

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.1502/Mum/2023  
(Assessment Year: 2015-16)**

Sanjay MadanrajShah, 316, New Link Way Estate, Near Chincholi Fire Brigade, Malad (W), Mumbai-400064.	<b>बनाम/ Vs.</b>	ACIT – 32(3) Kautilya Bhavan, BKC Complex, Bandra (E), Mumbai-400051.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AJCPS1858H</b>		
<b>(अपीलार्थी /Appellant)</b>		<b>(प्रत्यर्थी / Respondent)</b>

<b>Assessee by :</b>	Shri. Prakash Jhunjhunwala.AR
<b>Revenue by :</b>	Shri. Manoj kumar Sinha.DR

<b>सुनवाई की तारीख / Date of Hearing</b>	08/09/2023
<b>घोषणा की तारीख /Date of Pronouncement</b>	08/11/2023

**आदेश / ORDER**

**PER PAVAN KUMAR GADALE - JM:**

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 143(3) and U/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The Ld. First Appellate Authority (FAA) erred in upholding the addition of exempted long term capital gain of Rs. 1,49,18,125/- as unexplained credit u/s 68 of the Act.*
- 2. The Ld. First Appellate Authority (FAA) erred in upholding the addition made by the A.O without any basis, on account of*

*entry operators charge of Rs. 4,47,544/- as unexplained expenditure u/s 69C of the Act.*

*The Appellant craves leave to add, alter or amend all or any of the above Grounds of Appeal.*

2. The brief facts of the case are that, the assessee is engaged in the business and regular investor in shares. The assessee has e-filed the return of income for the A.Y 2015-16 on 25.02.2016 disclosing a total income of Rs. 24,55,220/- and the return of income was processed u/sec 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notice u/sec 143(2) and U/sec142(1) of the Act along with the questionnaire are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and filed the details and the case was discussed. On perusal of the information, the AO found that the assessee has claimed long term capital gains on sale of shares of M/s Jackson Investments Ltd u/sec 10(38) of the Act of Rs.1,46,30,067/- and the assessee was asked to furnish the details of shares purchase, mode of payment, share certificate, broker details, contract note, dematerialization details, bank details etc. It was explained that, the assessee has purchased 50,000 shares of M/s Jackson Industries Ltd for Rs.1,25,000/- in physical form and off line on 10.10.2011 from Kolkata based company M/s Pleasnt Dealcom Pvt Ltd and produced evidence in confirming the purchases of shares. Subsequently the shares of the M/s Jackson Investment Ltd were dematerialized in F.Y.2012-13 through the M/s Comfort Securities Ltd. Whereas the assessee

during the F.Y 2014-15 has sold the 50,0000 shares from 19-12-2014 to 23-02-2015 at an average price of Rs.298/- per share. The AO has dealt on the allotment /purchase confirmation, sale contract notes, bank statement and demat Account Statement in respect of shares purchase and sale transactions and also relied on the various facts of share price trends, modus operandi and the report of the kolkata investigation wing and statements recorded and has doubted the earning of Long Term Capital Gains (LTCG). The A.O. has also recorded the statement of the assessee u/sec131 of the Act. The A.O finds that there is a no correlation of the share price rise and the financial statements of the company. Finally the A.O was not satisfied with the explanations and material information and observed that the transactions are not genuine and made addition as unexplained cash credit u/s 68 of the Act of Rs.1,49,18,125/- and estimated commission expenditure @2.5% of trade value U/sec69C of the Act which works out to Rs. 4,47,544/- and assessed the total income of Rs.1,78,20,890/- and passed the order U/sec143(3) of the Act dated 27-12-2017.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO but has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the additions under section 68 & 69C of the Act overlooking the facts and submissions that the purchase & sale of shares are genuine and the assessee has substantiated with various details with the both the authorities. Further, there is no scope for the AO to make the additions based on the surmises and conjectures as the assessee has filed the documentary material evidence in support of the claim. The Ld. AR explained the basis and reasons for purchase of shares which were in physical form in F.Y.2011-12 and credited to the demat account and the holding is from F.Y 2012-13 to F.Y 2014-2015 and the assessee has received dividend income on shares. The Ld. AR mentioned that no independent enquiry was conducted by the revenue. The Ld.AR substantiated the submissions with the fact sheet, paper book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld.DR submitted that the share transactions are not genuine and are doubted and the Ld.DR supported the order of the CIT(A) and relied on the submissions.

5. We heard the rival submissions and perused the material on record. The Ld,AR envisaged that the CIT(A) has erred in sustaining the addition u/sec 68 & U/sec 69C of the Act overlooking the material information and evidences filed by the assessee in the proceedings. The Ld.AR submitted that the assessee has furnished the information with evidences of the purchase price, financial statements,

and summary of shares sold in F.Y 2014-15, Ledger account, copies of bank statement, copy of contract notes for sale of impugned shares, demat account statement, copy of physical shares certificates evidencing the shares in the name of assessee etc. Whereas the assessee has purchased 50,000 shares of M/s Jackson Investments Ltd on 10.10.2011 and the assessee has sold the 50,000 shares on 19.12.2014 to 23.03.2015 through SEBI registered broker of BSE & NSE. The Ld. AR demonstrated evidences in support of sale of shares with the sale bills cum contract notes subjected to Securities Transaction Tax(STT) placed at Page 2 to 8 of the paper book and the demat statement reflecting the sale of shares from 23-12-2014 to 25-02-2015 at page 7. The Ld.AR referred to shares purchase bill dated 10.10.2011 in the F.Y 2010-11 placed at page No. 27 of the paper book. The contentions are that the assessee has filed the documentary evidence to justify the genuineness of the purchases, sales and the long term capital gains as the assessee has sold the shares on the recognized stock exchange where the STT has been paid in respect of listed shares and the shares are held for more 12 months. The Ld.AR demonstrated the sale cum contract notes, computation of long term capital gains, ledger account of stock broker at page 9 to 11 of the paper book, bank statement disclosing the receipt of sale consideration at page 12 to 16 of the paper book. Further the Ld.AR relied on the Global report of the share transactions and Bhav copy disclosing prevailing selling

price of shares from the BSE Portal at page 18 to 21 of the paperbook. Further the Ld. AR demonstrated the Company Master Data (CMD) of the company shares traded by the assessee from the MCA portal disclosing the status as Active placed at page 26 of the paper book. We find that the assessee has purchased these shares in physical form and supported with the sale bills, dematerialization of shares on 29.01.2013 and demat statement reflecting the shares at Page 27 to 30. Further the Ld.AR relied on the material and submissions made before the CIT(A) at Para 5 to 5.2 of the order.

6. Further the Ld. AR submitted that, the shares purchased were earlier listed on the Kolkata stock exchange and due to companys expansion plans and on seeking approval of Bombay Stock Exchange (BSE), the shares after dematerialization are listed first time at the BSE on 6-06-2014. The assessee has sold the shares through SEBI registered broker of BSE & NSE M/s Comfort securities Ltd supported with the sale bills cum contract notes subjected to Securities Transaction Tax(STT) and the demat account statement reflecting the sale of shares from 23-12-2014 to 25-02-2015. The assessee has held shares for more than 2 ½ years from the date of purchase on 10-10-2011. The statement of the assessee was recorded U/sec131 of the Act by the Assessing officer and the assessee affirmed the genuineness of share transactions with the documentary evidences. The Ld.AR emphasized that the assessee is only a investor and was not involved in

the price rigging of shares and no enquiry was conducted by the SEBI and BSE against the assessee or the company. The Ld. AR relied on the following judicial decisions in support of the submissions as under:

1. *Anupama Garg & Others vs. ITO* ITA No. 5971/Del/2018.
2. *Yogesh P. Thakkar and others vs. DCIT*, ITA No. 1605/Mum/2021
3. *Bhikam chand Mutha vs. ITO*, ITA No. 2562/Mum/2022
4. *Nishith Rameshchandra Shah vs. ITO*, ITA No. 1116/Mum/2022
5. *Pr. CIT vs. Karuna Garg* ITA477/2022 (Del-HC)
6. *Pr. CIT vs. Smt. Krishna Garg*, 126 Taxmann.com 80 (Del-HC)
7. *CIT vs. Shyam R. Pawar*, 54 taxmann.com 108 (Bom-HC)
8. *CIT vs. Smt. Jamnadevi Agrawal* 20 Taxmann.com 529 (Bom-HC)
9. *Pr. CIT vs. Prem Pal Gandhi*, 94 Taxmann.com 156 (P & H-HC)
10. *Pr. CIT vs. Parasben Kasturchand Kochar*, 130 Taxmann.com 177 (SC) & 130 Taxmann.com 176 (Guj-HC)

7. Further the facts and circumstance of the present case is similar and identical and pertains to A.Y 2015-16 in respect of sale of shares of M/s Jackson Investments Pvt Ltd dealt by the Hon'ble Tribunal of Delhi Bench in the case of Ms. Anupama Garg & Ors Vs ITO Ward 40(1), in ITA 5971to5974/Del/2018 A.Y 2015-16 dated 12.12.2018 has

granted relief observing at Page 3 Para 3 to 8 of the order read as under:

*“3. Briefly, the facts of the case are that the assessee filed return of income declaring income of Rs.3,57,000/-. The case was selected on reasons of “Suspicious long term capital gains on shares”. During the scrutiny assessment, statement of assessee was recorded on oath under section 131 of the I.T. Act. The A.O. found that assessee had sold 2000 shares of M/s. Jackson Investment Limited on BSE and payment was received from the broker M/s. Anurity Multi Broking Pvt. Ltd. The assessee explained that shares were purchased in October, 2011 and were sold in October, 2014. The purchase price was Rs.20,000/- which was sold for Rs.6,14,000/- and the long term capital gains of Rs.5,83,762/- was claimed as exempt under section 10(38) of the I.T. Act. The assessee submitted copies of the bank account, Demat account, share purchase documents and share certificate are on record. The details of purchase and sale of this particular scrip i.e., M/s. Jackson Investment Limited were examined. It was found that assessee had purchased 2000 shares of the scrip in October, 2011 in physical form which were sold in October, 2014 and there were abnormal rise in the price of the sale of the share. The financials of M/s. Jackson Investment Limited are noted in the assessment order to show that there were no business activity and it was either in loss or no profit earning. The A.O, therefore, found that the growth rate in the share price was abnormal. The A.O. also noted that department has made search and surveys operations on some share broking entities and Investigation Wing of Kolkata found many brokers indulged in providing accommodation entries of long term capital gains. Statements of some of the brokers viz., Sri idyoot Sarkar, Sri Nikhil Jain, Sri Sanjay Vora, Sri Rakesh Somani, Sri Anil Khemkha and Sri Jai Kishan Poddar recorded by the Investigation Wing, Kolkata are reproduced in the assessment order. The A.O. observed the modus operandi of LTCG accommodation entry in the assessment order and also referred to recommendation of Special Investigation Team and held that huge capital gains were earned by the assessee within a short period of time by investing in penny stock whose fundamental/financials*

*had no support, was neither the result of co-incidence nor of a genuine investment activities but were created through well planned and an executed scheme in which Company brokers and buyers and sellers of the scrip worked deliberately to achieve the pre-determined objectives. The A.O. called for the explanation of assessee. The reply of the assessee is reproduced in the assessment order in which the assessee filed the requisite details and documentary evidences before A.O. It was also explained that assessee held the share for three years in physical form and then in Demat account and then sold these shares on recognized Stock Exchange through share broker on which STT on sale of share have been paid. The assessee produced sufficient documentary evidences to prove genuineness of the transaction. No adverse material have been brought on record against the assessee. The assessee relied upon several decisions to show that proposed action for addition is wholly unjustified. The A.O. however, rejected the explanation of assessee and noted that assessee has received sale consideration of Rs.6,14,000/- on sale of shares of penny stock company M/s. Jackson Investment Limited which is considered as unexplained cash credit. Addition of Rs.6,14,000/- was accordingly made. The A.O. also noted that entry have been obtained after paying Commission. Therefore, addition of Rs.18,420/- was made under section 69C of the I.T. Act on account of unexplained expenditure incurred for obtaining LTCG accommodation entry.*

*4. Both the additions were challenged before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee reiterated the same submissions. The Ld. CIT(A), however, dismissed the appeal of assessee. The assessee in the present appeal challenged the addition of Rs.6,14,000/- under section 68 of the I.T. Act on account of sale proceeds of the shares and addition of Rs.18,420/- on account of Commission under section 69C of the I.T. Act.*

*5. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee was holding shares for about 36 months which were sold in assessment year under appeal. Purchase and sale of shares have not been doubted. These*

were supported by documentary evidences and all the transactions are carried- out through banking channel. The assessee asked for cross- examination of the share brokers whose statements are referred in the assessment order, but, no cross-examination have been allowed to their statements. Therefore, such statements shall not be admissible in evidence against the assessee. The statement referred to at page-29 of the PB in which assessee asked for an opportunity to cross-examine these persons who have admitted to have provided accommodation entry. Learned Counsel for the Assessee, therefore, submitted that since no cross-examination have been allowed to the statement of these persons/brokers, therefore, their statements are not admissible in evidence against the assessee. Learned Counsel for the Assessee relied upon the following decisions :

	<i>Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II 2016 (15) SCC 785.</i>
	<i>Pr. CIT vs. BLB Cables &amp; Conductors, 2018 (8) TMI 525 – Calcutta High Court.</i>
	<i>Pr. CIT (Central), Ludhiana vs. Prem Pal Gandhi, ITA.No.95 of 2017 Dated 18.01.2018 of Punjab &amp; Haryana High Court.</i>
	<i>Veena Gupta vs. ACIT, Order of ITAT, Delhi in ITA.No.5662/Del./2018, Dated 27.11.2018.</i>
	<i>Smt. Jyoti Gupta vs. ITO, Order of ITAT Delhi Bench in ITA.No.3510/Del./2018, Dated 06.11.2018.</i>
	<i>Anubhav Jain vs. ITO, Order of ITAT, Delhi Bench in ITA.No.4566/Del./2018, Dated 26.11.2018.</i>
	<i>Suresh Kumar Chug vs. ITO, Order of ITAT, Delhi Bench in ITA.No.2789/Del./2018, Dated 29.11.2018.</i>

Learned Counsel for the Assessee on merit also submitted that all the documentary evidences were produced before the authorities below which have not been doubted by them, therefore, assessee proved genuineness of the transaction in the matter. Therefore, addition is wholly unjustified.

6. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that assessee could not explain the receipt of alleged share transaction profits credited in her bank account, therefore, addition was rightly made. The Ld. D.R. relied upon the following decisions.

	<i>Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain vs. CIT (2017) ITA.No.18 of 2017 – Bombay High Court – Nagpur Bench.</i>
	<i>Chandan Gupta vs. CIT (2015) 229 Taxman 173 ( P&amp; H)</i>
	<i>Balbir Chand Maini vs. CIT (2012) 340 ITR 161 (P &amp; H)</i>
	<i>Usha Chandresh Shah vs. ITO 2014-TIOL-1459-ITAT-Mumbai.</i>
	<i>Ratnakar M. Pujari vs. ITO 2016-TIOL-1746-ITAT-MUM.</i>
	<i>Abhimanyu Soin vs. ACIT 2018-TIOL-733-ITAT-CHD.</i>
	<i>Arvind M. Kariya vs. ACIT ITA.No.7024/Mum/2010.</i>
	<i>ITO vs. Shamim M. Bharwani (2016) 69 taxmann.com 65</i>

7. I have considered the rival submissions and perused the material available on record. In this case, assessee purchased the shares in question in October, 2011 which was sold in October, 2014. The A.O. admitted that assessee purchased the shares in physical form, therefore, assessee hold the shares for three years. Assessee sold shares on BSE and payment was received from share broker. The assessee submitted copies of bank account, Demat account, share purchase documents and share certificate before the authorities below. The assessee explained that after purchase of the shares in physical form, then, the same were put in Demat account and were sold through recognized Stock Exchange on which STT has also been paid. The documentary evidences submitted by assessee

*have not been rebutted by the A.O. No adverse material has been brought on record to disprove the claim of assessee. It is a case where shares have been purchased in earlier year which have not been doubted in earlier year by the Revenue Department and only the sale of shares have been doubted without giving any just reasons in the impugned Orders. An identical issue has been considered and decided by ITAT, Delhi SMC Bench in the case of Shri Amar Nath Goenka, Delhi vs. ACIT, Circle-20(1), New Delhi in ITA.No.5882, 5883, 6457 to 6459/Del./2018 vide Order dated 12.12.2018 and the findings of the Tribunal are reproduced as under.....*

*8. In the present case, the A.O. relied upon certain statements of the share brokers recorded by Investigation Wing, Kolkata to prove that they have provided accommodation entries for long term capital gains. The assessee in her statement requested that assessee may be allowed for cross-examinations of these statements. However, no cross-examination have been allowed to the assessee to cross-examine any of such share brokers. Therefore, such statements could not be admissible in evidence against the assessee. The decisions relied upon by the Learned Counsel for the Assessee squarely apply to this proposition. I also rely upon the decision of the Hon'ble Supreme Court in the case of Kishan Chand Chelaram 125 ITR 713 (SC). Learned Counsel for the Assessee also pointed-out from the assessment order that A.O. recorded balance-sheet and P & L A/c of M/s. Jackson Investment Ltd., and their figures of income and net worth for several years to show that the said Company was declaring the profit as well as having net worth. Considering the above discussion, the decisions relied upon by the Ld. D.R. would not support the case of the Revenue. The issue is, therefore, covered by the Order of ITAT, Delhi SMC Bench in the case of Shri Amar Nath Goenka, New Delhi & Others vs. The ACIT, Circle-20(1), New Delhi (supra). I, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.6,14,000/- under section 68 of the I.T. Act and addition of Rs.18,420/- under section 69C of the I.T. Act towards commission. Accordingly, appeal of assessee is allowed.*

8. The recent decision of Honble High Court of Bombay in the case of Pr. CIT Vs. Indravadan Jain. ITA No.454 of 2018 dated 12.07.2023 has considered the facts of sale of shares and dismissed the revenue appeal as under:

3. Respondent had shown sale proceeds of shares in scrip Ramkrishna Fincap Ltd. (RFL) as long term capital gain and claimed exemption under the Act. Respondent had claimed to have purchased this scrip at Rs.3.12/- per share in the year 2003 and sold the same in the year 2005 for Rs.155.04/- per share. It was A.O.'s case that investigation has revealed that the scrip was a penny stock and the capital gain declared was held to be accommodation entries. A broker Basant Periwal & Co. (the said broker) through whom these transactions have been effected had appeared and it was evident that the broker had indulged in price manipulation through synchronized and cross deal in scrip of RFL. SEBI had also passed an order regarding irregularities and synchronized trades carried out in the scrip of RFL by the said broker. In view thereof, respondent's case was re-opened under Section 148 of the Act.

4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said

*broker on various dates in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT[A] found there was no reason to add the capital gains as unexplained cash credit under Section 68 of the Act. 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. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal*

*5. We also find no infirmity in the order passed by the ITAT and no substantial questions of law as proposed in the appeal arised.*

9. Similarly the Jurisdictional High Court of Bombay in the case of CIT Vs. Shyam R. Pawar, 54 taxmann.com 108 has observed as under:

*Section 68 of the Income-tax Act, 1961 Cash credit (Share dealings) - Assessment years 2003-04 to 2006-07 Assessee declared capital gain on sale of shares of two companies. Assessing Officer, observing that transaction was done through brokers at Calcutta and performance of concerned companies was not such as would justify increase in share prices. held said transaction as bogus and having been done to convert unaccounted money of assessee to accounted income and, therefore, made addition under section 68 - On appeal, Tribunal deleted addition observing that DMAT account and contract note showed credit/details of share transactions; and that revenue had stopped inquiry at particular point and did not carry forward it to discharge basic onus Whether on facts, transactions in shares were rightly held to be genuine and addition made by*

*Assessing Officer was rightly deleted Held, yes [Para 7] [In favour of assessee]*

*It was revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange- words showed that the shares were purchased for code numbers S003 and R121 of STPL and RMPL pectively. Out of these two, only RMPL is listed in the appraisal report and it is stated to be involved in dus operandi It is on this material that the Assessing Offices holds that the transactions of sale and purchase of shares are doubtful and not genuine. In relation to assessee's role in all this, all that the Commissioner observed is that the assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the assessee to the accounted income and the assessee utilized the scheme Para 5]*

*The Tribunal concluded that there was something more which was required, which would connect the 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 cared forward by the revenue. A copy of the DMAT account, placed before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available which gave details of the transactions. The contract note is a system generated and prescribed by the stock exchange. From this material, the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client code has been referred to. But the Tribunal concluded that same, by itself, is not enough to prove that the transactions in the impugned shares were bogus sham. The details received from stock exchange have been relied upon for the purposes of faulting the revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the*

*Tribunal cannot be termed as perverse. The conclusions as recorded in the Tribunal's order are not vitiated by any error of law apparent on the face of the record either. [Para 6]*

10. Hon'ble Supreme Court in the case of Pr. CIT Vs. Parasben Kasturchand Kochar, 130 taxmann.com 177 (SC) has observed as under:

*Section 10(38) of the Income-tax Act, 1961 Capital gains Income arising from transfer of long-term securities (Shares) Assessment year 2014-15 Assessee-individual engaged in business of trading in shares claimed long term capital gains arising out of sale of shares as exemption under section 10(38) - Assessing officer denied claim and made certain additions into assessee's income on grounds that said gains were earned through bogus penny stock transactions and companies to whom sold shares belonged were bogus in nature Tribunal observing that assessee by submitting records of purchase bills, sale bills, demat statement, etc., had discharged his onus of establishing said transactions to be fair and transparent, same not being earned from bogus companies was eligible for exemption under section 10(38) High court by impugned order held that no substantial question of law. arose from Tribunal's order - Whether SLP against said impugned order was to be dismissed -Held, yes (Para 2) (In favour of assessee)*

11. Similarly Hon'ble High Court in the case of Pr. CIT Vs. Prem Pal Gandhi, (401 ITR 0253) (P & H) has observed as under:

*Capital gain-Share transaction-Addition-Deletion thereof-During course of assessment proceedings u/s 153A, it was noticed by AO that assessee had shown long term capital gain on sale of shares of company-AO treated share transaction as non-genuine transaction and amount was shown as long term capital gain on share transaction was added to income of assessee-CIT(A) deleted addition-Tribunal upheld order passed by CIT(A) and dismissed appeal of revenue-Held, assessee sold shares through MTL shares*

*and Stock Broker limited which was SEBI registered Stock Broker-Payment for sale of shares was received through banking channels-All documentary evidence being in favour of assessee, deletion of addition made by CIT(A) was upheld by Tribunal-All these documentary evidences in favour of assessee were rejected by AO merely on basis of some casual replies given by assessee to AO- Documentary evidences were in favour of assessee and CIT(A) had passed very reasoned and speaking order-Dividend amount was received with regard to holding of shares and said amount was disclosed by assessee in his return of income and exemption was claimed accordingly-Thus, addition being without any logical basis was deleted-Revenue's appeal dismissed.*

*Held:*

*The CIT(A) examined the matter and the comments of the Assessing Officer in the remand report. It has been recorded by the CIT(A) that the purchase of shares in the financial year 2006-07 for an amount of Rs. 11 lakhs had been physically transferred in favour of the assessee in the books of the company namely GeeFCee Finance Limited. Further, the said shares were dematerialized and credited in the assessee's account maintained with depository participant i.e. HDFC on 16.10.2006. The dividend amount of Rs. 1,50,000/- had been received with regard to aforementioned holding of shares on 23.10.2007. The said amount had been disclosed by the in his return of income and exemption was claimed accordingly. Thus, the addition being without any logical basis was directed to be deleted. (Para 4)*

*Assessee had sold shares through MTL shaes and Stock Brokers Limited as is noted by Assessing Officer in reply to question No.24 which is a SEBI registered Stock Broker. Furthermore the payment for sale of shares was received through Banking channels. All these documentary evidences in favour of the assessee were rejected by Assessing Offiver merely on the basis of some casual replies given by assessee to the Assessing Officer. However, the fact remains that all the documentary evidences are in favour of assessee and learned CIT(A) has passed a very reasoned and speaking order and we do not find any infirmity in the same."*

12. The Hon'ble High Court of Bombay in the case of CIT Vs. Smt. Jamnadevi Agrawal, 328 ITR 656 (Bom) has observed as under:

*Income-Cash credit-Genuineness of share transactions-Assessee offered long-term capital gains arising from sale of shares-On the basis of material seized during the search in the case of various assessee who belong to H group, AO did not accept the capital gains and treated the entire sale proceeds of the shares as income from undisclosed sources under s. 68-Not justified-Fact that the assessee in the group have purchased and sold shares of the same companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence has been produced to establish the genuineness of the sale- Company has confirmed that it has handed over the shares purchased by the assessee-Similarly, the sale of shares to the respective buyers is also established by producing documentary evidence-Purchase and sale price of the shares declared by the assessee is in conformity with the market rates prevailing on the respective dates-Thus, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions-Tribunal has arrived at a finding of fact that the transactions were genuine-Nothing has been brought on record to show that the findings recorded by the Tribunal are contrary to the documentary evidence-Also, no fault can be found with the finding recorded by the Tribunal that the cash credits in the buyers' bank accounts cannot be attributed to the assessee-Therefore, the decision of the Tribunal is based on findings of fact and no substantial question of law arises.*

*The fact that the assessee in the group have purchased and sold shares of similar companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence was produced to establish the genuineness of the claim. From the documents produced, it is seen that the shares in question were in fact purchased by the*

*assesseees on the respective dates and the company has confirmed to have handed over the shares purchased by the assesseees. Similarly, the sale of the shares to the respective buyers is also established by producing documentary evidence. It is true that some of the transactions were off-market transactions. However, the purchase and sale price of the shares declared by the assesseees were in conformity with the market rates prevailing on the respective dates as is seen from the documents furnished by the assesseees. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions. The statement of the broker P that the transactions with the H Group were bogus has been demonstrated to be wrong by producing documentary evidence to the effect that the shares sold by the assesseees were in consonance with the market price. On perusal of those documentary evidence, the Tribunal has arrived at a finding of fact that the transactions were genuine. Nothing is brought on record to show that the findings recorded by the Tribunal are contrary to the documentary evidence on record. The Tribunal has further recorded a finding of fact that the cash credits in the bank accounts of some of the buyers of shares cannot be linked to the assesseees. Moreover, in the light of the documentary evidence adduced to show that the shares purchased and sold by the assesseees were in conformity with the market price, the Tribunal recorded a finding of fact that the cash credits in the buyers' bank accounts cannot be attributed to the assesseees. No fault can be found with the above finding recorded by the Tribunal. Therefore, the decision of the Tribunal is based on finding of facts. No substantial question of law arises from the order of the Tribunal.- Asstt. CIT vs. Kamal Kumar S. Agrawal (Indl.) & Ors. (2010) 41 DTR (Nag) (Trib) 105: (2010) 133 TT (Nag) 818 affirmed; Sumati Dayal vs. CIT (1995) 125 CTR (SC) 124: (1995) 80 Taxman 89 (SC) distinguished. (Paras 11 to 14 & 16)*

*Conclusion:*

*Assesseees having established the genuineness of purchase and sale of shares by producing documentary evidence and declaring the purchase and sale price of shares in conformity with the*

*market rates prevailing on the respective dates, the finding of the Tribunal that the transactions were genuine is a finding of fact based on documentary evidence on record and, therefore, no substantial question of law arises from the order of the Tribunal deleting the addition under s. 68.*

13. Similarly Hon'ble High Court of Bombay in the case of Pr.CIT-3 Vs. Ziauddin A Siddique. Income Tax Appeal No 2012 of 2017 order dated 4 March 2022 has observed as under:

1. *The following question of law is proposed:*

*"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of Rs.1,03,33,925/- made by AO u/s 68 of the I.T. Act, 1961, ignoring the fact that the shares were bought/acquired from off market sources and thereafter the same was demated and registered in stock exchange and increase in share price of Ramkrishna Fincap Ltd. is not supported by the financials and, therefore, the amount of LTCG of Rs.1,03,33,925/- claimed by the assessee is nothing but unaccounted income which was rightly added u/s 68 of the IT. Act, 1961?"*

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

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

4. *Mr. Walve placed reliance on a judgment of the Apex Court in Principal Commissioner of Income-tax (Central)-1 vs. NRA Iron & Steel (P) Ltd.' but that does not help the revenue in as much as the facts in that case were entirely different.*

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

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

14. The Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax Vs. Smt. Renu Aggarwal (2023) 456 ITR 249 (SC) dated 3-07- 2023 has observed as under

*“CASH CREDITS-TRANSACTIONS IN PENNY STOCKS-FINDING THAT THERE WAS NO ADVERSE COMMENT FROM STOCK EXCHANGE OR COMPANY WHOSE SHARES INVOLVED-ASSESSING OFFICER QUOTING FACTS PERTAINING TO COMPLETELY UNRELATED PERSONS NAME OF ASSESSEE NEITHER QUOTED BY ANY SUCH PERSONS NOR MATERIAL RELATING TO ASSESSEE FOUND IN INVESTIGATION-TRIBUNAL AFFIRMING AND HIGH COURT DISMISSING DEPARTMENT'S APPEAL-SUPREME COURT-SPECIAL LEAVE PETITION DISMISSED-INCOME-TAX ACT, 1961, ss. 68, 260A.*

*Where the High Court dismissed the Department's appeal saying that no question of law arose from the order of the Tribunal affirming the order of the Commissioner (Appeals) allowing relief to the assessee, and the findings of the Commissioner (Appeals) to the effect that there was no adverse comment from the stock exchange or the company whose shares were involved in these transactions, that the Assessing Officer quoted the facts pertaining to completely unrelated persons whose statements were recorded and on the basis of unfounded presumptions, that the name of the assessee was neither quoted by any of such persons nor was any material relating to the assessee found at*

*any place where investigation was done by the Investigation Wing, on a petition for special leave to appeal to the Supreme Court*

*special leave to appeal to the Supreme Court*

*The Supreme Court dismissed the petition. Decision of the Allahabad High Court (printed below) affirmed.*

*Petition for Special Leave to Appeal (C) No. 13033 of 2023.*

*Petition under article 136 of the Constitution for special leave to appeal from the judgment and order dated July 6, 2022, of the Allahabad High Court in I. T. A. No. 44 of 2022. The judgment of the High Court (coram: SURYA PRAKASH KESARWANI and JAYANT BANERJI JJ.) ran as follows:*

*"JUDGMENT*

*Heard Sri Krishna Agarawal, learned counsel for the appellant. This appeal under section 260A of the Income-tax Act, 1961 has been filed challenging the order dated January 17, 2022, passed by the Income- tax Appellate Tribunal, Lucknow Bench 'SMC' Lucknow in IT. A. No. 205 of 2020 (assessment year 2014-15).*

*The basic question involved in the present appeal is with regard to deletion of some amount which was added by the Assessing Officer on the allegation of penny stock.*

*The appeal of the respondent-assessee was allowed against the assessment order. The appeal filed by the assessee was allowed by the Commissioner (Appeals). Against the appellate order the Revenue had filed the aforesaid income-tax appeal which has been dismissed by the Income-tax Appellate Tribunal.*

*After detailed discussion, the Income-tax Appellate Tribunal has recorded the following findings of fact*

*The above findings recorded by the learned Commissioner (Appeals) are quite exhaustive whereby he has discussed the basis on which the Assessing Officer had made the additions. While allowing relief to the assessee, the learned Commissioner (Appeals) has specifically held that there is no adverse comment in the form of general and specific statement by the principal officer of the stock exchange or by the company whose shares were involved in these transactions and he held that the Assessing Officer only quoted the facts pertaining to various completely unrelated persons whose statements were recorded and on the basis of unfounded presumptions. He further held that the name of the appellants were neither quoted by any of such persons nor any material relating to the assessee was found at any place where investigation was done by the Investigation Wing. The learned Commissioner (Appeals) relying on various orders of the Lucknow Benches and other Benches has allowed relief to the assessee by placing reliance on the evidence filed by the assessee before the Assessing Officer. I do not find any adversity in the order of the learned Commissioner (Appeals) specifically keeping in view the fact that the Lucknow Benches in a number of cases after relying on the judgment of the hon'ble Delhi High Court in the case of Krishna Devi had allowed relief to various assessees."*

*The concurrent findings of fact have been recorded by the first appellate authority and the Income-tax Appellate Tribunal. Thus, no substantial question of law is involved in the present appeal. The matter is concluded by findings of fact.*

*For the reasons aforesaid, we do not find any good reason to entertain this appeal. Consequently, it is dismissed. Balbir Singh, Additional Solicitor General, (Raj Bahadur Yadav, Prahlad Singh, Samarvir Singh and Prashant Rawat, Advocates, with him) for the petitioner."*

15. Considering the facts, circumstances, ratio of the judicial decisions and the information, find that the assessee has furnished the financials, details of price trend of shares at BSE to substantiate the listing/quote of shares, existence of the company to prove the genuineness of share transactions. The AO has doubted the purchase and sale of shares and observed that the price rise is not commensurate with the financials of the company. The assessee has substantiated with all details and information and the revenue could not make out a case that there is unaccounted money transactions took place in the hands of the assessee and the AO has relied on the investigation report and treated the long term capital gains on sale of shares as not genuine. Further the A.O. has not made any enquiry or independent investigation and relied on the statements. The fact remains that the assessee is a regular investor in shares and has submitted the requisite details in respect of purchase and sale of shares and were not disproved. The transaction of sale of shares is through SEBI registered broker of BSE & NSE supported with the sale bills cum contract notes subjected to Securities Transaction Tax(STT) and the demat account statement reflecting debits on the sale of shares and the sale proceeds are received through banking channel. The A.O has not established that the assessee was involved in the price rigging of the shares and also any enquiry was conducted by the SEBI and BSE. Further as

discussed in the above paragraphs, the Honble Tribunal dealt on the same scrip of share and for the same assessment and has allowed the assessee appeal. Accordingly, considering facts, circumstances, ratio of judicial decisions, submissions, evidences and rely on the judicial precedents as discussed above and set aside the order of the CIT(A) and direct the assessing officer to delete the additions and allow the grounds of appeal in favour of the assessee.

16. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 08.11.2023.

Sd/-

**(PADMAVATHY S)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated 08/11/2023

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलार्थी अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER.

1.

उप/सहायक पंजीकार (Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai