

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.2546/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2015-16)

DCIT, Circle-7(1)(1) Room No. 126, 1 st Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	Nisha Shantaram Pokle 42 Dattashram, 62 Sir Bhalchandra Road, Mumbai-400014.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEPP8998N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Vimal Punmiya	
Revenue by:	Shri Ashok Kumar Ambastha (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 05/03/2024

घोषणा की तारीख /Date of Pronouncement: 22/03/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 22.05.2023 for the assessment year 2015-16.

2. The main grievance of the revenue is against the action of the Ld. CIT(A) deleting the addition of Rs.5,96,25,721/- which AO has added u/s 68 of the Income Tax Act, 1961 (hereinafter "the Act") and also deletion of addition of Rs.35,77,543/- on account of commission.

3. Brief facts are that the assessee is an individual has filed her return of income on 30.09.2015 declaring total income at Rs.1,21,42,210/-. Later, the case of the assessee was selected for scrutiny. And the AO noted that the assessee had claimed Long Term Capital Gain (LTCG) of Rs.5,67,41,214/- on sale of scrip of M/s.



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Marigold Glass Industries Ltd (hereinafter “M/s. Marigold”) which company is now known as M/s. Greencrest Financial Services Ltd (hereinafter “M/s. Greencrest”). According to the AO, he has received information from the DDIT (Inv.) Unit, Kolkata, Ahmedabad & Mumbai that the scrip of M/s. Marigold was one among the eighty four (84) penny-stocks; and AO noted the *modus-operandi* of unscrupulous entry providers facilitating bogus capital gain/loss for beneficiaries which he discussed at para no. 6 (*page no. 4 & 5 of assessment order*). Thereafter, he discussed the case of assessee regarding the claim of LTCG in sale of shares of M/s. Marigold/Greencrest from para no. 7 (*page no. 5 to 18 of assessment order*) wherein he noted the financials of M/s. Greencrest as well as the price movement of shares in graph/chart form; and AO was of the opinion that unusual price movements depicts the price rigging resorted by the entry providers in active connivance with pre-arranged exit providers. The AO took note of the rise in closing price between 10.05.2013 and 24.06.2014 and with the help of a graph has given the date-wise price and volume of trade of this scrip from page no. 12 to 14 of the assessment order and noted that between these dates, the shares were traded on 137 days; and only 182 trades took place during the period [i.e. one or two trades daily]. He also noted the abnormality in the price rise and fall. Thereafter, the AO at para no. 7.7 discussed about the exit providers and noted the name of forty one (41) entities who all had purchased the shares of M/s. Greencrest between 24.01.2012 to 01.01.2015. According to the AO, inquiry conducted by Investigation Wing



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(Kolkata) and the statements of entry operators who controlled and managed these entry providers revealed that these entities (exit providers) are bogus/paper entities, which are not doing any real business and used only for providing accommodation entries. According to the AO, these exit providers forty one (41) named in page no. 19 & 20 of the assessment order, had purchased shares worth Rs.167 crs out of the total trade of Rs.246cr. So according to AO purchases facilitated by exit providers were only accommodation entries. Thereafter, the AO discussed about the share brokers at para no. 7.8 at page no. 21 of the assessment order wherein he noted that survey actions were conducted by the Directorate of Investigation, Kolkata on share brokers (i) Shri Anuj Agarwal/Director of Korp Securities Ltd (ii) Pravin Agarwal/Director of M/s. Gateway Financial Services Ltd and (iii) Subrata Haldar/Promoter of BSAS Securities Pvt. Ltd and (iv) Soumen Sen/(D.B & Co.) who all accepted their role in the entire scheme of providing accommodation entry in the form of bogus LTCG. Thereafter, the AO concluded that the entire LTCG claim of assessee was bogus, and such an act was resorted to by assessee for converting her black money to white. Thereafter, at para no. 8 at page no. 22 of assessment order, he discussed the mode of acquisition of the share of M/s. Marigold by the assessee and the sale of shares of M/s. Greencrest and noted the unusual rise in the price when it was sold. Thereafter, he noted that the assessee had failed to show that she had any knowledge about share trading and have invested only on advice of her husband, Shri S. G. Pokle. Thereafter,



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the AO was of the opinion that the claim of the assessee was non-genuine and citing the decision of the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT (1995) 214 ITR 801 and applied the “preponderance of the probabilities human” conduct and was of the opinion that the transaction of purchase and sale of 20 Lakh shares of M/s. Greencrest (earlier known as M/s. Marigold) led to generation of exempt LTCG are not genuine transaction, hence, the entire sale consideration of Rs.5,96,25,721/- received from sale of 20 Lakh share of M/s. Greencrest, was treated as undisclosed income of the assessee and brought to tax u/s 68 of the Act as unexplained cash credit. Further, the AO was of the opinion that the assessee might have incurred commission expenditure @ 6% of the amount purported to have been received on sale of shares of M/s. Greencrest and made an addition of Rs.35,77,543/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to allow the appeal of the assessee and deleted the addition made u/s 68 of the Act and also the commission added by AO. Aggrieved, the revenue is before us.

4. We have heard both the parties and perused the records. We note that the assessee is an individual who earns income from salary, income from house property, income from business, income from capital gain and income from other sources. And had filed her return of income for AY. 2015-16 on 30.09.2015 declaring total income at Rs.1,21,42,210/-. Later on, the case of the assessee was selected for scrutiny. The AO noted that the assessee had shown to have earned LTCG which was exempt u/s 10(38) of the Act to the tune of



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Rs.5,72,25,721/- (*assessee claims that AO has mistakenly noted LTCG claim as Rs.5,67,41,214/-*), therefore, he directed the assessee to file the details of the LTCG claimed, wherein the assessee brought to the notice of the AO that she has been allotted 2,00,000 shares of M/s. Marigold @ Rs.10 per equity share and on a premium of Rs.2/- [*and paid Rs.24 Lakhs by cheque*] (*copy of share certificate dated 11.02.2013 placed at page no. 44 of PB*) and filed relevant documents to prove the allotment of equity shares which are found placed at page no. 30 to 44 of PB. And also brought to the notice of the AO that the shares of M/s. Marigold allotted to her were dematerialized (*M/s. IL & FS Securities Ltd dematerialization form page no. 45 to 46*). And also the statement of Demat Account showing credit of the share to the demat account of the depository participant (*M/s. IL & FS Securities Ltd at page no. 48 to 51 of PB*). Thereafter, there was a split of share on 07.06.014 and by virtue of it 2,00,000 shares became 20 Lakh shares which fact is evident from the copy of demat statement at page no. 52 to 53 of PB. Thereafter, the assessee sold 20 Lakhs share in Bombay Stock Exchange (BSE) from 08.06.2014 to 19.12.2014 and received the total sale consideration of Rs.5,96,25,721/- and the assessee claimed LTCG of Rs.5,72,25,721/- which assessee claimed as exempt u/s 10(38) of the Act. As noted (*supra*), when the AO asked assessee to prove the purchase share of M/s. Marigold, she produced *inter-alia* the following primary documents to prove the purchase and holding of shares which are captured in chart form for easy reference as under: -



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Sr. No.	Particulars	Page No. of the Paper Book
1.	Letter from M/s. Marigold Glass Industries Ltd informing about their Preferential Equity Issue	30-31
2.	Letter to M/s. Marigold Glass Industries Ltd showing interest of buying 2,00,000 Preferential Equity Shares	32
3.	Letter of approval from M/s. Marigold Glass Industries Ltd for the proposed allotment of Preferential Equity Shares	33-34
4.	Copy of Bank statement reflecting payment through Banking mode (RTGS) for purchase of shares	35-37
5	Copy of allotment letter dated 12.02.2013 confirming allotment of 2000000 shares	38-40
6	Copy of Extra Ordinary General Meeting on 18.02.2023	41-43
7	Copy of share certificate dated 11.02.2013	44
8.	Copy of documents related to dematerialization of shares	44-47
9	Copy of statement of Demat A/c showing credit of shares to the Demat account at Depository participant (IL&PS)	48-51
10	Copy of Depository participant (IL&PS) statement describing split effect on shares on 07.06.2014 (2,00,000 shares to 20,00,000 shares)	52-53
11	Documents showing split of shares	54

5. The assessee also produced before the AO the following primary documents to prove the sale of 20,00,000 shares of M/s. M/s. Greencrest Financial Services Ltd. (earlier known as Marigold) through the BSE electronic platform: -



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Sr. No	Particulars	Page No. of the PB
1	Copy of statement showing sale of shares	55
2	Copy of party ledger and confirmation of the same showing purchase and sale of shares by Mrs Nisha S. Pokle at Harjivandas Nemidas Securities Pvt. Ltd	55-63
3	Copy of Account Ledger of Harjivandas Nemidas Securities Pvt. Ltd. In the books of Mrs Nisha S. Pokle	64-65
4	Copy of Depository participant (IL&FS) Contract notes for sale of 953600 shares (during the year) on BSE	66--138
5	Copy of Depository participant (IL^]&FS) statement describing balance unsold 10,46,400 shares as on 31.03.2015	139
6	Copies of Bank statements reflecting receipt of money for sales of shares through Banking mode (RTGS)	140-145
7	Chart showing month wise trading volume and price chart of the shares of Greencrest Financial Services Ltd at Bombay Stock Exchange	146

6. Thus, we note that the assessee has submitted the primary documents to prove purchase/allotment of shares of M/s. Marigold i.e share application form, share certificate, bank statement highlighting the payment made for purchase of shares, demat statement etc. To prove the event of sale of shares of M/s. Greencrest (earlier known as M/s. Marigold) assessee has filed primary evidences like Broker's ledger, Contract notes issued by the broker, bank statement highlighting the sales consideration and STT remitted on such sales. Thus we find that assessee has filed the primary/relevant documents to prove the purchase and holding of shares for the statutory period by dematerializing it and sale of shares through BSE in the electronic platform through the recognized broker M/s. Harjivandas Nemidas Securities Pvt. Ltd. And that the consideration for purchase/sale of shares happened through banking channel and STT has been remitted on sale of shares. Thus, we find that assessee has fulfilled the



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conditions necessary for making the claim of LTCG as exempt u/s 10(38) of the Act; and it is not the case of AO that there is any infirmity/deficiencies in the relevant/primary documents filed by the assessee as noted (supra). Thus, we find that assessee has discharged her burden to prove the LTCG claim on sale of shares of M/s. Marigold (now known as M/s. Greencrest) and the AO has failed to rebut/produce contrary material/evidence to counter/question the veracity of the primary documents produced by assessee (supra) in order to dis-prove her claim.

7. The AO has disallowed the LTCG claim of assessee by mainly taking note of report submitted by Investigation Wing (Kolkata) as well as he doubted the financial prudence of the assessee to have purchased the shares of M/s. Marigold and wondered as to how the price of shares of M/s. Marigold would have commanded a price of (approximately) Rs.90 per share within a span of two years. And thereafter, the AO was of the opinion that the prices have been rigged and shares were traded only on 137 days and only 182 trades happened during that period; and according to him rigging of prices took place on different days; and thereafter he noted the name of forty one (41) exit providers who according to him had purchased the shares of M/s. Marigold (now known as M/s. Greencrest Financial Services Ltd) between 24.01.2012 and 01.01.2015. According to him, these forty one (41) exit providers were known accommodation entry concerns and not doing any real business, but only providing accommodation entries. Thereafter, the AO also discussed about few share brokers [at



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para no. 7.8 at page no. 21 of the assessment order] wherein he noted that survey was conducted by the Directorate of Investigation, Kolkata on the following share brokers (i) Shri Anuj Agarwal/Director of Korp Securities Ltd (ii) Pravin Agarwal/Director of M/s. Gateway Financial Services Ltd and (iii) Subrata Haldar/Promoter of BSAS Securities Pvt. Ltd and (iv) Soumen Sen/(D.B & Co.) who all accepted their role in the entire scheme of providing accommodation entry in the form of bogus LTCG. Thereafter, he concluded that the purchase and sale of share of M/s. Marigold (now known as M/s. Greencrest Financial Services Ltd) was nothing but accommodation entry provided to the assessee for converting her unaccounted income. And therefore, the AO added the entire sale consideration of Rs.5,96,65,721/- u/s 68 of the Act. And also computed @ 6% on it as commission i.e. Rs.35,77,543/-. On appeal, the Ld. CIT(A) has deleted both additions by taking note that assessee has discharged her burden to prove the allotment/purchase and sale of the shares of M/s. Marigold (now known as M/s. Greencrest Financial Services Ltd). And since the shares were demated and both considerations (i.e. share purchase & sale consideration) have passed through banking channel and the sale has happened through the electronic platform of BSE; and there was no material/evidence to show the involvement of assessee or her broker in the *modus operandi* for converting her unaccounted money in the form of bogus LTCG; or there was any evidence to suggest that assessee or her broker had any connection with unscrupulous entry



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operators named by AO, the Ld. CIT(A) was pleased to delete both the additions which action has been assailed by revenue before us.

8. We find that the main plea of the assessee before the Ld. CIT(A) was that addition made by AO u/s 68 of the Act was not legally sustainable in the light of the fact that assessee has discharged the burden of proving the genuineness of her claim regarding LTCG on sale of share of M/s. Greencrest (earlier known as M/s. Marigold) by submitting primary documents to substantiate the claim (LTCG). The assessee in order to prove the transaction which led her to claim the LTCG/exemption u/s 10(38) of the Act had proved the events of allotment/purchase of M/s. Marigold shares, dematerialization of shares, and thereafter shares were sold through Bombay Stock Exchange Electronic Platform. Therefore, according to Ld. AR, since assessee proved that she has fulfilled all conditions for making claim of LTCG/exemption u/s 10(38) of the Act, the same could not have been denied by AO without first finding any infirmity in the primary documents filed by assessee which in this case has been undisputed by AO. And it was pointed out by the Ld. AR before the Ld. CIT(A) that AO have not leveled any allegation/infirmity about the primary documents produced by the assessee to prove the purchase and sale of shares of M/s. Marigold. The Ld. CIT(A) agreed with the assessee that AO has not found any infirmity/deficiency in the primary documents produced by the assessee to prove her LTCG claim and the Ld. CIT(A) also found that AO has not been able to show that cash transaction was there in the assessee's claim. The Ld. CIT(A) found fault with the



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assessee for relying on the 3rd party statements without allowing assessee to cross-examine them. We concur with the finding of Ld. CIT(A) and also note that AO failed to show from the purported material which he relies upon in the assessment order (*like investigation report of the Investigation Wing of Department, Financials, statements of stock-brokers/entry operator submission of assessee etc*) that assessee was participant/recipient in the organized racket of generating bogus entries of LTCG and involved herself in the '*modus operandi*' as discussed by him at para 6 of the assessment order. According to Ld. AR, unless the AO is able to point out from the investigation report/statement of stock brokers/entry operators and spell out the role of assessee/broker as a wrong-doer or participant in the racket (*as stated in the report of investigation wing*) the impugned action of AO, in the light of the un-impeached primary documents has to fail.

9. We find that AO during the assessment proceedings has asked the assessee to prove the claim of LTCG of Rs.5,67,41,214/- (according to assessee LTCG claimed is Rs.5,72,25,721/-) from sale of shares of M/s. Greencrest (earlier known as M/s. Marigold). And pursuant to such a direction, the assessee had filed the primary documents as discussed at para 4 to 6 (*supra*) to prove the purchase of shares of M/s.Marigold (now known as M/s. Greencrest Financial Services Ltd) and the same is not repeated for sake of brevity. Thus, we find that assessee had filed primary documents found placed at page 30 to 54 of the PB, which shows that assessee had



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applied/allotted the shares of M/s. Marigold (later known as M/s. Greencrest Financial Services Ltd on 11.02.2013 and sold the shares of M/s. Greencrest (*between Aug, 2014 to Dec, 2014.*) through Bombay Stock Exchange through broker M/s. Harjivandas Nemidas Securities Pvt. Ltd. and STT paid on the sale transaction. Thus, sale of shares cannot be held as bogus. The share certificate of M/s. Marigold (*renamed as M/s. Greencrest*) allotted to assessee proves the allotment of shares; and demat statement of holding of shares with M/s. IL & FS Securities Services Ltd proves that shares of M/s. Marigold was held by the assessee from allotment to sale of the same. Thus, when shares were allotted; and later sold through BSE (after remitting STT); and consideration having passed through proper banking channel (both allotment/sales), the LTCG claim of assessee on sale of shares of M/s. Marigold/M/s. Greencrest cannot be disallowed, unless there is any contrary material brought on record to show that it was a bogus claim. Merely on the basis of general investigation report (*report of investigation wing of Department/Kolkata*) wherein there is no whisper of any wrongdoing by assessee or her broker or assessee's involvement in *modus-operandi* as stated therein the investigation report of Kolkata or SEBI report, no adverse view is legally sustainable. We find that Kolkata Investigation Report discussed by AO at para 6 onwards nowhere alleges any wrongdoing of assessee or her brokers; and we have gone through the copy of the SEBI order dated 29th June 2022, wherein the SEBI conducted enquiry into the company M/s. Greencrest Financial Services Ltd & its director Shri



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Sunil Parekh and Shri Aditya Parakh and some allottees (total against 18 persons/entities refer page no. 45 of PB) wherein SEBI was concerned about two patches (Patch-1 from May 10th, 2013 to June 04, 2014 and Patch-II from June 05th, 2014 to Dec 04th, 2014). After investigation, the SEBI didn't impose any penalty against the company M/s. Greencrest, and its two directors and another allottee Shri Ravindra Kumar Grover; and SEBI imposed penalty for 14 persons/entities (refer Page no. 90 of PB). Thus, we find that there was no allegation/penalty imposed on assessee or her broker or even against the company M/s. Greencrest. Therefore, no adverse view can be drawn against the assessee on her claim of LTCG on sale of shares of M/s. Greencrest. Thus, we find that the general report/statements relied upon by AO in no way can be said to incriminate assessee being part of *modus-operandi* to do any illegal acts. As noted, the AO has been influenced by the investigation report submitted by the Investigation Wing of Department functioning at Kolkata. It is true that some unscrupulous entry operators had devised methods/modus-operandi to beneficiaries to facilitate laundering their black money to white through pre-planned receipt in the form of bogus LTCG, loan etc. But from perusal of the discussion of AO, we find it to be general in nature and there is nothing in the discussion to link/connect the assessee somehow with the *modus-operandi* of the Investigation Wing or Report. Since there is neither any evidence/material to incriminate the assessee in the investigation report nor any material to suggest assessee/broker being part of the nefarious conspiracy or abetment,



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such a report of investigation wing cannot be of any aid to the revenue and thus AO erred in placing reliance on such report to draw adverse inference against assessee; and Ld CIT(A) rightly appreciated the facts and judicial precedents and allowed the claim and deleted the addition made by AO.

10. The Ld. AR has brought to our notice that similar case came up before this Tribunal (*LTCG claim on sale of shares of M/s. Marigold*) wherein Tribunal in the case of Shri Yogesh P. Thakkar (ITA. No.1612/Mum/2021 dated 03.02.2023) held in favour of assessee (and drew our attention to page 27 & 28, para 11) and directed the AO to allow the LTCG/exemption claim of the assessee and deleted the addition by holding as under: -

“11. We have heard the rival submissions and perused the materials available on record. The findings given by us hereinabove for the AY. 2014-15 in the case of the assessee shall apply mutatis mutandis to AY. 2015-16 also, save that during the AY. 2015-16, there was no interim order passed by SEBI on both the scrips; that there was only final order passed by SEBI dated 05.06.2020 wherein the name of the assessee or his registered share broker was not reflected as defaulters or persons involved in artificial price rigging of shares. Hence, the observations and findings recorded by us for AY. 2015-16 also. Accordingly, the Ground Nos. 1 & 2 raised by the assessee are allowed.”

11. Now coming to the other judgments cited before us, it is clarified that we have carefully perused the plethora of judgments



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relied upon by both the parties and but only those judgments which are found to be relevant to the case in-hand, have been discussed in the ensuing paragraphs.

12. It is noted that the Ld. AR had rightly relied upon the judgment of the Hon'ble jurisdictional Bombay High Court in the case of **Shyam R. Pawar (229 Taxman 256)**. In the decided case also, the assessee was purchasing and selling the shares through a broker in Mumbai, for purchase of shares of (i) M/s. Bolton Properties Ltd., (ii) M/s Prime Capital and (iii) M/s. Mantra; and he has transacted through the broker at Calcutta and two operators namely Mr. Sushil Purohit and Shri Jagdish Purohit, and one of them was the Director of M/s. Bolton Properties Ltd. who had purportedly admitted to have manipulated the share price of M/s. Bolton Properties Ltd. Mr. Jagdish also reportedly floated several investment companies which were aggressively used in the entire deal with the broker M/s. Prakash Nahata & Co. According to AO, the shares offloaded by the beneficiaries through M/s. Prakash Nahata & Co., were ultimately purchased by the investment companies controlled by Shri Purohit. The name of the assessee figured during the course of the investigation. The AO noted that these entities/companies, whose shares were traded by the assessee, were not having sufficient business activities justifying the increase in their shares prices. Therefore, the AO concluded that certain operators and brokers devised a scheme to accommodate the unaccounted monies of the assessee in guise of capital gains. The AO accordingly added the capital gains derived by the assessee under Section 68 of the Act. On



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appeal, the Hon'ble jurisdictional High Court upheld the Tribunal order deleting the addition, by observing as under:

“..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



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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.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.”

13. We may also gainfully refer to the decision rendered by this Tribunal in the case of **DCIT Vs Mukesh R Marolia (6 SOT 247)** wherein on similar facts and circumstances the addition made by the



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AO on account of purported bogus LTCG derived on sale of listed shares was deleted by observing as under:

“10. We heard both sides in detail and perused rival contentions in the light of the records of the case and the paper book filed by the assessee. In the return of income filed by the assessee for the year under appeal, the purchase of flat at Colaba for a consideration of Rs. 2,06,72,904 was reflected. The assessee’s contribution in the purchase of the flat was @ 70 per cent for which the investment amounted to Rs. 1,44,71,033. The source of investment was, among other things, the sale proceeds of shares of Rs. 1,41,08,484. This amount has been questioned by the revenue authorities.

10.1 The assessee has purchased the shares of four companies viz., Allan Industrial Gases Ltd., Mobile Telecom, Rashee Agrotech and Centil Agrotech, during the previous years relevant to the assessment years 1999-2000 and 2000-01. The books of account maintained by the assessee for both the years clearly reflected the purchase of those shares. The shares are reflected in the balance sheets filed by the assessee along with the returns of income for the assessment years 1999-2000 and 2000-01. Therefore, it is seen that as a prima facie evidence, the purchases of shares have been contemporaneously entered into the books of account of the assessee.

10.2 The assessee has been declaring agricultural income in his returns of income for the assessment years from 1990-91 to 2001-02. The total agricultural income returned by the assessee up to the assessment year 1999-2000 was at Rs. 7,57,883. The amount invested in the purchase of shares as on 31-3-1999 was Rs. 4,48,160. The cash available with the assessee by way of



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agricultural income was much higher than the investment made by the assessee in the purchase of shares as on 31-3-1999. After making the investments in the shares, the assessee had a surplus cash balance of Rs. 3,09,000 as on 1-4-1999. Thereafter, the assessee has further returned an agricultural income of Rs. 66,000 for the assessment year 2000-01. The amount invested in the purchase of shares in the year ending on 31-3-2000 was Rs. 2,57,020. Again the assessee had a cash balance thereof of Rs. 1,18,771. Therefore, it is, very clear that the investment made by the assessee in shares during the previous periods relevant to the assessment years 1999-2000 and 2000-01 was supported by cash generated out of agricultural income. The above agricultural income have been considered in the respective assessments. Therefore, the contention of the assessing authority that the assessee had no sufficient resourcefulness to make investments in the shares is unfounded.

10.3 Purchase and sale of shares outside the floor of Stock Exchange is not an unlawful activity. Off-market transactions are not illegal. It is always possible for the parties to enter into transactions even without the help of brokers. Therefore, it is not possible to hold that the transactions reported by the assessee were quite sham on the legal proposition arrived at by the CIT(A) that off-market transactions are not permissible. The assessee has stated that the transactions were made with the help of professional mediators who are experts in off-market transactions.

10.4 When the transactions were off-market transactions, there is no relevance in seeking details of share transactions from Stock Exchanges. Such attempts would be futile. Stock Exchanges cannot give details of transactions entered into



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between the parties outside their floor. Therefore, the reliance placed by the assessing authority on the communications received from the Stock Exchanges that the particulars of share transactions entered into by the assessee were not available in their records, is out of place. There is no evidential value for such reliance placed by the assessing authority. The assessee had made it very clear that the transactions were not concluded on the floor of the Stock Exchange. The matter being so, there is no probative value for the negative replies solicited by the assessing authority from the respective Stock Exchanges. We are of the considered view that the materials collected by the assessing authority from the Stock Exchanges are not valid to dispel or disbelieve the contentions of the assessee.

10.5 The next set of evidences relied on by the assessing authority are the statements obtained from various parties. When certain persons like Radha Ashok and Sandeep D. Shah made negative statements against the assessee, persons like Satish Mandovara and Mangesh Chokshi had given positive statements in support of the contention of the assessee. But, the assessing authority sought to pick and choose the statements given by various parties. While accepting and rejecting such statements given by the parties, the Assessing Officer has made a mistake of accepting irrelevant statements and rejecting relevant statements. During the relevant period in which the assessee transacted in shares, persons like Radha Ashok and Sandeep D. Shah were not carrying on their business of brokers as in the manner they carried on the business in the past. Even their Stock Exchange Memberships were cancelled. It was Shri Satish Mandovara who was carrying on the business mainly for and on behalf of Shri Mangesh Chokshi, Director of M/s. Richmond



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Securities Pvt. Ltd. Those two persons have categorically admitted before the assessing authority that they had dealings with the assessee in respect of the share transactions. They have confirmed the transactions stated by the assessee that he had with them. These positive statements made before the assessing authority supported the case of the assessee. There is no force in the action of the assessing authority in relying on the negative statements of the other parties whose role during the relevant period was either irrelevant or insignificant. Therefore, in the facts and circumstances of the case, it is, our considered view that certain statements relied on by the assessing authority do not dilute the probative value of the statements given by other persons in favour of the assessee confirming the share transactions entered into by the assessee.

10.6 The above circumstances have made out a clear case in support of the book entries reflecting the purchase and sale of shares and ultimately supporting the money received on sale of shares and finally investing the same in the purchase of flat. The chain of transactions entered into by the assessee have been properly accounted, documented and supported by evidences.

10.7 Therefore, we find that the explanations of the assessee seems to have been rejected by the assessing authority more on the ground of presumption than on factual ground. The presumption is so compelling that comparatively a small amount of investment made by the assessee during the previous year period relevant to the assessment years 1999- 2000 and 2000-01 have grown into a very sizable amount ultimately yielding a fabulous sum of Rs. 1,41,08,484 which was used by the assessee for the purchase of the flat at Colaba. The sequence of the events and ultimate realization of money is quite amazing. That itself is



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a provocation for the Assessing Officer to jump into a conclusion that the transactions were bogus. But, whatever it may be, an assessment has to be completed on the basis of records and materials available before the assessing authority. Personal knowledge and excitement on events, should not lead the Assessing Officer to a state of affairs where salient evidences are over-looked. In the present case, howsoever unbelievable it might be, every transaction of the assessee has been accounted, documented and supported. Even the evidences collected from the concerned parties have been ultimately turned in favour of the assessee. Therefore, it is, very difficult to brush aside the contentions of the assessee that he had purchased shares and he had sold shares and ultimately he had purchased a flat utilizing the sale proceeds of those shares.

10.8 For a moment, even if all the above evidences are ignored, one cannot overlook the pressure of the evidence coming out of the survey carried out by the department in the business premises of the assessee. There was a survey carried out by the department in the business premises of the assessee. In the course of survey, contract notes for sale of shares, copies of bills thereof, photocopies of share certificates etc., were found. The purchase and sale of shares were also found recorded in the books of account. The department has no case that the survey was a staged enactment. A survey is always unexpected. So, it is not possible to presume that the assessee had collected certain fabricated documents and kept at his business premises so as to hoodwink the survey party to lead them to believe that the assessee had entered into share transactions. Atleast such an inference is not possible in law. The department has no defence



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against the forcible argument of the learned counsel that the survey conducted by the department has out and out upheld the contention of the assessee that he had purchased and sold shares. We find that this solitary evidence collected in the course of survey is sufficient to endorse the bona fides of the share transactions made by the assessee.”

14. On further appeal, it is noted that the Hon’ble Bombay High Court in their order in ITA No. 456 of 2007 dated 07-09-2011 has affirmed the order of this Tribunal.

15. The Ld. AR of the appellant has rightly relied on another judgment of the Hon’ble Bombay High Court in the case of **CIT Vs Jamna Devi Agarwal (328 ITR 656)**. In the decided case, also the Revenue had disputed the genuineness of the long-term capital gains derived by the assessee on sale of shares of listed companies for similar reasons as cited in the present case. On appeal, the Hon’ble High Court upheld the decision of this Tribunal deleting the additions by observing as under:

“12. From the documents produced before us, which were also in the possession of the Assessing Officer, it is seen that the shares in question were in fact purchased by the assessees on the respective dates and the company has confirmed to have handed over the shares purchased by the assessees. Similarly, the sale of the shares to the respective buyers is also established by producing documentary evidence. It is true that some of the transactions were off-market transactions. However, the purchase and sale price of the shares declared by the assessees



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were in conformity with the market rates prevailing on the respective dates as is seen from the documents furnished by the assessee. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions.

13. The statement of Pradeep Kumar Daga that the transactions with the Haldiram group were bogus has been demonstrated to be wrong by producing documentary evidence to the effect that the shares sold by the assessee were in consonance with the market price. On a perusal of those documentary evidence, the Tribunal has arrived at a finding of fact that the transactions were genuine. Nothing is brought to our notice that the findings recorded by the Tribunal are contrary to the documentary evidence on record.

14. The Tribunal has further recorded a finding of fact that the cash credits in the bank accounts of some of the buyers of shares cannot be linked to the assessee. Moreover, in the light of the documentary evidence adduced to show that the shares purchased and sold by the assessee were in conformity with the market price, the Tribunal recorded a finding of fact that the cash credits in the buyers' bank accounts cannot be attributed to the assessee. No fault can be found with the above finding recorded by the Tribunal.

15. Reliance placed by the counsel for the Revenue on the decision of the apex court in the case of Sumati Dayal [1995] 214 ITR 801 is wholly misplaced. In that case, the assessee therein had claimed income from horse races and the finding of fact recorded was that the assessee therein had not participated in races, but purchased winning tickets after the race with the unaccounted money. In the present case, the documentary



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evidence clearly shows that the transactions were at the rate prevailing in the stock market and there was no question of introducing unaccounted money by the assessee. Thus, the decision relied upon by the counsel for the Revenue is wholly distinguishable on the facts.

16. For all the aforesaid reasons, we hold that the decision of the Tribunal is based on findings of fact. No substantial question of law arises from the order of the Tribunal. Accordingly, all these appeals are dismissed. No order as to costs.”

16. The Ld .AR also brought to our notice therecent judgment rendered by the Hon’ ble jurisdictional Bombay High Court inthe case of **PCIT v .Ziauddin A Siddique (ITA No .2012 of 2017) dated 04.03.2022** which is found to be relevant in the facts involved in the present case .In the decided case ,the issue before the Hon’ble High Court was whether this Tribunal was right in law in deleting the addition made u/ s68 of the ACT in relation to LTCG derived on sale of shares, ignoring the fact that the shares were purchased from off-market sources and that the sharp rise in prices were not supported by financials. Answering the question raised by the Revenue in the negative, the Hon’ble High Court held that there was a finding of fact that the purchase& sale of shares occured on the platform of stock ,exchangupon payment of STT and were supported by documentary evidences and therefore there was no perversity in the order of this Tribunal .The Court further noted that there was no allegation against the assessee that he had participated in price rigging in the market and



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therefore dismissed the appeal of the Revenue. The relevant findings of the Hon'ble High Court which is binding upon us, are as follows:-

“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.¹ 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.”



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17. It is noted that similar questions were also put up for consideration before the Hon'ble Rajasthan High Court in the case of **Pr.CIT Vs Gaurav Bagaria (453 ITR 513)** which read as follows:-

"(I) Whether on the facts and in the circumstances of the case, the Learned ITAT was justified in deleting the addition of Rs. 7593444/- made on account of unexplained credit u/s 68 of the Act when the assessee was unable to justify equity trading by picking the shares of specific companies with poor net worth?

(II) Whether on the facts and in the circumstances of the case, the Learned ITAT, Jaipur was justified in deleting the addition of Rs. 7593444/- by holding the transaction as genuine because transaction is through Stock Exchange and payment is by cheque, completely ignoring the fact that such masquerade is used methodically to provide accommodation entries in order to show the sham transaction as genuine?

(III) Whether on the facts and in the circumstances of the case, the Learned ITAT, Jaipur was justified in deleting the addition of Rs. 151869/- being commission paid to acquire such accommodation entry?

(IV) Whether on the facts and in the circumstances of the case, the Learned ITAT, Jaipur was justified in rejecting the Revenue's appeal without considering the case on merit where the additions were made by the AO on the basis of corroborative information received from Investigation Wing, Kolkata given that the case fails under exception as per para 10(e) of CBDT circular no. 03/2018 dated 20-08-2018.

18. The Hon'ble High Court is noted to have answered the above questions against the Revenue by following their earlier judgment rendered in the case of **CIT v. Smt. Pooja Agarwal, [2018] 99 taxmann.com 451**, by observing as under :-



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“..Learned ITAT has specifically held that the assessee has produced all the relevant documentary evidence to establish genuineness of the transaction and there is no contrary evidence to doubt the correctness of the evidences produced by the assessee and therefore treating the transaction of purchase and sale as sham is not justified. Further, learned ITAT has also relied upon the decision of the jurisdictional High Court in CIT v. Smt. Pooja Agarwal, [2018] 99 taxmann.com 451 (Raj.) wherein learned ITAT has relied upon the judgment of Division Bench involving the same facts wherein the Division Bench has dismissed the appeal filed by the Revenue.”

19. As far as the reliance the reliance placed by the Ld. CIT, DR on the decision of **SEBI Vs Rakhi Trading Pvt Ltd (supra)** is concerned, it is noted that the said decision was rendered in the context of synchronized trading conducted by the said assessee in the F&O Segment of the Stock Exchange and therefore the facts involved therein are clearly distinguishable from the facts of the present case.

20. Coming to the decision of Hon’ble Delhi High Court in the case of **Suman Poddar vs ITO (112 taxmann.com 330)** cited by the lower authorities, it is noted that the Hon’ble Delhi High Court in their later judgment in the case of **Pr. CIT v. Smt. Krishna Devi (431 ITR 361)** had considered the various proposition laid down in case of Suman Poddar (supra) and noted that the decision in that case 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. The Hon’ble Delhi High Court in **Krishna Devi (supra)** taking note of the



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entire conspectus of case and the evidence brought on record before the Tribunal, unlike the case of **Suman Poddar (supra)**, the assessee had successfully discharged the initial onus cast upon it to substantiate the transaction conducted in shares. It was further noted that there was evidence whatsoever to allege that money changed hands between the assessee and the broker or any other person, or further that some person provided accommodation entry to assessee, as alleged. The Hon'ble Court had further held that the theory of human behaviour and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the assessee. The relevant findings of the Hon'ble High Court are as follows :-

"12...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 on its own specific facts .The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue".



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21. We thus note that the later judgment of Hon'ble Delhi High Court in the case of **Krishna Devi (supra)** is relevant to the facts of the present case, whereas the decision of **Suman Poddar (supra)** cited by the Revenue, is found to be factually distinguishable in light of the facts involved in the present case, as discussed above.

22. In the case of **Sanjay Bimalchand Jain Vs PCIT (supra)** cited by the Revenue, the assessee had made payments in cash for acquisition of shares and therefore genuineness of purchase was held to be in doubt. It was also found that the address of the listed shares purchased and the address of the stock broker was the same which was found to be peculiar and there was no response to the notices issued by the AO. We find that there are no such facts present in the appellant's case and therefore this judgment relied upon by the Revenue is also found to be factually distinguishable.

23. We have also perused the decisions of the coordinate Benches of the Tribunal cited by the Revenue but found that the facts involved therein to be factually distinguishable as well. For instance, in the case of **ITO v .Shamim M .Bharwani (supra)**, the addition was confirmed since the source of purchase of shares remained unproved. In the decided case, the assessee had claimed to have purchased the shares in cash but was unable to provide the necessary trail. The Tribunal also noted the assessee to be an inactive investor having meagre investment portfolio and therefore doubted the genuineness of the purchase of such unknown shares in cash. In the present case



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however, both the lower authorities have not doubted the contemporaneous evidences furnished by the appellant in support of purchase of shares, which took place through proper banking channel. Also, as noted earlier, the appellant was an active investor having portfolio holding in excess of Rs.900 lacs and thus cannot be said to have purchased the shares of TTL out of the blue. Hence, this decision cited by the Revenue is found to be distinguishable.

24. Likewise, in the case of **Satish Kishore v ITO (supra)** also, the act of purchase of shares in question were doubted, as the assessee could not substantiate the same with relevant documentary evidences, which is not the case before us . Further, unlike the appellant, in the decided case, the assessee was unable to corroborate the increase in the prices of the shares with the financials of the company . Similarly , the decision rendered in the case of **Sanat Kumar Vs ACIT (supra)** , is also found to be on completely different footing wherein the assessee was not able to produce the relevant details to justify its claim. Hence, both these decisions are found to be distinguishable.

25. Apart from the above, the Revenue has also relied upon several judgments rendered in the context of the genuineness of share subscription monies raised by closely held companies, which were held to be in the nature of unexplained cash credit u/s 68 of the Act by the judicial forums. Having perused those judgments, it is noted that, the question as to whether the assessee had satisfied the three ingredients set out in Section 68 of the Act is essentially a fact finding



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exercise. We note that the facts involved in each of them was qua share application monies whose facts & features were distinguishable to the issue involved in present case i.e. genuineness of capital gains derived on sale of shares. Since these judgments were noted to be not relevant to the present case, we do not deem it fit to discuss each of them separately.

26. We, instead, gainfully refer to the decisions cited by the Ld. AR, rendered by the coordinate Benches of this Tribunal wherein also, on similar facts and circumstances, following the above referred judgments of the jurisdictional High Court, this Tribunal deleted the addition/s made by the AO u/s 68 of the Act in relation to the long-term capital gains derived on these listed shares of TTL. The Ld. AR had brought to our notice that, the coordinate Bench at Delhi in the case of **Seema Tayal Vs. ITO (ITA. No.1132/Del/2018) dated 28.06.2019** was pleased to delete similar addition on account of alleged bogus LTCG made by the AO in relation to sale of shares of TTL by the assessee by holding as under: -

“17. That on going through the aforesaid judgment, we find that no question of law was formulated by Hon’ble High Court of Delhi in the said case and there is only dismissal of appeal in limine and the Hon’ble High Court found that the issue involved is a question of fact. Thus, the judgment of the Hon’ble High Court has to be seen if similar facts are permeating in the present appeal also and if there is difference on facts, then the judgment cannot be applied. In the judgment of Hon’ble Apex Court in Kunhayammed vs State of Kerala reported in 245 ITR



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360 and also in CIT vs. Rashtradoot (HUF) reported in 412 ITR 17, the Hon'ble Apex Court have held that if the High Court has not admitted the question of law, and has dismissed the appeal, then it is a case of dismissal in limine. Even on merits and facts, the judgment of Udit Kalra vs ITO (supra) is distinguishable as in that case the company was into consistent losses, whereas, the scrip in which assessee has dealt is a growing and high turnover company and dividend paying company. As TTL was having turnovers of Rs. 117.39 crores (AY 2014-15); Rs.150.59 crores (AY 2015-16); Rs 154.88 crores (AY 2016-17); and Rs. 146. 23 crores (AY 2017-18). The financial statements of said company are available in public domain, which have also been placed at Pages 325 to 370 of PB– II by assessee. That further, the interim order of SEBI in the case of TTL banning trading has been uplifted and cooled down by subsequent order of SEBI vide order dated 31.10.2018 placed before us at Pages 305 to 324 of PB– II by assessee. Thus, the growth in prices of TTL was backed by sound financials and as such, the case of Udit Kalra vs ITO relied by ld. DR is clearly distinguishable on facts and is not applicable to the facts of assessee. Thus, we hold that the case of assessee is factually and materially distinguishable from the facts of the case of Udit Kalra vs ITO so relied by ld. DR.

18.

19. On the above facts and circumstances, we find that the transaction of the assessee of deriving long term capital gains of Rs. 1, 93, 56, 813/- by selling shares of M/s Trinity Tradelink Ltd. was treated as bogus by the Revenue only on the basis of suspicion and probability and without finding any defect in the various documentary evidences filed by the assessee and further, the finding recorded by ld CIT (A) on page 26 of his order that



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the addition has been made on independent analysis of the documents, is contrary to material available on record. As on perusal of the order of assessment, we find that no independent inquiry was made with regards to alleged entry operator Sh. Vikrant Kayan. Whereas, the sole basis of making the impugned addition was statement of Sh. Vikrant Kayan, which too was recorded behind the back of assessee by DIT (Inv) Kolkata and the statement alone cannot be the conclusive evidence to nail the assessee and hence needs to be excluded for consideration as the said person has not been allowed cross examination by assessee, even though various requests were made by assessee. As such, the transaction of the assessee was duly supported by relevant documentary evidences without there being any rebuttal by lower authorities; the addition made by the Assessing Officer of Rs. 1,93,56,813/- by treating the LTCG as bogus is unsustainable. In view of our above finding, we, therefore, delete the addition of Rs.1,93, 56,813/-.

20. As we find the transaction of long term capital gains of Rs.1,93,56,813/- derived by the assessee as genuine and as such, further addition of Rs. 3,87,136/- made by the Assessing Officer on account of alleged commission is consequential and is also liable to be deleted and accordingly, the same is also hereby deleted.”

27. We also gainfully refer to the decision of the coordinate Benches at Jaipur and Delhi in the cases of **DCIT Vs. Shri Ghanshyam Agarwal (ITA. No.532/JP/2019)** and **Jyoti Gupta Vs. ITO (ITA No. 3510/Del/2018)** respectively, wherein also similar addition on account of LTCG derived on sale of shares of TTL by



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relying on statements of Mr. Kayan / purported exit providers, was deleted by this Tribunal. The relevant findings rendered by this Tribunal in both cases are taken note of as under:-

(A) DCIT Vs. Shri Ghanshyam Agarwal (supra)

“6. We have considered the rival submissions as well as the relevant material on record. The assessee purchased 20,000 shares of M/s. Trinity Tradelink Ltd. @ Rs. 10/- each for a total consideration of Rs. 2,00,000/-. The assessee has produced the share certificate of the shares whereby the shares were initially issued in the name of M/s. Amarkantak Procon Pvt. Ltd. and were transferred in the name of the assessee vide endorsement dated 31st October, 2012. As per the sale bill dated 07.10.2012 the payment of purchase consideration has been acknowledged by the seller. Even otherwise, the said payment was reflected in the bank account of the assessee through clearance of cheque no. 788048 on 31st October, 2012. This payment of Rs. 2,00,000/- paid to M/s. Amarkantak Procon Pvt. Ltd. is duly reflected in the bank account of the assessee and, therefore, the said evidence which can be independently verified cannot be disputed in the absence of any material brought on record to show that the payment was not in respect of purchase of shares but for some other transaction. The assessee has produced the sale bill, certificate of transfer of shares in the name of the assessee. These documents along with the bank statement of the assessee clearly established the fact that the assessee has made the payment of purchase consideration through banking channel on 31st October, 2012. Once the payment of consideration is not in dispute and shares were transferred in the name of the assessee as reflected in the



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Demat Account of the assessee, then the assessee has established the purchase of the shares and holding in the Demat Account since 31st October, 2012. The assessee is having Demat Account with IDBI Bank and on perusal of the Demat Account it revealed that the assessee has been a regular trader/investor in the shares of various companies including various public sector undertakings. Thus it is not an isolated transaction but it is one of the hundreds of transactions in the Demat Account of the assessee. Out of these 20,000 shares, the assessee has sold 15,500 shares after one year whereas the balance 4500 shares were sold prior to one year and offered short term capital gain to tax which has not been disputed by the AO. Thus out of a lot of 20,000 shares of M/s. Trinity Tradelink Ltd., the shares sold by the assessee prior to one year were not disputed by the AO as the short term capital gain was offered to tax by the assessee. The AO has disputed the transaction of purchase and sale only to the extent of the shares which were sold after one year and thereby the assessee claimed long term capital gain as exempt under section 10(38) of the IT Act. We further note that the AO has given the details of the prevailing price of shares of M/s. Trinity Tradelink Ltd. at Stock Exchange in the years 2012, 2013 and 2014. However, it is pertinent to note that the assessee purchased the shares of M/s. Trinity Tradelink Ltd. which was not listed in the Stock Exchange in the year 2012 but only after amalgamation of the said company with M/s. Omnitech Petroleum Ltd. (formerly known as Sharp Trading & Finance Ltd.) as per the approval of amalgamation by the Hon'ble Bombay High Court vide decision dated 10th January, 2014, the amalgamated company shares got listed by virtue of amalgamation. At the time of amalgamation, M/s. Trinity Tradelink Ltd. amalgamated in M/s. Omnitech Petroleum



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Ltd. but subsequently the said company also changed its name to M/s. Trinity Tradelink Ltd., which has resulted this confusion of prevailing share price in the Stock Exchange in the years 2012 to 2014. Thus, we find that the said comparison of the AO of the prevailing price in the year 2012 with the price of the shares of amalgamated company in the year 2014 is misconceived. The AO has not conducted any independent enquiry or investigation to verify the genuineness of the transaction but has referred the investigation conducted by the department and a report received by the AO. It is pertinent to note that the said report as referred by the AO and reproduced in the assessment order is nothing but a narration of modus operandi of the various entry operators involved in providing the bogus accommodation entries of long term capital gain, etc. The statement as referred by the AO of Shri Vikrant Kayan recorded under section 133A on 09.06.2014 is subsequent to the sale of shares by the assessee and, therefore the said statement does not refer to the transaction of shares of M/s. Trinity Tradelink Ltd. prior to its amalgamation and listing. The said statement at the most can relate to the transaction after the amalgamation of the unlisted company with M/s. Omnitech Petroleum Ltd. and subsequently changing the same to M/s. Trinity Tradelink Ltd. as a listed company. Therefore, the transaction of alleged accommodation entry stated by Shri Vikrant Kayan prima facie relates to the company after the amalgamation and change of name which is a listed company whereas the assessee has purchased the shares of an unlisted company, namely M/s. Trinity Tradelink Ltd. Further, the question no. 8 was very specific and in answer to the said question, Shri Vikrant Kayan has stated as reproduced by the AO at page 8 of the assessment order as under :-



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" Q.8. Please tell the name of the parties to whom you have provided bogus billing ?

Ans. Sir, I have provided accommodation entry in the form of bogus billing to many companies, some of them are Binani Cement Ltd., Binani Zinc Ltd., Merit Plaza Pvt. Ltd., Vansudhara Infra Developers Pvt. Ltd., Swis Mercantile Pvt. Ltd., Consumer Marketing India Pvt. Ltd., PAESS Industrial Engineers Ltd., Darashaw & Co. Pvt. Ltd. and Voltas Ltd."

Thus in response to the question to tell the names of the parties to whom he provided bogus billing, he replied the names of various parties and, therefore, there is no allegation against the assessee or the assessee's partnership firm by Shri Vikrant Kayan. The AO based on the report of investigation and the statement has treated the transaction as bogus whereas the assessee produced all the relevant direct evidences to establish the purchase of shares by paying the purchase consideration through banking channel. The evidence produced by the assessee is independently verifiable as the bank account wherein the payment is reflected cannot be manipulated by the assessee. Further, the shares were dematerialized and holding of the shares in the Demat Account is also independently verifiable and cannot be disputed in the absence of any contrary material to show that the Demat Account produced by the assessee itself is bogus. We further note that this is not a case of purchase of penny stock of a company and within a short period there is an unprecedented hike in the sale price of the shares, but in case the assessee purchased the shares of unlisted company which was subsequently amalgamated with a listed company and, therefore, the value of the amalgamated



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entity is certainly very higher than the value of share of unlisted company though there can be a question about the sweep ratio of the shares. However, the same has not been doubted by any authority and the scheme of amalgamation was duly approved by the Hon'ble High Court. Thus there is an extraordinary event in this case of amalgamation of unlisted company with a listed company and consequently there is a sudden increase in the price of the shares of amalgamated entity...”

(B) Jyoti Gupta Vs. ITO (supra)

“11. I have carefully perused the orders of the authorities below and relevant documentary evidences brought on record. Allotment of Equity Shares of M/s Trinity Tradelink Ltd is at page 7 of the paper book. Payment has been made through ING Vysya bank and the bank statement is at page 8 of the paper book. Share certificate and demat statement are at pages 9 to 11 of the paper book. The sale transactions are documented at pages 14 and 15 of the paper book. Payment has been received through banking channel, which is evident from the bank statement at page 13 of the paper book.

12. These direct clinching evidences cannot be ignored. The transactions have been done by BSE through proper banking channels evidenced by supporting documentary evidences. Moreover, securities transactions tax has also been paid.

13. Merely on the strength of statement of third party i.e. Shri Vikrant Kayan cannot justify the impugned additions. More so, when specific request was made by the assessee for allowing cross examination was denied by the Assessing Officer. The first



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appellate authority also did not consider it fit to allow cross-examination. This is in gross violation of the principles of natural justice and against the ratio laid down by the Hon'ble Supreme Court in the case of Andaman Timber Vs. CIT Civil Appeal No. 4228 OF 2006...

14. Considering the facts of the case in totality, I do not find any merit in the impugned additions. The findings of the CIT(A) are accordingly set aside. The Assessing Officer is directed to allow the claim of exemption u/s 10(38) of the Act.”

28. We also rely on the decision of the Hon'ble Allahabad High Court in the case of **Pr.CIT Vs Renu Agarwal (153 taxmann.com 578)** .In the decided case also the AO had disallowed exemption claimed by assessee under section 10(38) and made additions to income of assessee on ground that assessee was involved in purchase & sale of shares which were being misused for providing bogus accommodation of LTCG. On appeal, the Hon'ble High Court noted that the lower appellate authorities had extensively examined the facts of the case and taken note of the material fact that there was no adverse comment in form of any specific statement by Principal Officer of stock exchange or by company whose shares were involved in these transactions against the assessee and that the AO had only cited statements of unrelated persons on basis of unfounded presumptions. On these given facts, the Hon'ble High Court upheld the order of lower authorities deleting the addition made in relation to LTCG derived on sale of shares. The relevant findings of the Hon'ble High Court are as follows :-



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“After detailed discussion, the ITAT has recorded the following findings of fact :

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

6. The concurrent findings of fact has been recorded by the first appellate authority and the ITAT. Thus, no substantial question of law is involved in the present appeal. The matter is concluded by findings of fact.”



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29. For the various reasons discussed in the foregoing and following the judgments cited above, more particularly of the binding jurisdictional High Court in the cases of Shyam Pawar (supra), Ziauddin A Siddique (supra), Mukesh R Marolia (supra) & Jamna Devi Agarwal (supra), we uphold the impugned action of Ld. CIT(A) in deleting the addition of Rs.5,96,25,721/- and also the addition of Rs.35,77,543/- on account of commission. And we direct the AO to verify and allow the correct LTCG/exemption claimed by assessee u/s 10(38) of the Act on sale of shares of M/s Marigold/Greencast as noted by us at para 4.

30. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on this 22/03/2024.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/03/2024.
Vijay Pal Singh, (Sr. PS)



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai