

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

Appeal in ITA No	Assessee	Revenue	A.Y
1707/Hyd/2019	Shri Ravindra Kumar (HUF) Agarwal, Hyderabad PAN:AAIHR4527D	A.C.I.T (ODS) Ward 9 (2) Hyderabad	2015-16
901/Hyd/2019	Smt. Priya Darshini Kimtee Hyderabad PAN:ACFPK7087G	Income Tax Officer Ward-5(1) Hyderabad	2015-16
1706/Hyd/2019	Smt. Tulsidevi Agarwal, Hyderabad PAN:ACPPB6958H	A.C.I.T (ODS) Ward 9 (2) Hyderabad	2015-16

Assessee by:	Shri K.C. Devadas, CA
Revenue by:	Shri CH V Gopinath, CIT(DR)
Date of hearing:	07/11/2023
Date of pronouncement:	29/11/2023

ORDER

Per Bench:

These are the connected appeals filed by the respective assesseees. ITA No.1707/Hyd/2019 and 1706/Hyd/2019 filed by the respective assesseees are directed against the separate orders dated 27.09.2019 of the learned CIT (A)-7, Hyderabad relating to A.Y.2015-16. ITA No.901/Hyd/2019 filed by the assessee is directed against the order dated 03.04.2019 of the learned CIT (A)-4, Hyderabad relating to A.Y 2015-16. Since common issues are involved in all these appeals, therefore, these were heard

together and are being disposed of by this common order for the sake of convenience.

2. First, we take up ITA No.1707/Hyd/2019 filed by Shri Ravindra Kumar Agarwal as the lead case.

3. The grounds raised by the assessee reads as under:

1. The order of the Learned Commissioner of Income Tax (Appeals)-7, Hyderabad [Learned CIT (A)] in holding that the Long-Term Capital Gain on sale of 6000 shares of M/s. GCM Securities Limited at Rs. 1,20,000/- were sham transactions and therefore, the appellant was not entitled to exemption U/s. 10(38) at Rs. 40,77,487/- of the Income Tax Act, 1961 (the Act) is wholly unsustainable both on facts and law.

2. The Learned CIT (A) failed to note that the appellant was a regular subscriber of shares of other companies apart from M/s. GCM Securities Limited and full details having been filed before the Ld. CIT (A) who came to a wrong conclusion on a wrong foundation of facts arising out of non-application of mind and therefore, the order of the Ld. CIT (A) in denying the exemption U/s. 10(38) of the Act is wholly unsustainable both on facts and law.

3. The Learned CIT (A) failed to note that the entire subscription on Ms. GCM Securities was on the basis of IPO issued by the company for which applications were made by six family members and out of which only two members viz., Tulsi Devi Agarwal and Ravindra Kumar Agarwal HUF were allotted shares and therefore to hold that the investment by the appellant in M/s. GCM Securities Ltd was sham is totally contrary to the facts and evidence on record.

4. The Learned CIT (A) failed to note that the entire made subscription for shares of Mis. GCM Securities Limited were on the basis of public issue for cash at Rs. 20/- per equity share including share premium of Rs.10/- per equity share and therefore to hold that the subscription for shares in M/s. GCM Securities Limited and its sale at a later date was a sham transaction arises on wrong appreciation facts and is contrary to the facts and evidence placed on record by the appellant and therefore the learned CIT(A) erred in denying the exemption u/s. 10(38) of the I.T Act, 1961.

5. The Learned CIT (A) failed to note that the investment in shares arising out of a Public Issue was made in the A.Y 2013-14 and the investment in purchase of shares were accepted in the assessment proceedings for the A.Y 2013-14 and the entire sale was through recognized Stock Exchange

on payment of STT and therefore to hold that the appellant was not entitled to exemption u/s 10(38) of the Act is totally contrary to the facts and evidence on record and therefore is unsustainable.

6. The Learned CIT (A) failed to note that the entire evidences relating to allotment of M/s. GCM Securities Limited shares on 22/3/2013 which were listed in Stock Exchange and that the transactions were routed through Dmat Account and banking channels and further failed to note that the appellant continues to hold the unsold shares of M/s. GCM Securities as on date and therefore to hold that the entire transactions in the purchase and sale of shares resulting in LTCG was not eligible for exemption U/s. 10(38) of the Act is wholly unsustainable both on facts and in law.

7. The Learned CIT (A) failed to note that the entire assessment was made on the basis of the background details of the Investigation carried out by the Department and has without application of mind merely relied on the thesis prepared by the Directorate of Investigation which is not applicable to the facts of the appellant's case and has just followed the reports of the Investigation Wing and the general observations of the SEBI which were not applicable to the facts of the appellant's case and therefore, the Ld. CIT (A) erred in coming to the conclusion that the appellant was not entitled to exemption U/s. 10(38) of the Act is wholly unsustainable both on facts and in law.

8. The Learned CIT (A) failed to note that the appellant had along with the return of income filed the complete details relating to STCG of listed securities, LTCG on sale of M/s. GCM Securities Limited and details of investment in shares of innumerable Public Limited Companies apart from Ms. GCM Securities Limited and therefore to hold that the appellant was not entitled to exemption U/s. 10(38) of the Act in respect of sale of shares of Ms. GCM Securities Limited while holding that the Short Term Capital Loss/STCG on purchase and sale of other listed securities were genuine and thus the denial of LTCG on the sale of M/s. GCM Securities Limited is unsustainable being contrary to the facts and evidence on record.

9. Any other ground or grounds that may be urged at the time of hearing of the appeal.”

4. Facts of the case, in brief, are that the assessee, HUF, filed his return of income for the A.Y 2015-16 on 06.08.2015 declaring a total income of Rs.5,21,800/-. The case was selected for scrutiny through CASS. In response to the statutory notices

issued to the assessee u/s 143(2) and 142(1), the A.R of the assessee appeared before the Assessing Officer from time to time and furnished the information as called for.

5. The main issue involved in this case for selection of scrutiny is to examine the suspicious Capital Gains earned by the assessee from transactions in penny stock (inputs given by the Investigation Wing of the Department, Kolkata).

6. On verification of the information filed by the AR of the assessee, the Assessing Officer observed that the assessee has sold 4000 shares of M/s. GCM Securities Ltd whose face value was Rs.10/- and 19,200 shares whose value was Rs.1/- per share and claimed LTCTG amounting to Rs.40,77,487/- as exempt u/s 10 (38) of the Act. The Assessing Officer observed that the assessee purchased 6000 shares of the company @ Rs.10/- per share with a premium of Rs.10/- per share in public offer on 3rd April, 2013. Subsequently, in the month of October, 2014, the shares of the company were split and the face value of the share now was Rs.1/-. The Assessing Officer further observed that during the year under consideration, the price of the stock of the company has sky rocketed when compared to its financials and was rigged by the operators as per information available.

7. The brief background details of the Investigation carried out by the Investigation Wing of the Department as observed by the Assessing Officer reads as under:

4. Brief History of the Issue of penny stock, investigations by Investigation Wing,

Kolkata & SEBI findings: The Directorate of Investigation, Kolkata carried out a Country wide Investigation to unearth the organized racket of generating bogus entries of Long Term Capital Gains (LTCG) which is exempt from the Income Tax. The *modus operandi* adopted by the Operators was to make the benefit in the form of exempted LTCG by trading in transactions in some shares of a pre-determined Penny Stock Company controlled by them for the beneficiary. These shares are transferred to the beneficiary at a very nominal price mostly by means of "off-line" through the "preferential allotment" (or) "off-line sale". The beneficiary (an individual/HUF) holds the Shares for one year, which is the statutory period after which LTCG is exempt u/s 10(38) of the Act. In the meantime, the Operators

rig the price of the Stock and gradually rise its (Share) price many a times, often 500 to 1000 times. This is done through "low volume transactions" indulged in by the dummies of the Operator at a pre-determined price. When the price reaches the desired level, the beneficiary who bought the Shares of the Company at a nominal price, is made to sell it to a dummy Paper Company of the Operator. For this, the un-accounted money is provided by the beneficiary which is routed through few layers of the Paper Companies by the Operator and finally the un-accounted money parked with the dummy Paper Company that will buy the Shares.

4.1 Further, it may be pertinent to mention here that the price of the Shares of the Penny Stock Companies are rigged and are raised through the circular trading. This is managed by the "Operator" of the script. 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 'shares' of the Penny Stock Companies. The Operator manages many Paper/Bogus Companies and uses them to do the circular transactions to rig the price of the Shares. The Shares of these Penny Stock Companies, though listed on the Stock 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.

4.2 If the beneficiary say, M/s. "R" bought 10,000 Shares of a Company M/s. "G" @ `1/- per share and sold it @ `1,000/- per share, he would make a paper Capital Gains of `49,90,000/-. The paper Company that bought the Shares would deposit through cheque an amount of `50,00,000/- in M/s. R's bank account. The receipt is prima facie exempt from the tax under section 10(38) of the Act. The Directorate of Investigation, Kolkata investigated the transactions in 84 such Penny Stock Shares quoted on BSE and examined on oath a large number of Brokers, Directors of the Companies that finally purchased the Shares, the promoters of the Penny Stock Companies, the Entry Operators who managed the dummy Companies involved in price rigging. The money trail of transactions was also examined and in a large number of transactions, in the trail, right from the cash deposit account to the beneficiaries account was unearthed. As a result of investigation, individuals/entities who have been taken such entry of bogus LTCG amounting to several Crores of rupees have been identified. The result of the Investigation in brief is as under:

4.3 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 of rupees from the years 2010 to 2014.
- ii) The result of the enquiry was also shared with SEBI and the SEBI after investigating 11 cases have found that the allegation to be correct. In the balance of the cases, SEBI is still investigating.
- iii) The Top 25 groups under each Investigation Directorate of the Country were confronted in the course of further investigation. Almost all of them, barring a few, have accepted having taken the entries for a Commission. Crores of rupees has been voluntarily surrendered by such assesses.
- iv) In Kolkata itself, where this investigation was started, some of the beneficiaries who had taken entries of nearly 40 Crores have voluntarily offered it for taxation without any further enquiry.
- v) Several assesses have filed their Revised Returns since the enquiry and have taken back their claim of exemption claimed in their Original Return of Income.

8. The Assessing Officer observed that the Securities and Exchange Board of India (SEBI) has in the recent past, passed some orders on the issue of manipulation of Share market for providing accommodation entry of bogus LTCG. SEBI Considering the inputs from the Income Tax Department as well as from its own surveillance system and that of the Stock Exchanges has taken appropriate action in the cases of the suspect scrips/shares. These actions include passing of interim directions, suspending the trade, reducing the price band etc. In a large number of penny stocks, the price band had been reduced to the lowest band of 2 per cent. Out of these scrips, ad-interim orders have also been passed by SEBI in cases of 11 scrips, giving a finding that price in these scrips was rigged. Details of such orders are available on the website of SEBI. Since the shares are under the control of limited persons/entities who

hiked/ rigged the price and arranged the buyers for selling the shares of the LTCTG claimant (would be claimant). One of the big beneficiaries has also confessed on 4 out of these 11 scrips.

9. The Assessing Officer observed that the assessee has purchased 6000 shares of the company for a consideration of 1,20,000 through Initial Public Offer (IPO). The price of the said scrip was manipulated by several times, when compared to its financials with the help of several entry operators resulting in deriving exempted capital gains by the assessee.

10. The Assessing Officer further observed from the economic fundamentals of the company that during the period 1.4.2013 to 31.3.2015, the abnormal increase/decrease in the share value of the company was noticed when compared to the economical fundamentals during the period 1.4.2013 to 31.3.2015.

11. The Assessing Officer also observed on verification that there is a synchronized share trading through Hyderabad Stock Exchange in respect of the shares of the company sold by the assessee during the A.Y 2015-16. In most of the cases, orders were placed within a few minutes difference (or) at the same time with the counter party members. The Assessing Officer observed that all the shares put for sale by the assessee and his family members on different dates were purchased by Jama Kharchi companies/Paper Companies based at Kolkata with no financial credentials which were being controlled and managed by the operators who were engaged in providing the bogus LTCTG for a commission.

12. Thus, the Assessing Officer observed the following facts:

- i) That some unscrupulous operators in the capital market were running a scheme of providing entries of LTCG for a commission.
- ii) The financial results of the penny stocks used for the purpose clearly indicate that it's quoted price at the peak was the result of rigging.
- iii) The above mentioned facts have been independently also been confirmed by SEBI
- iv) That such schemes are prevalent for converting unaccounted money into accounted/explained money is common knowledge, independently confirmed SEBI.
- v) That a large number of individuals availed of the benefits of the scheme and took entries of LTCG amounting to several Crores of rupees.
- vi) Many such individuals have voluntarily without any enquiry by any authority have voluntarily withdrawn their claim and filed revised return.
- vii) Statements of the brokers, operators, directors of paper companies that has bought these shares, directors of the penny stock companies all confess to such a scheme with detailed modus operandi which tallies with actual transactions.
- viii) The assessee is one such beneficiary who has taken entry of LTCG.
- ix) The assessee's transaction with regard to trading in shares is nominal.
- x) As the trading in these shares are at a predetermined time between prearranged brokers at a predetermined price; there is virtually no scope of any genuine trader in shares to buy or sell these shares or enter into such transactions.

- xi) Thus whoever has benefitted from transaction in these shares have transacted in accordance with the scheme and has admittedly converted his/her/Its unaccounted money equal to the sale proceeds of share in to accounted/explained money in the guise of exemption under section 10(38) of the IT Act 1961.
- xii) With so much of evidence against the assessee, the onus was on assessee to prove that his transactions were genuine and that he had not availed benefit of the aforementioned scheme to convert unaccounted money into accounted/explained money.

13. Finally, the Assessing Officer concluded that the transactions were sham transactions in nature and aimed only to bring unaccounted money in the guise of exempted LTCG and paper work has been done merely to give a color of authenticity to the transactions and by creating a façade of legitimate transactions. Thus, the LTCG of Rs.40,77,487/- claimed by the assessee as exemption u/s 10(38) of the Act was denied and the same was brought to tax as per the provisions of section 69 of the Act r.w.s. 115BBE of the Act.

14. Aggrieved with such order of the Assessing Officer, the assessee preferred an appeal before the learned CIT (A) who dismissed the appeal by observing as under:

4.2. I have considered the submissions of the appellant and findings of the Assessing Officer in the assessment order carefully. The assessing officer observed that the appellant had purchased 6000 shares of a company called GCM Securities Ltd. for consideration of Rs. 1,20,000/- in the Initial Public Offer. The assessing officer further observed that the price of the said Scrip was manipulated by several times when compared to its financials with the help of the several entry operators. The assessing officer

further observed that the price of the scrip sharply risen from Rs.65 in April 2013 to Rs.724 by Oct 2014 and face value of the shares into Rs. 1 and thereby nosedive. The assessing officer treated the scrip as a penny stock and referred to the Investigation carried by Investigation Wing, Kolkatta and SEBI wherein Department has proved that the scrip price was manipulated and several entry operators were involved. The contention of AR of the appellant was that the appellant purchased shares under IPO and hence the price was not manipulated. It was further stated by the AR of the appellant that only two family members were allotted shares under IPO out of six members. However, the AR of the appellant could not justify the sharp increase in the price of the scrip when compared with its financials. It is pertinent to mention here that the shares were allotted to the appellant out of the reserved portion by market makers to the issue. It is further noticed by the assessing officer that the appellant had sold the shares on different dates and are with a pre-determined price. The appellant was the beneficiary of such transactions resulting into artificial profit. These findings made by the assessing officer were not rebutted by the appellant with any satisfactory explanation. Therefore, I agree with the view of the assessing officer and confirm the addition. While doing so, reliance is placed on the ratio of the decisions of the various courts as under:

- i. Hon'ble ITAT, Pune 'B' Bench in the case of Rajkumar B. Agarwal vs DCIT in ITA No.1648/1649/Pun/15, dated 04-01-2019.
- ii. Hon'ble ITAT, Mumbai 'E' Bench in the case of ITO vs Shamim M Bharwani reported in [2016] 69 taxmann.com 65 (Mumbai - Trib), dated 27-3-2015.
- iii. Hon'ble ITAT, Bangalore Bench SMC-C in the case of Smt M.K.Rajeshwari vs ITO reported in [2018] 69 taxmann.com 339 (Bangalore - Trib), dated 12-10-2018.
- iv. Hon'ble ITAT, Delhi, SMC Bench in the case of Anip Rastogi vs ITO reported in 3809/Del/2018 & 3810/Del/2018, dated 08-01-2019.
- v. Hon'ble ITAT, Delhi Bench 'G' in ITA No.420/Del/2019 in the case of Sri Sandip Bhargava vs ACIT, Circle-60(1), New Delhi dated 28-08-2019.
- vi. Hon'ble Supreme Court of India in the case of CIT vs Durga Prasad More (1971) 82 ITR 540 (SC).

- vii. Hon'ble Supreme Court of India in the case of Sumathi Dayal vs CIT (1995) 214 ITR 801 (SC).
- viii. Hon'ble Delhi High Court in the case of Udit Kalra vs ITO, Ward-50(1) in ITA No.220/2019 & CM No.10774/2019.
- ix. Hon'ble Bombay High Court (Nagpur Bench) in the of Sanjay Bimal Chand Jain L/H Shanti Devi Bimal Chand Jain vs PCIT, ITA No.18/2017.

5. In the result, the appeal is treated as **Dismissed**.

15. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal.

16. The learned Counsel for the assessee submitted that the assessee purchased the shares of GCM securities Ltd which is listed on the stock exchange on 22.3.2013 and the transactions have been routed through the De-mat account of the assessee. The learned AR further submitted that the shares were purchased through banking channels and the assessee continues to have some unsold shares of GCM Securities Ltd. It was argued that the shares were purchased on 22.3.2013 and for the said year there was no scrutiny on the purchase of shares or the genuineness of the GCM Securities Ltd.

17. The learned AR submitted that the reliance placed by the Assessing Officer on the statement of Brokers/Promoters/Operators as mentioned at Para 5 of the assessment order has no legs to stand as the assessee was not given a copy of the statement for rebuttal and the assessee was not aware of any such event until the receipt of the assessment order. It was submitted that all the requisite evidence being the demat account statement from Angel Broking, bank statements, share allotment letter have been duly furnished before the Assessing Officer which were duly examined by the Assessing Officer and the reasons

given by the Assessing Officer was that inputs were received from the Investigation Wing.

18. The learned AR relied on the following judgments:

S.No:	Name of the case	Court
1	C.I.T vs. Shri Mukesh Ratilal Marolia in ITA No. 456 of 2007	Bombay
2	Mukesh R Marolia vs. Addl.C.I.T (6 SOT 247)	Mumbai
3	I.T.A.T Order in the case of Sri Paduchuri Jeevan vs. I.T.O dated: 19.08.2016	Hyderabad
4	I.T.A.T Order in the case of Smt. Saritha Devi vs. I.T.O dated: 05.05.2017	Hyderabad
5	I.T.A.T Order in the case of D.C.I.T vs. Vinay Kumar Agarwal dated: 04.09.2015	Hyderabad
6	I.T.A.T Order in the case of Manish Kumar Baid vs. ACIT dated: 18.08.2017	Kolkata
7	I.T.A.T Order in the case of Navneet Agarwal, Legal Heir of Late Kiran Agarwal dated: 20.07.2018	Kolkata
8	Meghraj Singh Shekhawat vs. D.C.I.T (175 ITD 693)	Jaipur
9	I.T.A.T Order in the case of Dipesh Ramesh Vardhan vs. D.C.I.T Dated: 11.08.2020	Mumbai
10.	Smt. Aparna Misra vs. I.T.O	Kolkata

19. Per contra, the learned DR drew the attention of the Bench to the orders of the Assessing Officer and the learned CIT (A) and relied on the following judgments:

- i. ITAT Delhi in the case of Krishna Devi (ITA No.6356/Del/2019 dated 4.1.2022).
- ii. Hon'ble Supreme Court in the case of SEBI vs. Rakhi Trading Pvt. Ltd (Civil Appeal No.1969 of 2011 dated 8.2.2018).

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. Pirai Choodi 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

20. The learned DR drew our attention to the consolidated financials of the GCM Securities for the financial year 2012-13 to 2018-19. The birds eye view of the financial summary of GCM securities is as under:

GCM SECURITIES LTD.								REMARKS
CIN: <u>L67120WB1995PLC071337</u>								
3B LALBAZAR ST KOLKATA WB 700001 INDIA								
	F.Y. 2012-13	F.Y. 2013-14	F.Y. 2014-15	F.Y. 2015-16	F.Y. 2016-17	F.Y. 2017-18	F.Y. 2018-19	
								Active
PROFIT BEFORE TAX	2,291,279	1,075,155		1,393,408	-1,02,930	11,53,621	-5,13,25,708	
PROFIT AFTER TAX	1,768,857	928,571		935,162	-15,84,318	8,04,536	-5,09,64,823	
EARNING PER SHARE								
BASIC	0.14	0.05	0.56	0.00	-0.0083	0.00	0.268	
DILUTED	0.14	0.05	0.56	0.00	-0.0083	0.00	0.268	
OPERATING PROFIT BEFORE WORKING CAPITAL CHANGES	-14,473,089	8,777,609		12,139,105	-1,05,76,086	-1,11,61,892	-5,98,21,48	
CASH GENERATAED IN OPERATIONS	-	-	-	-		3,17,03,602	11,72,300	
INCOME TAX PAID	-	-	-	-	-13,22,000	3,02,749	-3,60,885	
NET CASH FLOW FROM OPERATING ACTIVITIES	-135,993,669	-95,403,135	301,375	-32,790,101	2,07,224		15,33,184	
REVENUE FROM OPERATING	5,364,279	120,791,781	19,250,310	16,971,508	55,97,084	4,71,96,577	4,19,13,147	
OPERATING EXPENSES								

21. On the basis of the above, it was submitted that the GCM Securities Ltd is a paper company and was having no financials and having very weak financials and therefore, it cannot be accepted that the assessee will apply for the allotment of the shares and the said shares within a short span of time resulted into huge LTCG to the assessee. It was submitted that the trail prepared by the assessee is a perfect paper trail and in fact there is nothing on record to show that the said company namely GCM Securities Ltd was into any manufacturing or production activity or having any contracts which yield into profitability of income and the company is having very weak and feeble fundamentals. It was submitted that the company was also a part of SEBI report.

22. The learned DR filed the following written submission in support of the case of the Revenue.

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. GCM Securities 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 Initially the assessee purchased 4000 shares of GCM Securities Ltd., for Rs.1,20,000/- @ 10/- each and 19200 shares @ face value of Re 1/- each. During the F.Y.2014-15 relevant to A.Y.2015-16, the assessee has sold the shares of M/s.GCM Securities Ltd. for total consideration of Rs.40,77,487/-. 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. GCM Securities 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. GCM Securities 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 GCM Securities 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 GCM Securities 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 brokers wise script wise analysis, where the broker has accepted that he is an entry operator. The following Brokers have traded in M/s GCM Securities 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. Unno Industries 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. GCM Securities 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 GCM Securities 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

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.

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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

"...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 assessee. Instead the Ld. AR has only come out with the plea that the assessee 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 assessee 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.

23. 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 made addition of Rs.40,77,487/- to the total income of the assessee u/s 69 of the I.T. Act r.w.s. 115BBE by disallowing the claim of exemption u/s 10(38). We find the learned CIT (A) confirmed the addition made by the

Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT (A) on this issue.

24. We find the Coordinate Bench of the Tribunal in the case of Govind Kumar Agarwal & Others in ITA Nos.125/Hyd/2020 and others vide order dated 21.11.2023 in Paras 17 to 23, under similar set of facts, dismissed the appeals filed by the assesseees by observing as under:

“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.	18.88	0.3	0.1	0.12

Expenses				
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.

25. Since the facts of the instant case are identical to the facts in the case of Govind Kumar Agarwal & Others (cited Supra), therefore, respectfully following the same the appeals filed by the respective assesseees in ITA No.1707/Hyd/2019, 901/Hyd/2019 and 1706/Hyd/2019 for the A.Y 2015-16 are dismissed.

26. In the result, all the appeals filed by the respective assesseees are dismissed.

Order pronounced in the Open Court on 29th November, 2023.

Sd/-

Sd/-

(R.K. PANDA) VICE-PRESIDENT	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 29th November, 2023.

Vinodan/SPS

Copy to:

S.No	Addresses
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4	ACIT (OSD) Ward 9(2) Hyderabad 500002
5	Income Tax Officer Ward 5(1) Hyderabad
6	PCIT-4, Hyderabad
7	DR, ITAT Hyderabad Benches
8	Guard File

By Order