IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 454/Del/2020
(ASSESSMENT YEAR 2015-16)

Anoop Kumar Gupta 5190, Lahori Gate Delhi-110 006 PAN-AAHPG 6768N	Vs.	ACIT Circle Circle-07 New Delhi
(Appellant)		(Respondent)

Appellant by	Mr. V.K. Bindal, CA & Ms. Rinki Sharma, ITP
Respondent by	Mr. P. Praveen Sidharth, CIT-DR

Date of Hearing	06/07/2023
Date of Pronouncement	05/10/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-35, Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Order No. ITBA/APL/S/250/2019-20/1022694424(1) dated 19/12/2019 against the order passed by Dy. Commissioner of Income Tax, Central Circle-7, New Delhi (hereinafter referred to as the 'Ld. AO') u/s 153A r.w.s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 27/12/2018.

2. The assessee has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case, the order passed by Ld. CIT(A) is bad both in eyes of law and on facts.

2. That the Ld. CIT(A) has erred in law and on facts in upholding the initiation of proceedings u/s 153A, since no incriminating documents pertaining to the assessee was found during the course of search conducted on 30/03/2016 on the basis of information received by Investigation Wing of Delhi from office of DGIT (Inv.), Kolkata.

3. That the Ld.CIT(A) has erred in law and on facts in ignoring the fact that report of DIT Investigation Wing, Kolkata has not found any material against the assessee and instead alleging that Income-tax Act follows the judicial principle of "preponderance of probability" and not "beyond reasonable doubt".

4. That the Ld. CIT(A) has erred in law and on facts in not considering the fact that assessment order passed by the Ld. AO is time barred and has not explicitly dealt with the Ground No.6 raised before the Ld. CIT(A) by the assessee wherein it is challenged by the assessee that assessment order passed u/s 153A of the Act is time barred in terms of section 153B of the Act and ought to have held to be annulled.

5. That the Ld. CIT(A) has erred in law and on facts in ignoring that no material has been alleged to be found by the Securities exchange Board of India (SEBI) against the assessee which is duly verifiable from the Show Cause Notice (printed in assessment order) issued by SEBI to contributors to positive LTP in the share of M/s. Mahavir Advanced Remedies Ltd (MARL) and merely alleging that trading in such scrip was suspended by SEBI.

6. That the Ld. CIT(A) has erred in law and on facts in upholding the reliance placed by the Ld. AO in assessment order on alleged similar LTCG matter emerged from trading of MARL shares and pending with Hon'ble ITAT Bangalore in the case of M.K. Rajesjhwari vs. ITO ITA No.1723/Bang/2018.

7. That the Ld. CIT(A) has erred in law and on facts in ignoring the fact that copy of statement of persons given in assessment order does not mention the name of the assessee and no allegations have been made against the assessee.

8. That the Ld. CIT(A) has erred in law and on facts in upholding the order of Ld. A.O. without observing the principles of natural justice and without providing the opportunity to cross examine the witnesses on whose statements reliance is placed by the Ld. AO.

9. That the Ld. CIT(A) has erred in law and on facts in disregarding the documentary evidence submitted by the assessee to substantiate the genuineness of the transaction in shares and treating the transaction as sham.

10. That the Ld. CIT(A) has erred in law and on facts in upholding the addition of Rs.20,56,31,211/- by treating the exempt Long Term Capital gain arising on sale of shares of M/s. Mahavir Advanced Remedies Limited (listed on Bombay Stock Exchange) as bogus LTCG under the Income-tax Act, 1961.

11. That the Ld. CIT(A) has erred in law and on facts in upholding the addition of Rs.1,23,37,872/- being 6% of exempt Long Term Capital Gain on account of alleged unexplained expenditure towards commission expenses incurred to arrange LTCG.

12. That the Ld. CIT(A) and the and the Ld. AO has erred in law and on facts by initiating the penalty proceeding u/s 271(1)(c) of the Income-tax Act, 1961.

13. That the CIT(A) has erred in law as and on facts in confirming the charging of interest as per the Income-tax Act, 1961.

14. That the appellant reserves the right to add, modify, alter, amend or delete any of the grounds."

3. The assessee has raised the following additional grounds of appeal before us:-

> *"15. The impugned assessment order is bad in law as it has been passed u/s 153A of the Act based on a search warrant issued in the name of the appellant for the premises no. F-208, Sainik Farms, New Delhi where no incriminating material at all in respect of the addition of Rs 20,56,31,211/- rejecting the said amount of the long term capital gain claimed as exempt u/s 10(38) of the Act:*
>
> > *i) by relying on some material found during the course of searches on some other persons in different premises that too on the strength of search warrants in their own names and where name of the assessee was not at all mentioned; and*
> >
> > *ii) the said incriminating material found and seized could only be used to frame any reassessment order by assuming jurisdiction through the course of the section 153C of the Act and then passing a separate assessment order u/s 153A of the Act in terms of the section 153C of the Act.*
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> *16. The impugned assessment order need to be quashed in view of the jurisdictional issue which goes to the root of the assessment proceedings as has been held in* ***Kanwar Singh Saini vs High Court of Delhi (2012) 4 SCC 307, PCIT vs S S Con Build (P) Ltd 2022-TIOL-656-HC-DEL-IT and Mavany Brothers vs CIT (2015) 62 taxmann.com 50 (Bom)."***

4. We find that these additional grounds go to the root of the matter and is a legal issue not requiring any verification of facts. Hence in the light of the decision of the Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383 (SC), the additional grounds are hereby admitted and taken up for adjudication along with the original grounds of appeal.

5. We have heard the rival submissions and perused the materials available on record. We find that assessee is an individual earning income from salary and

interest income. The assessee is also a partner in Khushiram Beharilal (firm) and Joint Managing Director of KRBL Ltd. The assessee filed his return of income for the Asst Year 2015-16 on 29.11.2015 u/s 139(1) of the Act. The assessee is a regular investor in shares of various listed and unlisted companies. On perusal of the Balance Sheet of the assessee as on 31.3.2013 and 313.2014 placed on record before us, it is evident that the assessee had invested in shares of 77 companies. The value of investments at cost as on 31.3.2013 was Rs 7.25 crores and Rs 7.54 crores as on 31.3.2014.

6. During the year under consideration, the assessee claimed exemption u/s 10(38) of the Act in respect of long term capital gains on sale of shares of Mahavir Advanced Remedies Ltd (MARL). The assessee acquired 600000 equity shares of MARL at the rate of Rs 11 per share comprising of face value of Rs 10 and premium of Rs 1 per share, under preferential allotment basis on 8.3.2013. The payment for the same was made through regular banking channels from the bank account of the assessee and disclosed in the Balance sheet of the assessee as on 31.3.2013. Similarly the family members of the assessee also subscribed to the preferential allotment of shares of MARL. The share certificate issued for allotment of 600000 shares to the assessee on 8.3.2013 is enclosed in Page 2 of Paper Book 1. This share certificate was duly signed by Chairman of MARL and by Shri BVS Koteshwar Rao in the capacity of Managing Director. These shares were duly dematted by the assessee as is evident from the demat statement enclosed in Page 6 of the Paper Book 1. The assessee sold these shares in various tranches in open market through a registered share broker in the recognised stock exchange after duly suffering Securities Transaction Tax (STT). The sale consideration for the same was received by the assessee from the stock exchange through regular banking channels. Since the shares sold belonged to a listed company and in view of the fact that shares were

transferred after holding it for more than one year and after suffering STT, the resultant long term capital gains was claimed as exemption u/s 10(38) of the Act by the assessee in the return of income. The workings of long term capital gains on sale of shares of MARL are as under:-

Anoop Kumar Gupta
(Assessment Year 2015-16)

Details of Long Term Capital Gain on Shares (STT Paid)

(Amt in Rs.)

Contract Note	Name of Scrip	No. of Shares	Sale Price	Sales Consideration	Brokerage	Service Tax & EC	Other Expenses (stamp duty & Trans. Charges)	Total Expenses	STT Paid	Net amount Due	Date of acquisition of Shares	Purchase price	Total Purchase Price	Profit on shares
05-08-14	Mahavir Advanced Remedies Ltd.	3,000	356.00	1,050,000	2,613	327	109	3,079	1,050	1,045,871	08-03-13	11.00	33,000	1,012,871
06-08-14	Mahavir Advanced Remedies. Ltd.	14,000	350.79	4,911,090	12,180	1,525	651	14,356	4,911	4,891,733	08-03-13	11.00	154,000	4,737,733
07-08-14	Mahavir Advanced Remedies. Ltd.	25,500	351.85	8,972,160	22,440	2,797	1,199	26,416	8,972	8,936,792	08-03-13	11.00	280,500	8,656,292
08-08-14	Mahavir Advanced Remedies Ltd.	7,500	350.90	2,629,500	6,523	817	348	7,691	2,630	2,618,180	08-03-13	11.00	82,500	2,535,680
11-08-14	Mahavir Advanced Remedies Ltd	18,050	351.92	5,641,858	13,994	1,749	748	16,490	5,642	5,619,726	08-03-13	11.00	198,550	5,443,186
12-08-14	Mahavir Advanced Remedies Ltd.	3,000	354.50	1,063,500	2,640	331	141	3,111	1,064	1,059,325	08-03-13	11.00	33,000	1,026,325
13-08-14	Mahavir Advanced Remedies Ltd.	9,000	354.90	3,194,500	7,920	993	423	9,334	3,191	3,177,975	08-03-13	11.00	99,000	3,078,975
14-08-14	Mahavir Advanced Remedies Ltd	13,800	354.18	4,887,720	12,144	1,521	648	14,312	4,888	4,868,500	08-03-13	11.00	151,800	4,716,700
18-08-14	Mahavir Advanced Remedies Ltd	13,000	353.77	4,599,020	11,440	1,432	609	13,482	4,599	4,580,918	08-03-13	11.00	143,000	4,437,918
20-08-14	Mahavir Advanced Remedies Ltd.	5,000	351.00	1,755,000	4,356	545	232	5,127	1,755	1,748,118	08-03-13	11.00	55,000	1,693,118
21-08-14	Mahavir Advanced Remedies Ltd.	30,150	351.79	10,606,350	26,542	3,313	1,405	31,260	10,606	10,564,683	08-03-13	11.00	331,650	10,233,043
22-08-14	Mahavir Advanced Remedies Ltd	20,000	342.24	7,044,975	17,420	2,194	933	20,528	7,045	7,017,302	08-03-13	11.00	220,000	6,797,302
25-08-14	Mahavir Advanced Remedies Ltd.	45,000	358.23	16,330,275	39,150	4,978	2,124	46,252	16,031	15,967,992	08-03-13	11.00	495,000	15,472,992
26-08-14	Mahavir Advanced Remedies Ltd.	2,500	363.86	909,650	2,275	283	121	2,679	910	906,279	08-03-13	11.00	27,500	878,779
01-09-14	Mahavir Advanced Remedies Ltd	22,500	383.34	8,173,975	20,475	2,554	1,083	24,112	8,195	8,142,788	08-03-13	11.00	247,500	7,895,288
02-09-14	Mahavir Advanced Remedies Ltd	15,000	363.33	5,450,000	13,500	1,681	722	15,913	5,450	5,428,637	08-03-13	11.00	165,000	5,263,637
03-09-14	Mahavir Advanced Remedies Ltd	33,000	365.42	11,966,000	29,700	3,719	1,585	35,004	11,960	11,919,036	08-03-13	11.00	363,000	11,556,036
04-09-14	Mahavir Advanced Remedies Ltd	15,000	367.00	5,353,000	13,350	1,672	710	15,731	5,355	5,333,914	08-03-13	11.00	165,000	5,168,914
08-09-14	Mahavir Advanced Remedies Ltd.	25,500	357.34	9,112,150	22,695	2,842	1,207	26,744	9,112	9,076,294	08-03-13	11.00	280,500	8,795,794
09-09-14	Mahavir Advanced Remedies Ltd.	25,000	354.53	8,863,277	8,877	2,767	1,179	12,822	8,877	8,841,980	08-03-13	11.00	275,000	8,566,980
10-09-14	Mahavir Advanced Remedies Ltd.	5,000	355.50	1,777,500	4,439	551	238	5,187	1,778	1,770,536	08-03-13	11.00	55,000	1,715,536
15-09-14	Mahavir Advanced Remedies Ltd	30,000	349.83	10,495,000	26,100	3,268	1,399	30,759	10,495	10,453,746	08-03-13	11.00	330,000	10,123,746
16-09-14	Mahavir Advanced Remedies Ltd.	15,000	354.67	5,320,000	13,200	1,653	709	15,558	5,320	5,298,122	08-03-13	11.00	165,000	5,154,122
17-09-14	Mahavir Advanced Remedies Ltd	12,000	354.00	4,248,000	10,560	1,322	563	12,445	4,248	4,231,307	08-03-13	11.00	132,000	4,099,307
18-09-14	Mahavir Advanced Remedies Ltd.	10,000	358.90	3,584,950	8,900	1,121	475	10,496	3,585	3,570,869	08-03-13	11.00	110,000	3,460,869
19-09-14	Mahavir Advanced Remedies Ltd	18,511	359.87	6,657,874	16,475	2,072	882	19,429	6,658	6,631,787	08-03-13	11.00	203,621	6,428,166
22-09-14	Mahavir Advanced Remedies Ltd	45,489	369.11	16,335,967	40,485	5,078	2,164	47,728	16,336	16,271,603	08-03-13	11.00	500,379	15,771,224
23-09-14	Mahavir Advanced Remedies Ltd.	24,100	358.14	8,632,145	21,446	2,686	1,144	25,279	8,632	8,598,234	08-03-13	11.00	265,100	8,333,134
24-09-14	Mahavir Advanced Remedies Ltd.	35,000	356.00	12,460,000	31,150	3,900	1,661	36,701	12,460	12,410,839	08-03-13	11.00	385,000	12,025,839
26-09-14	Mahavir Advanced Remedies Ltd.	42,300	345.10	14,597,769	37,647	4,555	1,934	44,136	14,597	14,539,076	08-03-13	11.00	465,300	14,073,736
25-09-14	Mahavir Advanced Remedies Ltd.	10,675	350.03	3,736,990	9,394	1,169	496	11,058	3,737	3,721,783	08-03-13	11.00	117,425	3,604,370
29-09-14	Mahavir Advanced Remedies Ltd	8,425	356.90	3,003,612	7,498	938	398	8,835	3,004	2,991,973	08-03-13	11.00	92,675	2,899,998
		600,000		213,956,291	517,425	66,350	28,232	612,007	213,073	212,231,211			6,600,000	205,631,211

Summary			(Amt in Rs.)
Sales Consideration			213,956,291
Less Brokerage			517,425
			212,538,866
Cost of Acquisition		6,600,000	
Expenses			
STT Paid	213,072		
Service Tax & EC	66,350		
Other Expenses	28,232	307,655	
Total			6,907,655
Net Long Term Capital Gain			205,631,211

7. A search and seizure operation u/s 132 of the Act was carried out on KRBL group of cases on 30.3.2016. Warrant of authorisation u/s 132 of the Act was issued in the following names:-

a) For the assessee for searching his residential premises;
b) For KRBL Ltd for searching its office premises, where name of the assessee was not included.

8. In the course of search in the premises of the assessee on 30.3.2016, no incriminating documents were found representing any undisclosed income of the assessee either in the form of money, bullion, jewellery, investment in other movable and immovable assets, notings in loose sheet, trail of any transactions involving receipt / payment of monies etc. Accordingly, the search stood concluded in the premises of the assessee on 31.3.2016 itself at 8.40 P.M.

9. Since simultaneous search was carried out in the hands of KRBL Ltd, where assessee is a Joint Managing Director, the assessee was taken to the premises of KRBL Ltd on 31.3.2016 after 8.40 PM. No incriminating materials were found in the premises of KRBL Ltd during the course of its search.

10. On the date of search on 30.3.2016, the time limit for issuing notice u/s 143(2) of the Act for the regular return filed for the Asst Year 2015-16 was available and hence the assessment for the Asst Year 2015-16 was pending and accordingly becomes an abated assessment.

11. Simultaneously, searches were conducted by Chennai Investigation Wing on Shri BVS Koteshwar Rao and others on 30.3.2016 based on independent warrant of authorisation issued in their respective names. Further a survey u/s 133A of the Act was carried out in the premises of MARL on 30.3.2016. During the course of search of Shri BVS Koteshwar Rao on 30.3.2016 at his residence, a statement u/s 132(4) of the Act was recorded from him wherein he stated that

he had resigned from the director's post from MARL in the year 2012. The search team confronted Shri Koteshwar Rao with the share certificate dated 8.3.2013 containing his signature by seeking clarification as to how he could have signed the same in March 2013 when he had resigned from MARL as director in the year 2012 itself. In response, Shri Koteshwar Rao denied the signature in the share certificate and claimed the same to be forged by Shri Dhanroop Betala and Shri Shantilal Purohit. Shri Koteshwar Rao also responded by stating that the statutory formalities for intimating the Registrar of Companies with regard to his resignation from directorship of MARL were delayed by the officials of MARL. Shri Koteshwar Rao also confirmed in his statement that he was not aware of the persons to whom preferential allotment of shares of MARL were made. The full copy of this statement of Shri Koteshwar Rao was not made available to the assessee. However, certain contents of the same were confronted to the assessee on 01.04.2016 while recording his statement in the office premises of KRBL Ltd. It is pertinent to note that this statement was given by the assessee in the capacity of Joint Managing Director of KRBL Ltd and not in his individual capacity. As stated supra, the assessee was shown certain contents of the statement recorded at Chennai from Shri Koteshwar Rao. The assessee categorically denied having known Shri Koteshwar Rao and accordingly pleaded complete ignorance of the facts mentioned by Shri Koteshwar Rao in his sworn statement. The statement recorded from the assessee in the office premises of KRBL Ltd on 01.04.2016 is enclosed in Pages 300 to 311 of the Paper Book 2.

12. The genesis of the search on the assessee was also the amount claimed as exempt Long Term Capital Gain (LTCG) on the said listed equity shares of MARL in the relevant return of income because some earlier search actions on many share brokers by the income-tax department had yielded evidence that in the

listed equity shares of MARL, bogus LTCG was facilitated by them. However, all connected surveys and enquiries were also conducted on the same date by the revenue across the country as is mentioned in the assessment order where interestingly as mentioned by the ld. AO in the assessment order, all the persons shifted the blame on others for the said transactions.

13. The ld. AO based on statements recorded from the exit providers inter alia among other persons, proceeded to treat the sale proceeds of shares of MARL to be bogus and concluded that the same is merely an accommodation entry obtained by the assessee in connivance with the various intermediaries. With these observations, the ld. AO treated the sale proceeds of shares to be taxed as unexplained cash credit u/s 68 of the Act. Having treated the sale proceeds of shares as an accommodation entry, the ld. AO proceeded to add estimated commission expenditure thereon @6% of net gain. This action of the ld. AO was upheld by the ld. CIT(A).

14. The ld. AR stated that the income-tax search at the residence of the assessee was concluded at 8.40 pm on 31/03/2016 as is clear from the panchanama of the said premises and thereafter, the assessee was taken to the Corporate office and in his statement there which cannot be considered in any manner to have been on him in absence of a search warrant in his name for the said premises, some questions were asked to him about the said share sales and to which he never affirmed anywhere as bogus transactions and admittedly, the same also does not display any such incriminating information. In the said statement, he was confronted with the statements being recorded elsewhere at the same time but which was not on the strength of common / joint search warrants. Without admitting, even presuming the same to be considered as some incriminating information, yet the same cannot be assessed in his hands

u/s 153A of the Act as the same was not found in the premises of the assessee nor on the strength of a search warrant on him.

15. The AR also stated that the addition was made without allowing an opportunity of cross examination of all the witnesses whose statements were relied in the assessment orders, though specifically demanded.

16. We find that the ld. DR before us argued that there is no difference between an abated assessment u/s 153A of the Act and regular assessment u/s 143(3)/144 of the Act. Accordingly, any information gathered from any source such as information received from investigation wing, could be used by the Assessing Officer while framing assessment in the hands of the assessee u/s 153A of the Act in respect of an abated assessment. He argued that the legal proposition that other party search materials used against the assessee could be done only in section 153C assessment , would apply only in respect of concluded assessments and not for abated assessments. On merits, the ld. DR argued –

a) Investigation was done with the directors of MARL.
b) Director Shri Koteshwar Rao who had signed the share certificate issued to the assessee stated on oath that it was not signed by him as he had denied his signature in the sworn statement recorded u/s 132(4) of the Act.
c) Shri Koteshwar Rao had resigned from the directorship of MARL in 2012 whereas the share certificate was issued to the assessee only on 8.3.2013.
d) Shri Dhanroop Betala also admitted about forgery in signature by stating that the signature of Shri Koteshwar Rao was forged by Shri Jitendra Joshi.
e) Investigation was carried out by the ld. AO with the exit providers of shares of MARL, wherein they had stated that the shares of MARL were purchased by them from the assessee as per the instructions of Shri Jitendra Joshi.

17. On the aspect of cross –examination not provided to the assessee, the ld. DR by relying on the judgment of the *Hon'ble Supreme Court in the case of ITO vs M. Pirai Choodi reported in 20 taxmann.com 733 (SC)* pleaded that the absence

of allowing cross examination cannot be fatal to the conclusion of the AO so as to delete the addition but the same be restored to the AO for allowing cross examination of the witnesses as was directed therein.

18. In rebuttal to the decision relied upon by the ld. DR in the case of ITO vs. M Pirai Choodi supra, the ld AR submitted that the decision in the case of Pirai Choodi was on peculiar facts therein as the said assessee had not filed an appeal before the CIT(A) against the order of the AO but had approached the High Court directly by way of a writ petition. In those circumstances, the Supreme Court held that the High Court ought to have required the assessee to avail the remedy of a statutory appeal instead of quashing the assessment proceedings. The ld. AR further pleaded that the *Hon'ble Jurisdictional High Court in the case of CIT Vs Sunil Aggarwal reported in 64 taxmann.com 107 (Delhi)* after taking note of the judgement of Hon'ble Apex Court in Pirai Choodi referred supra, held as under:-

> "20. *The Court further notes that in M. Pirai Choodi's case (supra), the Assessee had not availed the statutory remedy of filing an appeal before the Commissioner of Income Tax (Appeals) CIT(A) against the order of the AO but had approached the High Court directly by way of a writ petition. In those circumstances, the Supreme Court held that the High Court ought to have required the Assessee to avail the remedy of a statutory appeal instead of quashing the assessment proceedings on the ground of violation of natural justice. The Supreme Court, in fact, permitted the Assessee to approach the CIT (A).... It was then urged by Mr. Singh that if in the present case, the Court was of the view that there was a violation of natural justice on account of the denial of opportunity to the Assessee to cross-examine Mr. Sant Kumar Sharma, the matter ought to be remanded to the AO for that purpose. While this may have been a possible course to adopt, this Court is not inclined to do so since almost two decades have elapsed since the date of the search. There must be some finality to proceedings that seek to cover a block period beginning 1st April 1986. Consequently, Question (A) is also* answered in the affirmative, i.e., in favour of the Assessee and against the Revenue.'

19. The ld. AR pleaded that the same view has been taken by the *Hon'ble Jurisdictional High Court in the case of PCIT v Jagat Talkies Distributors (2017) 85 taxmann.com 189 (Delhi)* wherein it was held that:-

> "*25. The Court is also of the view that no comparison can be drawn with a situation where in the course of the assessment proceedings an opportunity to examine a witness is denied. That was the situation in M. PiraiChoodi (supra). There the Supreme Court was of the view that if there was a failure by the AO to provide the Assessee an opportunity of cross-examination of a witness, the Assessee could have gone in appeal. In that case it was found that "the Assessee had failed to avail statutory remedy." **Here there is no failure by the Assessee to raise objections at every stage of proceedings***." Similarly in SHL (India) (P.) Ltd. [2021] 128 taxmann.com 426 (Bombay) it was held that "*The Supreme Court decision in the case of ITO v. M. PiraiChoodi[2012] 20 taxmann.com 733/[2011] 334 ITR 262, referred to in the Revenue's reply is also not applicable to the issue at hand as that was a case where the assessee was not given an opportunity to cross-examine the concerned witness and which assessee also had a statutory appellate remedy which the assessee had failed to avail of, whereas there is no such right available to Petitioner in this case*".

20. The ld AR vehemently argued that the fact that the revenue was in possession of the definite incriminating information is transparent from the words **material or / and evidences gathered** by the income-tax department in the income-tax searches conducted in the premises of the other persons involved in the alleged scheme of providing the LTCG, mentioned in the assessment order in para 5.1 and 5.2 on page no. 6, in para 5.8.1 on page no. 35, second para on page no. 69 and in para 5.13 on page no. 77 of the assessment order besides the fact that the revenue confronted **Mr BVS Koteshwar Rao, one of the then directors of MARL, searched on 30/03/2016, with the extracts of disclosure on preferential allotment to certain persons of shares of MARL containing his signature filed before the MCA,** but who in his statement recorded u/s 132(4) of the Act at his residence as reproduced in para 5.2.3 on page no. 7 of the assessment order, **denied the same to be his signature and claimed the same to be forged as he was not a director**

of the company since 2012, which extracts by itself became incriminating material much more than the other incriminating information repeatedly mentioned by the AO in the assessment order. Looking into the issue in dispute from this perspective, the decision of the *Hon'ble Apex Court in the case of Vikram Sujitkumar Bhatia (2023) 149 taxmann.com 123 (SC)* would come to the rescue of the assessee herein. The AO has also categorically alleged in para 5.2.4 of the assessment order on the basis of the said extracts coupled with the said statement the allotment of those shares to the assessee as forged. Thus, nothing more is left to support the fact that the special mandatory non obstante provisions of section 153C of the Act were to be triggered to make an assessment of the said income if the revenue really wished to rely on the same as the same information relating to the assessee was detected in the premises in income-tax searches of some other persons.

21. The AR also stated that the ld. AO has failed to establish any money trail which is not depicted from the assessment order. The family of the assessee invested a sum of Rs 1.32 crores in a private placement of the equity shares of MARL as early as in March, 2013 through proper banking channel. The Revenue has not been able to show where the said money had gone for the benefit of the assessee in any manner from MARL. The shares were sold by the assessee from April 2014 till December 2014 which is a sufficient long period to leave the said amount with any person without any security. Further, also on perusal of the contentions of the ld. AO that the cash was given at the time of sale to the exit providers by the assessee or some brokers on behalf of the assessee to purchase those shares by those exit providers for enabling exit of the assessee, no money trail for the same has been brought on record in any manner. Admittedly, the

income-tax search in the premises of the assessee yielded no evidence at all in any manner to support the said allegation as none is mentioned in the assessment order to suggest exchange of any consideration either in cash or kind for the amounts received by the assessee on sale of those shares.

22. The ld. AR further stated that nowhere the name of the assessee was ever taken by anyone whose statements have been mentioned in the assessment order and who have also never even acknowledged any acquaintance with the name of the assessee in any manner. The SEBI has also nowhere mentioned the name of the assessee in its orders nor there is any allegation of involvement of the assessee in any manipulation/ rigging of the prices of the said shares as he was not part of the alleged manipulating syndicate mentioned by the ld. AO in the assessment order. The assessee never knew the buyers of those equity shares as he was not legally permitted to operate on the platform of the stock exchanges where only members of the Stock Exchange could undertake transactions. As per the conditions of trade on the stock exchanges, whenever anyone wishes to sell some listed equity shares, he directs his broker to sell those within a desired price range and time and accordingly the broker member places the quantity with the price range for sale on the platform of the stock exchange. Similarly, the broker of a buyer of listed shares also places his purchase requisition of those shares with quantity and the value range on the stock exchange platform. These intends also carry a time limit to complete any such transactions. Whenever all the parameters given by the seller and the buyer within the fixed time meet for whatever quantity whether full or part on the stock exchange platform, the transactions of sales / purchases respectively get concluded without knowing as to who the actual seller or buyer were by either the buyer or seller or even by the brokers of the both. Therefore, the allegation

of the revenue that the assessee could sell the shares in connivance with those persons cannot at all hold good. Moreover, the contention of the ld. AO as has been stated in the assessment order that the buyers / so-called exit providers were in a very large number but without identifying as to how the assessee could connive with all of them at the same time spread over the country to buy those shares from the assessee is not sustainable, particularly in absence of any evidence detected anywhere.

23. It is pertinent to note that though the ld. AO had stated that large number of incriminating documents were found and impounded during the search, we find that ultimately no addition was made based on the same by the ld. AO in the assessment proceedings, as the ld. AO was convinced with the explanations given by the assessee for those documents. The fact of assessee claiming exemption u/s 10(38) of the Act for sale of shares of MARL was duly disclosed in the return of income filed on 29.11.2015 prior to the search itself. No document whatsoever was found and seized from the premises of the assessee during his search representing any incriminating document qua the issue of claim of exemption u/s 10(38) of the Act. The only document which fall within the ambit of incriminating nature is the forged signature of Shri Koteshwar Rao in the documents pertaining to allotment of preferential shares submitted to Ministry of Corporate Affairs (MCA), which was also not seized from the premises of the assessee. The investigation wing of Income Tax Department had gathered those informations from MCA and had confronted Shri Koteshwar Rao during the course of search. Shri Koteshwar Rao denied having affixed his signature thereon as he had resigned from the post of Director of MARL in the year 2012. However, from the statements recorded by the investigation wing of income tax department from various persons involved , it is evident that the signature of Shri Koteshwar Rao was indeed forged in the documents pertaining to allotment

of preference shares to various persons including the assessee and his family members. At this juncture, it would be relevant to note that both Shri Koteshwar Rao as well as the assessee in their individual sworn statements had categorically denied having known each other. Hence it becomes evident that assessee was never involved in any of the forgery acts that had been carried out in the allotment of preference shares of MARL. But we find that the assessee was confronted by the revenue with those very same forged signed documents in order to draw adverse inference on the claim of exemption u/s 10(38) of the Act on the assessee. Hence the said forged signed documents become incriminating documents found during the course of search of third parties (which include MARL and Shri Koteshwar Rao). Accordingly, if at all the assessee need to be questioned based on those incriminating documents, as per the scheme of provisions of Chapter XIV (sections 153A to 153C) of the Act , it could be done only by taking recourse to section 153C of the Act and not u/s 153A of the Act irrespective of the fact whether the assessment is abated or not. This is so because , the provisions of Sections 153A and 153C of the Act are special provisions starting with non-obstante clause thereon which had been introduced in the statute only for the limited purpose of framing assessments pursuant to search actions carried out and information / materials surfaced therein.

24. We find that the assessment for this assessment year was not completed as the time limit to issue any notice u/s 143(2) of the Act was still available to the ld. AO and undoubtedly, as per the law as existed then, no addition in an assessment order passed u/s 153A of the Act in the case of the assessee was possible on the basis of some alleged incriminating information/ material seized /

statements from / of the alleged entry providers as no incriminating material in any manner at all depicting bogus LTCG was found during the course of search in the premises of the assessee or on the strength of any search warrant in the name of the assessee in any premises anywhere. Thus, the only course available to the revenue was to initiate proceedings u/s 153C of the Act as has been held by the *Hon'ble Supreme Court in Vikram Sujitkumar Bhatia vs ITO reported in 149 taxmann.com 123 (SC)*. We find that the *Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt Ltd reported in 149 taxmann.com 399 (SC)* had not overruled / could not at all overrule the special provisions u/s 153C of the Act mandated by the legislature for the purpose. The directions therein by the Hon'ble Apex Court to consider material available with the ld. AO in pending assessments which was gathered by the ld. AO in normal course and not flowing from any search action for which the mandatory recourse is the route provided in section 153C of the Act only and there could be several assessments of the same assessee in addition to the single assessment u/s 153A of the Act for the relevant period on search on him. This is so because the cause of action u/s 153C of the Act can arise upto 10 years when some incriminating information pertaining to the assessee is detected in searches elsewhere at different times which were not accessible to the revenue earlier. The assessment procedures under the two specific situations have, therefore, been categorically mandated by the legislature without any fetters and need to be followed by all the courts including the Hon'ble Supreme Court being a jurisdictional issue as has been held by the *Hon'ble Supreme Court in S S Con Build Pvt Ltd reported in 293 Taxman 491 (SC) dated 4.5.2023* by following the earlier Apex Court judgment in *Kanwar Singh Saini vs High Court of Delhi reported in (2012) 4 SCC 307***.** We find that undisputedly section 153C of the Act starts with a **non obstante clause** and both the AOs involved were bound to act as per this provision as term deployed

therein is **"shall"**. Accordingly, as per the law, no addition in an assessment order passed u/s 153A of the Act without following the mandatory route of section 153C of the Act in the case of the assessee was possible on the basis of some alleged material seized / statements from / of the alleged entry providers as no incriminating material in any manner at all depicting bogus LTCG was found during the course of search in the premises of the assessee or on the strength of any search warrant in the name of the assessee in any premises anywhere. Thus, the only course available for the revenue was to initiate proceedings u/s 153C of the Act on the assessee whereby the AO of the entry provider was statutorily required, (and not the officers of the investigation unit of the department under any circumstance on the basis of the seized material) if he was satisfied that the seized material/information from the searched entry provider had some bearing etc. on the determination of the assessable income of the assessee by sending the same to the AO of the assessee and then the AO of the assessee should have proceeded to assess the same by a separate assessment order u/s 153A read with the section 153C of the Act. Undisputedly, section 153C of the Act is a non obstante section and a complete code by itself and both the AOs involved were bound to act as per this provision as term deployed therein is **"shall"**. No option was available with the AOs to act otherwise overruling the law at their whims. Therefore, if the material found and seized from an entry provider 'pertains or pertain to, or any information contained therein, relates to the assessee, then the ld. AO of the said entry provider must have initiated the assessment process u/s 153C of the Act. It is in his exclusive domain to be satisfied whether 'pertains or pertain to, or any information contained therein, relates to' or not and the statute in an unambiguous language has not bestowed this power on any other authority, which admittedly here has been completely misunderstood to be with the

Investigation Unit of the income-tax department by the ld. AO while completing the assessment.

25. For the sake of convenience, the provisions of section 153C of the Act as it stood at the relevant point of time are reproduced hereunder:-

Assessment of income of any other person u/s *153C of the Act*

153C.** (1)**Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned **shall** be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer **shall** proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A:*

***Provided** that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:*

***Provided further** that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.*

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing

Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

(emphasis supplied by us)

26. It would not be out of place to refer to the Notes on Clauses of the Finance Bill 2015 when the legislature thought it fit to amend the provisions of section 153C of the Act w.e.f. 01.06.2015.

Clause 36 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

The existing provisions contained in section 153C provide that in the course of an assessment proceeding, in the case of a person in whose case search action under section 132 or action under section 132A have been conducted, and whether the Assessing Officer is satisfied that the assets or books of account or documents seized belong to another person, then, the assets or books of account or documents seized shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person, if he is satisfied that the books of accounts or documents or assets seized have a bearing on determination on the total income of such other person.

It is proposed to amend sub-section (1) of the said section so as to provide that where the Assessing Officer is satisfied that,

(a)	*any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*

(b)	*any books of account or documents, seized or requisitioned, pertains or pertain to, or **any information contained therein**, relates to,*

*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned, **shall** be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer **shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A**, if that Assessing Officer is **satisfied** that the books of account or documents or assets, seized or requisitioned, **have a bearing on the determination of the total income** of such other person **for the relevant assessment year** or **years** referred to in sub-section (1) of section 153A.*

This amendment will take effect from 1st June, 2015.

27. On perusal of the above provision read with relevant Notes on Clause to the Finance Bill 2015, it is clear that any information or entry found in any document seized pertaining / relating to a person other than the person searched from the searched premises as was referred u/s 153A of the Act was to be handed over by the investigation wing to the AO of such other person (searched) and then that AO of the searched person shall handover the same to the AO of the person not searched who thereafter was to proceed against such other non-person by issuing a notice u/s 153C of the Act and then to assess / re-assess income of such other not searched person.

28. Further on perusal of the proviso to section 153C of the Act , it is very clear that the **first proviso** as it existed then, the **deemed date of search** for **initiation** of proceeding u/s **153C** of the Act in the case of a non-searched person (assessee here) was the **date of receiving the documents by the AO of the assessee. It is pertinent to note that the panchanama was finally closed in the hands of the assessee on 31.3.2016 at 8.40 P.M.**

The case of the assessee got centralised only on 5.9.2016, which means the AO could have received any information relating to bogus LTCG based on entry operators statements only on or after 5.9.2016 and certainly not before that date. This is so because absolutely no documents of incriminating nature was found and seized in the premises of the assessee during the course of search on 30.3.2016 which got concluded on 31.3.2016 at 8.40 P.M. Hence even if 5.9.2016 is construed as the date of receipt of information by the AO of the assessee, then that would become the date of search on the assessee in order to proceed on the assessee in terms of section 153C of the Act. This view of ours is fortified by the decision of the *Hon'ble Jurisdictional High Court in the case of CIT vs RRJ Securities Ltd reported in 380 ITR 612 (Del) followed in Pr. CIT vs Raj Buildworth (P) Ltd reported in 113 taxmann.com 600 (Delhi) and the SLP of the revenue dismissed by the Hon'ble Apex Court which is reported in 113 taxmann.com 601 (SC).* Consequently, the period relevant to the Asst Year 2015-16 herein, when the impugned incriminating material was found in a search of a third person, got shifted from the scope of an assessment u/s 153A of the Act to the provisions of the sections 153C of the Act being one of the six assessment year preceding the date of search in the case of the other person.

29. Thus, it could be safely concluded that in addition to the assessment order passed u/s 153A of the Act on the basis of an income-tax search conducted on the assessee, the impugned amount assessed in this assessment order as undisclosed / unexplained income, allegedly based on some incriminating material found elsewhere, with respect to the long term capital gain already declared in the return of income filed on 29/11/2015 could not be assessed in

the said assessment order passed u/s 153A of the Act but it could be considered for the purpose only and only in a separate assessment order by taking recourse to the **mandatory and special non obstante provisions of the section 153C** of the Act and then to pass a separate assessment order u/s 153A r.w.s. 153C of the Act. Had recourse to section 153C of the Act been adopted by the revenue, then it would be in accordance with the decision of the *Hon'ble Supreme Court in the case of ITO vs Vikram Sujitkumar Bhatia (supra)*. Hence the consideration of denial of exemption u/s 10(38) of the Act for the long term capital gain on sale of shares of MARL could not be done by the revenue legally in the proceedings u/s 153A of the Act on the assessee.

30. We find that the main grievance of the revenue in the instant case is that the signature in the documents pertaining to preferential allotment of shares to the assessee and his family members was forged and accordingly, the entire transaction of purchase and sale of shares were pre-meditated. But in our considered opinion, all these allegations cannot be taken as a relevant consideration in view of the following facts :-

a) The assessee had been allotted 600000 equity shares of MARL on preferential allotment basis at Rs 11 per share.
b) The assessee physically received the share certificate for allotment of 600000 equity shares of MARL.
c) The assessee had made payment of Rs 66,00,000/- towards purchase of shares through regular banking channels before the allotment.
d) These shares were duly reflected in the balance sheet of the assessee as on 31.3.2013 and 31.3.2014.
e) These shares were duly dematted with the Depository Participant. In this regard, it is relevant to note that the physical share certificate in original had to be deposited with the Depository Participant for getting the shares registered in Dematerialised form.
f) These shares were duly sold in the open market through recognised stock exchange through a registered share broker (Rashi Equisearch Pvt Ltd)

and correspondingly the shares lying in demat account were duly reduced to the extent of sale in various tranches.

31. Hence the entire allegations levelled by the revenue on the assessee falls flat and devoid of merit.

32. The main grievance of the ld. AO is that rise in share price of MARL is devoid of commercial principle or market factors ; that transactions are based on mutual connivance on part of assessee and operators ; that assessee resorted to preconceived scheme to procure bogus long term capital gains and hence the transactions are not bonafide ; that SEBI also passed an interim order in the case of MARL holding that share prices were determined artificially by manipulations ; that these are close circuit transactions and are pre-structured; that assessee had failed to discharge the onus cast on him ; that net worth of MARL is negligible and that its share prices were artificially rigged ; that investigations prove that cash is routed through various accounts to provide these bogus long term capital gain entries. The ld. AO by making these observations proceeded to treat the sale proceeds of the shares as unexplained cash credit u/s 68 of the Act. Since the receipt of sale proceeds was treated as bogus, the ld. AO also proceeded to add estimated commission @ 6% on LTCG amount for arranging the said bogus transaction as estimated expenditure.

33. It would be not out of place to mention here that in none of the statements of various persons relied upon by the ld. AO, the name of the assessee or the share broker through whom the shares were sold by the assessee, was mentioned. Further no money trail was proved by the revenue in the instant case despite searching the assessee u/s 132 of the Act.

34. We find that the ld. AO had not proved with any cogent evidence on record that assessee was involved in converting his unaccounted income into exempt long term capital gains by conniving with the so called entry operators and brokers who were involved in artificial price rigging of shares. No evidence is brought on record to prove that assessee was directly involved in price manipulation of the shares dealt by him in connivance with the brokers and entry operators. It is not in dispute that the assessee herein was merely receiving salary income and interest income apart from earning exempt income from partnership firm on a routine basis. As stated in earlier part of this order, the assessee has been making investments in shares of various listed and unlisted companies. During the year under consideration, he had earned exempt LTCG on sale of listed company shares.

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

> *From the documents produced before the Court it was seen that the shares in question were, in fact, purchased by the assessees on the respective dates and the company had confirmed to have handed over the shares purchased by the assessees. Similarly, the sale of the shares of the respective buyer was also established by producing documentary evidence. It is true that some of the transactions were off-market transactions. However, the purchase and sale price of the shares declared by the assessees were in conformity with the market rates prevailing on the respective dates, as was seen from the documents furnished by the assessees. Therefore, the fact that some of the transactions were off-market transactions could not be a ground to treat the transactions as sham transactions.*
> *On a perusal of those documentary evidences, the Tribunal had arrived at a finding of fact that the transactions were genuine. Nothing was brought to notice of the Court that the findings recorded by the Tribunal were contrary to the documentary evidences on record. Therefore, no substantial question of law arose from the order of the Tribunal.*

36. We find that independent enquiries were conducted by SEBI for the relevant period from 26.6.2013 to 6.1.2015 and SEBI had passed an order dated 30.8.2019 in the case of MARL after its final investigation, wherein only three persons viz. Ms Shilpa Gowdanakunta (PAN-AOFPS5937R) ; Mr Mukesh Kanakriya (PAN- AAIPM5576B) and Mr Vinod Hari Mhatre (PAN – ANQPM0834M) were held to be involved in artificial rigging of share prices of MARL and hence they were prohibited from accessing the securities market for a period of 3 years. This SEBI order dated 30.8.2019 in the case of MARL did not even mention the name of the assessee or his broker through whom the shares were sold by the assessee in the open market. Hence this goes to prove that the assessee or his broker were not involved in artificial rigging of price of shares of MARL in connivance with any person. When even SEBI does not allege any involvement of the assessee herein with the manipulation of share prices, how can the revenue herein state that long term capital gains derived by the assessee is merely an accommodation entry and is bogus.

37. We are unable to persuade ourselves to accept to the contentions of the ld. DR that Kolkata Investigation Wing had conducted a detailed enquiry with regard to the scrip dealt by the assessee herein and hence whomsoever had dealt in this scrip, would only result in bogus claim of long term capital gain exemption or bogus claim of short term capital loss. Merely because a particular scrip is identified as a penny stock by the income tax department, it does not mean all the transactions carried out in that scrip would be bogus in the hands of all the investors. So many investors enter the capital market just to make it a chance by investing their surplus monies. They also end up with making investment in certain scrips (read penny stocks) based on market information and try to exit at an appropriate time the moment they make their profits. In this process, they also burn their fingers by incurring huge losses without knowing the fact that the particular scrip invested is operated by certain interested parties with an ulterior motive and once their motives are achieved, the price falls like pack of cards and eventually make the gullible investors incur huge losses. In this background, the only logical recourse would be to place reliance on the orders passed by SEBI pointing out the malpractices by certain parties and taking action against them. Since assessee's name does not even figure in the list of parties who were involved in manipulation of shares prices of MARL in the order of SEBI dated 30.8.2019 after its detailed investigations, the transaction carried out by the assessee cannot be termed as bogus.

38. We find that the *Hon'ble Calcutta High Court in the case of CIT vs Shreyashi Ganguli in ITA No. 196 of 2012* had observed that in that case, the Hon'ble Calcutta High Court held that the Assessing Officer doubted the transactions since the selling broker was subjected to SEBI's action. However the transactions were as per norms and suffered STT, brokerage, service tax, and cess. There is

no iota of evidence over the transactions as it were reflected in demat account. The appeal filed by the revenue was dismissed. We find that the assessee's case before us is in a much stronger footing as no action has been initiated on the Broker or on the assessee by SEBI. Even though the trading of the scrip was suspended from 07.01.2015 in view of the fact that SEBI carried out the investigation for the movement of share prices of MARL during the period 26.6.2013 to 6.1.2015 (i.e. the period during which assessee herein also sold the shares in the open market), still the SEBI in its final order dated 30.8.2019 after carrying out detailed investigations, did not implead either the assessee or his broker for any manipulation of share prices. Infact this is also evident and this fact gets further strengthened from the statements recorded from various entry operators who had also never mentioned the name of the assessee or his broker.

39. In any case, we find that the assessee had duly proved the nature and source of credit representing sale proceeds of shares of MARL within the meaning of section 68 of the Act. The sale proceeds have been received by the assessee from the stock exchange through the SEBI registered share broker by account payee cheques through regular banking channels. We find that the three ingredients of section 68 of the Act are duly fulfilled by the assessee in the instant case. Hence there is no question of making any addition as unexplained cash credit u/s 68 of the Act in the instant case.

40. In view of the aforesaid observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that there is no case for the revenue to deny the claim of exemption u/s 10(38) of the Act and to sustain the disallowance of estimated commission expenditure thereon in the proceedings framed u/s 153A of the Act on the assessee. Accordingly, the additional grounds

raised by the assessee are allowed and original grounds 2 to 3 and 5 to 11 are hereby allowed.

41. The Ground No. 4 raised by the assessee is challenging the limitation of framing the assessment. Though exhaustive arguments were indeed made by the ld. AR at the time of hearing, the ld. AR on hearing the arguments of ld. DR, fairly conceded that the said ground is not pressed. Accordingly, we do not deem it fit to even address the arguments advanced therein for Ground No. 4 and the same is hereby dismissed as not pressed.

42. The Ground No. 12 is challenging the initiation of penalty proceedings u/s 271(1)(c) of the Act, which would be premature for adjudication at this stage. Hence dismissed.

43. The Ground No. 13 is consequential in nature and does not require any specific adjudication.

44. The Ground Nos. 1 and 14 are general in nature and does not require any specific adjudication.

45. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 5th October, 2023.

Sd/-	Sd/-
(ANUBHAV SHARMA)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:05/10/2023
Pk/sps
Copy forwarded to:
1. Appellant

2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI