

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 715/Mum/2021
(Assessment Year 2010-11)

ITA No. 716/Mum/2021
(Assessment Year 2011-12)

ITA No. 708/Mum/2021
(Assessment Year 2012-13)

ITA No. 714/Mum/2021
(Assessment Year 2013-14)

ITA No. 719/Mum/2021
(Assessment Year 2014-15)

ITA No. 707/Mum/2021
(Assessment Year 2015-16)

ITA No. 717/Mum/2021
(Assessment Year 2016-17)

Ms. Priya Mohan Gurnani
2101, Moraj Cass Grande,
Plot no. 57, Sector 17,
Koperkhairne,
Navi Mumbai 400 709
(Appellant)

Vs.

The DCIT
Central Circle -5(2),
1908, 19th Floor, Air India
Building, Nariman Point,
Mumbai-400 021
(Respondent)

PAN No. AACPG 8826 C

Assessee by	Mr. CA Pradip Kapasi, AR
Revenue by	Mr. Manojkumar Sinha SR DR



	Mr. Sandeep Rai, Sr DR Mrs. Mahita Nair SR Dr
--	--

Date of hearing:	11/08/2023
Date of pronouncement :	08/11/2023

ORDER

PER BENCH

01. These are seven appeals filed by the assessee Ms Priya Mohan Gurnani [Assessee/ Appellant] for assessment year 2010 – 11 to 2016 – 17 involving certain common issues emanating from same search. Both the parties submitted that appeals involve common grounds, identical facts and circumstances for all those years. Therefore, the learned authorized representative argued all the matters raising similar contentions, the learned departmental representative also defended the orders of the lower authorities raising similar arguments for all these years; therefore, these appeals are disposed of by this common order.

02. Fact shows that appellant is an individual assessed to income tax. She derives income from salary, house property, business and income from other sources by maintaining regular books of accounts. Search and seizure action u/s 132 of the act was carried on 4/2/2016. Therefore the assessment for assessment year 2010 – 11 to 2014 – 15 were carried out by issuing a notice u/s 153A of the Act and for assessment year 2015 – 16 and 2016 – 17 carried out u/s 153A rws 143 (3) of the act.



03. Status of return filed by the assessee u/s 139 (1) of the Act and u/s 153A of the act in response to the notice is as under :-

A.Y.	F.Y.	Original Return u/s 139		Return u/s 153A		
		Date of filing	Returned Income	Date of filing	Returned Income	
10-11	09-10	25.03.2011	9,96,620	13.01.2017	10,23,860	
11-12	10-11	21.06.2012	4,77,180	12.01.2017	4,77,180	
12-13	11-12	31.08.2012	14,24,850	13.01.2017	14,24,850	
13-14	12-13	31.07.2013	44,85,040	12.01.2017	44,85,040	
14-15	13-14	30.07.201	44,59,850	12.01.2017	44,59,850	
15-16	14-15	31.08.2015	68,42,700	12.01.2017	68,42,700	
16-17	15-16	30.07.2016	41,89,830			

04. Pursuant to notices u/s 153A of the Act the total income of the assessee was assessed by the Id AO as under :-

A Y	Date of Assessment	Assessment passed u/s	Assessed Income	Returned Income	Additions made
10-11	26/12/2018	153A rws 143(3) of The Act	1251425	1023860	227625
11-12	26/12/2018	153A rws 143(3) of The Act	756840	477180	279660
12-13	26/12/2018	153A rws 143(3) of The Act	1713300	1424850	288450
13-14	26/12/2018	153A rws 143(3) of The Act	4536949	4485040	51909
14-15	26/12/2018	153A rws 143(3) of The Act	69985390	4459850	65525540
15-16	26/12/2018	153A rws 143(3) of The Act	34562114	6842700	27719414



16-17	26/12/2018	153A rws 143(3) of The Act	18846521	4189830	14656691
-------	------------	----------------------------------	----------	---------	----------

05. Nature of additions made by the Id AO are as under :-

A.Y.	Additions u/s 143(3) r.w.s. 153A		
	Income from House Property found that properties owned not disclosed income thereof	Bogus Long Term Capital Gain on sale of shares u/s 10 (3* of the Act	Unsecured Loans added u/s 68 of the Act
10-11	2,27,625	-	-
11-12	2,79,660	-	-
12-13	2,88,450	-	-
13-14	51,909	-	-
14-15	1,19,718	6,14,05,822	40,00,000
15-16	1,25,428	2,75,93,986	-
16-17	69,090	1,45,87,601	-

06. Assessee preferred appeals before the Id Commissioner of Income tax (Appeals) -53 Mumbai [the Ld CIT [A]] who passed appellate orders as under :-

A.Y.	Additions u/s 143(3) r.w.s. 153A			Decision of the Id CIT [A]
	Income from House Property	Bogus Long Term Capital Gain	Unsecured Loans	
10-11	2,27,625	-	-	Confirmed the addition by appellate order dated 12/03/2021
11-12	2,79,660	-	-	Confirmed the additions as per appellate order dated 15/03/2021
12-13	2,88,450	-	-	Confirmed the additions as per order dated 12/03/2021
13-14	51,909	-	-	Confirmed addition by appellate order dated 15/03/2021
14-15	1,19,718	6,14,05,822	40,00,000	Confirmed the addition by the appellate order dated 30/3/2021
15-16	1,25,428	2,75,93,986	-	Confirmed the addition as per appellate order dated 30/3/2021



16-17	69,090	1,45,87,601	-	Confirmed the addition made by the Id AO by order dated 30/3/2021
-------	--------	-------------	---	---

07. Therefore as per the above table, the LD CIT [A] confirms all the additions made by the LD AO. Hence, for all these years the assessee is in appeal before us.

08. Thus, In all these 7 appeals filed by the assessee from assessment year 2010 - 11 to 2016 - 17 wherein Assessee has challenged the

i. Addition under head of income from House Property,

ii. Addition on account of Bogus Long term capital gain and

iii. Addition u/s 68 of the Act of unsecured loan.

AY 2010-11

09. ITA number 715/M/2021 for assessment year 2010 - 11 is filed by the assessee against the appellate order passed by the Commissioner Of Income Tax, Appeals - 53, Mumbai (the learned CIT - A) dated 12/3/2021 dismissing the appeal of the assessee. By this Appellate order, appeal filed by the assessee against the assessment order passed u/s 143 (3) read with Section 153A of the act dated 26/12/2018 by the Deputy Commissioner of income tax - Central Circle - 5 (2), Mumbai (the learned AO), was dismissed.

010. Assessee has raised following grounds of appeal:-

“Ground Number 1: invalid application of Section 153A and additions made by exceeding the scope of Section 153A [Para 4, page number 5 – 7 CIT (A) order dated 12/3/21]

a) the learned CIT (A) erred in law and on facts in confirming the action of learned AO in making additions in denying exemptions aggregating to ₹ 227,625/- in respect of items and issues for which no material was found and/or seized during the course of search u/s 132 and thereby ignoring that the AO had erred in exceeding the scope of provisions of Section 153A by encompassing the items and issues not covered by the provisions of Section 153A and further erred in confirming the action of the learned AO in applying the provisions of Section 153A to Section 153D to the case of your appellant and in making assessment of total income Under the special provisions of Section 153A to Section 153D of the Act 1961

b) your appellant strongly submits that no material whatsoever nature was found and/or seized during the course of search u/s 132 of the act in the hands of the appellant and that the additions made in the order were in respect of the items and issues that were settled in the original assessment and therefore were not the subject matter of the special assessment u/s 153A of the act. Your appellant further submits that no material belonging to the appellant was found during the course of search action and that the learned AO

failed to apply his mind to such material and that the special provisions of Section 153A to Section 153B did not apply in the case of your appellant

c) your appellant prays that the additions or disallowances made in passing the order in excess of the scope and powers there under, be deleted/allowed and the order so passed in gross disregard of the provisions of income tax act 1961 be quashed

GROUND NO 2 :- addition of ₹ 227,625/- as Notional income from house property u/s 22[Para seven, page number 10-18 of CIT (A) order dated 12/3/2021]

a) the learned CIT (A) order in law and on facts in confirming the action of the learned AO in making the addition of 427,625/- on account of notional income Under the head income from house property u/s 22 considering it as a deemed income in respect of three premises and further erred in confirming the action of the AO in estimating such income without any basis and not allowing deduction u/s 23 (1) (C) and Section 24 of the act and proceeded in gross violation of natural justice and further erred in confirming the action of the AO in making addition in respect of annual value for which no material of whatsoever nature was found and/or seized and thereby erred in law inacting in excess of the scope and the powers vested u/s 153A of the act.

b) Your appellant submits that the learned CIT (A) has failed to appreciate the fact that no notional income was taxable u/s 22 Under the head income from house property and that in the alternative vacancy allowance should have been granted u/s 23 (1) (C) by the AO and in the further alternative without prejudice, the annual value should have been restricted to lower of the standard rent or municipal value, which should have further been reduced by the municipal tax paid and by standard deduction u/s 24 at the rate of 30% of adjusted ALV and the appellant further submits that no material of whatsoever nature was found and/or seized during the course of search u/s 132 of the act in the hands of your appellant and that the addition of ₹ 227,625/- deemed income from house property made in the order were in respect of the items and issues that were settled in the original assessment and therefore were not the subject matter of the special assessment u/s 153A

c) your appellant prays that the addition of ₹ 227,625/- be deleted from the total income of the assessee as assessed by the learned CIT (A) and further prays that the addition or disallowance made in passing CIT (A) order u/s 250 read with Section 153A and 143 (3) in excess of the scope and the powers there under be deleted/allowed and the order so passed be quashed and in the alternative the lower of standard rent or municipal rateable value adopted and such amount be further



reduced by the municipal taxes and deduction u/s 23 and u/s 24 of the act.

Ground no 3 :- change of jurisdiction (Para 5, page number 7 to 9 of CIT (A) order dated 12/3/2021)

a) the learned CIT (A) erred in law and on facts in confirming the action of the learned AO in assuming jurisdiction to assess and proceed with the hearing ignoring the fact that the jurisdiction vested only with the ITO Ward 10 (3) (4) Mumbai and in as much as no order was passed u/s 127 on any other applicable provisions of law for transfer of case to DCIT Central Circle 5 (2), Mumbai without opportunity given to your appellant to contest the transfer, if any

b) it is submitted that neither any notice of transfer was served on assessee, nor was she given any opportunity to object to such transfer and no order of transfer was passed and or was served on the appellant

c) on this ground alone, the proceedings giving rise to the order Under appeal passed u/s 250 read with Section 143 (3) and 153A to be declared invalid and bad in law and accordingly your appellant prays that the said order passed u/s 250 read with Section 143 (3) and 153A should be quashed and set-aside

GROUND No 4 :- invalid assessment, order passed without issue of notice u/s 143 (2)[Para 4, page number 5 to 7 of CIT (A) order dated 12/3/2021]



a) the learned CIT (A) erred in law and on facts in confirming the action of learned AO passing the order of assessment and not issuing the notice u/s 143 (2) on assumption of the charge from the predecessor and instead continued the proceeding without issuing such notice as required by the law and passed an order not permitted in law

b) your appellant submits that no notice u/s 143 (2) was issued by the new incumbent AO DCIT Central Circle 5 (2), Mumbai within the permitted time and the consequent assessment was bad in law

c) your appellant prays that the assessment made without issue of notice u/s 143 (2) be quashed

GROUND NO 5 :-Levy of interest u/s 234A of ₹ 15,656/-, u/s 234B of ₹ 127,818/- and u/s 234C of ₹ 7 240/-[Para 8, page number 18 of CIT (A) order dated 12/03/2021/]

a) this the learned CIT (A) erred in law and on facts in confirming the action of the learned AO in levying interest u/s 234A of ₹ 15,656/-, u/s 234B of ₹ 127,818/- and u/s 234C of ₹ 7240 in the course of assessment and further erred in levying interest in gross violation of the provisions of income tax act without giving any opportunity of hearing and without passing any speaking order for the levy of interest.



b) Your appellant denies any liability of payment of interest and further submits that the tax was paid as per the provisions of the law and the return was filed as per the provisions of Section 139 (1) read with Section 153A/153D

c) your appellant pleads that the interest levied be deleted

GROUND No 6 :- assessment of total income (Para 9, page number 19 of CIT (A) order dated 12/03/2021)

a) the learned CIT (A) erred in law and on facts in confirming the action of the learned AO in assessing the total income at ₹ 1,251,425/- against the returned total income of ₹ 1,023,860/- and in the process in making an addition of ₹ 227,625/- to the returned total income.

b) Your appellant submits that she had correctly disclosed the total income at ₹ 1,023,860/- as per the provisions of the income tax act as against the assessed income of ₹ 1,251,425/-

c) your appellant pleads that the returned total income of Rs 10,23,860/- be accepted and the addition made to such returned income of ₹ 227,625/- be deleted

GROUND No 7 :- serious violation of natural justice[Para 6, page number 9 of CIT (A) order dated 12/03/2021]



a) the learned CIT (A) erred in law and on facts in confirming the action of the learned AO in passing an order of assessment in gross violation of the provisions of natural justice and further erred in confirming the action of the AO in ignoring all the evidences and proofs and documents produced for verification and further erred in assessing the total income in total disregard of such evidences and in not conducting adequate enquiry or bringing any material on record to support his action and in denying adequate opportunity of hearing including by not furnishing the copies of material used against appellant and not facilitating the Cross examination

b) your appellant submits that the learned CIT (A) and AO did not appreciate and instead ignored the evidences produced in assessment and the appellant further submits that all the details and explanation is as requested were furnished including those required as per the law and adequate enquiries were not made and the copies of material used was not furnished and examination was not facilitated.

c) Your appellant pleads that an assessment made in the violation of the provision of natural justice be quashed.”

011. All the grounds raised by the assessee are argumentative, descriptive, and explanatory as well as elaborate, which are in clear violation of the ITAT Rules, 1963. Generally the ground should be concise and



succinctly on the point. However, in the interest of substantial justice, we adjudicate these grounds in spite of these infirmities.

012. For all these years the grounds raised are similar except where there are new issues, therefore, we proceed to decide the appeals of the assessee.
013. The fact shows that based on search conducted on 4/2/2016, Assessee filed an application before The Income Tax Settlement Commission [ITSC] on 28/12/2017. Per letter dated 10/1/2018 assessee sought permission to file revised application which was rejected as per order dated 11/1/2018 u/s 245D (1) of the act and therefore the assessment proceedings were revived.
014. For AY 10-11, notice u/s 153A was issued on 5/1/2017 against which the assessee filed return of income on 13/1/2017 at returned income of ₹ 1,023,860/-. Notice u/s 143 (2) was issued on 24/1/2017 and assessment proceedings were initiated.
015. During the course of assessment proceedings, the learned assessing officer noted that there are certain immovable properties appearing in the balance sheet of the assessee, which was unearthed during search. However, notional income as annual income under the head Income from House Property was not shown from the same. The AO noted that assessee owns [1] flat number 13, Model House CHS , above chirag Motors , plot number 158, Sion , Mumbai -22 and also [2] flat number 14 at the same premises. Assessee was asked to show cause why annual value should not be taxed,

where no income is shown in the return of income, but properties are owned by the assessee. As no proper explanation was forthcoming, learned AO noted that assessee has flat number 13 and 14 at Model House, Assessee did not disclose any income as income from House Property, therefore, the learned AO estimated the income at the rate of 5% of the cost of acquisition of those properties at Rs. 1,18,380/- for each of the property invoking the provisions of clause (b) of subsection (4) of Section 23 of The Income Tax Act.

016. Accordingly, the total income of the assessee was assessed at ₹ 1,251,425/- against the returned income of ₹ 1,023,860/- making an addition of ₹ 227,625/- under the head income from house property by the assessment order passed u/s 143 (3) read with Section 153A of The Income Tax Act 1961 on 26/12/2018.

017. On Appeal before the learned CIT – A – 53, Mumbai, he passed an order dated 12/3/2021 dismissing the appeal of the assessee as under :-

- i. Assessee challenged by ground number 1, 4 and 8 regarding the validity of assessment u/s 153A of the act. Assessee challenged that no incriminating material was found and seized during the course of search u/s 132 of the act. Therefore, no addition could have been made by the learned AO.
- ii. The Id CIT (A) held that existence of the house properties in the name of the appellant found on the basis of the balance sheet which was not earlier disclosed to the Id AO ,therefore, balance

sheet is undisclosed, that itself is the incriminating evidence rejecting various judicial precedents relied upon by the appellant. Thus, he rejected the jurisdictional ground raised by the assessee.

- iii. As per ground number 3 assessee challenged the change of jurisdiction citing several judicial precedents stating that Jurisdiction of assessee was with The Income Tax Officer Ward 10 (3) (4), Mumbai and no order was passed u/s 127 of the Act to transfer the case to the Deputy Commissioner of Income Tax Central circle 5 (2), Mumbai. This was also dismissed holding that order u/s 127 is passed which is an administrative order and to transfer the jurisdiction from one AO to another AO within the same city there is no requirement of opportunity of hearing to the assessee.
- iv. With respect to the violation of principles of natural justice challenged before him as per ground number 7, he dismissed this ground holding that AO has made an addition of notional rent in respect of more than one house property owned by assessee, the addition made on the basis of the details provided by the appellant and therefore there is no violation of the principle of natural justice.
- v. On the merits of the addition of Rs. 227,625/-, he held that both the House properties are located in Mumbai and Maharashtra Rent Control Act is

applicable to properties, therefore the Id AO was duty-bound to determine 'standard rent' as per the Maharashtra Rent Control Act. As there is no standard rent fixed for the above property, return on investment in the property would be a guiding factor determining standard rent of the property. Accordingly, he confirmed the chargeability of income arising out of these two properties; he also confirmed denial of various deductions such as vacancy allowance etc. Accordingly, the addition on the merit was confirmed.

vi. With respect to the charging of interest/s 234B etc, ground raised by the assessee was also dismissed. Accordingly, the appeal of the assessee was dismissed and therefore she is in appeal before us.

018. Assessee has filed a paper book containing 245 pages before us, which relates to submissions before LD AO, LD CIT (A), Remand proceedings etc. According to Rule 18(6) of ITAT Rules, 1963, those papers, which are referred and relied up on, are dealt with.

019. The LD AR firstly submitted that as search and seizure took place on 4/2/2016, and consequent by notice u/s 153A was issued. He categorically submitted that, by the date of search AY 2010-11 to 2014-15 were concluded assessment, which could have only been disturbed based on incriminating material found during the course of search. He submitted that in respect of national income from house property, no incriminating material was found. All these properties were acquired from known sources. Therefore, his preliminary objection was that

the addition on account of income from house property made by the learned AO in absence of any material found during the course of search is invalid. He relied up on plethora of judicial precedents :-

- i. CIT V Continental Warehousing Corporation [2015] 374 ITR 645 [BOM]
- ii. Murli Agro Products Ltd 49 taxmann.com 172 [Bom]
- iii. Kabul Chawla 380 ITR 573 [Delhi]
- iv. Lata Jain 384 ITR 543 [Delhi]
- v. Regency Mahavir Properties 89 Taxman.com 444 {ITAT} {Mum}
- vi. Jitendra J Mehta 104 taxmann.com 449 [SC]

020. Even on the merits of the addition, he submitted that assessee is owner of three properties out of which two properties were self-occupied. The remaining premises remained vacant and same were held for letting out or sale and could not be let out during the year. Assessee pays regular municipal taxes and maintenance. Therefore, there was no liability to any notional income u/s 22 under income from property. He stated that the learned AO has assumed income at the rate of 5% of the amount of investment. He submits that properties were subjected to the provisions of Maharashtra rent Control act and therefore the annual value, if any should have been restricted to the lower of the standard rent or municipal rateable value and further the assessee should be granted deduction u/s 24 of The Act @ of 30% of



such value. He further submits that assessee is also entitled to vacancy allowance u/s 23 (1) (C) of the act. He submitted that when learned CIT [A] admitted that standard rent is applicable, the learned AO should have attempted on his own to determine the standard rent as held by Honourable Bombay High Court in Tiptop Typography [48 taxmann.com 19]. He also submitted that assessee has paid municipal taxes and maintenance charges which should have been allowed as a deduction in view of the decision of coordinate bench in case of Sharmila Tagore [150 Taxman 4]. With respect to vacancy allowance, he referred to several judicial precedents of coordinate benches. He also submitted that according to Section 24 (1) of the Act, deduction of 30% should have been allowed to the assessee. Accordingly, he submitted that there is no jurisdiction to make this addition, the addition made deserves to be deleted, if same is upheld, the assessee should have been granted benefit of standard rent and also deduction from that of vacancy allowance and standard deduction of 30%.

021. The learned departmental representative vehemently supported the orders of the lower authorities. He submitted that there is incriminating material found during the course of search in the form of the balance sheet of the assessee, which was not disclosed to the LD AO. It was noticed during the search itself that the assessee is owner of various house properties and assessee has not shown rental income in the return of income for the said properties. He submits that it is not whether the property is accounted or unaccounted in this case. He further referred to paragraph number 4.4 of the

order of the learned CIT – A on this count. Accordingly, he submitted that there was incriminating material found during the course of search and based on that only the addition is made.

022. On the merits of the addition, he submitted that the learned assessing officer for the taxability of income from house property with respect to 2 flats owned by the assessee in Mumbai, the AO repeatedly questioned the assessee about the income required to be offered, which is not replied by the assessee and therefore no infirmity can be found in the order of the learned AO. Further, he submitted that the learned CIT – A has categorically referred to the decision of honourable Allahabad High Court wherein the 7% of the investment has been considered as a fair method of determining the annual letting value as reported in [4 taxmann 183]. He further referred to the coordinate bench decision in 58 TTJ 27 where 8% of the investment is held to be the annual value. With respect to the vacancy- allowance of those flats and determination of annual value, he submitted that issue is squarely covered against the assessee by the decision of honourable Punjab and Haryana High Court in 76 taxmann.com 349. He submitted that there is no infirmity in the order of the lower authorities.
023. During the course of hearing, bench put to the notice of the parties the decision of Honourable Supreme court in case of Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell P. Ltd. (24.04.2023 - SC) : MANU/SC/0434/2023 [2023 SCC OnLine SC 481] [2023] 149 taxmann.com 399 (SC) . The Ld AR submits that that

decision supports his contention, as there is no incriminating material. The LD DR submitted that decision supports the case of revenue as the incriminating material is found during the course of search and LD AO is authorized to determine Incriminating material income and other material income to compute total income.

024. We have carefully considered the rival contentions and perused the orders of the lower authorities. All the decision cited by the parties are perused, but now culminated and subsumed in the decision of Honourable Supreme court in case of Abhisar Buildwell Pvt Ltd, [supra] therefore, now none of them is required to be further discussed. If in a concluded assessment, there is an incriminating material LD AO is authorized to make addition on account of incriminating material and other income to compute total income. In absence of any incriminating material, the concluded assessment cannot be disturbed.

025. In this case, search took place on 4/2/2016. Assessee filed return of Income u/s 139(1) of the Act on 25/3/2011 at ₹ 996,620/-. This return was not assessed. Therefore, on the date of search, i.e. on 4/2/2016, the assessment for assessment year 2010 - 11 was concluded. Therefore, according to the binding judicial precedents, such income could have been enhanced only based on incriminating material found during the course of search related to such enhancement. If there is no incriminating material found during the course of search, no addition could have been made by the learned assessing officer. The only material referred by the learned AO is the balance sheet

of the assessee where certain properties are shown. Further, when this issue was raised before the learned CIT - A, he held that the existence of immovable properties in the name of the assessee itself is an incriminating evidence. It is stated by the learned departmental representative before us that those immovable properties are disclosed in the balance sheet of the assessee and the assessee before the lower authorities never disclosed such balance sheet and therefore, unearthing balance sheet of the assessee, during the course of search itself is the incriminating evidence. Thus, there is reference of material found during the course of search, which suggests that the income of the assessee is required to be adjusted upwardly. It is the case of the revenue that assessee did file return of income for earlier years as well as for this year, prior to search and these properties or the balance sheet were not disclosed by the assessee for earlier years. The assessee does not deny these facts that balance sheet was found during the course of search and it was earlier not disclosed to the LD AO prior to search.

026. The honourable Supreme court in *Abhisar Buildwell Pvt Ltd* [*Supra*] has held that [1] in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the total income taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns and [2] in case no incriminating material is unearthed during the search, the AO cannot

assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition could be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act.

027. As in the present case there is an incriminating material in the form of balance sheet where certain properties are stated to be owned by assessee with respect to the addition made by the AO of notional income from house property u/s 22 of The Income Tax Act, the addition deserves to be upheld holding that assumption of jurisdiction u/s 153A is valid. Accordingly, ground number 1 of the appeal of the assessee is dismissed.
028. As we have already upheld that there is incriminating material found during the course of search related to the addition made by the learned AO in the concluded assessment for assessment year 2010 - 11, the addition deserves to be upheld, therefore now other grounds need to be adjudicated.
029. Fact shows that assessee is owner of various premises. Those premises are required to be taxed under the head income from house property as per the scheme of the act. The claim of the assessee is that the assessee is owner of 3 premises of which 2 premises are self occupied. Further, the remaining premises remained vacant as the same were held for letting out or sale and could not be let out during the year. The assessee has paid regular municipal taxes and maintenance thereon.

The claim of the assessee is that there was no liability to any notional income under section 22 under the head income from house property. The learned assessing officer disregarded the explanation of the assessee and held that those properties shall be chargeable under the income from house property as annual value is taxable. . According to assessee, the income is not chargeable to tax under the head income from house property is of those properties. The AO made an addition of ₹ 227,625/-. The main contention of the learned assessing officer is that the assessee is holding house properties however; no income has been shown from these properties. Therefore, he estimated the income under the head income from house property. When the matter reached before the learned CIT – A he confirmed the action of the learned assessing officer. The learned CIT – A also did not allow vacancy allowance. Therefore the claim of the assessee is

- i. that the annual value of the above property cannot exceed the lower of the municipal rateable value and standard rent,
- ii. in respect of the property, the fair rent value of an earlier year with 10% increase cannot be taken as annual value taxable of that property,
- iii. the assessee should be granted the deduction for municipal taxes and maintenance charges,
- iv. Assessee must be allowed deduction of standard deduction at the rate of 30% under section 24 (1).

030. We have carefully considered all the above claims of the assessee and adjudicate as under.

- i. On the first claim with respect to the standard rent or rateable value should be taken to arrive at the annual let out value of the property, the learned CIT - A has held that that appellant is owner of flat number 13 and flat number 14 of model House operating housing society, Sion, Mumbai. Assessee provided the working of the deemed rental income of the above 2 properties as per property tax levied by the Mumbai municipal Corporation which was not accepted by the AO. The learned assessing officer took 5% of the cost of acquisition of the property to determine standard rate. Undisputedly the Maharashtra rent control Act 1999 is applicable to the properties, however; the standard rent of the area in which the properties are situated has not been fixed under that act. Therefore, standard rent is not available of those properties. Assessee has also not produced any evidence about the standard rent of those properties according to that act. Therefore, there is no point in stating that the learned assessing officer has not attempted to determine the standard rent. Even assessee could also not do that despite being the owner of the property. Therefore, now the option left is to determine the annual value of the property. The claim of the assessee is that in view of the decision of the honourable Bombay High Court in case of Tiptop Typography [48 taxmann.com 19], the LD AO should have determined on standard rent. In



the present case, the standard rent has not at all been determined by the BMC and therefore no fault can be found with the assessing officer to determine the so. Further in case of Tiptop Typography in paragraph number 33 the honourable High Court has noted that "However, in all the appeals before us, the factual position is that the property or part thereof is let or given on leave and license basis.", Fact was that the properties were let out during the year. This is not the case of the properties owned by the assessee. Thus the property was not let, therefore the provisions of section 23 (1) (b) and (c) does not apply. The case of the assessee falls under section 23 (1) (a). Therefore, the annual value of the property would be the sum for which the property might reasonably be expected to let from year to year. The learned assessing officer has considered 5% of the cost of acquisition of the property by which the property can be expected to be let out. Assessee has not made any attempt to justify what is the sum for which the property might reasonably be expected to let from year to year, therefore it is for the AO to estimate the income. It cannot be said that return on the acquisition cost of the property cannot be considered as return on such property and it is not fair method. The learned assessing officer has estimated 5% of the cost of acquisition as the income from the same. There is no whisper from the side of the assessee that whether 5% rate of

return, which is expected to be annual value for the property maintenance also, is excessive or unreasonable. The learned CIT – A has given the decision of the honourable High Court in case of Radha Devi Dalamia [4 taxman 183] [All] wherein the 7% of the investment was considered to be the fair and just return of income on such investment. The learned CIT – A also relied on the decision of the coordinate bench in case of [58 TTJ 27] wherein 8% return on such cost was also held to be the annual value of a property for taxation under the head income from house property. Therefore, we do not find any infirmity in the order of the learned lower authorities in assuming 5% of the cost of the investment as the annual value of the property which can be taxed under section 23 (1) of the act under the head income from house property.

- ii. With respect to the deduction of Municipal taxes, there is no requirement for reducing the income of the assessee where the learned assessing officer has estimated the percentage of the cost of the equity as rate of return on the investment. In fact, the deduction of municipal taxes is inbuilt in the taxability of 5% estimated by the learned assessing officer.
- iii. With respect to granting deduction of 30 % we find that such deduction is available u/s 24 (a) of the Act. This deduction is unqualified and assessee is eligible for the same. No reasons are shown to us why assessee is same. We direct the LD AO to



grant deduction of 30% of annual value to the assessee in terms of provision of section 24 (a) of the Act.

iv. With respect to the vacancy allowance, the facts are clear that those properties are not let out during the whole of the year and therefore there is no question of granting any vacancy allowance to the assessee. This is the mandate of the decision of honorable Punjab and Haryana High Court in 76 taxmann.com 349. The SLP filed by the assessee against that decision has also been dismissed. In view of that precedent, we do not find any merit in the claim of the assessee for allowability of vacancy allowance.

031. In view of the above facts, ground number 2, is allowed partly.
032. Ground number 3 is with respect to the change of jurisdiction. The claim of the assessee that the original jurisdiction is with The Income Tax Officer Ward 10 (3) 4) Mumbai and no order was passed under section 127 to transfer the case to the Deputy Commissioner of income tax, Central Circle - 5 (2) Mumbai. Therefore, the assessee was objecting to the assessment asking for its quashing. However the fact as stated by the learned CIT - A clearly shows that principal Commissioner of income tax - 15 Mumbai passed an order under section 127 of the act on 14/12/2016 and the case of the assessee was centralized with the Deputy Commissioner of income tax, Central Circle - 5 (2), Mumbai. Therefore it is not the case that there was no order passed by the learned

principal Commissioner of income tax. By the order under section 127, the jurisdiction over appellant was transferred from Mumbai to another assessing officer in Mumbai. As per the provisions of section 127 (3) of the act, there is no requirement of giving any opportunity of being heard before the transfer of jurisdiction within the same city. Further, it is merely an administrative order and there is no prejudice caused to the assessee if the assessee is assessed in the same city. We find that the several judicial precedents cited by the learned authorized representative does not have any bearing on the issue before us. None of the cases cited shows that the transfer is within the same city, locality or place, which has been quashed. Provisions of section 127 (3) of the act clearly provides that when there is a transfer of case in the same city, locality or place, it does not require an opportunity of hearing to the assessee. In view of these facts, we do not find any infirmity in the order of Ld. CIT(A). Accordingly, ground number 3 of the appeal is dismissed.

033. Ground number 4 of the appeal, assessee argues that it is an invalid assessment as the order is passed without issue of notice under section 143 (2) of the act. We find that the facts clearly shows that after the issue of notice under section 153A on 5/1/2017, a notice under section 143 (2) dated 24/1/2017 was served upon the assessee and acknowledgement for receipt of the same by the assessee was placed on record. It is the claim of the assessee that no notice was issued under section 143 (2) by the new incumbent, i.e. Deputy Commissioner of income tax Central Circle 5 (2), Mumbai within the

permitted time. Therefore, the assessment proceedings were conducted without issue of any notice under section 143 (2) by successor assessing officer after application to settlement commission on its revival of jurisdiction by the learned assessing officer. The assessee heavily relied on the decision of Honourable courts in Hotel blue moon [321 ITR 362], Virendra Devi Dixit [331 ITR 483], Pavan Gupta [318 ITR 322], B Satya Narayana [356 ITR 323] and Pradeep K Soni [361 ITR 201]. It is not the case of the assessee that no notice under section 143 (2) has been issued. Perusal of all these decisions shows that the notice is required to be issued under section 143 (2) of the act prior to making the assessment. In this particular assessment, the learned assessing officer has issued notice under section 143 (2) of the act which has been served on the assessee and this fact has not been denied. On change of jurisdiction by a statutory order, there is no provision of law that search new incumbent should also issue a new notice u/s 143(2) of the Act and that too within the permitted time. In view of this ground number 5 of the appeal of the assessee is dismissed.

034. Ground number 6 of the appeal with respect to the levy of interest u/s 234A, B and C are consequential and therefore those are dismissed.
035. Ground number 6 of the appeal is general in nature, no arguments were advanced, therefore same is dismissed
036. Ground number 7 is with respect to the violation of principles of natural justice is also not required to be adjudicated in view of our decision in ground number 1 of the appeal of the assessee, therefore dismissed.

037. Accordingly, appeal of the assessee in ITA number 715/M/2021 for assessment year 2010 – 11 is partly allowed.

ITA No. 716/Mum/2021

(Assessment Year 2011-12)

ITA No. 708/Mum/2021

(Assessment Year 2012-13)

ITA No. 714/Mum/2021

(Assessment Year 2013-14)

038. For assessment year 2011 – 12, appeal is filed by assessee against Appellate order passed by the Commissioner of Income Tax (Appeals) – 53, Mumbai for assessment year 2011 – 12 on 15/3/2021 wherein the appeal filed by the assessee against the assessment order passed by the learned assessing officer on 16/12/2018 was dismissed. The learned assessing officer assessed the returned income of the assessee of Rs. 477,180/- at ₹ 756,840/- by assessment order u/s 143 (3) read with Section 153A of the income tax act 1961.
039. The only addition was made with respect to three house properties owned by the assessee for which no income was offered by assessee in the original return of income under the head income from house property.
040. During the course of assessment proceedings, the assessee was found owner of flat number 13, flat number 14 and a commercial property at 104, Central facility

building, Agricultural Produce Marketing Committee Market, sector 19, Navi Mumbai. With respect to the two flats, no income was offered in earlier year also however with respect to the commercial property rented in assessment year 2010 - 11 at ₹ 39,000 per annum. Therefore, the learned assessing officer computed the annual rent of ₹ 118,380/- being 5% of the cost of acquisition as the reasonable return as annual value of those properties to be taxed under the head income from house property. Further with commercial property, the learned AO took 10% increase in the amount of rent received by the assessee for earlier year and accordingly assessed annual value at ₹ 42,900/-. Accordingly the rental income of ₹ 279,660/- was determined and added to the returned income of the assessee. Assessee did not offer such annual income in return of income filed u/s 153A of the act.

041. The order of the learned AO was challenged before the learned CIT - A, assessee challenged raising the similar grounds as were raised by her in appeal for assessment year 2010 - 11, the learned CIT - A dismissed the appeal of the assessee on all counts on the similar lines of his appellate order for assessment year 2010 - 11. Therefore, assessee is in appeal before us.
042. The grounds raised in this appeal are identical to grounds raised by the assessee in appeal for assessment year 2010 - 11 except the change in the amount of addition of Rs. 279,660/-. Ground number 1 is with respect to the applicability of provisions of section 153A and unearthing any incriminating material during the course of search,

ground number 2 is with respect to the merits of the addition of ₹ 279,660, ground number 3 is with respect to the change of jurisdiction without giving assessee opportunity, ground number 4 is non-issue of notice under section 143 (2) of the act by the new incumbent once again, ground number 5 is with respect to the levy of interest under section 234A, 234B, 234C, ground number 6 is general with respect to the total income as and ground number 7 is with respect to the violation of the principles of natural justice. Thus, it is apparent that except the change of the amount, there is no difference in this appeal of the assessee compared to appeal for assessment year 2010 - 11.

043. Both the parties agreed before us that their arguments are similar to the arguments advanced in the appeal of the assessee or assessment year 2010 - 11 and there is no change in the facts and circumstances of the case except that one more property has been included by the learned AO for making an addition Under the head income from house property.
044. For assessment year 2012 - 13 in ITA number 708/M/2021 is filed by the assessee against appellate order passed by the learned CIT - A for assessment year 2012 - 13 dated 12/3/2021 dismissing the appeal of the assessee filed against the assessment order
045. For this year, assessee filed her return of income on 31/8/2012 at total income of ₹ 1,424,840/-. The return of income was accepted as it is. On subsequent search on 4/2/2016 notice u/s 153A of the act was issued on 5/1/2017 which culminated into an assessment order u/s

143 (3) read with Section 153A of the income tax act 1961 wherein the learned assessing officer made an addition to the income returned by the assessee of ₹ 288,450/- with respect to 2 flats and one commercial property. Accordingly the total income of the assessee was assessed at ₹ 1,713,300/ -.

046. Assessee preferred appeal before the learned CIT - A. The similar grounds as were raised by the assessee in her appeal before the learned CIT(A) for assessment year 2010 - 11 and 2011 - 12 were raised challenging the jurisdiction of the learned AO, addition without incriminating material and on the merits. The learned CIT - A dismissed the appeal of the assessee on all counts. Therefore, assessee is in appeal before us.

047. Assessee has raised identical grounds in this appeal as were raised in appeals of the assessee for assessment year 2010 - 11 and 2011 - 12 except the change for addition made with respect to three properties under the head income from house property. The addition of ₹ 227,625/- was made with respect to 2 flats in assessment year 2010 - 11 and ₹ 279,664 for assessment year 2011 - 12 with respect to the same 2 flats as well. One commercial property in this assessment year 2012 - 13 , addition of ₹ 288,415/- was made wherein three properties as were there in assessment year 2010-11 were included. In the present case the difference between the amount of addition as compared to the amount of addition in assessment year 2011 - 12 is that the learned assessing officer increase the rental income by 10% compared to assessment year 2011 - 12

in case of commercial property. Therefore, according to us and as confirmed by parties that there is no change in the facts and circumstances of the case in this assessment year as compared to earlier assessment years.

048. Rival parties submitted before us that they intend to raise similar arguments as advanced in those earlier assessment years, as there is no change in the facts and circumstances of the case.
049. Appeal for assessment year 2013 - 14 is filed by the assessee against appellate order passed by the learned CIT (A) 53, Mumbai as per order dated 15/3/2021 where the appeal filed by the assessee was dismissed. Assessee filed appeal before the learned CIT - A against assessment order passed u/s 153A read with Section 143 (3) dated 26/12/2018 passed by the learned assessing officer.
050. Assessee originally filed return of income on 31/7/2013 declaring income of ₹ 4,485,040/-. This return was accepted as it is and not selected for scrutiny. Subsequently search took place on 4/2/2016, based on which the notices u/s 153A was issued to the assessee on 5/1/2017, which was complied by the assessee by filing the return of income on 12/1/2017 at the same income.
051. The learned assessing officer during the course of assessment proceedings noted that assessee has one property at 104, Central facility building, agricultural produce marketing committee, Navi Mumbai four which the income from house property is required to estimate

at ₹ 51,909/- which has not been offered by the assessee and therefore the returned income filed by the assessee at Rs 24,85,040/- was enhanced by ₹ 51,909/- and the assessed income was determined at ₹ 4,536,949/-.

052. The assessee aggrieved with the order of the learned AO preferred appeal before learned CIT – A similar grounds of appeal as were raised before him in the appeals of the assessee for earlier years. It also resulted into the same fate, the learned CIT – A dismissed the appeal of the assessee and therefore, assessee is in appeal before us.
053. The grounds of appeal raised by the assessee in this appeal are identical as were raised by her in appeal for earlier years. There is only change for amount of addition. Both the parties confirmed that there is no change in the facts and circumstances of the case for this year as compared to the appeals of the assessee for earlier years. It was also stated that this is also a concluded assessment year and therefore any addition that is required to be made in this year should be based on incriminating material found during the course of search. They submitted that their arguments are also similar as advanced in the earlier year on this issue.
054. We have carefully considered the rival contention and perused the orders of the lower authorities. For all these three Assessment years [i.e. 2011-12, 12-13 and 13-14] assessee has filed paper books containing 256 pages, 257 pages and 264 pages respectively which would be considered in terms of rule 18(6) of ITAT Rules, 1963.

055. With respect to ground number 1 of the appeal for assessment year 11-12, 12-13 and 13-14, we find that these are identical to ground number 1 of the appeal of the assessee for AY 2010-11. While deciding ground number 1 of the appeal for that year, we have held that during the course of search, the balance sheet of the assessee was found, based on that evidence it came to the knowledge of the revenue that assessee is holding certain properties, the annual value of such properties have not been disclosed by the assessee in her return of income, therefore, we have held that the addition made by the learned assessing officer of annual value of those properties is based on the incriminating material found during the course of search and therefore the assessing officer is entitled to assume jurisdiction u/s 153A of the Act and make the addition in all those concluded assessment u/s 153 A of the Act . Therefore, despite these assessments being concluded assessment years, in view of the incriminating material found during the course of search, following the decision of the honourable Supreme Court in case of *Abhisar Buildwell private limited (supra)*, addition made by the learned assessing officer based on those incriminating material assuming jurisdiction u/s 153 A is upheld. Accordingly, ground numbers 1 of the appeal for all these three assessment years are dismissed.
056. Ground number 2 of the appeal for all those years are with respect to the addition made on account of the annual value of house property not disclosed by the assessee earlier but found on the basis of the balance sheet and unearthed during the course of search, is identical

to ground number 2 of the appeal for assessment year 2010 – 11 wherein we have confirmed the addition but directed Id AO to grant deduction u/s 24(a) of the Act. Therefore, for the similar reasons we also partly allow ground number 2 of the appeal of the assessee for all those years.

057. Ground number 3 of the appeal for all those years is with respect to the change of jurisdiction as per the order passed under section 127 of the income tax act which is identical to ground number 3 of the appeal for assessment year 2010 – 11, for the similar reasons given therein, we dismiss ground number 3 of the appeal for all these assessment years.
058. Ground number 4 of the appeal is with respect to the non-issue of notice under section 143 (2) of the act by the new incumbent, is identical to ground number 4 of the appeal for these assessment years. We have dismissed ground number 4 of the appeal for assessment year 2010 – 11, for the similar reasons, we dismiss ground number 4 of these appeals too.
059. Ground number 5 with respect to the challenge of interest u/s 234A, B and C is consequential in nature, ground number 6 is general in nature and therefore same are dismissed.
060. Ground number 6 for all these appeals are is general in nature, therefore same is dismissed.
061. Ground number 7 is with respect to the serious violation of the principles of natural justice, which is identical to ground number 7 of the appeal of the assessee for

assessment year 2010 – 11, which is dismissed by us, for the similar reasons we also dismiss ground number 7 of the appeal for all these years.

062. In the result ITA number 715/M/2021, 716/M/2021, 708/M/2021 and 714/M/2021 for assessment year 2010 – 11 to assessment year 2013 – 14 are partly allowed.

Assessment year 2014 – 15

ITA number 719/M/2021

063. This appeal is filed by assessee against the appellate order passed by the CIT (A), 53 Mumbai (the learned CIT – A) dated 30/3/2021 for assessment year 2014 – 15 raising grounds of appeal on following 9 counts:-

- i. invalid application of Section 153A and addition made by exceeding the scope of Section 153A of the act in absence of any incriminating material found during the course of search
- ii. addition of ₹ 40 lakhs on account of loan from santoshima Tradelink private limited taxed as income from undisclosed services by making an addition u/s 68 of the income tax act by the learned assessing officer in absence of any incriminating material found during the course of search
- iii. addition of Rs. 119,718/- as notional income from house property in absence of any incriminating material
- iv. addition on account of sale proceeds of ₹ 61,405,822/- by denying the exemption u/s 10



(38) of the act and benefit of rate of tax u/s 11 2 of the act

v. despite changing jurisdiction of the assessing officer order u/s 127 of the act is passed

vi. notice u/s 143 (2) was not issued by the successor in the versions of the learned assessing officer where there is a change in the charge

vii. levy of interest u/s 234B and C

viii. assessment of income

ix. Violation of principles of natural justice by not bringing any material on record and not furnishing the copies of the material used against the assessee and not facilitating the cross-examination.

064. Facts shows that assessee filed her return of income for assessment year 2014 - 15 on 30/7/2014 declaring a total income of ₹ 4,459,850/- computed after deducting exemption from long-term capital gain u/s 10 (38) of the act amounting to ₹ 58,804,187/ -. This return of income was accepted, as it is not picked up for scrutiny.

065. Subsequently search and seizure action u/s 132 of the act was carried out on 4/2/2016, case of the assessee was also covered there in, and therefore notice u/s 153A issued on 5/1/2017 in compliance of which the assessee filed return on 12/1/2017 declaring the same income. The learned assessing officer picked up this return for

scrutiny and assessed the same at ₹ 61,985,390/- . He made following three additions to the total income:-

- i. addition of ₹ 119,718 on account of income from house property on account of annual value of house properties.
- ii. bogus unsecured loan of ₹ 40 lakhs added under section 68 of the income tax act
- iii. denial of exemption under section 10 (38) of the act on account of long-term capital gain on sale of shares of ₹ 61,405,822/-

066. Addition made on account of income from property of ₹ 119,718/- is on identical facts and circumstances as has been made in the earlier years on the basis of immovable properties appearing in the balance sheet of the assessee for which the assessee did not offer income in the return of income.

067. During the year it was found that assessee has acquired the shares through preferential allotment of one company Santoshima Tradelink Ltd (one of the amalgamated company of M/s sunrise Asian limited) and then dispose of the shares of this company. However the characteristics of the trading of the script along with the findings in the search proceedings, there were issues about the exemption claimed under section 10 (38) of the act. Assessee has also obtained the loan of ₹ 40 lakhs from the same company on 30/9/2013. The issue is that this companies as well as sunrise Asia Ltd are the companies, which are operated by one accommodation entry provider Shri Vipul Vidur Bhatt. The above company



made a preferential allotment of shares and thereafter active trading in the share of that company started with effect from 16/10/2012. The price of the above company started rising despite having no major corporate announcement or any major investment or acquisition. Increase in the price of the share was also not coupled with any improvement in the turnover of that company as well as the reported profits. It is undisputed that the share price of that company is moving upwardly abnormally. Therefore, the movement in the price of that company was an absolute disregard to the general market trends. Therefore, on 4/2/2016, search was conducted on sunrise Asian limited. During the course of search the statement under section 132 (4) of the act was recorded of the director of the above company one Mr. kalpesh manharlal Jani, who categorically stated under the oath that his cousin brother Mr. Vipul Vidhur Bhatt has used his name and has appointed him as a director in sunrise Asian limited for 2½ years ago. He also stated that he is not aware of anything related to that company and he refused to have any link with the above company. He categorically stated that Mr. Bhatt is managing and controlling that company. Consequently, search under section 132 (4) was also conducted on Shri Vipul Vidhur Bhatt on 5/2/2016, who in a statement under section 132 (4) has categorically stated that he is an entry operator. He is operating sunrise Asian limited as a bogus, paper entity and this company is used by him for providing bogus long-term capital gain accommodation entries to the various beneficiaries for commission including the assessee. Further, on an analysis of the trade data of the trading of this company

the information available was collected and further enquiries were conducted on some of the entities, which has purchased the shares of this company, same confirmed by Mr. Vipul Vidhur Bhatt. He also identified in his statement, all transactions of bogus long-term capital gain, as well as loan transactions, how accommodation entries were arranged by Bogus MOU s, shown the money trail, named his other partners in this activities, also named the assessee's chartered accountant, assessee's Accountant, how these transactions were routed. Therefore, his statement was systematic explanation of the accommodation entries provided by him to Moraj Group [Assessee's Group]. From the enquiries done so far, it was found that all the entities, which has purchased the shares of the above company, were bogus/paper entities and many of those entities are controlled/managed and used by Mr. Bhatt. During the course of search on assessee, statement of Mr. Mohan Gurnani father of assessee was recorded on 4/2/2016 and of the assessee on 5/2/2016 under section 132 (4) of the act. Assessee was specifically asked to explain the modus operandi of preferential allotment of the shares and booking of the long-term capital gain in her books. The assessee was also asked to explain how and in what circumstances the assessee and his family members invested in the shares of sunrise Asian shares Ltd and whether she has any family members who have done any fundamental analysis before making an investment in the above company. The assessee categorically answered in the negative.

068. It is required to be noted that the learned assessing officer has categorically noted that assessee has earned crores of rupees along with other family members of the group in financial year 2011 – 12 to 2015 – 16, which is about Rs. 37 crores. This was unearthed only because of the search and seizure action.
069. During the year it was also found that assessee has received, an amount of ₹ 40 lakhs on 30/9/2013 from one company SantoshiMa Trade links Private Limited. The learned assessing officer noted that this company is controlled, managed and used by Mr. Vipul Bhatt for providing bogus accommodation entries to the various beneficiaries and therefore the assessee was questioned about the identity, creditworthiness and genuineness of the above transaction with respect to the above loan.
070. Assessee submitted the copy of confirmation, copy of the bank statement and the financials of the lender company for financial year 2013 – 14. This was also stated that the above loan has been repaid on 3/6/2015 and the copy of the Ledger confirmation for financial year 2014-15 and financial year 2015 – 16 along with the copy of the bank statement showing the repayment was also submitted. Therefore the claim of the assessee is that initial onus is discharged as it submitted the details of loan received, loan repaid, Ledger account of the lenders, loan confirmation by lender stating its name, address and permanent account number, bank statement of the lender, audited annual accounts of the lender, bank statement to show that the loan has been repaid, source of loan of the lender, affidavit of the lender, net worth

statement of the lenders, certificate of incorporation of lender company, their assessment orders, the annual returns filed with the Ministry of corporate affairs and application of funds by lenders on repayment of loan by the assessee. It was also stated that there is no cash deposit in the bank accounts of the lenders while giving loans and nor was there any cash withdrawals in such accounts on repayment.

071. The learned assessing officer rejected the explanation of the assessee for the reason that assessee has not denied the facts on record that company is one of the paper companies of Mr. Vipul Bhatt. Adequate documentary evidences have been found in his premise to prove this fact. Further, assessee has not brought any material contrary to the conclusion that the companies were real in terms of business, standing and its board of director and other relevant factors. The learned assessing officer held that the factual position of the transaction shows that the transaction is entered into with the entities controlled, managed and used by the hawala entry operator. The assessee has not denied the facts on the record that the company is one of the bogus companies of Mr. Bhatt. There is no contrary material brought to show that the company was real, the transaction is genuine. All these paper trails losses its credibility when the person who issued it i.e. Mr. Vipul Bhatt has confessed that it is bogus and has explained the manner in which it has been given a color of genuine transactions. Therefore, the learned assessing officer made an addition under section 68 of the income tax act of ₹ 40 lakhs on account of failure on part of the assessee

to prove the identity, creditworthiness and genuineness of the transaction.

072. The learned assessing Officer further found that assessee has claimed long-term capital gain of ₹ 61,405,822/- under section 10 (38) of the act by selling the shares of Santoshima lease finance and investments India Ltd which was ultimately amalgamated with sunrise Asian Ltd.
073. Assessee submitted the evidence of the share application forms for acquisition of the shares in preferential allotment for acquisition of 5 lakhs equity shares, source of payment with proof for purchase of shares, bank statement of the company wherein the above share consideration for preferential acquisition was received, allotment letter and allotment of shares to the assessee, income tax return and the assessment order of the company along with their certificate of incorporation, memorandum of Association, articles of Association, return of allotment furnished to the registrar of companies, contract notes at the time of sale of shares, dematerialized account of the assessee, brokers Ledger account, daily rate list of quotation of the company and proof of brokerage and Demat charges paid by the assessee as well as the proof of payment of securities transaction tax, stamp duty, brokerage and other charges mentioned in the bills of the broker.
074. The learned assessing officer was of the view that the above long-term capital gain claimed by the assessee is bogus and therefore he denied exemption for the following reasons:-



- i. the learned AO found that assessee has acquired the shares through preferential allotment of Santoshima trade link Ltd which [subsequently amalgamated with sunrise Asian Ltd] on 31/1/2012 (5 lakh shares) at a cost of Rs. 1,00,00,000/- which were sold partly in assessment year 2014 – 15 and partly in assessment year 2015 – 16 and 2016-17. The reason for making the addition is that search dated 4/2/2016 on sunrise Asia Ltd, the statement u/s 132 (4) of the act of the director Mr. Kalpesh Manharlal Jani was recorded. He submitted that one Shri vipul vidhur Bhatt, his cousin brother, has used his name and has appointed him as a director in this company who is managing the affairs. Therefore, action u/s 132 of the act was also taken on 5/2/2016 on Mr. Bhatt. He accepted in his statement u/s 132(4) that he is an entry operator and sunrise Asia Ltd is a bogus paper entity, which was used by him for providing bogus long-term capital gain accommodation entries to the various beneficiaries for commission. On analysis of trade data that who are the entities purchasing the above shares, information was collected and further enquiries were conducted about who purchased the shares. On enquiry, it was found that all the entities that purchased the above shares were bogus paper entities controlled, managed and used by Mr. Bhatt. Mr. Bhatt confessed this in his statement.
- ii. During search on assessee, the statement were recorded of assessee and her father, several

questions were asked, replies to the same was not satisfactory and therefore the learned assessing officer issued a notice which was replied by assessee by submitting the details such as contract notes, brokers ledger accounts, confirmation of brokers, details of investment, physical share certificate copies showing the allotment, payment of invested amount, receipt of sale amount of shares, details of Demat account of the assessee where the shares are credited and subsequently when the shares are sold they are debited from the account. Assessee further stated that that the statement of Mr. Bhatt, on basis of which the enquiry started has already retracted. Therefore, same is not relevant. The assessee denied any wrongdoing and stated that all transactions are above board. She submitted that she has sold 122,812 shares out of 5 lakh shares for ₹ 61,260,431 on various dates on stock exchange and payment received through banking channels after holding the shares for more than three years. The assessee submitted that she is a genuine share trader and she has nothing to do with any unfair activities on the sale of the shares.

- iii. The learned AO held that assessee is not a regular trader and there is no history of any trading by the assessee. She has made investment in only three shares script all of them of similar nature and therefore the investment made by the assessee are not absolutely out of suspicion. Acquisition of two other companies are also non descript companies.

Assessee does not know anything about Sunrise Asian Ltd., nor do her family members are aware and they have earned such a huge exempt capital gain. The AO then considered modus operandi of earning tax-free capital gain on the shares.

- iv. Factual position of transactions with entities controlled, managed and used by the entry operator is explained and same has not been denied by the assessee that this company is one of the paper companies of an accommodation entry provider. Its share prices are rigged by him and beneficiaries, he also provided exit .
- v. Further accommodation entry provider has not brought any material contrary to the conclusion that the companies were real in terms of business and standing etc.. Therefore, learned AO came to conclusion that company did not have any real business at the time of transaction.
- vi. The learned assessing officer has further noted that assessee earned ₹ 37 crores in the name of family members of the group in financial year 2011 - 12 to 2015 - 1216 in similar manner by obtaining accommodation entries from Mr. Vipul Vidhur Bhatt. It was on the search and seizure action these transactions have been unearthed . The AO in paragraph number 6.2 further held that assessee has not denied the factual record that the company is one of the paper companies of Shri Vipul Vidhur Bhatt. Adequate documentary evidences have been found in his premises to prove this fact. The

facts also clearly shows that the simultaneous search under section 132 of the Act conducted on M/s sunrise Asian limited on 4/2/2016, Wherein statement of the directors of that company were recorded under section 132 (4) of the Act, director submitted that Shri Vipul Bhatt has used his name and has appointed him as a director in the above company for 2 ½ years ago. Therefore, search action was also conducted on Shri Vipul Vidhur Bhatt on 5/2/2016. Statement of Mr. Bhatt was recorded wherein he accepted that he is an entry operator and has also accepted that sunrise Asian Ltd is a bogus paper entity and this company was used by him for providing bogus long-term capital gain accommodation entries to the various beneficiaries for commission including the assessee group.

- vii. Further, the trade data of sunrise Asian limited was analyzed entities have purchased shares after the price rise, were identified. Further enquiries were conducted on those entities. From the enquiries it was found that all the entities, were bogus paper entities and are controlled, managed and used by Shri Vipul Bhatt.
- viii. During search, statement of Shri Mohan Gurnani ,assessee's father and assessee was recorded on 4/2/2016 and 5/2/2016 under section 132 (4) of the act. Assessee or his father were not knowing about why they have invested in the script, what is the fundamental analysis they did before

considering the investment in the shares and whether any of the family members have attended the annual general meeting of the company in which they have invested in the such shares. The answer of the assessee and his father was in negative. In fact, the assessee replied that she and her family members were not aware about this company nor do they knowabout the financial statements it. Further they have never met any of the persons related to this company. Thus, assessee is completely unaware about company as well as investment relations in that company.

- ix. The assessee is not a regular trader on any of the stock exchanges. There is no history of any trading done by the assessee in the share market. She purchased shares of only one company and sold shares and earned huge capital gain which is exempt. The learned AO stated that the family has earned ₹ 37 crores of the long-term exempt capital gain, Assessee does not have any knowledge about the company, its working, it's financials, who advised her, how did she come to know about this company and whether any of the family members have studied while making any investment in the preferential share allotment. Thus, assessee is completely unaware about company as well as investment rationale in that company.
- x. Mr. Bhatt has accepted that he is an accommodation entry provider, providing accommodation entry of long-term capital gain

through the company operated by him, where the company in which assessee has earned long-term capital gain is also mentioned, the manner of giving accommodation entry is also mentioned therefore nothing else is required to be proved by the AO

xi. The retraction is at behest of assessee group --- ,only a course adopted as corrective step to reduce the damage. Nothing was shown that the original statement made by him i.e. Mr. Bhatt is not valid. He did not deny the evidences found, his explanation etc. Retraction is just to save the assessee from consequences. Original confessional statements were based on evidences, which are not denied.

xii. Investment pattern, sale of shares, the price variation, without support of financial backing of the company, the holding period, clearly proves that the whole transaction was crafted carefully to deceive the tax. Therefore, the long-term capital gain earned by the assessee is not genuine.

075. Accordingly assessment order was passed under section 143 (3) read with section 153A of The Income Tax Act 1961 on 26/12/2018 determining total income of the assessee at ₹ 69,985,390/-.

076. The assessee preferred an appeal before the learned CIT – A raising several contentions:-

i That the addition cannot be made in the hands of the assessee, as the assessment year 2014 – 15 is a concluded assessment, no incriminating evidences

- found during the course of search. The learned CIT – A dismissed the argument of the assessee holding that there is an incriminating material available during the course of search, which was not disclosed before the learned revenue authorities, and therefore the action of the learned assessing officer under section 153A of the act is in accordance with the law.
- ii He further held that that notice under section 143 (2) of the act has been issued to the assessee and therefore there is no requirement that as many time assessing officer changes, such notice as required to be issued. Accordingly he dismissed ground number 1 against action under section 153A of the act, ground number 6 that the assessment order is invalid as notice under section 143 (2) has not been issued and ground number 10 wherein it is stated that action under section 153A & 153D are bad in law. Thus, all the grounds of appeal against the jurisdiction were dismissed.
- iii Ground number 2 was with respect to the addition of ₹ 40 lakhs of unsecured loan received by the assessee from one company operated by an accommodation entry provider holding that same is not genuine and added to the total income of the assessee under section 68 of the act. On the issue of addition of unsecured loan of ₹ 40 lakhs, assessee stated that assessee provided all the details including the audited balance sheet of the lender, income tax return, bank statement, sources of loans of the lenders and affidavit of the lender for confirmation of the

transaction, network statement of the lenders and assessment order of such lender. Therefore the assessee has discharged initial onus cast upon under section 68 of the income tax act. The learned assessing officer has not controverted any of the documents submitted before him but has merely relied upon the statement of Mr. Vipul Bhatt for making addition. It was further stated that there is no incriminating evidence found during the course of search with respect to the above loan and therefore this addition could not have been made. It was further claimed that the opportunity of cross-examination of Mr. Bhatt is also not allowed. The learned CIT – A noted that though the assessee has filed a large number of documents but such documents in case of an entry operator and the main concern does not carry any evidentiary value and such are of no significance at all. These are held to be self-serving documents, which are obtained by the assessee from the dubious concerns of Mr. Vipul Bhatt for proving accommodation entries to be genuine. Accordingly, he confirmed the addition under section 68 of the act of ₹ 40 lakhs holding that assessee has failed to establish genuineness of the above loan.

- iv Ground number 3, the assessee also challenged the addition of 119,718/- as income from house property under section 22 of the act as per the past year, the learned CIT – A following his decision in assessee's own case for earlier years dismissed the same.



- v Ground number 4 was with respect to denial of exemption under section 10 (38) of the income tax act with respect to the sale of shares of a company which is found to be operated by the entry operator. With respect to addition of ₹ 61,405,822/- by treating the sale proceeds on sale of shares of sunrise Asian limited as undisclosed income, the assessee submitted the details of the payment for acquisition of the shares, payment of consideration by cheque, allotment of the shares, copies of physical share certificate, order of the honourable High Court approving the merger of companies, acquisition of shares pursuant to amalgamation, dematerialization statement of those shares, proof of sale of those shares through broker on stock exchange, affidavit of the issuer of shares company, affidavit of the broker, contract notes, the affidavit of retraction of the statement of Mr. Vipul Bhatt, details of other investment in shares etc. to show that the transaction of earning of long-term capital gain on sale of shares is genuine. It was contended by the assessee that this is a concluded assessment, there is no incriminating evidence found during the course of search with respect to alleged undisclosed bogus long-term capital gain, the opportunity of cross examination of Mr. Vipul Bhatt is not allowed and none of the evidences produced before the assessing officer by the assessee were considered false but merely on reliance of the statement of Mr. Vipul Bhatt the addition has been confirmed. Assessee further referred to several judicial precedents wherein the honourable High Court's and coordinate benches have



deleted the addition on account of capital gain earned in penny stocks. During the course of appellate proceedings, the assessee also made an application for admission of additional evidences. Such additional evidences were in the form of share application forms, allotment letter, board resolution of issuing company, return of allotment with Ministry of corporate affairs, bank statement of company showing evidence of receipt of purchase consideration, source of payment with proof of purchases etc. The additional evidences were admitted by the learned CIT - A sent for the remand report from the AO. The learned assessing officer on 3/10/ 2019, stated that the AO is carrying on the enquiries in remand report on the merits of the issue submitted and letter a where it was also stated by the AO that inquiries issued to the Bombay stock exchange, securities and exchange board of India, other details for verification. Those are still awaited. The learned assessing officer further submitted details called for by the learned CIT - A and further stated that assessing officer has called for various details from the assessee during the course of assessment proceedings but same are not submitted the learned assessing Officer further held that the retraction made by Mr. Vipul Bhatt cannot be accepted as reliable as there was no material to doubt veracity of the original statement. The learned AO further objected to the admission of the additional evidence. Second remand report was submitted on 2/3/2020. The AO further stated that he has sent enquiries letter under section 133 (6) to Santoshi ma trading private limited and sunrise Asian limited at address provided



by the assessee, however the said letter were returned back by postal authorities with remark "left." Once again, enquiries letter was submitted to the different address and there 'the parties were not known' remark by the postal authorities. The learned assessing officer further sent the details with respect to the information collected from the website of Bombay stock exchange and SEBI. The Bombay stock exchange further submitted a compact disc vide letter dated 24/10/2019, which was also enclosed with the remand report. The copies of the order passed by the Income Tax Settlement Commission in case of the assessee were also produced before the CIT - A by the learned AO. The remand report was also given to the assessee who submitted her rejoinder on 9/3/2021. The learned CIT - A has recorded his finding in paragraph number 9.1 of his order at page number 164 of 193. He noted that assessee has sold 1,22,812 shares of the above company on 14 different trading days with a sale consideration of ₹ 61,260,407/- and earning a capital gain of ₹ 58,804,187. The balance sheet of Sunrise Asian Limited listed on the Bombay stock exchange was analyzed which has a turnover of Rs 112 crores [Stated to be not genuine in statement of Mr. Bhatt] but a meager profit of Rs. 69,54,857/- having the earning per share of only ₹ 0.02/- per share. It was further held that within a period of 4 months share price of the company increased from ₹ 60 per share to ₹ 424 share i.e. almost 42 times the face value of the shares which was not in consonance with the financial statements of the company as well as not supported

by any corporate announcement. Coupled with these evidences it is correlated with the statement under section 132 (4) of the act recorded of Mr. Bhatt who confirmed his role in providing accommodation entries of long-term capital gains as entry and exit providers to the parties including the assessee. Though statement is retracted but retraction was without any evidences. The learned CIT – A also noted that the trading in the share option Asian limited from 16 October 2012 to 30 September 2015 entered into manipulation of share by making certain violations. The countrywide investigation of the income tax department also shows that this company was not having any substantial profit when the assessee purchased the shares in 2011-12. The exit providers to the beneficiary including assessee were identified. The assessee is not at all a regular investor and has invested scantily in three companies whose shares are not at all worth considering an investment. The various decisions cited by the assessee were also dealt with and held that all these decisions are distinguishable on its fact. On the issue of cross-examination, he held that assessee is one of the beneficiaries of the whole penny stock transaction in sunrise Asian limited therefore, it is not at all practical to allow cross-examination of all the person in the case of each beneficiary. Accordingly, he confirmed the addition of ₹ 61,405,822 by dismissing ground number 4.

vi All other grounds were also dismissed.



077. Against the appellate order, now, the assessee is in appeal before us. Assessee has submitted the paper book containing 898 pages to support her case. Written fact sheet was also filed.[combined for all 7 appeals]
078. So far as the provisions of section 153A, the taxability of income from house property, non issue of notice under section 143 (2) of the act, violation of principles of natural justice, change in the jurisdiction of the assessee within the same city without giving an opportunity of hearing to the assessee are also same as were made in the earlier years.
079. The first ground of appeal is with respect to the addition made by the learned assessing officer exceeding the scope of the provisions of section 153A of the act. Fact shows that the search took place on 4/2/2016. In the assessment year 2014 - 15, original return under section 139 was filed on 30/7/2015. Therefore, this assessment year on the date of search on 4/2/2016 was completed. Therefore, it could have been disturbed only on account of incriminating material found during the course of search. In the earlier year, we have already held that for assessment year 2014 - 15, there is an addition of ₹ 119,718/- as income from house property on the basis of the balance sheet found during the course of search, which was not available with the revenue before the date of search, in which certain properties were found for which the assessee did not disclose the income from house property. For assessment year 2010 - 11 to assessment year 2013 - 14, we have already held that there was incriminating material found during the course

of search with respect to the income from house property. Therefore, the concluded assessment for assessment year 2010 – 11 to assessment year 13 – 14 have been rightly disturbed on account of incriminating material found during the course of search. As the same situation continues, we also hold that for assessment year 2014 – 15 also there was incriminating material in the form of the balance sheet, which was not disclosed before the learned assessing officer, same was unearthed during the course of the search, therefore, there is an incriminating material found during the course of search. For this reason, the income of the assessee despite there being a concluded assessment, can be disturbed on the basis of same.

080. The fact shows that after the date of search the assessee has filed an application before the Income Tax Settlement Commission on 28/12/2017 and later on as per letter dated 10/1/2018, assessee asked for the permission to file revised application. The settlement commission rejected the application filed by the assessee as per order under section 245D (1) dated 11/1/2018. Before us, the assessee has not filed any copy of the application filed before the settlement commission. In the balance sheet of the assessee for the year ended on 31st of March 2013, she has shown an investment of Rs. 1,00,00,000/- in Santoshima lease and finance investments Ltd, which was not disclosed to the revenue but was unearthed on finding the balance sheet during the course of search. Further in the statement of Mr. Bhatt, manner of acquisition of such share are also disclosed that by repayment of the several accommodation entries in the

form of loan obtained by the assessee and her group concern, were repaid and those shares were acquired. Those shares were sold by the assessee and long-term capital gain exempt under section 10 (38) was shown. Thus, there is an incriminating material also with respect to the claim of the assessee under section 10 (38) of the act.

081. Honourable Supreme Court in case of *Abhisar Buildwell private limited (supra)* has held that in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the Assessing Officer would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the Assessing Officer including the income declared in the returns. Therefore, in the present case before us, there can be an addition on the basis of the incriminating material which has been made by the learned assessing officer on account of income from house property and further addition on account of the income under section 68 as well as under section 10 (38) of the act.
082. Even otherwise, when it is not denied by the assessee that the balance sheet was not disclosed to the revenue from which the assets were found, income of which is chargeable to tax under the head income from house property, even the addition of the capital gain claimed as exempt under section 10

(38) could also have been added by the learned assessing officer as it is other income.

083. In view of the above facts and finding for assessment year 2010 - 11 to 2013 - 14, the ground number one of the appeal of the assessee is dismissed.

084. Ground number 3 of the appeal is with respect to the addition of ₹ 119,718/- as notional income from house property under section 22 of the income tax act which has been decided by us in case of the assessee for the earlier assessment years starting from assessment year 2010 - 11 to assessment year 2013 - 14, therefore for similar reasons we partly allow ground number 3 of the appeal of the assessee with similar directions to grant deduction of 30% under section 24 (a) of the act.

085. Ground number 2 of the appeal is with respect to the addition of ₹ 40 lakhs/- under section 68 of the income tax act and ground number 4 is with respect to the addition of sale proceeds of ₹ 61,405,822 claimed exempt under section 10 (38) of the act which is stated to be an accommodation entry obtained by the assessee from the accommodation entry provider Mr. Vipul Bhatt.

086. With respect to denial of exemption under section 10 (38) of the act main argument of the assessee is as under:-

- i. Assessee has provided the details of the company, the brokers, proof and evidence of the transaction of purchase and sales of the shares before the assessing officer and no infirmity is found in this

details. The assessee submitted all the details with respect to the acquisition of the shares and sale of those shares at each of the stage of the process of acquisition and sale. The assessee further relied upon the plethora of judicial precedents, wherein it has been held that where assessee proves genuineness of the said transaction by producing contract for sale and purchase of the shares, bank statement of the brokers, Demat account showing transfer in and out of the shares and also the transaction is at the stock exchange, no addition can be made in the hands of the assessee.

- ii. Assessee further relied upon several judicial precedents showing where Sri Vipul Bhatt and the same company in which the assessee has earned long-term capital gain, the addition is deleted.
- iii. The onus of proof is discharged by the assessee and therefore, no addition should have been made in the hence, of the assessee, where the learned AO has not thrown back the onus on the assessee.
- iv. Share price of that company was ₹ 500 approximately in financial year 2012 - 13 which rose to Rs. 565 in the subsequent year and then to ₹ 615 in the later year. Therefore, shares commanded good price which was higher than the selling price of the appellant and therefore there is no unusual appreciation by the assessee.
- v. The shares are properly dematerialized and those were transacted in and out from that account. The

assessee further relied upon the decision of coordinate bench that has been upheld by the honourable Bombay High Court.

- vi. Shares are traded on recognized stock exchange through registered broker approved by the Security and exchange board of India therefore, it cannot be said to be non genuine.
- vii. The learned assessing officer has recorded incorrect facts about the exit providers, which are not at all into any business and are only the paper companies
- viii. it was submitted that the receipt and payment through banking channels, no material found seized during the course of search relevant to the addition, entries for purchase and sale of shares made in the books of accounts of the assessee and merely the sole reliance on the statement of third-party as well as the report of investigation wing without making any further enquiry and issuing any summons and also without affording any opportunity of cross examination to the assessee of those parties who made the statement, the addition cannot be made under section 68 of the act.
- ix. He further stated that the learned assessing officer has failed to make an independent enquiry with registered brokers, bankers as well as the depositories and other parties mentioned.

087. With respect to the addition under section 68 of the income tax act The main submission of the assessee are as under:-

- i. The loan received by the assessee from sunrise Asian Ltd of ₹ 40 lakhs on 30/9/2013 is a genuine loan and out of the accounted source of the lender company.
- ii. The loan was given by the lenders out of the lawful sources being fund received by the banking channel and the details of the source of loans of lender together with loan confirmation giving name, address, permanent account number, bank statement of the source party was also produced
- iii. Lenders are assessed to tax having regular sources of income which is established by explaining the source of lending as well as the bank statement
- iv. Assessee has discharged its onus cast upon the her of disclosing the identity, creditworthiness and genuineness of the transaction which has not been proved incorrect by the assessing officer
- v. He further stated that in some of the cases involving Mr. Bhatt, wherein this company is directly involved in giving the loan, the coordinate benches have held that no addition could have been made. Further loans advanced by the group companies on the basis of unsubstantiated statement and report, Where the borrower has discharged its burden by filing adequate evidences. addition deserves to be deleted.

088. The learned departmental representative vehemently submitted that :-

- a. statement of the assessee, the statement of Mr. Bhatt, statement of Father of the assessee, the

manner of earning of the capital gain, huge capital gain of ₹ 37 crores earned by the assessee and her family in the single company shares, none of the family members are aware about what the company is doing, Shabby share knowledge of the assessee and her family members, clearly proves that the capital gain earned by the assessee is bogus. With respect to the addition, it was submitted that the issue is squarely covered against the assessee by the decision of the honourable Calcutta High Court in case of Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta)/[2022] 288 Taxman 403 and of the honourable Supreme Court in case of CIT V Suman Poddar [2019] 112 taxmann.com 330 (SC)/[2020] 268 Taxman 320 (SC) . Ld DR Submitted that all these decision, which have been cited by the LD AR, are all considered in that decision and therefore, no more decisions can be stated to be in favour of the assessee in such a bad facts of the case.

- b. On the issue of cross-examination, he referred to Para No 59, 60,65,88 and 90 of decision of Honourable Kolkata High court in case of Swati Bajaj. Even otherwise it is submitted that Shri Vipul Bhatt has retracted the statement is known to assessee, he has given an affidavit in assessee's case, then now where is the question of cross examination of Vipul Bhatt. He submits that it is not the case of the assessee that Mr. Bhatt is not an accommodation entry provider, not known to assessee and its group of people. He referred to the statements of Mr. Vipul Bhatt, which

- has the complete linkage of the transactions of penny stock in case of assessee and her family members.
- c. He even otherwise submitted that even without the statement of Mr. Vipul Bhatt , Assessee has failed to discharge her onus of showing genuineness of the claim of exemption u/s 10 (38) of the Act.
 - d. He submits that it is unheard of the persons in family earning Rs 37 crores and more as exempt gain u/s 10 (38) of the Act despite the fact that assessee's people are involved in obtaining such accommodation entry from a known accommodation entry providers, Assessee does not know anything about the share transactions.
 - e. In this case, even exit providers are identified, operated by the same accommodation entry providers. Those parties also do not have any credentials.
 - f. Documentary evidences are bound to be there in case of bogus arranged transactions. In view of the persons statement, those documents loses their credibility. Then AO is not requested to carry out any further inquiry on those none genuine documents. What purposes of making an inquiry, when the parties itself say that those are bogus . Then, AO is not required to carry out any further inquiry on those non genuine documents, no purpose could have been served
 - g. Persons who purchased, the shares, (assessee) does not know anything about the company, mode of

acquisitions, mode of sales, when the shares were split and when the shares were sold at what price those shares are sold, despite assessee and her family earning bogus exempt gains of Rs 37 crores. It is a fit case that preponderance of probability shows that the claim of the assessee is bogus.

- h. He further stated that annual average income of the assessee is Rs 10 lakhs Per Annum. The assessee has earned Rs 10 Crores as Long-term capital gain. How it is possible that assessee does not know, how these income is earned. He referred to the statement of the assessee recorded u/s 132 (4) of the Act and stated that assessee does not know anything about the company; She even could not answer who is Mrs. Rukhsana and her role in the transactions.
- i. He submits that there are many orders of ITAT where in the addition based on the statement of Mr. Vipul Vidhur Bhatt of Penny stock of same company is upheld. Therefore, the claim of the AR that there are decisions in case of several assessees where same entry operator is referred , is of no consequences.
- j. He also submitted that SEBI has levied fine of Rs 1 Crore on 86 entities for fraudulent trading for the same period. Thus, it proves that trading of the assessee is bogus and manipulated. The Trading period is 16 October 2012 to 30 September 2015. This is available in public domain. SEBI had conducted an investigation in the scrip of Sunrise Asian Ltd. from October 16, 2012, to September 30, 2015, based on a reference received from the Principal Director of

Income Tax (Investigation), Kolkata. The probe was meant to ascertain whether there was any violation of the PFUTP (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2003 by certain entities while trading. In the investigation, SEBI discovered that pursuant to allotment of shares under the scheme of amalgamation, Sunrise Asian and its then directors had devised an arrangement whereby 83 connected entities had manipulated the price of the scrip in four patches of trading during the investigation period, violating PFUTP norms. The regulator found that 77 out of the 83 connected entities were counterparties to the sale of shares by 1,059 entities/allottees at the artificially inflated or manipulated price, thereby violating rules. Of the 83 entities, instant proceeding initiated against four entities has been disposed of. Of the four entities, two have passed away and one has settled the case with SEBI under settlement mechanism. He submitted that these information are available on website of SEBI. Therefore, the whole case stated by the assessee is full of manipulations as assessee also traded during same period and is part of those 1059 entities..

Thus according to him there is no infirmity in the orders passed by lower authorities.

089. We have carefully considered the rival contentions and perused the orders of the lower authorities. First we deal with denial of the claim of exemption u/s 10 (38) of the Act. Assessee has claimed the exemption for

i. Rs 61405822/- for Ay 2014-15,

ii. Rs 27593986/- for AY 2015-16 and

iii. Rs 14587601/- for Ay 2016-17.

It is the claim of the LD AO that family of the assessee has shown long-term exempt capital gain of Rs 37 Crores in the same company. The LD AR has not denied this fact.

090. Similarly, is the case of an unsecured loan of ₹ 40 lakhs received from the same company i.e. Santoshima Trade link Ltd added under section 68 of the Income Tax Act by the AO and confirmed by the CIT[A].
091. Both the accommodation entries of unsecured loan as well as long-term capital gain are stated to be arranged through Mr. Vipul Vidhur Bhatt. Therefore, it is necessary to analyze what he says on these transactions. Assessee has not furnished the complete statement of Mr. Vipul Vidhur Bhatt in its paper book but has submitted complete affidavit of retraction statements. Ld DR has placed before us the complete statement of Mr. Bhatt which runs in to several pages containing 90 questions and most of questions are answered stating how Moraj Group has used accommodation entries in the form of loans, capital gains etc through him.
092. Statement of Mr. Vipul Vidhur Bhatt is recorded on 9 February 2016 under section 132 (4) of the income tax act. We have carefully perused the statement. In answer to question number 12, he replied that he is maintaining the books of accounts of all the bogus entities, which are managed and controlled by him. In response to question



number 14, he categorically states that he is an entry operator and bogus accommodation entry provider. In response to question number 15, he categorically states that sunrise Asian limited is a listed company, which is a paper/bogus company, and he is using this entity for providing bogus accommodation entries to the various beneficiaries. He controls the entire activities/affairs of this company and all the directors of the company are dummy directors. These directors are appointed by him and are controlled by him. He submits that he is an entry operator of share of this company and he manages the entire affair/activities of this company and is in absolute control of Sunrise Asian Limited. He further submits that the share price of this company was artificially rigged up at the Bombay stock exchange with an objective to provide bogus long-term capital gain/accommodation entries to various beneficiaries, for which he charges a commission on cash between 4 -5% for long-term capital gain. He also refers to Santoshima Trade link Ltd stating that this is a bogus paper company, which is being used for providing bogus accommodation entries to the various beneficiaries. He is the director in that company and all other directors are dummy directors. He further stated that initially preferential shares of this company were allotted to the bogus long-term capital gain beneficiaries. Thereafter, this company was amalgamated with sunrise Asian limited and the shareholders of this company were allotted the shares of sunrise Asian limited in the swap ratio of 1:1. He further states that after amalgamation, share price of sunrise Asian limited was artificially rigged up in the Bombay stock exchange and once the share price of the company reached at the desired level, the

shares of the preferential allottees were sold through stock exchange with the help of bogus buyers (exit providers) which are also controlled by him. He further states that he has given a bogus unsecured loan entry to M/s Moraj building concept private limited from this company. He mentions the functioning of 347 different such entities. He further referred/the nature of accommodation entries provided by him in answer to question number 18. In answer to question number 21, he categorically says that in his capacity as the managing director of the above company he uses sunrise Asian limited for providing bogus long-term accommodation entries and he is the operator of the scheme and have managed the affairs of that company. In answer to question number 22, he once again gave the detailed modus operandi of how bogus long-term accommodation entry in the above script was provided. In response to that question, he also referred to Santoshima Trade link Ltd. He explains that for providing the bogus long-term capital gain accommodation entries unaccounted cash was taken from the beneficiaries and the same was routed into the accounts of some companies/firms/individuals managed and controlled by him and thereafter the routed funds were used to purchase the shares of sunrise Asia Ltd held by the beneficiaries of bogus long-term capital gain. His answers to question number 23 – 29 explain his modus operandi. In response to question number 29, he also mentions the name of several other persons who are with him for providing this entry. In answer to question number 30, he also refers to a chartered accountants Mr. Sandeep Maroo and other chartered accountants giving the mobile



numbers. In response to question number 31, he refers to the name of Mr. Piyush rasiklal Shah who introduced Mr. Mohan Gurnani family to him for providing bogus long-term capital gain. He also gave the date -wise reference in question number 34, how the share prices of sunrise Asian limited were rigged up after preferential allotment in Santoshima Trade link Ltd. In response to question number 35, he referred to being in control of several entities, which are used for routing, and layering of funds for purchasing the shares of the beneficiaries of long-term capital gain. In reference to question number 39, whether he knows Mr. Mohan Thakurdas Gurnani, he replied that yes, he knows him and he is a director/promoter of Moraj group of companies. He and his family members have taken accommodation entry of loans, long-term capital gain in the books through the shares of sunrise Asian limited. In response to question number 40, he stated that Sri Gurnani was introduced to him by Shri Piyush rasiklal Shah. In response to question number 41, he says that Piyush Shah informed him about Sri Mohan Gurnani and told him that Shri Mohan Gurnani wants to book bogus long-term accommodation entries in his personal files and the files of his family members. In response to question number 42, he explained that Shri Piyush Rasiklal Shah explained scheme of bogus long-term capital gain accommodation entry to Sri Mohan Gurnani. Mr. Gurnani also wanted accommodation entry of short-term capital loss in the books of his companies and wanted entry of long-term capital gain in the personal file of his family members. In response to question number 43, explains that how the entry of short-term capital loss was given to Moraj group. In

response to question number 44, he explained that how the bogus long-term unsecured loans of ₹ 50 crores were given to Moraj building concept private limited. In response to that question, he also gives the name of nine different companies, which were used by him for providing the above loan. In response to question number 48, it was asked to explain how the bogus long-term capital gain entries were given to Gurnani group family members, he answers:-

“Sir, during FY 2011 - 12, the entries of unsecured loans were given. At the same time, 5 (five) members of Gurnani family were also allotted shares of Santoshima Trade link Ltd on preferential basis. The plan was to give entry of short-term capital loss entry in Moraj group of companies during 2011 - 12 and subsequently, bogus long-term capital gain accommodation entry in the personal files of Gurnani family. Subsequently, Gurnani family received the shares of sunrise Asian limited against the shares of Santoshima Trade link Ltd. after the amalgamation of later with the former. Thereafter, the share prices of M/s sunrise Asian limited was artificially rigged up by me. When the share price of sunrise Asia Ltd reached up to a desired level, Mr. Piyush Shah after consulting Mr. Mohan Gurnani and Ms Priya Gurnani asked me to sell the shares. I used to receive RTGS/ cash which was used to purchase the shares of Gurnani family through my controlled entities.”

093. Further, in response to question number 49, he explained that what is the amount of cash that has been received by him for giving accommodation entry of long-term capital gain to Gurnani family members. He explains that he used to get cash picked up from the office of Moraj group and many times received RTGS [reversal of loan repayment of old accommodation entries provided to the group] in bank account of the entities controlled and managed by him. Usually, he received RTGS which were actually the reversal of the entry of unsecured loans and it was used to purchase the shares of sunrise Asian limited. Sometimes, the shares were sold and the unsecured loans were returned after the sale of shares. This was done as per the mutual convenience. Further, in response to question number 50, he gives the name of the various persons of the Gurnani family, how many shares allotted to them, what is the sale price and what is the total amount of money received by him for allotment of the shares of Santoshima Trade link Ltd. However, he mentions the five names of Gurnani family, but he tells that the shares were sold only from the account of Mr. Mohan Gurnani, Ms Priya Mohan Gurnani and Ms. Deepa Gurnani. He also submits that bogus capital gain could not be arranged in the name of other entities because of cash crunch. In response to question number 51, whether he has ever met Mr. Mohan Gurnani/ Priya Gurnani and Deepa Gurnani, his categorical answer was that he did not meet them personally at any time however the entire deal was done through Shri Piyush Rasiklal Shah (chartered accountant) and he has spoken to Priya Gurnani once or twice about 4 – 5 months back. In response to question number 52, that who used to

decide about the quantity and the rate for the sale of shares of the Gurnani group, it was explained that the quantity of shares to be sold and rate dependent on the RTGS received by him. He used to communicate the same to Mrs. Rukhsana [Accountant] in the office of Moraj group and she used to place order. Sometimes he himself used to place share sale orders on behalf of Gurnani group. In response to question number 53 about the authorization to place orders for the Gurnani group, he explains that entire scheme was finalized in consultation with Shri Piyush Rasiklal Shah for opening of Demat account of the individual family members with various share, the trading accounts were opened at Anand Rathi, DJS stock Brokers, F8 Finserve, JHP Securities, SMC Global. As he is the entry operator all the brokers knew him and hence they accepted his orders on behalf of Gurnani family members. These transactions were always confirmed with Mr. Piyush rasiklal Shah. Next orders were always confirmed after confirmation and receipt of RTGS. In answer to question number 54, he also referred to the commission income received by him and how he shared this commission with others. In response to question number 58, there were 17 annexure seized from his possession, which contains the details of bogus accommodation entries, details of RTGS received, and paid for bogus long-term capital gain accommodation entries. In response to question number 16 while explaining annexure A - 14 the name of Mr. Piyush Rasiklal Shah was also mentioned. At page number 175 onwards the papers were impounded wherein it is mentioned that " Piyushbhai c/o Moraj". Similar entries were found at page number 195 where a sum of Rs2.46

cores were received in the name of same persons were Mentioned. The total annexure A - 14 was explained that these sums were received as RTGS from Moraj group which were used to purchase shares of the Gurnani family. In response to question number 61, he further mentioned the details of several intermediaries used by him. In this question, he refers to the name of PiyushBhai who is a chartered accountant and who has taken the unsecured loan from Gurnani group and introduced him with the Gurnani group family members. After that in his reply to several questions, he explains each and every exit providers for providing accommodation entries. In response to question number 77, he refers to 343 entities, which are related to various bogus accommodation entry entities to various beneficiaries are shown. In response to question number 78 - 88, he explains the various exit providers. In question number 87, he also gives the names of various entities, which have the several trades from assessment year 2009 - 10 to the date of his statement. He submits their permanent account number and to what extent they have provided accommodation entries to the various beneficiaries. The name of sunrise Asian Ltd appears there prominently and in huge volume. His statement continued for 90 questions. On perusal of his statement, it is apparent that he refers to the assessee, her family, her chartered accountant, her office accountant, the manner of receiving cash, the manner of transaction of sale etc. To say it succinctly , it is a complete modus operandi of an accommodation entry provider that how bogus loans are shown the color of genuineness and how the bogus long term exempt capital gain is arranged by managing

from the stage of acquisition till the stage of disposal by misuse of platform of stock exchange. It shows how he manages demat agencies, exit providers, routing of cash or RTGS in various bank accounts, settlement of share sold on exchange and receipt of cash / RTGS from beneficiaries to give the color of genuineness to bogus long term capital gain to beneficiaries.

094. The statement of Shri Piyush Rasiklal Shah dated 6 February 2016 also categorically confirms the statement made by Mr. Vipul Bhatt. In answer to question number 15 – 36 clearly shows that Mr. Shah reiterates whatever Mr. Bhatt stated. In response to question number 29, he categorically says that he has arranged bogus long-term capital gain accommodation entries in the name of Mr. Mohan, Ms. Priya and Ms. Deepa through Mr. Bhatt in the shares of sunrise Asian limited. In response to question number 31, he also explained the entire modus operandi of obtaining the bogus long-term capital gain of Gurnani family. He further stated that the transaction in the case of other two family members could not be completed because of some payment issues. He is stated himself very well known to the Gurnani family and the auditor of his companies of Moraj group. He also explained what is the business of Mr. Gurnani. He names 11 entities where he is the auditor of Gurnani family -controlled companies. He also submits that he is a director in Granada Chem Pharma Limited where Mr. Mohan is also a director.
095. Statement of Mr. Mohan Gurnani was taken under section 132 (4) of the act on 4 February 2016 wherein he could not provide the details of Demat account and stated that

he does not have any details of his Demat account. In response to question number 23, he refused stating that he does not know Shri Vipul Bhatt and he has never met him. In response to question number 8, he categorically states that though he does not have any direct relation with Mr. Vipul Bhatt but his CA Mr. Piyush Shah has arranged the loans and advances. In response to question, number 15, he submits that he came to know about sunrise Asian India Ltd through his broker and chartered accountants advise of Shri Piyush Shah. In response to question number 16 about the business activity of sunrise Asian limited, he submits that he does not remember exactly however the investment was based on advice of Mr. Piyush Shah. In response to question number 17, he explains that the brokers through whom he sold the shares, these same brokers appeared in the statement of Mr. Vipul Bhatt also. It is this details at question number 18. In response to question number 21, he says that he does not know anything about the penny stock and he has never heard these words. However in question number 22, he says that CA Piyush Shah who is known to him for the last two decades but now he has been withdrawn from the work. He was also questioned about the petition filed before settlement commission and why it was withdrawn. He did not answer what is manner of disclosure and how unaccounted income was earned..Assessee did not bring those facts on record till date.

096. Statement of Assessee Ms Priya Mohan Gurnani was recorded on 20/12/2018 wherein in answer to question number 8, she has categorically stated that she does not

have any direct relationship with Mr. Vipul Bhatt however her CA Mr. Piyush Shah has arranged an investor for the plots of land purchased by Moraj group of companies. She replied in negative about the several land deals. With respect to the investment in sunrise Asian limited, she stated that her father had decided about the investment in these companies. In response to question number 14, she referred to certain brokers, which were also referred to in the statement of Mr. Bhatt. The name of Ms Rukhsana (accountant) also appeared in the statement of assessee, which also referred to in the statement of Mr. Bhatt. Further in response to question number 6, a statement was recorded during the search and the post search proceedings, she has given that her statement was also recorded on 4/2/2016, 5/2016, 7/2/2016. The statements clearly indicated that those are in complete corroboration with the statement of Mr. Bhatt, Mr. Shah and Mr. Gurnani.

097. Further Mr. Vipul Bhatt was issued summons and examined on 20/12/2018 wherein a statement was recorded. He stated that he has filed his retraction statement on 2/9/2016 and letter dated 20/9/2017. He submitted that his statements given earlier on 4/2/2016 to 12/2 /2016 were not in the sound state of mind and health. He also furnished the statement along with an affidavit that the earlier statement given by him was patently false and therefore retracted. However, in the retraction statement there was no evidences produced before any authorities about his modus operandi, various names he has given for Demat accounts, various exit providers, various accomplices, shri Piyush Shah, loan

entries of Moraj group for land acquisitions, various documentary evidences found in several annexure, 343 dummy entities controlled by him, business of sunrise Asian Limited, its directors and many more things. His only statement was that his earlier statement is patently false.

098.

In view of

- i. statement of the accommodation entry provider Mr. Vipul Bhatt
- ii. Statement of assessee's chartered accountant shri Piyush Shah
- iii. Confirmation of statement of Mr. Mohan and Priya about Shri Piyush Shah
- iv. ignorance of the assessee and her father about the company its working or even where about of the company
- v. non service of 133 (6) notices to companies
- vi. pending information from BSE
- vii. association with the chartered accountant who operated and worked as link between Assessee group and Accommodation entry providers,
- viii. approaching settlement commission and withdrawal of application later
- ix. Acquisition of shares of company through private places held to be part of scheme explained by Mr. Bhatt

- x. Holding shares in Demat account by the assessee and same parties for demat mentioned in the statement of Mr. Bhatt
- xi. Transaction of transferring share from one demat account to another where shares could have been sold from any demat account particularly when those demat agencies were mentioned as part of scheme by Mr. Bhatt
- xii. Synchronized trade pattern of putting order on stock exchange platform and in seconds trade takes place in a non descript company
- xiii. Identification of exit providers controlled by Mr. Bhatt
- xiv. Trail of money and commission in several annexure found where name of the assessee, her CA, cash / RTGS receipt were mentioned along with commission of Mr. Bhatt coupled with the RTGS and Cash from assessee matching with sale of shares of assessee or her family
- xv. Bald retraction of Mr. Vipul Bhatt by affidavit without any evidences and not denying any documents found

Documentary evidences of purchase, sales confirmation etc provided by the assessee loses its sanctity. Even otherwise, in case of loan of accommodation entry, confirmation bank statement and annual accounts, return of income etc loses its significance the moment it is shown to be an orchestrated arrangement of camouflage

of the real transaction. Similarly, in case of allegedly bogus long-term capital gain, the details of sale, bank payments, trading at the stock exchange platform, payment of STT etc are merely make-believe arrangement of the documents as those are necessary ingredient to claim exemption. All other circumstances and facts a surrounding those documents shows whether the transaction is genuine or not.

099. Grievance of assessee about not giving an opportunity to cross examination of several parties, in the decision of Swati Bajaj, the honourable High Court has answered that as under :-

"73. It is very rare and difficult to get direct information or evidence with regard to the prior meeting of minds of the persons involved in the manipulative activities of price rigging and insider trading. We can draw a parallel in cases of adulteration of food stuff, more than often action is initiated under the relevant Act after the adulteration takes place, the users of adulterated products get affected etc. Therefore, a holistic approach is required to be made and the test of preponderance of probabilities have to be applied and while doing so, we cannot lose sight of the fact that the shares of very little known companies with insignificant business had a steep rise in the share prices within the period of little over a



year. The Income-tax department was not privy to such peculiar trading activities as they appear to have been done through the various stock exchanges and it is only when the assessee made claim for a LTCG/STCL, the investigation commenced. As pointed out the investigation did not commence from the assessee but had commenced from the companies and the persons who were involved in the trading of the shares of these companies, which are all classified as penny stocks companies. Therefore, the argument of the assessee that the copy of the investigation report has not been furnished, the persons from whom statements have been recorded have not been produced for cross examination are all contention which has to necessarily fail for several reasons which we have set out in the proceedings paragraphs. To reiterate, the assessee we not named in the report and when the assessee makes the claim for exemption the onus of proof is on the assessee to prove the genuinity. Unfortunately, the assessee have been harping upon the transactions done by them and by relying upon the documents in their hands to contend that the transactions done were genuine. Unfortunately, the test of genuinity needs to be established



otherwise, the assesses are lawfully bound to prove the huge LTCG claims to be genuine. In other words if there is information and data available of unreasonable rise in the price of the shares of these penny stock companies over a short period of time of little more than one year, the genuinity of such steep rise in the prices of shares needs to be established and the onus is on the assessee to do so as mandated in Section 68 of the Act. Thus, the assesses cannot be permitted to contend that the assessments were based on surmises and conjectures or presumptions or assumptions. The assessee does not and cannot dispute the fact that the shares of the companies which they have dealt with were insignificant in value prior to their trading. If such is the situation, the assessee has to establish that the price rise was genuine and consequently they are entitled to claim LTCG on their transaction. Until and unless the initial burden cast upon the assessee is discharged, the onus does not shift to the revenue to prove otherwise. It is incorrect to argue that the assesses have been called upon to prove the negative in fact, it is the assesses duty to establish that the rise of the price of shares within a short period of

time was a genuine move that those penny stocks companies had credit worthiness and coupled with genuinity and identity. The assesses cannot be heard to say that their claim has to be examined only based upon the documents produced by them namely bank details, the purchase/sell documents, the details of the D-Mat Account etc. The assesses have lost sight of an important fact that when a claim is made for LTCG or STCL, the onus is on the assessee to prove that credit worthiness of the companies whose shares the assessee has dealt with, the genuineness of the price rise which is undoubtedly alarming that to within a short span of time. The revenue had placed heavy reliance on the decision in *MCDowell & Co. Ltd.* to show that the claim of the assessee is not case of tax planning to be one of the tax avoidance by indulging in dubious methods. Mr. Bagaria had argued the rule in *MCDowell & Co. Ltd. (supra)* was considered in *Azadi Bachao Andolan (supra)* and *Vodafone International Holdings (supra)* and it is in the manner explained in these decisions the rule in *McDowell & Co. Ltd. (supra)* needs to be applied. From paragraph 138 onwards the Hon'ble Supreme Court considered in detail as to why McDowell and what it says and

what it does not say. The argument of Mr. Bagaria would primarily rests on as to what would mean by a sham transaction as a legal one and it is pointed out that all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. Further by referring to the decision in *Vodafone International Holdings (supra)*, it is submitted that the revenue cannot start with the question as to whether the transaction was a tax deferment/avoidance but the revenue should apply the "look at" test to ascertain its true legal nature and that genuine strategic planning had not been abandoned. Further the revenue has to establish on the basis of facts and circumstances surrounding the transactions that the impugned transaction is a sham or tax avoidance. In this regard Mr. Bagaria also referred to the decision in the case of *Hill Country Properties Ltd. (supra)* and also the decision *Duke of Westminster (supra)*."

0100. It is surprising to note that assessee wants a cross examination of Mr. Vipul Bhatt, accommodation entry provider. Assessee is not aware about the statement of Mr. Bhatt confessing everything, but in possession of his

retraction affidavit completely. He appeared before LD AO also till that time assessee would never wanted to question him. Assessee never attempted to produce Shri Piyush Shah or Rukhsana. She never wanted to dispute the factum of loan taken as accommodation entries and trail of repayment of loan to bogus entities of Mr. Bhatt and simultaneous sale of shares by family members.

0101. Despite all the above stated facts , Proof of purchases and sales and its reliability is required to be tested. The assessee has made an application form for issue of equity shares of Santoshima lease finance and investments India Ltd by applying for 1,50,000 shares by paying a consideration of ₹ 30 lakhs on 27 September 2011 and 3,50,000 shares on 3 October 2011 by paying Rs. 70 lakhs . The assessee was allotted 5 lakh shares by allotment letter dated 31 January 2012 the physical share certificate number 440 , 5 lakh shares were issued to the assessee on 31 January 2012. The shares were credited in the Demat account of the assessee with DJS stock and shares Ltd. 1 lakh shares were credited on 3/10/2013 in Demat account of Mr. Mohan Gurnani, which were immediately transferred. This was the Demat statement provided by the assessee at page number 528 of the paper book. It page number 619 - 631 the Demat account with the same broker of the assessee was stated. On 4/5/2013, the assessee received 5 lakh shares. On 2/9/2013 and 3/9/2013 cumulatively 20,000 shares were transferred. On 18/11/2013 shares were debited in the Demat account. The shares were transferred in the another Demat account of the assessee with SMC Global Limited. Immediately thereafter, assessee started selling

shares by debiting this Demat account. On 28/2/2015 3,67,000 shares were transferred from the Demat account of the assessee therefore, thus all the shares were transferred to another Demat account JHP securities Private Limited. Therefore, all these Demat accounts mentioned in the documentary evidences produced by the assessee are exactly the parties, which were mentioned in the statement of Mr. Bhatt. Assessee has transferred shares of one demat account to another demat account of her own for which there is no reason. All the depositories are mentioned as his associate in these penny stock transactions by Mr. Bhatt.

0102. Naturally, the transaction of penny stock happens at the regulated stock exchange only where time and date stamp and securities transaction tax are paid. This is the necessary conditions of claiming exemption under section 10 (38) of the act. Further, the pay-in and payout at the stock exchange always happens through the banking channel and therefore it is a mandatory condition. It is nobody's case that that the shares can be sold at the exchange and the brokers will pay seller cash. Therefore as these are the mandatory conditions, those does not weigh much in deciding whether the transaction is genuine or not.

0103. Price rise of shares of Sunrise Asian Limited Mr. Vipul Bhatt in his original statement has already stated how he has arranged the price rigging in the shares of the above company starting from ₹ 62 to ₹ 600 plus. There was no corporate announcement supporting the price or profitability of Sunrise Asian Ltd. Till date nobody except

Mr. Vipul Bhatt knows what is the business of this company!

0104. So far as the issue of independent enquiry is concerned, when all the documents are proved to be a make-believe evidences for claiming the exemption under section 10 (38) of the act or section 68 of the Act , we do not find that any inquiry is required, despite everything coming out in the statement of Mr. Vipul Bhatt , Piyush Shah, Mohan Gurnani, and Priya Gurnani. If assessee wants to dispute them, it is for her to show that transaction is not non-genuine.
0105. SEBI order relied up on by the Id DR clearly speaks about the involvement of all 86 entities controlled by Mr. Bhatt that are held to be involved in price rigging of the shares of Sunrise Asian Limited. Therefore, there is no credence in the argument of the assessee that shares of that company are not rigged by Mr. Vipul Bhatt and assessee is not a beneficiary. Same persons are named in his statement also.
0106. Assessee has relied on many decisions of coordinate benches where addition on account of penny stock were deleted. Assessee also submitted many decisions where penny stock addition were deleted and Alleged accommodation entry provider is same i.e. Mr. Vipul Vidhur Bhatt and company is also same i.e. Sunrise Asian Limited. Indeed that is the fact. We have closely analyzed all those decisions where LD AO has made addition on the basis of statement of Mr. Vipul Vidhur Bhatt and company alleged rigged is Sunrise Asian Limited, but addition is deleted by ITAT. However, we

find that in none of those decisions, statements of Mr. Vipul Bhatt, which is placed before us, is analyzed. In this statement of Mr. Bhatt, most of the questions out of 90 questions are with respect to Moraj Group transactions, including penny stock. It does not begin with the penny stock accommodation entries and does not end with it. It goes prior to that how for purchase of land services of Mr. Bhatt were utilized for financing land purchase transaction, what is the sources of money for acquiring shares of Sunrise Asian Limited, how the bogus capital gain was arranged, who were the part of depositories for opening Demat accounts for penny stock gain generation, who are the exit providers who will buy the shares of beneficiaries, how the pay in and pay out would be sourced, how, who and when the money is provided in cash or RTGS for arranged sale at stock exchange etc. Ld AR could not show us single decision out of those decisions relied, where these facts exits/considered. Hence, we reject reliance on those decisions.

0107. Reliance on the Decision of honourable Bombay High court in case of **PRINCIPAL COMMISSIONER OF INCOME TAX – 31, MUMBAI VERSUS INDRAVADAN JAIN, HUF INCOME TAX APPEAL NO. 454 OF 2018** July 12, 2023 was misplaced for the reason that in that case the assessee purchased the shares on stock exchange platform and not through preferential allotment. “The tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were

also sold on the floor of stock Exchange.’ However in the present case it was acquired in preferential allotment that too was investigated by SEBI and found to be Fraudulent.

0108. Decision of Honourable Bombay high court in case of Shyam Pawar [Income Tax Appeal No. 1568 of 2012, Income Tax Appeal No. 1569 of 2012, Income Tax Appeal No. 1570 of 2012], Income Tax Appeal No. 1571 of 2012 dated December 10, 2014 was also relied up on. In that case it was held that “The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. “In this case the statement of Mr. Vipul Vidhur Bhatt specifically names the assessee family and order of SEBI on preferential allotment makes the case distinguishable on facts. In this case, search, itself resulted in to complete investigation and it is for the assessee to rebut evidences found from accommodation entry provider

0109. We find it relevant to rely on Para no 77 and 78 of decision of Swati Bajaj {supra}. In Para no 77 the Honourable high court held that

“77. While on the issue regarding the onus of proof, it would be beneficial to refer to the decisions which were relied on. In Durga Prasad More, the Hon’ble Supreme Court pointed out that on the question of onus that

law does not prescribe any quantitative test to find out whether the onus in a particular case has been discharged or not and it depends on the facts and circumstances of each case. It was further held that in some cases, the onus may be heavy whereas in others, it may be nominal. In the said case the assessee was receiving some income which he stated that it is not his income but that of his wife. On facts, it was found that the assessee's wife is supposed to have had Rs. 2 lakhs neither deposited in bank, nor advanced to others but safely kept in a safe. The assessee was unable to show from what source she built up the amount and Rs. 2 lakhs before the year 1940 which was a big sum during the relevant time. The Tribunal disbelieved the story of the assessee and held it to prima facie be a fantastic story, a story that does not accord with human probabilities. It was further held that the Courts and Tribunals have to judge the evidence before it by applying the test of human probabilities, human minds may differ as to the reliability of a piece of evidence but in that sphere, the decision of the final fact finding authority is made conclusive by law."

0110. Our reason for referring it is that what should be onus on the assessee. Firstly assessee in her family as stated to

have received Rs 37 crores of exempt capital gain in a non descript listed company operated by the accommodation entry provider, who has confessed that he has provided accommodations entries to the beneficiaries , including assessee, Confirmed by SEBI in adjudication order for same time in which assessee has sold these shares. In our view, a wanderer who does not know anything about the shares, did not attend any meetings of the companies , even do not know the nature of the business of the company, company is not found at the place where notices issued u/s 133 (6) , invest Rs 1 Cr in 2012 and earns Rs. 10 crores in 2015-16 [her family earns whopping Rs 37 Crores] is really a fantastic story. This needs to be rejected at threshold itself not only because preponderance of probability is against the assessee but also the facts found from Vipul Bhatt [documentary evidences i.e. various annexure] proves that story is fake .

0111. Now we come to Para no 78 of that decision where the decision of Honourable supreme court in case of *Sumati Dayal v. CIT* [\[1995\] 80 Taxman 89/214 ITR 801 \(SC\)](#) was considered. Honourable court held that :-

“78. In *Sumati Dayal*, the appeals were filed by the assessee against the order passed by the Income Tax Settlement Commission. On the aspect of burden of proof, it was pointed out that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the



nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act, lies upon the assessee. With regard to the effect of Section 68 of the Act, it was held that where any sum is found credited in the books of the assessee in previous year, the sum may be charged to Income Tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. It was further held that in such a case, the prima facie evidence against the assessee namely, the receipt of money and if he fails to rebut, the said evidence being unrebutted, can be used against him by holding that it was a receipt of an income nature. The Hon'ble Supreme Court proceeds to discuss the facts of the case where the dispute was whether the winnings of the assessee therein were from horse races. Pointing out as to how this matter has to be examined, it was held that the matter has to be considered in the light of human probabilities and by applying the said test it was held that the assessee's claim therein about the amount being her winnings from horse races was not genuine."

0112. In present times, whopping gain earned by a wanderer who does not have any knowledge about the company earns Rs 10 Crores [in whole family Rs 37 Crores] is more surprising than winning in a horse race, Especially when the accommodation entry provider also says that, it is an arranged gain in the hands of family members of the assessee.
0113. An interesting aspect emerges of the contract notes submitted by the assessee for the sale of shares, it is apparent that moment assessee orders for the sale of shares, at the same time, those shares offloaded and sold. Thus, the order time and trade time are almost same or with a difference of split seconds. This is unusual when it happens in one-company shares, on the same date and in multiple trades on a single day where the trading is thin. SEBI order is relevant in case of 89 entities passed in this case for such synchronized trading.
0114. We have also noticed fact that Mr. Vipul Vidhur Bhatt has retracted his statement by filing an affidavit dated 2 November 2016 and further on 9 June 2017, he has stated that whatever he stated in the statement earlier is patently false. However while retracting the statement originally given, he did not give any evidence that those annexure which are found from his place wherein the name of the assessee and the full transaction is recorded is incorrect. Reading of statement of Mr. Vipul Bhatt clearly gives an idea how closely and how long he is associated with the group providing accommodation entries. He names the concern of the assessee and her

family members as if he is associated with the group for a long time.

0115. In view of this, even if we ignore the original statement given by the accommodation entry provider and his retraction later on, those evidences still remain which needs to be examined, now, independently to ascertain whether the amount of loan taken by the assessee and the amount of long-term capital gain earned by the assessee is genuine or non genuine.

0116. In view of the above facts, we set-aside ground number 2 and 4 of the appeal back to the file of the learned assessing officer with a direction to the assessee to show the genuineness of the trade and unsecured loan with respect to the documents found as stated in the statement of various parties, exit entry providers details, Demat agencies and the cash trail found. It is also the duty of the assessee to produce before the AO of her chartered accountant (who statement is not retracted), Ms. Rukhsana who is stated to have been involved in transferring the cash for the long-term capital gain and conversion of loan entries, for further examination. It is also the duty of assessee to produce Mr. Vipul Bhatt before the Id AO to be examined specifically with respect to documents in annexure 1 to 17, his each of the reference in 90 questions referring to Moraj Group. The learned assessing officer on appraisal of all the details furnished by the assessee may carry out further enquiry with respect to the observation made above and decide the issue afresh considering the standard operating procedure of investigation of penny stock. The LD AO

may also consider the inquiry pending before him from BSE etc. LD AO may carry out the inquiries with respect to exit providers looking at date and time stamp of trades executed and sources of the fund of the exit providers tearing the layering where it is stated that in some of the case funds are out of RTGS made by assessee for repayment of loan. Ld AO is directed to make meaningful and relevant inquiries in accordance with law. It is also made absolute that, it is for the assessee to show that transactions are genuine, but Needless to say, assessee must be confronted with all evidences and there should not be any violation of principles of natural justice in accordance with the law. Accordingly, ground number 2 and 4 of the appeal of the assessee are allowed for statistical purposes.

0117. Ground number 9 of the appeal is with respect to the principle of natural justice, which will be taken care of at the time of disposal of ground number 2 and 4 of the appeal. Therefore, this ground is also allowed for statistical purposes.
0118. Ground number 5 with respect to the change of jurisdiction and ground number six with respect to the assessment order passed without issue of notice under section 143 (2) of the act is dismissed for the reasons given in the appeal of the assessee for the earlier assessment years.
0119. Ground number 7 is with respect to levy of interest is consequential and ground number 8 with respect to the computation of total income is general, hence, both these grounds are dismissed.



0120. In the result, appeal of the assessee for assessment year 2014 – 15 is partly allowed for statistical purposes as stated above.
0121. Appeal of the assessee for assessment year 2015 – 16 is also involving identical grounds in and abetted assessment proceedings.
0122. Appeal of the assessee for assessment year 2016 – 17 is also involving identical grounds in abated assessment years.
0123. Ground number 1 of both the above appeals for assessment year 15-16 and 16-17 is with respect to invalid application of provisions of section 153A of the income tax act is dismissed in view of both the assessment years as not concluded assessment year and therefore abated assessment years.
0124. Ground number 2 of the appeal is with respect to the addition on account of income from house property of ₹ 125,428 and Rs. 69,090/- are similar to ground of appeal of the assessee for assessment year 2010 – 11 to assessment year 2013 – 14, therefore for the reasons given in those appeals, subject to the deduction at the rate of 30% from the annual value, these grounds are allowed partly.
0125. Ground number 3 for assessment year 2015 – 16 is with respect to the denial of exemption under section 10 (38) of the act of ₹ 27,593,986/- and ₹ 14,587,601/- are identical to ground number 2 and 4 of the appeal of the assessee for assessment year 2014 – 15. As we have already set-aside this ground of appeal with the specific

direction, with similar directions those grounds are also set-aside to the file of the learned AO with the similar directions.

0126. Ground number four in both the appeals are with respect to the change of jurisdiction and are similar to the ground of appeal of the assessee in the earlier years, which has been dismissed, for similar reasons we dismiss these grounds.
0127. Ground number 5 is with respect to the invalid assessment order passed without issue of notice under section 143 (2) of the act by the new incumbent, these grounds are identical to the ground of appeal in earlier years which has been dismissed, for similar reasons we dismiss ground number 5 of the appeal for both the years.
0128. Ground number 6 in both the appeals is with respect to the levy of interest under section 234B of the act, which is consequential in nature and therefore this ground for both the years are dismissed.
0129. Ground number seven in both the appeals are general in nature challenging the overall assessment, therefore same are dismissed.
0130. Ground number 8 is with respect to the violation of the principles of natural justice, which has been dealt with by us in assessment year 2014 - 15 and therefore while deciding ground number 2 - 4 of the appeal for assessment year 2014 - 15, we have directed the learned assessing officer to give proper opportunity of



hearing, therefore these grounds are allowed for statistical purposes.

0131. Accordingly, appeal of the assessee for assessment year 2015 - 16 and 2016 - 17 is partly allowed for statistical purposes.

0132. Accordingly, all these seven appeals of the assessee are disposed of by this order.

Order pronounced in the open court on 08.11.2023.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08. 11.2023

Dragon

Copy of the Order forwarded to :

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

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai