

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

**ITA NO.1843/MUM/2022
(ASSESSMENT YEAR: 2014-15)**

DCIT – Central Circle – 2(2) Room No. 806, 8 th Floor Old CGO Annex Building M.K. Road, Mumbai - 400020	v.	Viral Saraf Mittal 901/902, Capri Heights Palli Hill, Bandra (W) Mumbai - 400050 PAN: AZBPS0317C
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Sidharth Kothari
Department Represented by	:	Ms. Kavitha Kaushik
Date of conclusion of Hearing	:	23.01.2024
Date of Pronouncement	:	23.02.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of Learned Commissioner of Income Tax (Appeals)-48, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 04.05.2022 for the A.Y.2014-15.

2. Brief facts of the case are, Assessee is an individual derives income from salaries, Income from Business or profession and Income from other sources. The return of income was filed by the assessee on 26.11.2014 declaring total income of ₹.76,09,550/-. Subsequently the case was selected for complete scrutiny under CASS and statutory notice u/s 143(2) of Income-tax Act, 1961 (in short "Act") was issued and served on the assessee. In response Authorized Representative of the assessee attended and submitted the details as called for.

3. During the course of assessment proceedings, Assessing Officer observed that assessee has shown exempted long term capital gain of ₹.1,81,82,004/- in the script named KDJ Holidayscapes & Resorts Ltd (previously known as GomtiFinicase). Assessee was asked to give details of long term capital gain. In response, assessee submitted that it earned long term capital gain (LTCG) of ₹.1,81,82,004/- in respect of sale of shares of KIAJ Holidayscapes & Resorts Ltd. The said long term capital gain was claimed as exempt u/s 10(38) of the Act.

4. Assessing Officer observed that assessee earned long term capital gain in the current year and claimed it as exempt u/s 10(38) of the Act and the quantum of huge exempt LTCG was found suspicious.

Assessing Officer in his order from Page No. 3 to 15 has elaborately analysed various parameters with regard to claim of Bogus long term capital gain such as findings of the Investigating Wing, Analysis of the scrip for a period from February 2012 to December, 2013, Investigation in the case of operators, Examination of persons with which assessee traded (Exit Entry provider), analysis of Cash trail and SEBI Report and its finding with regard to accommodation entry providers. Subsequently, Assessing Officer asked the assessee to explain with evidences why the Long Term Capital Gain should not be treated as non-genuine and sale consideration received on the penny stock should not be taxed as an unexplained cash credit under section 68 of the Act.

5. In response, assessee filed its submissions vide letter dated 16.12.2016, for the sake of clarity it is reproduced below (As reproduced by Assessing Officer in assessment order): -

"..... (iii) The shares of KDJ Holiday were purchased from stock exchange and the same were credited to the Demat statement of the assessee. The assessee has said the share after almost 2 years of holding the shares. Before the final lot was sold 6800 old shares were sub divided into 34000 shares and the assessee later sold the sub divided shares. The delivery were effected from the Demat account of the assessee

iv. The entire purchase consideration was paid through cheque and copies of bills and bank statement are already provided to your good self.

v. The whole sale consideration is received by the assessee through cheque and the same has been credited to her bank account.

In our opinion we have provided all the requisite information in support of the Long Term Capital Gain. We further request you good self that in case you have any adverse/negative information in the matter then kindly provide us a copy of the same to reply suitably."

6. After considering the submissions of the assessee, Assessing Officer observed that the transaction of LTCG is a manipulated transaction done by assessee in connivance with the operators to evade taxes on his unaccounted income and relying on statement made by operators treated the exemption claim of LTCG as non-genuine. According to him LTCG declared by the assessee of ₹.2,06,53,430/- as unexplained income u/s.68 of the Act, he came to conclusion by observing as under: -

"12.1 The Directorate of Investigation, Kolkata investigated transactions in 84 such penny stock shares quoted on 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 many individuals who have taken such entry of bogus LTCG amounting to crores of rupees have been identified The result of the investigation in brief is as under:

i) Many individuals throughout the country identified who have taken such bogus entries of LTCG amounting to crores of rupees 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. 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 have been voluntarily surrendered by such assessee's.*

iv) *In Kolkata, where this investigation was started some of the beneficiaries who had taken entries of nearly Rs. 40 cores have voluntarily surrendered it for taxation without any further enquiry.*

v) *Some of the assessee's have filed revised return since the enquiry and have taken back their claim of exemption and many of their have disclosed there transaction as undisclosed income under income declaration scheme 2016.*

12.2 *The assessee is one such beneficiary who has allegedly taken the entry of Rs. 2,06,53,430/- through penny stock ie, KDJHRL (Scrip code 530701). The facts and circumstances of the case, as recorded above in preceding paras clearly suggest that the revenue cannot take or accept such make-believe transactions, as presented by the assessee. Truth or genuineness of such transactions must prevail over the smoke screen, created by way of premeditated series of steps taken by the assessee with a view to imparting a colour of genuineness and character commercial nature, to such share transactions. Needless to say that one has to look at the whole transactions and a series of steps taken to accomplish such share transactions, in an integrated manner, with a view to ascertaining the true nature and character of such purchase and sale of shares.*

13. *From the discussion in the preceding paras it is concluded that long term capital gains booked by assessee in her books were pre arranged method to evade taxes and launder money. Following are the findings and the reasons which substantiates the findings.*

a. *Sale of shares and unusual rise in the price: Further, the assessee has sold the entire shares purchased, thus resulting the long term capital gain of Rs. 2,06,53,430/-, which is 10 times the increase of the cost price, and as discussed the rise in share prices is not holding to any commercial principles and market factors.*

b. Findings of Investigation wing The findings of the Directorate of Investigation of Mumbai and Kolkata as discussed above have proved that Shri Anil Agarwal, Shri Praveen Kumar Jain and associated brokers, entry operators and the assessee had worked out an arrangement in which the shares were acquired by the assessee, the share prices were rigged and then with the help of entry operators by routing the cash, shares were sold at high price to arrive at tax free capital gains

c. Analysis of transactions. Facts revealed that such trading transactions of purchase and sale of shares are not been effected, for commercial purpose but to create artificial gains, with a view to evade taxes-

i. Transactions of shares were not governed by market factors prevalent at relevant time in such trade, but same were product of design and mutual connivance on part of assessee and the operators.

ii. The assessee resorted to a preconceived scheme to procure long- term capital gains by way of price difference in share transactions not supported by market factors.

iii. Curmulative events in such transactions of shares revealed that same were devoid of any commercial nature and fell in realm of not being bona fide and, hence, impugned long term capital gain is not allowable.

iv. The order of SEBI referred above has also given the similar finding that the prices of the shares were determined artificial by manipulations and cannot be a product of market factors and commercial principals.

d. Failure of Assesse to discharge her onus: The assessee has not been able to prove the unusual rise and fall of share prices to be natural and based on the market forces. It is evident that such share transactions were closed circuit transactions and clearly structured one. The assessee submitted that the reasons for such high profit cannot be shared as it is assessee's TRADE SECRET

e. Ignorance of the assessee about shares and penny stock companies: Assessee has deliberately avoided to answer the same by stating that the same are TRADE SECRETS WHICH CANNOT BE SHARED.

f. Financial analysis of the penny stock companies: The net worth of the penny stock company is negligible. Even though the net worth of the company and the business activity of the company

is negligible the share prices have been artificially rigged to unusual high.

g. Order of the SEBI: Sebi has passed an order where the main operator Shri Anil Agarwal and M/s Comfort fincorp are said to be indulging in to share manipulations.

h. Cash trail in the accounts of the entry providers: 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 accommodations to assessee.

i. Arranged transactions: The transactions entered by the assessee involve the series of preconceived steps, the performance of each of which is depending on the others being carried out. The true nature of such share transactions lacked commercial contents, being artificially structured transactions, entered into with the sole intent, to evade taxes.

14. Thus considering the findings of the search/ survey, inquiries conducted in the case of assessee, brokers, operators and the entry providers and the nature of transaction entered into by the assessee the LTCG of Rs. 1,81,82,004/ claimed exempt u/s 10(38) of the act by the assessee cannot be allowed and the amount of Rs. 2.06,53,430/- received back as sales proceeds on sale of shares is required to added back towards her taxable income under section 68 of the Act."

7. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) and filed detailed submissions. After considering the detailed submissions of the assessee, Ld. CIT(A) by relying on various judicial pronouncements allowed the ground raised by the assessee observing as under: -

"8. It is observed that in order to establish the genuineness of the claim, the appellant has provided sufficient documentary evidences during the assessment as well as the appellate proceedings:-

- (i) Statement of computation of capital gain showing name of company, date of acquisition, cost of acquisition, date of sale, amount of sale consideration, long term capital gain thereon*

- (ii) *Copies of contract notes for purchase and sale of shares showing contract note no, trade date, settlement no, settlement date, order no, order time, trade No, trade time, name of the security, no of shares, rate per share, amount of brokerage, amount of service tax, amount of stamp duty charges, amount of Securities Transaction Tax, cost of acquisition of shares of KDJHRL (formerly known as Gomti Finlease), amount of transaction charges BSE and net sale consideration for relevant period.*
- (iii) *Copies of DEMAT statement reflecting shares purchased and sold*
- (iv) *Ledger account of broker M/s Anand Rathi Share and Stock Brokers Ltd. reflecting the transactions*
- (v) *Bank statement reflecting payment made and received on purchase and sale of shares*

8.1 In the light of above documentary evidences, in my considered view, the transactions of sale of share of KDJ Holidayscapes & Resort Limited (Scrip code- 530701), by the appellant, cannot be disbelieved unless and until contrary to the same has not been established by the AO, as held in a no. of judicial decisions. From the assessment order, which is summarized in the preceding paragraphs, it is clear that the AO has neither examined the above mentioned documents nor verified the claims made by the appellant. No specific findings with respect to the appellant vis-à-vis manipulation in the prices of the shares of KDJ Holidayscapes&Resort Limited. have been brought on record by the AO. Rather than making the necessary enquiry and investigation so that contradictions in the claim of the appellant, are established, the AO has just reproduced the enquiry report of the Investigation Wing Kolkata where the manipulative aspects of shares of KDJHRL are mentioned.

8.2 The observations/reference made by the AO, in the impugned assessment order, are general in nature and there seems to be no effort been made toco-relation the same with the appellant. Throughout the assessment order, the AO has just narrated the modus operandi adopted by few operators viz., Shri Anil Agarwal, who have rigged the price of shares of certain companies. Even the methodology as mentioned therein, are the outcome of the enquiry made by the Investigation Wing, Kolkata not as a result of any verification carried out at the end of the AO. None of the statements relied upon by the AO in the impugned assessment order has any relevance/relationship with the

transactions carried out by the appellant. None of the persons whose statements were recorded, had named the appellant as the beneficiary nor the assessee has dealt with the persons on whose statement, the AO has relied upon.

8.3 The assessee purchased shares of KDJHRL (Scrip code: 530701) valued at Rs. 24,71,426/- in the month of February, 2012 from Bombay Stock Exchange through an Independent broker M/s Anand Rathi Share and Stock Brokers Ltd. a SEBI registered broker at Mumbai. The broker M/s Anand Rathi Share and Stock Brokers Ltd. was neither involved in the rigging of the shares nor found connected with Shri Anil Agarwal or M/s Comfort Securities Ltd. It is observed from the bank statement of the appellant that the payment for purchase of shares of KDJHRL were made on 17.02.2012 and 18.02.2012 out of funds available on account of redemption of mutual fund units on 15.02.2012. Hence, genuineness of the source of fund for purchase cannot be doubted. Immediately after, the shares were dematerialized on 18.02.2012 and 22.02.2012. Between April, 2013 to December, 2013, the price of shares of KDJHRL (Scrip code: 530701) rose to an average price of Rs. 320/- per share at the BSE from Rs. 49 per share when the appellant purchased in Feb., 2012, i.e., a rise of 6.53 times. Therefore, the observation of the AO that in 27 months of 2011, the price was jacked up nearly 125 times, has no relevance as far as the present case is concerned.

8.4 From the Demat account and the relevant bank account, it is observed that the shares were sold from April, 2013 to December, 2013 at the BSE at an average price of Rs. 320/- per share and the sales proceeds of Rs. 2,06,53,430/- was received back in the bank account of the appellant. No fault has been found by the AO as far as purchase and sales amount debited/credited in the bank account of the appellant is concerned. There is no specific allegation or findings of the AO that implicating the appellant that cash were received or paid back in the entire transactions of purchase /sale of the scripts of KDJHRL.

8.5 The AO has also mentioned in para 9 of the assessment order, about SEBI report involving accommodation entry providers. On careful reading of the relevant paragraph, I find that this either relates to First Financial Services Ltd. or other concerns and not related to KDJHRL (Scrip code: 530701). Nothing has been brought on record that about any SEBI report against KDJHRL (Scrip code: 530701) which relates to the year under consideration.

8.6. It is also observed that the AO has relied on the report of Investigation Wing, Kolkata where reference has been made to the statement of Shri Anil Agarwal, Director in M/s Comfort Securities

Limited recorded during the course of search action on him. The Ld. AR, during the course of hearing has stated that the AO has neither provided the copy of Investigation Wing report nor the statement of Shri Anil Agarwal. Hence, the assessee was unable to file any rebuttal to what has been stated in the statement and also debarred the assessee from an opportunity of cross-examining Shri Anil Agarwal. Further, from the statement extracted by the AO, it is evident that Shri Anil Agarwal has neither mentioned the name of appellant nor mentioned the name of broker through which the assessee has traded in these shares. It is also claimed by the Ld. AR that the appellant has not carried out any transaction in shares through the stock broker, M/s Comfort Securities Limited mentioned in the assessment order. The said stock broker is not related/linked to the appellant or appellant's transaction. Hence, there is nothing in the report of Investigation Wing to draw any adverse inference against the appellant as there is no specific allegation as far as the appellant is concerned. It is also explained that the shares were sold by the assessee through her share broker, M/s. Anand Rathi Share & Stock Brokers Ltd. of Mumbai. I find strength in the above argument of the Ld. AR, which has not been disproved by the appellant.

8.7. The AO in para 11.2 has held that despite poor fundamentals of companies, the assessee bought this penny stock and took the investment risk in such type of company. However, it is not clear whether this is a general statement or after making examination of the accounts of KDJHRL (Scrip code: 530701) by the AO. In the latter case, some specifics about the poor fundamentals of KDJHRL (Scrip code: 530701) should have elaborated by the AO. In my considered view, unless and until analysed properly, small or micro-cap companies, often referred to as penny stock company, cannot always be termed as reflecting "Poor fundamentals".

The Financials of KDJHRL (Scrip code: 530701), for relevant FY 2013-14, is extracted as under: -

.....

Seeing the above result, I am unable to understand which "Poor fundamentals" the AO is referring to. The AO is required to thoroughly examine the Financials and come out with specific findings regarding poor fundamentals of KDJHRL (Scrip code: 530701) vis-à-vis Industry average or among its peers, which the AO has failed to do

8.8. From the above discussion, it is very clear that the AO has completely overlooked the submissions of the appellant and facts

on record and just relying on the general observations or details not connected with the appellant, has concluded that the sale proceeds from the sale of shares of KDJHRL (Scrip code 530701) amounting to Rs.2.06,53,430/- are non-genuine and required to be added u/s.68 of the I.T. Act. In my considered view, the way the conclusion has been reached in the assessment order will not pass-through the litmus test of the Hon'ble Courts. The Courts have always held that all these information may only create doubts and suspicion which cannot take the place of evidence. No specific evidence showing nexus of the appellant with the conversion of unaccounted money into sale proceeds of shares is brought on record by the AO. Hon'ble Courts have also held that each transaction is required to be independently inquired into. Suspicion howsoever strong cannot take the character of evidence as held in the decisions reported in Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC), Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC), CIT v. East Coast Commercial Co. Ltd. [1967] 63 ITR 449 (SC) and Anil Tibrewala v. ITO [2004] 1 SOT 90 (Mum); CIT v. Daulatram Rawatmull [1964] 53 ITR 574 (SC); Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC); Pr. CIT v. Ajay Surendrabhai Patel [2016] 69 taxmann.com 309 (Guj.). These principles enunciated by the Apex Court/High Courts have been followed by various Tribunals. In this regard the notable cases are DN Kamani (HUF) v. Dy.CIT [1999] 70 ITD 77 (Pat.) (TM), Pooja Bhatt v. Asstt. CIT [2000] 73 ITD 205 (Mum.) and Aishwarya K. Rai v. Dy. CIT [2007] 104 ITD 166 (Mum.) (TM).

8.9. On the identical issue of LTCG on the sale of penny stock, where addition was made on the basis of Kolkata Investigation Wing Report, Hon'ble Bombay High Court in the case of Jainam Investment vs ACIT [2021] 131 taxmann.com 327 (Bombay), has held as under-

"15. As regards the penny stock, in the reason for reopening, it is stated that the Kolkata Investigation Wing have analyzed the trade data and there are 13 penny stocks in which it was conclusively ascertained that petitioner is found to be involved in trading of these scripts and is a beneficiary to gain the bogus short term capital loss and for the Assessment Year 2014-2015 the name of the script Shrenth (it should be Shreenath). In the first show cause notice, respondent no. 1 has called upon petitioner to provide information related to penny stocks and gave the name of Shreenath. In its reply dated 14th December 2016, petitioner has provided all details including submission of transactions recorded in the annual information report in the script of Shreenath. The assessment order does not deal with these submissions nor the first assessment order

referred to any penny stock. In the reasons for reopening, it is not respondents' case that in the original assessment order it was missed out. The reasons for reopening of assessment, as held in Aroni Commercials Ltd. (supra), has to be tested/examined only on the basis of the reasons recorded at the time of issuing a notice under section 148 of the Act seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and/or oral submissions. Moreover, the reasons for reopening an assessment should be that of the Assessing Officer alone who is issuing the notice and he cannot act merely on the dictates of any another person in issuing the notice. Moreover, the tangible material upon the basis of which the Assessing Officer comes to the reason to believe that income chargeable to tax has escaped assessment can come to him from any source, however, reasons for the reopening has to be only of the Assessing Officer issuing the notice. No such tangible material is disclosed in the reasons for reopening. Assessing Officer simply says Kolkata Investigation Wing have analyzed the trade data of identified 84 penny stocks and concluded that most of the purchases in penny stocks on abnormally higher rate are being done by these paper companies and one of those penny stock is Shreenath in which petitioner was found to be involved in trading. This is far too general. In the case of Phool Chand Bajrang Lal (supra), on which Mr. Suresh Kumar relied upon, the I.T.O. Azamgarh, subsequent to completion of the original assessment proceedings, received a confidential communication from the I.T.O., Calcutta based on a request made by the I.T.O. Azamgarh. No such material has been identified. Ofcourse, the submission of Mr. Suresh Kumar that there was no true and full disclosure on the facts of the case and therefore, the I.T.O. would have the jurisdiction to reopen the concluded assessment in such a case is not acceptable because as noted earlier, the proviso to section 147 does not govern a notice for reopening within a period of four years and admittedly, in this case, the notice to reopen was issued within a period of four years. Therefore, we have to agree with petitioner that there is no tangible material for the reopening as stated in the reasons for reopening.

16. The Assessing Officer was aware of the fact that the script of Shreenath was allegedly a penny stock company as it is clear from the annual information report given by the Assessing Officer himself to petitioner alongwith the first notice. Therefore, there is no question of any further information on the same issue being treated as information

so as to justify the reopening of the assessment. The expression "reason to believe in section 147 of the Act has been held to mean a cause or justification. It is also the position that at the stage when the Assessing Officer reopens an assessment, it is not necessary that the material before the Court should conclusively prove or establish that income has escaped assessment. But that does not mean that the Assessing Officer will not even mention enough details of tangible material that he has received for him to reopen the assessment. A general and bald statement, as stated in the reasons for reopening that Kolkata Investigation Wing have analyzed the trade data of identified 84 penny stocks and there are 13 penny stocks in which petitioner is found to be involved, has been made, is not enough. The Assessing Officer should have atleast indicated the details of the material that he had received and when he received.(Emphasis Supplied)

Although the aforesaid judgment was delivered with respect to issuance of notice u/s 148, the observation of the Hon'ble jurisdictional High Court is equally relevant to the facts of the present case.

8.10. Apart from that Hon'ble Supreme Court in the case of PCIT vs Parasben Kasturchand Kochar(2021] 130 taxmann.com 177 (SC) has dismissed the SLP filed by the Department against the order of Hon'ble Gujarat High Court in (2021] 130 taxmann.com 176 (Gujarat). The Hon'ble High Court has the occasion to examine the identical issue of disallowance of LTCCG claimed u/s 10 (38) of the Act, on the sale of shares of penny stock company, had stated as under-

The Revenue has proposed the following question of law for the consideration of this Court:-

"Whether the Appellate Tribunal was right in law and on facts in deleting the addition of Rs. 9,70,468/- made on account of LTCCG claimed as exempt u/s. 10(38) of the Act without appreciating the fact that the transaction was pre-arranged as well as sham and was carried out through penny scripts companies/paper companies?"

2. We take notice of the fact that the issue in the present appeal is whether the assessee earned long term capital gain through transactions with bogus companies. In this regard, the finding of fact recorded by the Tribunal in paras 9, 10 and 11 reads thus:-.

"9. In our considered opinion, in such case assessee cannot be held that he earned Long Term Capital gain through bogus company when he has discharged his onus by placing all the relevant details and some of the shares also remained in the account of the appellant after earning of the long term capital gain.

10. Learned A.R. contention is that no statement of the Investigation Wing was given to the assessee which has any reference against the assessee.

11. In support of its contention, learned A.R. also cited an order of Coordinate Bench in ITA No. 62/Ahd/2018 in the matter of Mohan Polyfab (P.) Ltd. v. ITO wherein ITAT has held that A.O. should have granted an opportunity to cross examine the person on whose statement notice was issued to the assessee for bogus long term capital gain. But in this case, neither statement was supplying to the assessee nor cross examination was allowed by the learned A.O. Therefore, in our considered opinion, assessee has discharged his onus

3. Thus, the Tribunal has recorded the finding of fact that the assessee discharged his onus of establishing that the transactions were fair and transparent and further, all the relevant details with regard to such transactions were furnished before the Income-tax authorities and the Tribunal also took notice of the fact that some of the shares also remained in the account of the appellant.

4. We take notice of the fact that the assessee has a Demat Account maintained with the ICICI Securities Ltd. and has also furnished the details of such bank transactions with regard to the purchase of the shares. In the last, the Tribunal took notice of the fact that the statements recorded by the investigation wing of the Revenue with regard to the Tax entry provided were informed to the assessee despite giving him opportunity to meet such an allegation. In the overall view of the matter, we believe that the proposed question cannot be termed as a substantial question of law for the purpose of maintaining the appeal under section 260-A of the Act, 1961.

5. In the result, this appeal fails and is hereby dismissed.

The facts are identical in the present case.

8.1 *in yet another case of Punjab & Haryana High Court in Pr.CIF v. Prem Pal Gandhi [2018] 94 taxmann.com 156/401 ITR 253 wherein it was held that*

"Though appreciation of value of share sold by assessee was very high, in view of fact that same was traded in NSE and receipts of sales routed through bank and company whose shares were sold was not a closely held company, no addition could be made as undisclosed income."

8.12. *The Hon'ble Bombay High Court in the case of CIT vs Shyam R. Pawar [2015] 54 taxmann.com 108 (Bombay)/[2015] 229 Taxman 256 (Bombay) has ruled that-*

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny. It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that

there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

OTHER JUDICIAL PRECEDENCE-

9. Now, let us study some of the judgments delivered by various benches of Hon'ble Tribunal on this issue and to examine, it's applicability on the facts of the instant case.

9.1 The Hon'ble Rajasthan High Court in the case of CIT vs Pooja Agarwal in Income Tax Appeal No. 385/2011 order dated 08.09.2018 had held that the addition made by the Assessing Officer based on mere suspicion and surmises without any cogent material to show that the assessee has brought back his

unaccounted income in the shape of long term capital gain is unsustainable.

9.2 Decision of Hon'ble ITAT, Mumbai in the case of Ramprasad Agarwal vs. ITO reported in 100 Taxmann.com 172 (Mumbai) wherein, it was held that if the holding of shares in Dmat account cannot be disputed then the transaction cannot be held as bogus. The AO has also not. disputed the sale of shares from the Dmat account of the assessee and the sale consideration was directly credited to the bank account of the assessee. Once the assessee produced all relevant evidence to substantiate the transaction of purchase, dematerialization and sale of shares then, in the absence of any contrary material brought on record the same cannot be held as bogus transaction merely on the basis of statement of one Anil Agrawal recorded by the Investigation Wing, Kolkata wherein there is a general statement of providing bogus long term capital gain transaction to the clients without stating anything about the transaction of allotment of shares by the company to the assessee.

9.3 Decision of Hon'ble ITAT, Mumbai in the case of Kamla Devi S. Doshil vs. ITO reported in 88 taxmann.com 773 (Mumbai) wherein, it was held that where assessee had placed substantial documentary evidence to substantiate genuineness and veracity of purchase and sale of shares in question, standalone statement of an alleged entry provider could not be basis to treat sale consideration of shares as income from undisclosed source.

9.4 Decision of Hon'ble ITAT, Mumbai in the case of Dipesh Ramesh Vardhan vs. DCIT in ITA No. 7648/M/2019 vide order dated 11.08.2020 wherein, it was held that the allegations of Ld. AO that the assessee was part of the group which indulged in rigging or manipulation of prices of shares in connivance with Shri Vipul Bhat is not backed by any independent material. Firstly, there is nothing on record which establishes the fact that the assessee was acquainted with Shri Vipul Bhat or any of his entities and secondly, the onus cast upon assessee to prove the genuineness of the transactions was already discharged by the assessee. Shri Vipul Bhat, in his statement, stated that one Shri Sandeep Maroo acted as intermediary who introduced Vardhan family to him. However, no further investigations have been carried out to establish this vital link between the assessee and Shri Vipul Bhat. We do not find any independent investigations by AO to bring on record any tangible material to corroborate the same. There are no evidence or even allegation of any cash exchange between the assessee and group entities of Shri Vipul Bhat.

This is further evidenced by the fact that no substantial incriminating material/ wealth of that magnitude has been found

during the course of search operations on assessee which would corroborate such presumption and prove that the transactions were sham transactions, in any manner.

9.5 Decision of Hon'ble ITAT, Mumbai in the case of Shri Amit Mafatial Shah vs. ACIT in ITA No. 5793/M/2019 vide order dated 25.02.2020 wherein, it was held that the assessee has filed all the necessary evidences before the AO as well as before the Ld. CIT (A). However, no further enquiry was carried out by the AO or by Ld. CIT(A) but merely relied on the report of the investigation wing and statements of certain individuals, recorded during the course of search who have stated that they were engaged in providing accommodation entries for LTCG/LTCL in various shares which are called penny stocks. The said information were never provided to the assessee. Similarly, no cross examination was allowed by the AO to the assessee during the assessment proceedings. In other words, the AO has merely relied on the investigation report and did not try to collect further evidences by conducting further investigation to prove that the assessee own funds have changed hands.

9.6 Decision of Hon'ble ITAT, Mumbai in the case of M/s Indravadan Jain HUF in ITA No. 4861/Mum/2014 wherein, it was held that merely because the investigation was done by SEBI against broker or his activity, assessee cannot be said to have entered into in-genuine transaction, insofar as assessee is not concerned with the activity of the broker and have no control over the same.

9.7 Decision of Hon'ble ITAT, Mumbai in the case of Shri Mukesh Ratilal Marolia vs. Addl. CIT in ITA No. 1201/Mum/2005 wherein, it has been held that on the basis of the internal evidences available with the assessee and the fact that the sale proceeds were collected through bank accounts and coupled with the external evidence of survey and statement of parties, the sale proceeds has been explained. The decision of Hon'ble ITAT, Mumbai was confirmed by the Hon'ble Bombay High Court vide order dated 07.12.2011.

....

9.16 In the case of Vipul Patel vs ITO Ward 45-4 Kolkata (2019) 1101 Taxmann.com 215, the Hon'ble ITAT held that when the assessee has produced all relevant evidence to substantiate the transaction of purchase, dematerialisation and sale of shares, the same could not be treated as bogus Long Term Capital Gain transaction u/s 68 merely on the basis of report of the investigation wing which was only a general report describing the modus

operandi of providing bogus Long Term Capital Gain transaction to several clients without stating anything particularly or specifically about the transaction of purchase and sale of shares by the assessee.

9.17 Further, in the recent decision in the case of Vijayarattan Balkrishna Mittal has been decided in favour of the assessee by the Hon'ble ITAT, Mumbai vide order dated 01.10.2019. In the said case, the AO had negated the claim of long term capital gain by holding the transaction in sale of shares as bogus, thereby making addition u/s 68 and disallowing the claim of exemption u/s 10(38) of the Income Tax Act, 1961. In the said case, the AO, based on information received from the Investigation Directorate regarding enquiries conducted in respect of certain penny stock companies, had made the addition by holding that the assessee has been named as one of the beneficiaries who had taken accommodation entry of long-term capital gain through the sale of shares pertaining to penny stock companies with the help of certain entry providers. Accordingly, the AO brought to tax the sale proceeds of shares as income u/s 68 of the Act, thereby denying exemption u/s 10(38) and also made addition of commission u/s 69C of the Act.

9.18. In my considered view, the reasoning of the Hon'ble ITAT in its detailed order, giving relief to the assessee Vijayarattan Balkrishna Mittal, applies squarely in the instant case of the appellant. Broadly the findings of the Hon'ble ITAT, that has enabled the Hon'ble ITAT to hold the issue in favour of the assessee and which would apply in the present case of appellant are as under:-.

(i) To prove the genuineness of the transactions all supporting evidences such as share application form, bank statement highlighting the transaction, contract notes, broker's ledger, form 10DB and demat statements are available. The sale transactions have suffered expenditure such as brokerage, service tax, Securities Transaction Tax (STT), stamp duty, SEBI turnover charges etc.

(ii) Addition u/s 68 is neither justifiable nor tenable on the facts of the case. Under the mandate of section 68 of the Act, the assessee is required to prove (a) identity of creditor (b) source of credit and (c) genuineness of transaction. To prove identity of creditor, the assessee has the copy of the contract notes, which identify the broker who has transacted on the BSE platform. The contract note would show name, address, PAN, order quantity, rate, order time, value, taxes and charges such as Securities Transaction Tax (STT), brokerage etc. To prove the source

of credit, the appellant has submitted the bank statement reflecting sale proceeds credited by the broker and the demat account of the appellant will show sold shares debited or transferred to broker. To prove the genuineness, the sale consideration is received from a registered broker on the BSE platform. Sale is done at prevailing price quoted on BSE and the shares are sold on BSE platform. Thus all the three ingredients under section 68 are fully satisfied.

(iii) The AO is unable to establish that the unaccounted money is routed through various channels. There is nothing to establish that the transactions are mere accommodation entries facilitated by exit providers. On the other hand, the assessee has evidence to prove the genuineness of the transactions such as share application form, bank statement highlighting the transaction, contract notes, broker's ledger, form 10DB and demat statements.

(iv) The report from the Investigation Wing, Kolkata which forms the basis for making the impugned addition, does not establish the appellant's involvement/collusion with brokers, exit providers or accommodation providers.

The AO did not bring anything on record to supplement either the report of the Investigation Wing or to implicate the appellant.

CONCLUSION

9.19 As stated in the preceding paragraphs, the entire assessment is based on report of Investigation Wing. There is no reason for the AO not to share the information or statements received from the Investigation Wing, with the appellant. No opportunity for cross examination was afforded. On the other hand, the appellant has provided documentary evidences, bank statements, broker's notes, etc., to establish identity, creditworthiness and genuineness of the transaction. There is no finding of the AO in respect of the explanation given by the appellant and in respect of the documentary evidence furnished to the AO. It is also a fact that none of the evidences furnished to support the genuineness of the transaction, has been treated as dumb/bogus document by the AO. Once, the appellant has duly discharged the onus of proving that the transactions of sale and subsequent purchase of shares are genuine, it is the duty of the AO to find lacuna or discrepancies in it. However, nothing has been brought on record by the AO.

9.20 Once the assessee has duly discharged primary onus cast upon him u/s 68 of the Act than the Assessing Officer must bring some material evidences, which has direct link or nexus to prove that the transaction is not genuine. Reliance can be placed on decision of Rajasthan High court in the case of CIT v. Pooja Agarwal [2018] 99 taxmann.com 451. As held in a no. of judicial precedence, the transactions duly supported by evidences cannot be affected adversely unless and until Assessing Officer carry out some independent inquiry to prove that the Assessee has entered into the transactions of penny stock and received back the amount through multiple layering of transfer entries.

9.21 In view of the foregoing discussion, I am of the considered view that the AO is not justified in assessing the sale consideration of shares as unexplained cash credit u/s 68 of the Act. Hence, the AO to directed to delete the addition made with respect to sales consideration of shares of KDJHRL of Rs.2,06,53,430/- as unexplained cash credits u/s 68 of the LT. Act. The cost of purchase of shares of Rs. 24,71,426/ will be allowable against the sale proceeds of the shares. Accordingly, the assessee is eligible for exemption u/s 10(38) of the Act with respect to LTCG on sale of shares of Rs. 1,81,82,004/. Thus, the grounds of appeal no. 1, 2 and 3 are allowed."

8. Aggrieved with the above order, Revenue is in appeal before us raising following grounds in its appeal: -

"1. Whether, on the fact and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 2,06,53,430/- made by the assessing officer without appreciating that the said addition was made based on credible information received from the Investigation Wing that the assessee transacted in penny stock for the sole purpose of tax evasion and money laundering.

2. Whether, on the fact and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs. 2,06,53,430/- considering that the assessee could not establish genuineness, Identity and creditworthiness of the transaction in question."

9. At the time of hearing, Ld. DR submitted that the addition was proposed based on the Kolkata investing wing report and he submitted that Ld. CIT(A) has deleted the addition without considering the above investigation wing report. Further, he submitted that the circumstantial evidences are relevant in this case considering the fact that assessee has earned such huge profit from the sale and purchase of disputed scrip. Further, he brought to our notice the findings of the Assessing Officer in his order at Para No. 6.1 to 6.2 of the order. In this regard, he heavily relied on the decision in the case of Pr.CIT *v.* Swati Bajaj.

10. On the other hand, Ld.AR of the assessee relied on the findings of the Ld. CIT(A) and he brought to our notice Page No. 17 of the Paper Book in which the details of the transactions are given in detail. He submitted that the scrip was purchased online from the listed securities from stock market and similarly sold the same online through stock exchange. He submitted that addition was made based on search in the case of Shri Anil Agarwal and Assessing Officer has not brought on any material linking the assessee to the parties who are involved in the penny stock transactions involving entry /exit or price manipulation. The assessee has dealt with the independent stock broker. Even no discrepancies relating to the above stock broker was brought on record.

Further, he submitted that the scrip in which the assessee has transacted was not subject matter of investigation under SEBI. Therefore, he relied on the findings of the Ld.CIT(A) and submitted that the Ld. CIT(A) was justified in deleting the additions made by the Assessing Officer.

11. Further, he submitted that Assessing Officer has not pointed out any discrepancies in the documentary evidences submitted by the assessee. Ld.AR of the assessee submitted that without pointing out any discrepancies in the documentary evidences submitted by the assessee the Assessing Officer has heavily relied on the investigations carried out by the Directorate of Investigation Kolkata. Therefore, Ld.AR of the assessee prayed to sustain the findings of the Ld. CIT(A).

12. Considered the rival submissions and material placed on record, The Assessing Officer observed that assessee had made huge profit out of this investment because of this, according to him, it makes the scrip as suspicious and it is penny stock. We cannot agree to the above observation merely because of huge profit, it does not make the script a penny stock. Further, it is fact on record that the financials of the company under consideration are not commensurate with the purchase

and sale price in the market. The assessee has purchased the shares directly from stock exchange/market and sold the same in the stock exchange/market. This is evident from the contract notes submitted before the tax authorities. Merely because the scrip involved is under investigation, it has raised several doubt on the purchase and sales transactions recorded in this case. However, there is no discrepancies in the documents filed by the assessee claiming the deductions u/s 10(38) of the Act. At the same time, even though all the characteristics of the penny stock exists in the present case, still the revenue has not brought on record any materials linking the assessee in any of the dubious transactions relating to entry, price rigging or exit providers. Even in the SEBI report, there is no mention or reference to the involvement of the assessee or the broker involved in these transactions even the scrip under consideration. We can only presume that the assessee is one of the beneficiary in this transactions merely as an investor who has entered in investment fray to make quick profit. Even the assessing officer has applied the presumptions and concept of human probabilities to make the additions without their being any material against the assessee. We observe that the Hon'ble Bombay High Court in the case of Pr. CIT v. Ziauddin A Siddique in Income Tax Appeal No. 2012 of 2017 dated 04.03.2022 held as under: -

"1. The following question of law is proposed:

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

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

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

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

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

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

13. Further, the Hon'ble Delhi High Court in the case of Pr. CIT v. Smt Krishna Devi in ITA 125/2020 dated 15.01.2021 held as under: -

"8. Mr. Hossain argues that in cases relating to LTCG in penny stocks, there may not be any direct evidence in the hands of the Revenue to establish that the investment made in such companies was an accommodation entry. Thus the Court should take the aspect of human probabilities into consideration that no prudent investor would invest in penny scrips. Considering the fact that the financials of these companies do not support the gains made by these companies in the stock exchange, as well as the fact that despite the notices issued by the AO, there was no evidence forthcoming to sustain the credibility of these companies, he argues that it can be safely concluded that the investments made by the present Respondents were not genuine. He submits that the AO made sufficient independent enquiry and analysis to test the veracity of the claims of the Respondent and after objective examination of the facts and documents, the conclusion arrived at by the AO in respect of the transaction in question, ought not to have been interfered with. In support of his submission, Mr. Hossain relies upon the judgment of this Court in *Suman Poddar v. ITO*, [2020] 423 ITR 480 (Delhi), and of the Supreme Court in *Sumati Dayal v. CIT*, (1995) Supp. (2) SCC 453.

9. Mr. Hossain further argues that the learned ITAT has erred in holding that the AO did not consider examining the brokers of the Respondent. He asserts that this holding is contrary to the findings of the AO. As a matter of fact, the demat account statement of the Respondent was called for from the broker M/s SMC Global Securities Ltd under Section 133(6) of the Act, on perusal whereof it was found that the Respondent was not a regular investor in penny scrips.

10. We have heard Mr. Hossain at length and given our thoughtful consideration to his contentions, but are not convinced with the same for the reasons stated hereinafter.

11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On

an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under Section 10(38), in a pre-planned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income Tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under Sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party,

prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.

12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on Suman Poddar v. ITO (supra) and Sumati Dayal v. CIT (supra) is of no assistance. Upon examining the judgment of Suman Poddar (supra) at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of Sumati Dayal v. CIT (supra) too turns ITA 125/2020 and connected matters Page 10 of 10 on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.

13. The learned ITAT, being the last fact-finding authority, on the basis of the evidence brought on record, has rightly come to the conclusion that the lower tax authorities are not able to sustain the addition without any cogent material on record. We thus find no perversity in the Impugned Order.

14. In this view of the matter, no question of law, much less a substantial question of law arises for our consideration.

15. Accordingly, the present appeals are dismissed."

14. Therefore, we respectfully follow the ratio of the above decisions. In this case also, the Assessing Officer has applied the concept of Human probabilities and held the above said scrip to be a penny stock without bring on record how the assessee is involved in any of the scrupulous activities or directly linked to one of the person who has involved in manipulation/rigging of share prices, entry operator or exit provider. Therefore, we do not see any reason to disturb the findings of the Ld. CIT(A) in deleting the addition made by the Assessing Officer. Accordingly, ground raised by the revenue is dismissed.

15. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 23rd February, 2024.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 23.02.2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
 2. The Respondent.
 3. CIT
 4. DR, ITAT, Mumbai
 5. Guard file.
- //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum