

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

S.No	ITA No	Assessee	Revenue	A.Y
1	125/Hyd/2020	Shri Govind Kumar Agarwal, Hyderabad PAN:AEMPA6821K	Income Tax Officer Ward 4(2) Hyderabad	2015-16
2	1940/Hyd/2018	Shri Govind Kumar Agarwal, Hyderabad PAN:AEMPA6821K	Income Tax Officer Ward 4(2) Hyderabad	2014-15
3	1941/Hyd/2018	Shri Naresh Kumar Agarwal, Secunderabad PAN:ADHPA8519L	Income Tax Officer Ward 10(2) Hyderabad	2015-16
4	1942/Hyd/2018	Shri Sumeet Kumar Agarwal, Secunderabad PAN:ADHPA8516F	Income Tax Officer Ward 10(2) Hyderabad	2015-16
5	704/Hyd/2019	Smt. Saroj Agarwal, Hyderabad PAN:ADHPA8513A	Income Tax Officer Ward 4(2) Hyderabad	2015-16
6	705/Hyd/2019	Shri Vikas Kumar Agarwal Hyderabad PAN:ADHPA8515G	Income Tax Officer Ward 4(2)Hyderabad	2015-16
7	89/Hyd/2022	Shri Nageswara Rao Pinneti, Hyderabad PAN:ACUPP6464D	ACIT, Central Circle 1(2) Hyderabad	2015-15
8	167/Hyd/2018	Shri Abhishek Agarwal, Hyderabad PAN:ADYPA7514N	Income Tax Officer Ward 16(2) Hyderabad	2014-15

Assessee by:	Shri K.A. Sai Prasad, CA (S.No.1 to 6), Shri P. Vinod, Advocate (S.No.7) & Shri S. Rama Rao, Advocate (S.No.8)
Revenue by:	Shri CH V Gopinath, CIT(DR)
Date of hearing:	09/11/2023
Date of pronouncement:	21/11/2023

ORDER**Per Bench:**

These are the connected appeals filed by the respective assessees. ITA No.125/Hyd/2020 filed by the assessee Shri Govind Kumar Agarwal is directed against the order dated 6.3.2019 of the learned CIT (A)-1 Hyderabad relating to A.Y 2015-16. There is a delay of 189 days in filing the appeal by the assessee before the Tribunal for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay. After considering the contents of the condonation application filed along with the affidavit and after hearing both the sides, the delay in filing of the appeal by the assessee is condoned and the appeal filed by the assessee is admitted for adjudication.

2. ITA No.1940/Hyd/2018 filed by the same assessee is directed against the order dated 22.06.2018 of the learned CIT (A)-1 Hyderabad relating to A.Y 2014-15 against the addition of Rs.9,89,664/- u/s 68 r.w.s. 115BBE of the I.T. Act and also penalty proceedings u/s 271(1)(c) of the Act. ITA No.1941/Hyd/2018 filed by the assessee Shri Naresh Kumar Agarwal is directed against the order dated 17.05.2018 of the learned CIT (A)-6 Hyderabad relating to A.Y 2015-16. ITA No.1942/Hyd/2018 filed by the assessee Shri Sumeet Kumar Agarwal against the order dated 17.05.2018 of the learned CIT (A)-6 Hyderabad relating to A.Y 2015-16. ITA No.704/Hyd/2019 filed by the assessee Smt. Saroj Agarwal is directed against the order dated 18.02.2019 of the learned CIT (A)-1 Hyderabad relating to A.Y 2015-16. ITA No.705/Hyd/2019 filed by the

assessee Shri Vikas Kumar Agarwal is directed against the order 6.3.2019 of the learned CIT (A)-1 Hyderabad for the A.Y 2015-16. ITA No.89/Hyd/2022 filed by the assessee Shri Nageswara Rao Pinneti is directed against the order dated 25.01.2022 of the learned CIT (A)-1 Hyderabad relating to A.Y 2014-15. ITA 167/Hyd/2018 filed by the assessee Shri Abhishek Agarwal is directed against the order of the learned CIT (A)-4, Hyderabad relating to A.Y 2014-15. Since common issues are involved in all these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

3. ITA No.125/Hyd/2020 filed by Shri Govind Kumar Agarwal is taken as the lead case and are being adjudicated as under.

4. Facts of the case, in brief, are that the assessee an individual is deriving income from textile business and other sources filed his return of income for the ay 2015-16 electronically on 22.08.2015 declaring an income of Rs.3,24,820/- after claiming deduction under chapter VIA at Rs.40,760/- which was processed u/s 143(1) on 24.09.2015. Thereafter, the case was selected for scrutiny under CASS and statutory notices u/s 143(2) and 142(1) were issued and served on the assessee to which the A.R of the assessee appeared before the Assessing Officer and filed the requisite details as called for from time to time.

5. The Director of Investigation, Kolkata carried out a country-wide investigation to unearth the organized racket of generating bogus entries of Long-Term Capital Gain (LTCG) which is exempt from tax.

6. The Assessing Officer observed that the modus operandi adopted by the operators was to make the beneficiary buy some shares of a pre-determined Penny Stock Company controlled by them. These shares were transferred to the beneficiary at a very nominal price mostly off-line through preferential allotment or off-line sale to save STT or by share allotment. The beneficiary holds the share for one year, the statutory period after which LTCG is exempt under section 10(38) of the I.T. Act, 1961. In the meantime, the operators rig the price of the stock and gradually raise its price many times, often 500 to 1000 times. This is done through low volume transaction indulged in by the dummies of the operator at a pre-determined price. When the price reached the desired level, the beneficiary who bought the shares at a nominal price, is made to sell it to a dummy paper company of the operator. For this, unaccounted cash is provided by the beneficiary which is routed through a few layers of paper companies by the operator and finally is parked with the dummy paper company that will buy the shares.

7. Further, the Assessing Officer observed that the prices of the shares of the penny stock companies are rigged and are raised through circular trading which is managed by the "operator" of the scrip. An "operator" is a person who is managing the overall affairs of the scheme and he is the one who contacts the entities who wish to take entry of bogus LTCG/STCL in their books and arranges the same through the scripts of penny stock companies. The operator manages many paper/bogus companies and uses them to do circular transactions to rig the price of the shares. The shares of these penny stock companies, although listed on exchange, are always closely held and are controlled by

the promoter of the Penny Stock Company and the operator who is arranging for the bogus LTCG/loss. This is due to the fact that the general public is not interested in these shares as these companies have no credentials and this helps the operator to keep a control on the price movement of the shares.

8. According to the Assessing Officer, if the beneficiary say, "B" bought 10,000 shares of company "p" @ Re.1/ per share and sold it @ Rs.1,000/- per share, he would make on paper capital Rs.49,90,000/-. In his bank account, there would be a cheque deposit of Rs.50,00,000/- paid by the paper company that buys the shares. The receipt is prima-facie exempt from tax under section 10(38) of the I.T. Act, 1961. The Directorate of Investigation, Kolkata investigated transactions in 84 such penny stock shares quoted in BSE and examined on oath a large number of brokers, directors of companies that finally purchased the shares, the promoters of Penny Stock Companies, the entry operators who managed the dummy companies involved in price rigging. The money trail of the transactions was also examined and, in a large number of transactions trail right from cash deposit account to the beneficiaries' account was unearthed. As a result of investigation, individuals who have taken such entry of bogus LTCG amounting to several crores have been identified. The result of the investigation in brief is as under :

- i. Individuals throughout the country identified who have taken such bogus entries of LTCG amounting to several crores from 2010 to 2014.
- ii. The result of the enquiry was also shared with SEBI and the SEBI after investigating 11 cases have found

the allegation to be correct and the balance cases are still being investigated by SEBI.

- iii. The TOP 25 groups under each investigation directorate of the country were confronted in course of further investigation. Almost all of them barring a few have accepted having taken the entries for a commission. A sum of crores has been voluntarily surrendered by such assesseees.
- iv. In Kolkata, where this investigation was started, some of the beneficiaries who had taken entries of nearly Rs.40 crores have voluntarily surrendered it for taxation without any further enquiry.
- v. Several assesseees have filed revised returns since the enquiries have taken back their claim of exemption.

9. The Assessing Officer observed that on verification of computation of income filed for the A.Y.2015-16, it was noted that the assessee has claimed Long Term Capital Gains of Rs.8,41,446/- comprising of Rs. 8,40,506/- from Capital Gains on which STT is paid of Rs.940/- and claimed the same as Income exempt U/s. 10(38). During the course of hearing, the AR of the assessee was asked to furnish the details of share transactions made during the F. Y. 2014-15 relevant to the A.Y.2015-16 along with documentary evidence.

10. In response to the same, the AR of the assessee furnished the details of purchases/sales of shares, and copy of

bank statements, contract notes for the relevant period in which purchases and sales were made. The same have been verified. On verification of the same, it was found that the assessee had purchased 25000 shares of M/s. CAREFUL PROJECTS ADVISORY Limited off market from Jatadhari Marketing Pvt. Ltd., Kolkata on 28/12/2011 for a total consideration or Rs.25000/-. Subsequently, the company M/s. Careful Projects Advisory Ltd, was merged with M/s. Kailash Auto Finance Limited as a result of which the assessee got 50000 shares and the same was credited into his D-MAT Account maintained with M/s. HSE Securities Limited. Later on, the assessee sold 25000 shares of M/s. Kailash Auto Finance Limited through M/s. HSE Securities Limited during the previous year 2014-15 relevant to the A.Y.2015-16 for total consideration of Rs.8,66,446/- and arisen LTCG of Rs.8,41,446/-. The SEBI after thorough investigation has certified that such transactions are rigged and are carried out to convert unaccounted money into account vide interim order dated 29/03/2016.

11. In this regard, all the information forwarded by the DIT(Investigation), Kolkata wherein it is clearly mentioned that this company is a bogus company i.e. paper Company which is not holding any worth in the market and the same was confirmed in the statements recorded from the operators in which scrip of M/s. Kailash Auto Finance Limited was treated as penny stock, were shown to the assessee's AR and asked to explain as to why the LTCG of Rs.8,41,446/- claimed as exempt income u/s.10(38) of the I.T. Act, should not be treated as arranged one or accommodation/bogus entry and be added back to the total Income from other sources/unexplained cash credit. Accordingly,

a show cause letter was issued to the assessee on 8.12.2017 and served on the assessee. The Assessing Officer relied upon the SEBI order passed on 29.03.2016 and rejected the arguments advanced by the assessee and concluded that the transactions were bogus transactions and aimed only to bring unaccounted money in the guise of exempted long term capital gain and paper work has been done merely to give a colour of authenticity to the transaction and by creating a façade of legitimate transactions. Thus, the transactions made with these paper companies were treated as fictitious and the amount of Rs.8,41,446/- involved in the transactions were treated as unexplained cash credit and added back to the total income from other sources.

12. Before the learned CIT (A), the assessee reiterated the submissions made before the Assessing Officer. However, the learned CIT (A) rejected the explanations given by the assessee and upheld the addition made by the Assessing Officer.

13. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

a) The order of the First Appellate Authority is not correct either in law or on facts and in both.

b) The learned First Appellate Authority is not justified in confirming the addition of Rs.8,41,446/- as unexplained cash credit u/s 68 of the I.T. Act.

c) The learned First Appellate Authority failed to appreciate the fact that all ingredients/conditions laid down for claiming exemption u/s 10(38) of the I.T. Act were fulfilled. Hence the denial of exemption u/s 10(38) is not justified.

d) The appellant craves leave to add or alter or amend any of the grounds at the time of hearing of the appeal”.

14. The learned Counsel for the assessee reiterated the submission made before the learned Assessing Officer and the learned CIT (A). It was submitted by the learned Counsel for the assessee that the assessee had paid STT at the time of sale of shares, in fact, the purchase of the assessee shares have not been disputed by the Assessing Officer and the LTCG claimed by the assessee have been denied by the Assessing Officer and the learned CIT (A). Further, it was submitted that the SEBI report on the basis of which the assessment order was passed by the Assessing Officer was not provided to the assessee at the time of assessment proceedings. It was submitted that the assessee has provided all the documents of purchase and sale of scrips namely Kailash Auto Finance Ltd and therefore, the assessee was able to discharge its onus for providing the identity, creditworthiness and the genuineness of the transactions in the hands of the assessee. The assessee also relied upon the following decisions:

- 1 Copy of the High Court (T&AP) order in the case of Sri Rajiv Kumar Mittal
- 2 Copy of the High Court order in the case of Smt Aarti Mittal (Telangana High Court)
- 3 Copy of the ITAT order in the case of Smt Aarti Mittal & Others, ITAT, Hyderabad Order dt.06.11.2013
- 4 Copy of order in the case of Smt Krishna Devi (431 ITR 361 Del)
- 5 Copy of order in the case of Mukesh R Marolia (6 SOT 247 Mum) Confirmed by Bombay High Court 2016 0 72(1) ITCL 0047
- 6 Copy of order of the ITAT Mumbai in the case of Ravindra Kumar Toshniwal
- 7 Copy of order of Supreme Court in the case of Smt. Renu Aggarwal, dt. 03.07.2023 [456 ITR 249 (SC)]
- 8 Copy of order of the ITAT Lucknow in the case of Smt. Renu Agarwal, dt. 17.01.2022 ITA No. 2014/Lkw/2020 (SMC).
- 9 Copy of order of the ITAT Hyd in the case of Paduchuri Jeevan Prashant, ITA No. 452/Hyd/2015 ('A' SMC) dt. 19.8.2016.
- 10 Copy of order of the ITAT Hyd in the case of Smt. Sarita Devi, dt. 05.05.2017 ITA No.1228/Hyd/2016 (A)

15. Per contra, the learned DR strongly relied on the orders of the Assessing Officer and the learned CIT (A) and also the SEBI report in the case of Kailash Auto Finance Ltd. The learned DR also drew our attention to the additional financials filed before us on 17.08.2021 whereby the consolidated financial statements of Kailash Auto Finance Ltd for the financial year 2010-11 to 2016-17 have been placed before us and it was submitted before us that the same may be accepted as additional evidence. The learned DR further relied upon the following written submissions and supporting the case of the Revenue:

S.No.	PARTICULARS
1	Written Submissions
2	Report of DIT(Inv), Kolkata on Project Bogus LTCG/STCL Though BSE listed Penny Stocks
3	Order of Hon'ble Supreme Court of India in the case of M/s Dilip Kumar and Company & Ors in Civil Appeal No. 3327 of 2007
4	Recommendations of SIT on Black Money as contained in the Third SIT report released by Press Information Bureau dated 24.07.2015
PAPER BOOK (Volume-2)	
5	Order of Hon'ble ITAT, D-Bench, Chennai in the case of M/s. Vidya Reddy in ITA No. 2016/Chny/2017
6	Order of ITAT SMC Bench, Delhi in the case of Pooja Ajmani (106 taxmann.com 65)
7	Order of Hon'ble ITAT, B- Bench Pune in the case of Raj Kumar B. Agarwal, & others in ITA Nos. 1648 to 1652/Pun/2015
8	Order of Hon'ble High Court of Bombay in the case of Sanjay Bimal Chand Jain (89 taxmann.com 196)
9	Order of Hon'ble ITAT, Nagpur Bench, Nagpur in the case in the case of Sanjay Bimal Chand Jain in ITA. No. 61/Nag/2013
10	Order of Hon'ble ITAT, A- Bench Chennai in the case of M/s Pankaj Kumar Agarwal & Sons (HUF) and others in ITA Nos. 1413 to 1420/Chny/2018
11	Order of Hon'ble ITAT, E- Bench, Mumbai in the case of M/s Shamim M Bharwani (69 taxmann.com 65)
12	Order of Hon'ble ITAT, A- Bench Chandigarh in the case of Shri Abhimanyu Soin in ITA No. 951/Chd/2016
13	Order of Hon'ble High Court of Delhi at New Delhi in the case of Udit Kalra in ITA 220/2019 and CM No. 10774/2019
14	Order of Hon'ble ITAT, SMC- Bench New Delhi in the case of Udit Kalra in ITA No. 6717/DEL/2017
15	Order of Supreme Court of India in the case of M. PiraiChoodi in 334 ITR 262.
16	Order of ITAT Bangalore Bench SMC-C in the case of Smt. M.K. Rajeshwari 99 taxmann.com 339.
17	Order of Hon'ble High Court of Madras in the case of Smt. Tharakumari in ITA No. 128/2019 & CMP No. 3353/2019

18. ITAT Delhi in the case of Krishna Devi (ITA 6356/Del/2019) dated 4.1.2022

19. Hon'ble Supreme Court in the case of SEBI vs. Rakhi Trading (P) Ltd (Civil Appeal No.1969 of 2011 dated 8.2.2018)
20. Hon'ble Supreme Court in the case of Suman Poddar (SLP No.26864/2019) dated 22.11.2019
21. Hon'ble Delhi High Court in the case of Suman Poddar (ITA No.841/2019, dated 17.09.2019)
22. ITAT Delhi in the case of Suman Poddar (ITA No.1006/Del/2019)
23. ITAT Delhi in the case of M/s. Anandtex International (P) Ltd (ITA No.2476/Del/2018 dated 24.02.2022).

Written Submission submitted by the learned DR:

1. It is humbly and respectfully submitted as under:
 2. In this case, the assessee has not been able to prove / establish the applicability of his claim of exemption u/s 10(38) of the Income-tax Act. The assessee has failed to discharge the onus of proving that his claim of exemption of Long Term Capital Gains, comes within the parameters of Section 10(38); in the background of the findings of the Investigation Wing of the Department, which indicated that the transaction of alleged long term capital gains by selling of shares by the assessee of M/s. Kailash Auto Finance Ltd., is not a genuine transaction but is orchestrated and stage managed. The onus to prove that such transactions and the resultant Long Term Capital Gain are genuine has not been discharged by the assessee before Assessing Officer or before the Ld. CIT (A). Since the assessee has claimed exemption of income u/s 10(38) of the Income-tax Act, 1961, it is the assessee who is required to prove that he is entitled to such claim under law.
3. **Facts of the case in brief:**
 - 3.1 The assessee purchased 50,000 shares of Careful Projects Advisory Ltd., for Rs.50,000/-, off market from Jatadhari Marketing P. Ltd., Kolkata. These shares were sold on BSE through the HSE Securities Ltd., for a sum of Rs.16,96,729/-. The profit thereon was claimed as exempt u/s 10(38) of the I.T. Act.
 - 3.2 As per the requirement of law, the assessee is required to prove that he is entitled to such exemption and exemption provisions are required to be interpreted strictly. This requires that the assessee should first prove that the transactions which resulted in the alleged long term capital gains are genuine transactions and that his case falls within the parameters of Section 10(38) of the Income-tax. This onus was not discharged by the assessee in the background of the findings of the Directorate of Investigation of the Income-tax Department, statement and admission of key persons of share broking houses, which were responsible for making huge purchases of the shares of M/s. Kailash Auto Finance Ltd., at abnormally high prices to artificially rig the price of the shares. Understandably, the documents furnished by the assessee in support of his claim, do not prove the genuineness of the transactions of purchase and sale of the shares resulting in Long Term Capital Gains, in the background of findings discussed above with regard to the scrip, M/s. Kailash Auto Finance Ltd.

4. Findings of the Investigation Wing of Income-tax Department with regard to the scrip M/s. Unno Industries Ltd.:

4.1 The Report of the Investigation Wing discussed in the assessment order by the AO is submitted in the Paper Book from Pages 1 to 153. The Report captioned '**All about Bogus LTCG / STCL through BSE Listed Penny Stocks**' is also in public domain. In this Report at Page-5 of the Paper Book against Sl.32 of the Table, the company name Kailash Auto Finance Ltd., appears, being BSE listed penny stocks identified by the Investigation Directorate and which have been used for generating bogus LTCG. The basic modus of providing LTCG have been discussed in the Report. Chapter -2 of the Report, from Pages 21 of the Paper Book, discusses the modus operandi of generation of bogus LTCG and it can be seen that certain modus operandi discussed in the Report, at Pages-41 of the Paper Book, of splitting the shares, fits in to the case of the assessee.

4.2 Kind attention of the Hon'ble Bench is invited to the portion of the Report of Investigation Wing at Page-46 of the Paper Book where it is discussed that, analysis was carried out on the basis of trade patterns of scrips called from BSE. At Chapter-3 of the Report of the Investigation Directorate, from Page-46, a discussion on All listed Penny Stocks (Scrips) used in bogus LTCG Scam have been made and at Sl.32 of the table at Page-48 of the Paper Book, the name of the scrip M/s Kailash Auto Finance Ltd., appears, being one of those penny stocks which has been used in bogus LTCG scam detected and proved by the Investigation Directorate.

4.3 Further, the Investigation Directorate found that in many cases, the share brokers are not independent brokers listed with BSE, but they are sub-brokers of other share brokers. The Investigation Directorate analysed in such cases the data for whole share broking entity and while going through the trade data of 84 BSE listed scrips in which LTCG/STCG scam has been organised. The name of the scrip Unno Industries Ltd., appears at Sl.32 of the list of 84 scrips at Page-48 of the Paper Book and Report. Further, the total trade of these share brokers were identified. This can be seen in the said Report appearing at Pages 73 and 74 of the Paper Book. It was shown in the Report that, from total amount of trade of Rs.38 thousand crores in 84 scrips, these brokers has traded more than Rs.15 thousand crores on the purchase side, i.e. loss booking side. The Report also mentions that, these share brokers have not only accepted their active role in the scam but many incriminating documents were found and impounded from their premises, which suggest their active role. The analysis also showed that on the purchase side certain share brokers present in the market have done most of the trading through Jama Kharchi Companies.

4.4 Kind attention of the Hon'ble Bench is invited to Pages: 75-94 of the Report and the Paper Book. The Report, in these pages, discusses the broker wise script wise analysis, where the broker has accepted that he is an entry operator. The following Brokers have traded in M/s Kailash Auto Finance Ltd.

1. The Calcutta Stock Exchange Ltd.
2. SMC Global Securities Ltd.
3. Anand Rathi Share & Stock Brokers Ltd.
4. Religare Securities Ltd.
5. Destiny Securities Ltd.
6. Eureka Stock & Share Broking Services Ltd.
7. Madhya Pradesh Stock Exchange Ltd.
8. Manu Stock Broking Pvt Ltd.
9. Nakamichi Securities Ltd.
10. Intellect Stock Broking Ltd.
11. Millenium Stock Broking P. Ltd.

4.5 Therefore, the findings of the Investigation Wing are not general findings but are specific with regard to the scrip M/s. Kailash Auto Finance Ltd., and the assessee is a beneficiary of the orchestrated transaction of purchase and sale of shares to book bogus LTCG and evade payment of taxes. Hence, the onus lay on the assessee to dislodge these specific findings of Revenue with supporting evidences, to prove / show that it is entitled to exemption u/s 10(38) of the Income-tax Act; which he had failed to do before both the Assessing Officer as also the Ld. CIT (A).

5. Investigation into the facts of the case:

5.1 The onus to prove the genuineness of such transactions and the resultant Long Term Capital Gain are genuine, has not been discharged by the assessee before Assessing Officer or before the Ld. CIT (A). The share price of the scrip M/s. Kailash Auto Finance Ltd., registered an abnormal rise despite poor financial track record. As facts show, prior to purchase of shares, the assessee did not carry out due diligence exercise, including availing consultancy services, expert opinion, and analysis of fundamentals of the company and the previous performance of the stock in the market.

5.2 As the study of financials of the fundamentals of stock i.e. Earnings per Share (EPS), Dividend Declared, Profit Before Tax are quite poor by any standards and any prudent investor would not put his hard earned money in such stock. The same trend continued even after purchase of stock by the assessee and subsequent to sale of stock.

6. Findings of SEBI:

6.1 The AO has also discussed the findings of SEBI in the case of Kailash Auto Finance Ltd., in the assessment order. In this regard it is humbly submitted that the findings of the Investigation Wing of the Income Tax Department discussed in the report and used by the AO in the assessment order of the assessee are corroborated by the order of SEBI in its order dated 27.10.2016 under WTM/RKA/ISD/169/2016.

6.2 The SEBI in their aforesaid order has observed inter alia, that during the FY 2010-11, Careful Projects Advisory Ltd., (CPAL) and Panchshul Marketing Ltd.,

(PML) were incorporated with a dubious plan and premediated arrangement and artifice to increase the number of equity shares therein through sham and non-genuine transactions with regard to issuance of shares which resulted in fetching exorbitant and unrealistic consideration in the scheme of amalgamation with Kailash Auto Finance Ltd. Pursuant to amalgamation, 2058 shareholders of PML and 1972 shareholders of CPAL (hereinafter referred to as beneficiaries) received 58,59,10,800 shares of Kailash Auto in the form of consideration. It was further observed by the SEBI that such profits were generated on account of the rigged price of the scrip and creation of artificially inflated volumes.

6.3 Further, the SEBI in their aforesaid order dated 27.10.2016 has observed that the details of the transactions put through in such a ruse contain the tell story of how the entire process of private placement, fabrication of share premium, issuance of bonus share, subsequent transfer of shares and funds to connected / related entities was designed and structured on the building blocks of slew of transfers and retransfers to beguile the same as transactions with commercial sense to generate bogus LTCG which is exempt from tax under the provisions of I.T. Act, 1961. The SEBI has further observed in their aforesaid order that during this process the stock exchange system was grossly misused. Since the said SEBI order has elaborately discussed the modus operandi of such transactions of obtaining accommodation entries through LTCG taking benefit of the exemption provisions of section 10(38) and also showed as to how the contentions of the beneficiaries that, no material evidence has been brought on record to demonstrate any kind of nexus or prior arrangement between the beneficiaries and the Kailash Auto, CPAL and PML or any other entities fails and are without merit, a prayer has been made for admitting the said SEBI order as an additional evidence. The SEBI has further observed that the noticees were unable to demonstrate or provide plausible reasons as to why any rational investor would like to invest in a closely held company with hardly any operations and had poor business / financial standing. CPAL and PML had nil value of tangible and intangible assets. Despite such poor background of the company, the exuberance shown by the noticees according to the SEBI, for companies like CPAL and PML cast doubt on the investment / trading strategy of these noticees. It has been held by the SEBI that this type of investment was possible only when the entities are acting in nexus for a common objective.

7. Inferences:

7.1 The assessee therefore clearly resorted to a preconceived scheme to procure long-term capital gains by way of price difference in share transactions not supported by market factors. Cumulative events in such transactions of shares revealed that the same were devoid of any commercial nature and fell in the realm of not being bonafide. The assessee has not been able to prove the abnormal rise and fall of prices to be natural based on the market forces. It is evident that such transactions were closed circuit transactions and structured. The assessee had failed to show that it had any knowledge about the fundamentals of the penny stock companies. Mere cheque payment does not prove the genuineness of the transaction under the surrounding factual findings of the case discussed above.

7.2 Further, the net worth of the penny stock company is negligible. Even though the net worth of the company is negligible, the shares were split and the share prices rose abnormally which shows that the rise is not due to normal market forces but artificially rigged and the stock splitting is part of the process of the scam. The investigations in the fund flow analysed in the accounts of the entry providers, have established that the cash has been routed from various accounts to provide accommodation entry. The transactions entered by the assessee involve the series of preconceived steps, the performance of each of which is dependent on the others being carried out. The true nature of the transactions lacked commercial contents, being artificially structured transactions, entered with the sole intent to evade taxes.

7.3 Demat account would show only the shareholding of the assessee on a certain date / period. It does not show / prove that the alleged transaction is genuine in the light of the scam detected with respect to M/s. Kailash Auto Finance Ltd., discussed above. In view of the facts and circumstances mentioned and discussed above, the revenue cannot accept the transactions to be genuine. Truth or genuineness must prevail over the smokescreen created by way of pre-meditated steps taken by assessee with a view to imparting a colour of genuineness and character of commercial nature to such transactions. The background of the scheme clearly shows requirement of routing transaction through stock exchange and payment by means of cheque are inbuilt in this scheme and does not ipso facto prove genuineness of transactions. The evidence gathered therefore has to be evaluated on the principle of preponderance of probability judged on the basis of human probability. Reliance is placed in this regard on the decisions of the Hon'ble Supreme Court in the cases of Sumati Dayal v CIT 214 ITR 801 and Durga Prasad More v CIT 82 ITR 540 (SC); among other cases submitted in the Paper Books;

8. Other Decisions / Case Laws relied upon:

8.1 In respect of Income-tax cases, courts have held in favour of the department observing that penny stock transactions should be judged by applying the "theory of preponderance of probabilities" in place of paper evidence furnished by the assessee. Also, the concepts of "substance over form" and "lifting the corporate veil" should be pressed into action in order to understand the actual intention of the assessee behind entering into transactions through penny stocks.

8.2 It is respectfully submitted that, in the case of Mrs. Vidya Reddy vs ITO, contained at Pages 243 through 252 of the Paper Book, the Hon'ble ITAT, D-Bench, Chennai, has dismissed the appeal of the assessee wherein; similar issue of claim of exemption u/s 10(38) in the case of scrip Surabhi Chemicals & Investments Ltd. was adjudicated. This name of this scrip also appears in the Investigation Wing Report as that of the scrip Unno Industries Ltd. The Hon'ble ITAT held that payment of STT was to paint creditworthiness to the transaction and claim of exemption u/s 10(38). Para 6 of the Order may kindly be seen. It is submitted that, in continuation of Para 6 the Hon'ble ITAT has held that the assessee has not

placed any material to prove that her claim of exemption u/s 10(38) is genuine and valid relevant portion of the order is extracted below.

“...Since, the right to exemption must be established by those who seek it, the onus therefore, lies on them. In order to claim the exemption from payment of income-tax, the assessee had to put before the Income-tax Authorities proper materials which would enable them to come to a conclusion. No part of the concurrent findings recorded by the AO and the Ld. CIT (A) is disputed by the assessee. Further, she has not placed any material before us to dislodge the findings by the Lower Authorities. Thus, the above actions of the assessee are nothing, but a premeditated, contumacious conduct, surreptitiously done for specific reasons for converting unaccounted money of the assessee under the guise of long term share transactions, that too without paying the requisite tax on the same. This is clearly on the realm of tax evasion. Hence, we do not find any reason to interfere with the order of the Ld. CIT (A)...”

It is submitted that, in the case of the assessee too, no material has been placed to prove that the claim of exemption u/s 10(38) is genuine.

8.3 In the Paper Book submitted several other decisions / cases favouring revenue in similar cases of penny stocks have been compiled. The same may kindly be perused and duly considered while taking a decision in the instant case.

8.4 It may be mentioned here that, in the case of Pankaj Agarwal & Sons (HUF) and Ors, (submitted in the Paper Book) the issue of addition u/s 68 by rejecting claim u/s 10(38) in a case of penny stock where the Investigation Wing had made a finding was considered by the Hon'ble ITAT, A Bench, Chennai in ITA Nos. 1413 to 1420/ Chny/2018; and the case was adjudicated in favour of revenue. Kind attention is invited to Paras 7 and 8 of the order and relevant portion of Para 8 is extracted below.

“...8. We have heard the rival submissions and carefully perused the materials on record. At the outset we must say that the Ld. AR could not justify before us any of their claims made before the Ld. Revenue Authorities that the transaction was genuine. Further the Ld. AR could not successfully controvert to any of the findings of the Ld. Revenue Authorities before us which are against the assesseees. Instead the Ld. AR has only come out with the plea that the assesseees were not provided with opportunity of cross examining the witness, the investigation report was not furnished and proper opportunity was not provided of being heard. However we find that all these arguments raised by the Ld. AR before us was never alleged before the Ld. Revenue Authorities when the matter came up before them. In this situation we do not have any other option but to confirm the orders of the Ld. Revenue Authorities in the case of all the assesseees because the Ld. AO as well as the Ld, CIT (A) have arrived at their respective decisions after considering the issues in the appeal in detail and there is nothing before us to disturb the findings. Accordingly we hereby confirm the Order of the Ld. Revenue Authorities on the issue..”

It is submitted that, in the case of the assessee too, no material has been placed by the assessee to dislodge the findings of the AO and the Ld. CIT (A) and prove that the claim of exemption u/s 10(38) made is genuine.

8.5 Kind attention of the Hon'ble Bench is further drawn to the decision of the Hon'ble ITAT, Delhi Bench, SMC, in the case of Pooja Ajmani v. Income-tax Officer, Ward-20(4), New Delhi, reported in 106 taxmann.com 65 (Delhi-Trib) and submitted in the Paper Book. In this case also, similar issue of claim of exemption u/s 10(38) in the case of scrip Kappac Pharma Ltd. has been adjudicated and the appeal of the assessee was dismissed. Kappac Pharma Ltd. is also one of those scrips on which adverse findings like Unno Industries Ltd., have been discussed / made in the Investigation Wing Report. In this case, the Hon'ble ITAT held at Para 5.4 as under:

"...Keeping in view of the aforesaid discussions, I am of the view that documents submitted as evidences to prove the genuineness of the transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that purchase and sale of shares are arranged transactions to create bogus profit in the garb of tax exempt long term capital gain by well organised network of entry providers with the sole motive to sell such entries to enable the beneficiary to account for the undisclosed income for a consideration or commission. I further find that the share transactions leading to long term capital gains by the assessee are sham transaction entered into for the purpose of evading tax. I note that the landmark decision of the Hon'ble Supreme Court in the case of Mc. Dowell and Co. Ltd. (supra) is squarely applicable in this case wherein it has been held that tax planning may be legitimate provided it is within the framework of law and any colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by dubious methods. However, the case laws cited by the Ld. Counsel for the assessee are distinguished on facts, hence not applicable in the instant case....."

8.6 In the Hon'ble ITAT's same order (in ITA No. 5714/D/2018), at Page-13, it has been further observed as under:

"..Section 102 of Indian Evidence Act makes it clear that initial onus is on person who substantially asserts a claim. If the onus is discharged by him and a case is made out, the onus shifts on to the deponent. It is pertinent to mention here that the phrase "burden of proof" is used in two distinct meanings in the law of evidence viz, 'the burden of establishing a case', and 'the burden of introducing evidence'. The burden of establishing a case remains throughout trial where it was originally placed, it never shifts. The burden of evidence may shift constantly as evidence is introduced by one side or the others. In this case, once the evidence that assessee has claimed bogus long term capital gains was introduced by the Assessing Officer, the burden of evidence shifted to the assessee. During the assessment proceeding and even during the.. proceeding, the assessee has failed to produce any evidence to prove that the long term capital gain

claimed by her was genuine. In the present case, it is seen that the assessee has failed to discharge her burden of proof and the Assessing Officer, on the other hand has proved that the claim of the appellant was incorrect. The enquiry conducted by SEBI was further corroborated by the investigation carried out by the Directorate of Investigation, has been thoroughly analysed by the Assessing Officer to prove that the assessee has introduced bogus long term capital gains in her books of account by routing her unaccounted income through a tax evasion scheme....”

The facts of the above case are similar to those of the assessee and the assessee has not been able to discharge the burden of evidence in the case.

8.7 The Hon'ble Supreme Court in Civil Appeal No. 3327 of 2007, in the case of Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company & Ors has at Para 52 on Page- 285 of the Paper Book held as under:

1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption cause or notification.
2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject / assessee and it must be interpreted in favour of revenue.

9. Kind attention is Hon'ble Bench is drawn to the PIB release dated: 24.7.2015 wherein; misuse of exemption of LTCG tax for money laundering has been discussed. The said PIB release is available in public domain.

10. In the light of the discussion made above, it is respectfully submitted that, the assessee has failed to discharge her onus of proving / establishing with evidences that the alleged transaction of buying and selling of shares was genuine and prove that its case is covered within the parameters of Section 10(38) of the Income-tax Act. Further, as the genuineness of the alleged transaction has not been proved to the satisfaction of the AO, addition of the amount by the AO by rejecting the claim of exemption u/s 10(38) which action has subsequently been confirmed by the Ld. CIT (A) is justified.

11. Accordingly, it is humbly and respectfully submitted that, the order of the Ld. CIT (Appeals) confirming the action of the Assessing Officer in the instant case of the assessee, be kindly sustained.

12. Submitted for kind perusal and consideration of the Hon'ble ITAT.

16. The learned Counsel for the assessee, on the other hand, opposed the admission of the said financials which was available with the Assessing Officer even at the time of appeal proceedings and therefore, the Revenue cannot be permitted to submit the financial statements now before us.

17. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case at page No.8 and 9 of its order have reproduced the financial statements of Kailash Auto Finance Ltd for the financial year 2010-11 to 2013-14 in ITA No.1940/Hyd/2018 in the case of the assessee for the A.Y 2014-15 and had mentioned as under:

Steep increase in the share price and trading volumes in Kailash Auto
Source: www.moneycontrol.com

Further, the financials of Kailash Auto Finance are as per the Tables below:

Year	FY13-14 (in Rs. Crore)	FY12-13 (in Rs. Crore)	FY11-12 (in Rs. Crore)	FY10-11 (in Rs. Crore)
Operating Income	20.41	0.34	0.13	0.35
Operating & Administration Expenses	18.88	0.3	0.1	0.12
Employee Expense	0.05	0.02	0.05	0.1
Adjusted Net Profit	0.84	0.01	-0.21	-0.17
Price Earning	4,065.00	0	0	0
EPS	0.01	0	-0.51	0
Price to Book Value	41.06	22.14	0	0
Price/Cash EPS (P/CEPS)	2,841.14	1,27,400.70	0	0
EV/EBIDTA	0	0	0	0

In this regard, it has to be noted that the operating income reported during April 2013 to March 2014 is 20.41 crores. The company has clarified to BSE that this value of 20.41 crores is sales value of securities sold in the market during the FY 13-14. Also the operating administrative expense reported 18.88 crores is the buy value of securities bought from the market during the FY 13-14 (Source: SEBI Order dated 29th March 2016)

Thus, it may be mentioned that price of share of Kailash Auto Finance Ltd. was sky rocketed without having any significant profits, EBIDTA margins, EPS, bonus, dividend etc. It is seen that, all the parameters which are essential for increase of price of share are not present or favorable. In spite of this, if share price is increased multi folded then it is definitely due to artificial increase by circular trading of shares forming cartel. This has been evidenced from the trading details verified by SEBI on BSE Exchange. This is another evidence that the price of share of M/s Kailash Auto was artificially hiked to create non-genuine LTCG to the assessee alongwith other beneficiaries.

18. In fact, the evidence filed before us is only supporting the findings recorded by the Assessing Officer at pages 8 and 9. In view of the above, we are of the considered opinion that the evidence filed by the Revenue is not required to be admitted being superfluous and repetitive in nature as concise statements were already recorded by the Assessing Officer at pages 8 & 9 of the order.

19. Now coming to the merits of the case, it appears that the assessee has provided all the details of purchase and sale of shares and had also provided the details of the STT paid by the assessee while selling the shares. However, we cannot be oblivious to the fact that there is a huge difference in sale and purchase of the shares within a short span of time. In the present case, the assessee had purchased 25000 shares of M/s. Careful Project Advisory Ltd on 28.12.2011 for a meagre consideration of Rs.25000/- and subsequently the said M/s. Careful Project Advisory Ltd got merged into Kailash Auto Finance Ltd which happens to be the penny stock company and as a result thereof, the assessee got 50,000 shares and the same were credited into the Demat account maintained by M/s. HSE Securities Ltd. After the said 50000 shares of M/s. Kailash Auto Finance Ltd, the assessee sold 25000 shares through HSE Securities Ltd in the A.Y 2015-16 for a consideration of Rs.8,66,446/- and has claimed LTCG for Rs.8,41,556/-. Thus, within a short span of time with an investment of meagre Rs.25,000/- the assessee gained Rs.8,41,446/-. The amount of Rs.8,41,446/- is disproportionate, exorbitant and beyond human probabilities. No business on earth would yield a return of Rs.8,41,446/- within a short span of less than 3 years with an investment of Rs.25,000. Though the

assessee was able to maintain perfect paper trail, however, the astronomical profit and windfall is not expected for the small amount from a company which has no financial establishment, commercial establishment and industrial establishment and was merely a paper company. In fact, the net worth of the company as captured by the Assessing Officer reproduced herein above was negative and no commercial/industrial activities were undertaken by the said company for the financial year 2010-11 to 2013-14. In our view, if a company has a strong financial fundamental, then it must be carrying on some activity which must result into earning profits and payment of dividend to the shareholders. The company must be having some tangible and intangible asset, workforce, paying electricity charges, excise duty, employee cost etc. In fact the operating income and the employee expenses for the financial year 2013-14, 2012-13, 2011-12 and 2010-11 of Kailash Auto Finance Ltd are as under:

Year	F.Y 2013-14 (Rs. in crore)	F.Y 2012-13 (Rs. in crore)	FY 2011-12 (Rs. in crore)	F.Y 2010-11 (Rs. in crore)
Operating Income	20.41	0.34	0.13	0.35
Operating & Adm. Expenses	18.88	0.3	0.1	0.12
Employee Expense	0.05	0.02	0.05	0.1

20. A perusal of the above clearly shows that hardly any amounts were spent by the said Kailash Auto Finance Ltd towards employee's expenses. In our view for a company to run it is essential for the company to spend money on the employees and establishments. In the present case the expenses of Kailash Auto Finance Ltd towards these heads are conspicuously missing. In our view it is highly improbable and against the human probability for a business person/investor like the assessee before

us to invest in such a paper company which is not doing any tangible activity but for the obvious reason of converting the cash into LTCG In absence of any such expenditure, it is not expected for a company to flourish and grow. In our view, if the company does not have strong financial fundamental, it is not expected of any individual investor (like the assessee before us) to invest in the company which is lacking strong financial fundamentals. In fact, the above said exercise of investing in a paper company seems to be undertaken by the assessee just to convert the ill-gotten money with the help of perfect paper trail. To demonstrate how the assessee and other persons are working in tandem with the operators, we would like to reproduce one of the submissions in the case of Abhishek Agarwal, wherein the assessee in response to the notice given by the Assessing Officer had submitted as under:

Summons were issued to the assessee. In response to the summons, Sri Shankarlal Agarwal, father of the assessee appeared and stated that the assessee is abroad. Questionnaire was given to him requiring to furnish reply. A reply was filed on 21-12-2016. In response to a question whether the assessee had any specific information regarding the shares of M/s.Baviscon Vincom Pvt Ltd, it was stated that the shares were purchased on the advice of friends. It was further stated that he did not have any specific information that the said shares would see a huge growth in such a short time. The assessee had filed statement of affairs for the last three years during the course of scrutiny. It is seen that the assessee is not a frequent trader in share and has invested in one, or odd scrip during these three years. When the assessee was questioned regarding the frequency of trading in shares, it was stated that he was not involved in frequent trading of shares and only involved in occasional trading.

The shares of M/s.Matra Kaushal Enterprises Ltd was sold to 6 parties and the shares of M/s.UNNO Industries Ltd., were sold to 9 parties. Letters were addressed to the 15 parties to whom these shares were sold. Out of this, letters in respect of 7 parties were returned unserved. In respect of the remaining 8 parties also, replies were

received from only two parties, namely, i) Tekmek Trading Company Pvt Ltd., Kolkata and ii) Vitro Suppliers Pvt Ltd. In both the replies it was stated that the shares were purchased through their broker M/s. Ashika Share Broking Ltd. There was no reply from the remaining 6 parties.

On going through the above transactions of the assessee, it is clearly seen that the modus operandi is akin to that of penny stocks transactions. The assessee has sold the shares at almost its peak price which was managed by the entry operators as mentioned in the investigation report. The price rigging was done specifically for the beneficiaries and the claim of the assessee that he was not aware of the upsurge in the price of the share and he had invested only as a normal person is not acceptable.

Thus it goes to prove that the assessee has specifically invested in the above shares with an intention to convert the unaccounted money into his books by way of accommodation entries provided by other parties as discussed in the investigation report. Therefore, the surplus amount in respect of the above shares are worked out as under:

In respect of the shares of M/s. UNNO Industries Ltd, the sale consideration is Rs.52,18,790/- and after reducing the cost of Rs.2,80,000/- incurred for purchase of the shares, the surplus amount works out to **Rs.49,38,790/-**. In respect of the shares of M/s. Matra Kaushal Enterprises Ltd, the sale consideration is Rs.33,02,870/- and after reducing the cost of Rs.2,00,000/- incurred for purchase of the shares, the surplus amount works out to **Rs.31,02,840/-**.

As per the discussion made above, the surplus Capital Gains of **Rs.80,41,630/-** which is claimed by the assessee as exempt is brought to tax as deemed income representing unaccounted income brought under the guise of exempt Capital Gains during the previous year relevant to the assessment year 2014-15.

21. The assessee in the present case also was not a regular investor and was working on some advice of the broker/friends/ operators and was involved into the above said activity and had used colourable device to convert cash into LTCG. We cannot subscribe to the same. Though the assessee was able to create flawless paper trail, however flawless paper

trail is to be tested on the touchstone of human probabilities, prevailing financial market and the fiscal fundamentals of the company in which the assessee has traded. On examination of the fiscal fundamental of Kailash Auto Finance and background of the assessee, we found that the company Kailash Auto Finance Ltd has meagre/no financial fundamental strength and therefore, no prudent person would invest in such a company which does not have any strong fundamentals. This is against the human probabilities and conduct. Further, we are of the opinion that the Assessing Officer cannot be expected to do impossible act of bringing on record the evidence that the assessee has given the cash in lieu of claiming the LTCG. In our view and as per the fact, the manipulation of scrips/rigging of the share price have been done with the help of complex web of transaction/circular transaction which were undertaken by operators in connivence and collusion with various unscrupulous persons placed in various jurisdiction namely Kolkata, Mumbai, Delhi, Hyderabad etc., Further, in the present case, the SEBI which is a regulatory and adjudicating authority has examined the trading in the scripts of Kailash Auto Finance Ltd after issuing the notices to various beneficiaries of price hike, brokers/operators and the company and thereafter had held that the increase in price of Kailash Auto Finance Ltd were artificially increased with the connivence of operators and other stakeholders just to gain LTCG/Long Term Capital loss. We cannot brush aside the report of SEBI which has evidentiary value and binding in nature. In the present case, the Assessing Officer has relied and referred to the report. Further, we can apply the salutary principles of resjudicata as mentioned in Section 11 of the Civil Procedure Code and also section 33 r.w.s. 56 of the Evidence Act. In view of

the above, we do not find any merit in the appeal of the assessee and accordingly the appeal of the assessee is liable to be dismissed.

21.1 Though both the parties relied upon various decisions, however, the decision of the Coordinate Bench of the Delhi Tribunal in the case of M/s. Anandtex International (P) Ltd vs. ACIT in ITA No.2476/Del/2018 dated 24.02.2022 is squarely applicable to the facts of the present case wherein the Coordinate Bench at paras 10 to 16 have decided similar issue as under:

“10. We have gone through the record in the light of the submissions made by the Ld. DR. In PCIT vs. NRA Iron and Steel (P) Ltd (supra) and NR Portfolio Private Limited (supra) it is held that it is legitimate for the learned Assessing Officer to look into the issues like - whether the two parties are related or known to each other, or mode by which parties approached each other? whether the transaction is entered into through written documentation to protect investment? whether the investor was an angel investor? what is the quantum of money invested? how the party believed the credit-worthiness of the recipient? what is the object and purpose of payment/investment? whether the share applicant is in existence and an independent entity? how the financial capacity of the share applicant to invest funds is proved? how the source of funds from which the high share premium was invested is dealt with by the assessee? why the investor companies had applied for shares of the Assessee Company at a high premium? in case the field enquiry conducted by the AO revealed that the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee? whether the assessee discharged their legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO? whether the assessee discharged the onus to establish the credit worthiness of the investor companies? did the assessee do anything more than mere mention of the income tax file number of an investor to discharge the onus under Section 68 of the Act? did the assessee do anything more than mere filing all the primary evidence in discharge of their onus to prove the identity of the investee? etc.

11. When the learned Assessing Officer felt it necessary to verify the things beyond the pale of papers, it is incumbent upon the assessee to cooperate with the learned Assessing Officer in dispelling the doubts, which the circumstances raised in the mind of the learned Assessing Officer. It is not open for the assessee to say that the learned Assessing Officer shall not enquire into anything beyond the papers that were submitted by the assessee.

12. Orders of the authorities below reveal that the assessee has not complied with the requirements of the learned Assessing Officer in the exercise of forming satisfaction as to the creditworthiness of the share applicants or the genuineness of the transaction. Mere paperwork by the assessee does not take the authorities anywhere, when the learned Assessing Officer suspected the existence of the entities in question and insisted that a higher degree of proof is required in that respect.

13. In view of the decisions of the Hon'ble jurisdictional High Court and Hon'ble Supreme Court in the case of NDR Promoters Pvt. Ltd. (supra) and the decision of the Apex Court in the case of NRA Iron and Steel (P) Ltd (supra) we are of the considered opinion that the action of the learned Assessing Officer was legal and non-production of the persons summoned had rightly led to the inference that the assessee had routed their own money in the books of accounts through the conduit of investor companies. On this premise, we agree with the authorities below and uphold the addition made under section 68 of the Act. Grounds No. 1 to 3 of the assessee's appeal are accordingly dismissed.

14. Coming to the addition of Rs. 6 Lacs covered by grounds No. 4 and 5, it was made by the learned Assessing Officer by making certain portion of the labour charges, loading and unloading expenses and missionary repair and maintenance charges, according to the learned Assessing Officer such payments were made in cash and bills were not properly vouched and therefore such expenses remained unverifiable. Precisely for this reason, Ld. CIT(A) also confirmed the same. No reasons are forthcoming before us to take a different view. We, therefore, do not find any reason to interfere with the findings of the Ld. CIT(A) and therefore dismiss grounds No. 4 and 5.

15. The next addition challenged under grounds No. 6 and 7, is in respect of Rs. 19,29,050/-towards the disallowance of 1/8th portion of the expenditure met further car expenses, conveyance, Festival expenses, telephone expense, travelling expense and sales promotion expenses. On this aspect learned Assessing Officer recorded that the log books of car and complete details of telephone calls were not produced by the assessee and according to the assessee is not feasible to produce the same because the vehicles are almost under the direct control of the management. Ld. CIT(A) recorded that the explanation offered by the assessee was only superficial and log books are maintained mandated really in any concern of whatever the size. On this aspect also, no submissions are forthcoming from the side of the assessee to take a different view. We therefore, do not propose to interfere with the findings of Ld. CIT(A) in the impugned order.

16. Lastly addition of Rs. 7,94,315/-covered by grounds No. 8 and 9, it represents the disallowance of a part of the expense under the head repair and maintenance on the ground that the bills in respect of the amounts paid in cash were not properly vouched. Ld. CIT(A) recorded that the assessee sought to take shelter under the fact that certain vendors do not maintain printed bills and expenses are internally vouched. According to the Ld. CIT(A) in the absence of any non-availability of the expense disallowance of a portion of the same is justifiable. In the absence of any

material or reason before us to take a contrary view. We decline to interfere with the same. Grounds No. 7 and 8 are accordingly dismissed.”

22. In view of the above, we do not find any reason to interfere with the order passed by the learned CIT (A).

23. With respect to the judgments relied upon by the assessee in the case of R.K. Mittal, Aarsh Mittal and others, we are of the opinion that no straight jacket formula/guidelines were laid down by the Hon'ble High Court for deciding the issue pertaining to the LTCG claimed by the assessee for selling the penny stock. On the facts of the case, we are satisfied that Kailash Auto Finance Ltd was a penny stock company having feeble fundamentals and the assessee has traded in this company with a view to gain LTCG and thereby converting the cash. In view of the above discussions, we do not find any merit in the submissions of the assessee that the decisions relied upon by the assessee are applicable to the facts of the case and accordingly the appeal of the assessee is dismissed and the order passed by the learned CIT (A) is upheld.

24. With regard to the remaining seven appeals filed by the assessees are concerned, we find the grounds raised by the respective assessees are more or less identical to the grounds of appeal in ITA No.125/Hyd/2020 except the quantum of addition. We have already decided the issue and the appeal of the assessee has been dismissed. Following similar reasonings, the grounds raised by the respective assessees in the remaining seven appeals are also dismissed in the light of our findings given in ITA

No.125/Hyd/2020. Thus, all the appeals filed by the respective assesseees are dismissed.

25. In the result, all the appeals filed by the assessee are dismissed.

Order pronounced in the Open Court on 21st November, 2023.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 21st November, 2023.

Vinodan/SPS

Copy to:

S.No	Addresses
1	Sri Govind Kumar Agarwal, Smt. Saroj Agarwal, Shri Vikas Kumar Agarwal, Shri Naresh Kumar Agarwal and Shri Sumeet Kumar Agarwal, Shri Abhishek Agarwal, C/o Katraopati & Associates, 1-1-298/2/B/3, 1 st Floor, Asbhok Nagar, Hyderabad 500020
2	Sri Nageswara Rao Pinneti, H.No.7-1-307/14/F/52, Jaya Prakash Nagar, B K Guda, Sanath Nagar, Hyderabad 500029
3	Income Tax Officer, Ward 4(2) Aayakar Bhavan, Basheerbagh, Hyderabad 500029, Income Tax Officer Ward 10(2), 5 th Floor IT Towers, AC Guards, Hyderabad 500004 and Income Tax Officer Ward 4(5) Hyderabad
4	ACIT, Central Circle 1(2) Hyderabad
5	Pr. CIT -1, Pr.CIT-6, Hyderabad, Pr.CIT Central, Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order