and on facts in levying the tax @77.25% invoking the provisions of S. 115BBE of the Act as against the lower tax rate of 20% as prescribed u/s 112 of the Act.	Dismissed (67-69)
Ground No.	Particulars	Page no of CIT(A) order															
1,6-7	General	---															
2-5	Addition of Rs. 3,03,05,713/- disallowing exemption u/s 10(38) of the Act is bad in law	Dismissed (43-56)															
	Enhancement of expenditure incurred u/s 69C of the Act of Rs. 9,09,171/-	(56-57)															
Additional Ground	That the Ld AO has erred in law and on facts in levying the tax @77.25% invoking the provisions of S. 115BBE of the Act as against the lower tax rate of 20% as prescribed u/s 112 of the Act.	Dismissed (67-69)															
18	25.10.2021	Aggrieved by the aforesaid order of Hon'ble First Appellate Authority assessee filed instant appeal raising below mentioned grounds: <table border="1"> <thead> <tr> <th>S.no</th> <th>Grounds</th> <th>Particulars</th> </tr> </thead> <tbody> <tr> <td>i)</td> <td>1, 5</td> <td>General</td> </tr> <tr> <td>ii)</td> <td>2-3.7</td> <td>That the addition made and confirmed of Rs. 3,03,05,713/- disallowing exemption u/s 10(38) of the Act is bad in law.</td> </tr> <tr> <td>iii)</td> <td>4-4.1</td> <td>That the addition made of Rs. 9,09,171/- u/s 69C of the Act is bad in law. That enhancement by Ld Commissioner of Income Tax (Appeals) in the impugned order is beyond the scope of powers vested u/s 251(2) of the Act and thus in excess of jurisdiction.</td> </tr> </tbody> </table>	S.no	Grounds	Particulars	i)	1, 5	General	ii)	2-3.7	That the addition made and confirmed of Rs. 3,03,05,713/- disallowing exemption u/s 10(38) of the Act is bad in law.	iii)	4-4.1	That the addition made of Rs. 9,09,171/- u/s 69C of the Act is bad in law. That enhancement by Ld Commissioner of Income Tax (Appeals) in the impugned order is beyond the scope of powers vested u/s 251(2) of the Act and thus in excess of jurisdiction.			
S.no	Grounds	Particulars															
i)	1, 5	General															
ii)	2-3.7	That the addition made and confirmed of Rs. 3,03,05,713/- disallowing exemption u/s 10(38) of the Act is bad in law.															
iii)	4-4.1	That the addition made of Rs. 9,09,171/- u/s 69C of the Act is bad in law. That enhancement by Ld Commissioner of Income Tax (Appeals) in the impugned order is beyond the scope of powers vested u/s 251(2) of the Act and thus in excess of jurisdiction.															

8.1. In the above paragraphs, observations and conclusion drawn by the ld. AO have been extracted. Ld. Counsel has countered and made detailed submission for each of the observations and conclusion drawn by the ld. AO. We find it more meaningful and comprehensible to present the same in a tabulated form for better understanding to arrive at our finding. The chart presented by the ld. Counsel effectively summarises multiple contentions raised in support of the claim made by the assessee. The same is reproduced as under for ease of reference:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Para of Assessment Order (Page)</i>	<i>Remarks</i>
<i>i)</i>	<i>Stake holders involved were either Bogus or devoid of financial capabilities</i>	<i>2.4 (2)</i>	<i>General Observation</i>
<i>ii)</i>	<i>Capital Trade link is engaged in the Scam as revealed by the Investigation Wing and SEBI</i>	<i>3 (3)</i>	<i>No report of Investigation wing or SEBI on record, much less no such information provided to appellant. (Para 17-17.2)</i> <i>Name of scrip appearing in the list of penny stock of income tax department cannot be a basis to make addition. (Para 16-16.3)</i>
<i>iii)</i>	<i>Fundamentals of CTL do not support the premium it commanded</i>	<i>3.1. (3)</i>	<i>Incremental Revenue from operation running in several Crores and incremental profit before taxes since 2013 onwards. (Para 10-10.5)</i>
<i>iv)</i>	<i>Modus operandi</i>	<i>3.2. (3-5)</i>	<i>General (Not specific observation regarding assessee)</i>
<i>v)</i>	<i>Report of SEBI dated 19.12.2014, 04.12.2014,</i>	<i>3.3 (5)</i>	<i>None of report is regarding 'Capital Trade Link'</i>

	08.05.2015, 09.11.2015, 17.04.2015		S. No.	Date of Report	Name of Scrip
			i)	19.12.2004	M/s. first financial Services Ltd.
			ii)	04.12.2014	M/s. Moryo Industries Ltd.
			iii)	08.05.2015	M/s. Pine Animation Ltd.
			iv)	09.11.2015	M/s. Redford Global Ltd.
			V)	17.04.2015	M/s. sunrise Asian
vi)	SEBI provided information pertaining to the Scrip to the income tax department	3.4 (6)	No such information provided to appellant. (Para 17-17.2) The learned Assessing Officer has mechanically lifted the conclusions/observations arrived without making any independent inquiries either from SEBI or stock exchange or broker or share company to ascertain genuineness of such transactions. (Para 12-12.2)		
vii)	Recommendations of the SIT of Hon'ble supreme court on Black Money pointed out the Modus Operandi	3.5 (6-8)	General report		
viii)	Scrip in which appellant traded, prima facie appear to be a penny stock s return of 7704.65% seems unreal in short span of time – the price of the shares of Capital Trade Links were rigged & manipulated and	4 (8-9)	That there is range bound movement in the share price of Capital Trade Links Ltd. much less the share has been listed with Bombay Stock Exchange at Rs.98 in June 2014 which reached to highest of Rs.132 within a period of 2 years and 3 months and as such no abnormal		

	<i>were increased through circular transaction by unscrupulous elements.</i>		<i>increase much less assessee sold shares at prices ranging from 69 to 95, which is not the highest prices (Para 11 to 11.2)</i> <i>Further Appellant also filed clarification regarding the significant increase in price to the Bombay Stock Exchange – No adverse inference by Bombay Stock Exchange. (Copy of letter dated 27.10.2017 attached as Annexure ‘A’ to synopsis.)</i>
<i>iv)</i>	<i>General Overview of Penny stock related cases – The entry operators admitted in sworn statements about the ‘Modus operandi’</i>	<i>5 (9-10)</i>	<i>General (Not specific observation regarding assessee) No specific statement recorded in respect of appellant, which is either referred or provided till dated (Para 17-17.2 & Para 19).</i>
<i>x)</i>	<i>Transaction of sale of CTL were sham – transaction of purchase of shares of CTL was off market transaction; SEBI had vide circular No. SMDRP/Policy/CIT-21/99 dated 14.09.1999 banned all negotiated deals, cross deals and all such deals are required to be executed only on the screens of Exchanges in the price and order matching mechanism of the exchange just like any other normal trade.</i>	<i>6.1 (10-11)</i>	<i>That the allegation that offline purchase of shares of Capital Trade Link Ltd. was to book bogus LTCG is misconceived and without any basis much less off-market transaction are not illegal transaction. (para 4-4.2 hereinbelow)</i> <i>That neither the trading in shares of Capital Trade Link Ltd. is suspended as on date or at any time prior. The share of Capital Trade Link is never delisted by the SEBI (Para 9-9.1)</i>
<i>xi)</i>	<i>Various case laws referred</i>	<i>6.3 (11-18)</i>	<i>That the theory of preponderance, human probabilities, circumstantial</i>

			<i>evidence so called rules of suspicious transactions are not applicable in respect of transactions of listed security where the transactions are supported by due evidence on record. (Para 15-15.1)</i>
--	--	--	--

8.2. We find force in the multi-fold contentions raised by the Id. Counsel as stated above, supported by corroborative evidence and relevant judicial precedents, all of which is discussed in detail. Assessee has sufficiently explained his case with all the cogent evidence and material which have not been rebutted or controverted or found to be false. Having convinced with the submissions made by the Id. Counsel, we list down the summary of them to give our affirmation to the same and uphold the claims made by the assessee in respect of Long Term Capital Gain on sale of shares of CTL. We draw our force from the judicial precedents referred and discussed above relating to the respective contention. Summary of said multi-fold contentions is as under:

Sr. No.	Particulars
i)	Investment and disinvestment in share of Capital Trade Link Ltd. cannot be treated as accommodation entries in the garb of Long Term Capital Gain when the transaction of sale and purchase of shares has been explained by placing sufficient documentary evidence on record. Revenue has not disproved the documentary evidences furnished by the assessee. No efforts have been made by the Id. Assessing Officer to examine the correctness of various proof, filed by the assessee by carrying out any investigation.
ii)	Off-market purchase transaction made by the assessee is not an illegal transaction.
iii)	Assessee sold shares through Online Trading platform after payment of STT.
iv)	Transactions carried out by the assessee through Stock Exchange are without any physical interaction between buyer and seller.
v)	Assessee is a habitual investor having portfolio of investment in shares

	and has earned capital gain both in preceding and succeeding years.
vi)	Neither the trading in shares of Capital Trade Link Ltd. is suspended as on date nor the share is delisted by SEBI
vii)	Status as per ROC and Financial viability of Capital Trade Link Ltd. is corroborated by demonstrating its Incremental Revenue from operation running in several crores and incremental profit before taxes since 2013 onwards.
viii)	There is range bound movement in the share price of Capital Trade Links Ltd. much less the share has been listed with Bombay Stock Exchange at Rs.98 in June 2014 which reached to highest of Rs.132 within a period of 2 years and 3 months and as such no abnormal increased. Assessee sold shares at prices ranging from Rs.69 to Rs.95, which are not the highest prices.
ix)	Assessing Officer arrived at adverse conclusion without making any independent inquiries either from SEBI or stock exchange or broker or share company to ascertain genuineness of the impugned transaction.
x)	Name of scrip appearing in the list of penny stock of income tax department cannot be a basis to make addition.
xi)	No addition can be made on the basis of adverse material, when neither such purported material was shown nor referred and confronted or supplied to the assessee in the course of assessment proceedings.
xii)	No opportunity was afforded to assessee to cross examine the purported statements relied upon by Assessing Officer in the order of assessment violating the principles of natural justice.

8.3. On a specific query by the Bench in respect of details of DMAT account in which the purchase of shares of CTL were credited, Id. Counsel furnished the DMAT statement with DP ID 12069800 and Client ID 00001312, issued by Rajgul Securities Pvt. Ltd., DP of Central Depository Services (I) Ltd. From the perusal of the said statement, it is noted that purchase of 5,00,000 shares of CTL were credited on 19.06.2014 in the DMAT account which were purchased off-market on 13.06.2014. Thus, in our observation, it is not a case where purchased shares are credited in the DMAT account just prior to the date of sale and remain in the pool account of the broker until then. Even though shares were purchased in an off-market transaction, the same were dematerialized and credited in the DMAT account at the earliest possible date, immediately after its actual purchase.

8.4. Further, from the perusal of the note from the office of Directorate of Income Tax (Invest), New Delhi, referred by the ld. DR in his submission and as extracted above, we find that it does not in way suggest that scrip of CTL is suspended or has failed to comply with listing requirements of the stock exchange so as to conclude on an adverse finding recorded by the authorities below.

8.5. Also, under section 142(3), it is incumbent upon the ld. AO to give an opportunity of being heard in respect of any material gathered by him and proposed to be utilised for the purpose of the assessment. We note that compliance of provisions of sec. 142(3) is a mandatory statutory procedural requirement in completing the assessment proceeding, failure of which may vitiate the entire assessment itself since this sub-section uses the word "shall". The only exception to this requirement is where an assessment is made u/s 144 which is not so in the present appeal before us. In the present case before us, requirement mandated by section 142(3) has not been complied with by the ld. AO in completing the impugned assessment.

8.6. On careful reading of the show cause notice issued by the ld. AO as reproduced in the impugned assessment order, we observe that nowhere, ld. AO has mentioned any specific section under which the income is proposed to be added/disallowed. In the words of ld. AO, it is stated in para 4 as – *"It is beyond no doubt that the price of the shares of Capital Trade Links were rigged & manipulated and were increased through circular transaction by unscrupulous elements. Keeping in view you are requested to explain why not gain (LTCG) amounting to Rs. 30305713/- to be assessed as undisclosed income while considering as escape assessment."* In para 5, ld. AO has again stated as – *"Therefore, you are asked to show cause as to why the accommodation entries obtained*

amounting to Rs.3,03,05,713/- in shape of sale of shares of Capital Trade Links should not be added in your total income for the year under consideration.” Further, while drawing conclusion in para 7 for making the assessment, ld. AO again writes in similar manner as – “In view of the elaborate discussion made above, I hereby hold the amount of Rs. 3,03,05,713/- introduced/credited by the assessee in the shape of Long Term Capital Gain out of these purported share sale receipts during the financial year 2015-16 (A.Y. 2016-17) in his computation of total income (taxable at the rate of 60% as provided u/s 115BBE). This would resultant of addition of Rs. 3,03,05,713/- in the total income of the assessee.” Lastly, in para 8 while arriving at the total assessed income, ld. AO made the addition of Rs.3,03,05,713/- for which he noted as – “Bogus LTCG claimed u/s 10(38) held to be Income from Other Sources, as discussed above.”

8.6.1. From the above extraction of the impugned assessment order, it is not at all discernible whether the addition is made by applying provisions of section 68 or a disallowance is made of the claim of exemption of LTCG u/s 10(38) of the Act by the ld. AO.

8.6.2. Taxable rate of 60% u/s 115BBE is stated to be applied by the ld. AO on the addition made. From the perusal of section 115BBE, it is noted that the said section applies only when total income of an assessee includes any income referred to in section 68, 69, 69A to 69D. Considering this, if an inference is drawn that ld. AO has applied one of these specified sections for making the addition of LTCG on sale of shares of CTL, we find that in the entire assessment order, there is no whisper by him on the three vital limbs of establishing identity and creditworthiness of the buyers of the shares sold by the assessee and genuineness of the said transaction. We do not find any action taken by

the ld. AO to enquire on these three vital aspects from the assessee either by issuing notices/summons under section 133(6) or 131 of the Act.

8.6.3. In this context, it is worth noting that impugned share sale transaction undertaken by the assessee is on the online digital trading platform of stock exchange of BSE which is a regulated market under the aegis of a regulator viz. SEBI. There is nothing on record from the market regulator SEBI which establishes the 'tainted' status of the scrip of CTL so as to hold the share sale transaction as bogus/accommodation entry by the ld. AO. Also, the operations and modus operandi of this regulated market does not in any way provide for any mechanism by which assessee can bring forth the identity of the buyers of its shares and their creditworthiness. Further, sale proceeds are received through the stock market processing into the pre-identified bank account of the seller i.e. the assessee which cannot be tainted as 'unexplained or unaccounted or undisclosed'. Thus, it cannot be inferred that ld. AO has made the addition under the specified sections of 68, 69 and 69A to 69D though he has stated to apply tax rate as per section 115BBE.

8.6.4. If the inference is drawn that ld. AO has made a disallowance of claim of exemption by the assessee u/s 10(38), then, first and foremost, his statement of applying the rate of 60% under section 115BBE does not hold good. Further, for claiming exemption under section 10(38) on the LTCG of equity share in a company, only two conditions are prescribed in the said section, viz. first, transaction of sale of such equity share should be entered into on or after 01.10.2004 and second, such transaction is chargeable to securities transaction tax (STT). In the present case, assessee has established compliance of both the conditions which is not in dispute even by the ld. AO. Also, in the show cause notice, while proposing for the addition as well as in the impugned assessment order, while making the addition, ld. AO has made

no such reference to section 10(38) about its non-fulfilment. Thus, even this inference fails.

8.6.5. We note that while computing the total assessed income, ld. AO held the LTCG as 'income from other sources'. It is important to take note of computation of LTCG mentioned in his show cause notice wherein full consideration stated is Rs.3,06,99,056/- from which cost of acquisition of Rs.3,93,343/- is deducted to arrive at LTCG of Rs.3,03,05,713/- which is in terms of section 45 and 48 of the Act. Assessee received Rs.3,06,99,056/- during the year under consideration which is the subject matter for seeking explanation by ld. AO from the assessee. However, ld. AO made the assessment by making an addition of Rs.3,03,05,713/-, giving deduction for cost of purchase of shares. Such an addition of amount computed under the head 'income from capital gains' by accepting the purchase giving its deduction and holding the balance as 'income from other sources' is not tenable.

8.7. Considering the totality of the facts and circumstances of the case, factual matrix and submissions of parties narrated above and judicial precedents relied upon as discussed as well as discussion and observations made herein above, we set aside the orders of the authorities below and delete the addition made towards Long Term Capital Gain on sale of shares of CTL. Accordingly, grounds taken by the assessee in this respect are allowed.

8.8. Also, addition made by resorting to enhancement of income by ld. CIT(A) towards brokerage/commission as unexplained expenditure u/s 69C by treating the LTCG as bogus and accommodation entry is deleted since it is consequent to the addition made towards LTCG. Accordingly, grounds taken by the assessee in this respect are allowed.

9. Grounds taken in the appeal for AY 2017-18 are also allowed which are similar to the ones taken in appeal for AY 2016-17 except for variation in their amounts in terms of our observations and findings stated above while disposing the appeal for AY 2016-17.

10. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 20 .09.2023.

Sd/-

**(Saktijit Dey)
Vice-President**

Sd/-

**(Girish Agrawal)
Accountant Member**

Dated: 20 September, 2023

Mohan Lal

Copy forwarded to:

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

By Order

Assistant Registrar
ITAT, Delhi Benches
New Delhi