

IN THE INCOME TAX APPELLATE TRIBUNAL, "B" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS PADMAVATHY S, ACCOUNTANT MEMBER

I.T.A. No.4419/MUM/2023
(A.Y.2014-15)

NawalBasudeoAgarwal, 1601, Kanchan Ganga, Manish Nagar, J.P.Road, Andheri (W), Mumbai-400053.	Vs.	ITO, Ward-24(3)(1), Room.no.415, 4 th Floor, Piramal chambers, Lalbaug, Parel, Mumbai-400012.
PAN/GIR No. AABPA1746L		
(अपीलार्थी/Applicant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Vimal Punmiya.AR
Revenue by	Shri.Ashish Kumar.Sr.DR

सुनवाई की तारीख/Date of Hearing	01.05.2024
घोषणा की तारीख/Date of Pronouncement	10.05.2024

ORDER

PER PAVAN KUMAR GADALE JM:

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

"1. On the facts and circumstances of case and law the Ld CIT(A) erred in confirming the assessment order under section 143(3) of income tax Act which is passed against the principal of natural justice.

2.The LD CIT(A) erred in confirming Rs.49,51,255/- as unexplained cash credit under section 68 of the Income Tax Act 1961 and thereby erred in confirming the addition to the total income of the assessee as against shown by the assessee as Long term Capital Gains.

3.The Ld. CIT(A) erred in confirming the charging of interest under section 234A, 234B and 234C of the Income Tax Act 1961.

4.The Ld. CIT(A) erred in confirming the initiation of the penalty proceeding under section 271(1)(c) of the Income Tax Act 1961.

5. The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”

2. The brief facts of the case are that, the assessee is engaged in the business. The assessee has filed the return of income for the A.Y 2014-15 on 30.07.2014 disclosing a total income of Rs. 2,17,570/-. Subsequently the case was selected for scrutiny under CASS and notice u/sec 143(2) and U/sec 142(1) of the Act along with questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details. On perusal of the financial statements, the Assessing Officer(AO) found that the assessee has disclosed the income from salary of Rs. 2,97,500, loss from business of Rs. 22,39,289/-, short term capital gains on on sale of land of Rs.3,05,084/- and income from other sources of Rs. 4,822/-. Further the assessee has claimed exemption U/sec10(38) of the Act being long term capital

gains on sale of shares of Rs. 48,63,755/- and the A.O. has called for the information. The AO on perusal of the details, found that the assessee has earned long term capital gains on sale of shares of M/s Global Infratech Ltd (formerly known as M/s Asianlak Capital & Finance Ltd.) and the assessee was asked to produce the details of purchase of shares, mode of payment and relevant supporting evidences in support of purchase and sale of shares. Whereas the assessee has purchased 20,000 shares of M/s Asianlak Capital & Finance Ltd at Rs.10/- per share from KKJ Stock & Company for Rs. 2 lakhs through cheque as per purchase invoice bill dated 13.09.2011. Subsequently equity shares of M/s Asianlak Capital & Finance Ltd were split in the ratio of (1:10) i.e 20,000 equity shares of Rs.10/- paid up are split into 2 lakh shares of Rs.1/-paid up each on 14.12.2012 and the name of the company was changed from M/s Asianlak Capital & Finance Ltd to M/s Global Infratech & Finance Ltd. Further the assessee has dematerialized the shares on 20.06.2013 and during the F.Y 2013-14, the assessee has sold 87,500 shares on 25.02.2014 & 03.03.2014 for a consideration of Rs. 49,51,255/- and claimed exemption of Long term capital gains u/s 10(38) of the Act.

3. The AO has dealt on the purchase confirmations, sale contract notes, bank statements and demat statements in respect of shares purchase & sale and relied on the various factual aspects of share trends, modus operandi and report of the Investigation Wing ITDA data, BSE data and report

of the kolkata Investigation Wing, statements recorded and has doubted the earning of long term capital gains on shares. Whereas the AO find that there is no correlation of price rise on stock market and the financial statements of the investee company. Finally the AO was not satisfied with the explanations and material information and observed that the transactions are not genuine and made addition of sale proceeds u/sec 68 of the Act of Rs. 49,51,255/- and assessed the total income of Rs. 51,68,830/- and passed the order u/s 143(3) of the Act dated 30.12.2016.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the AO in respect of addition of sale proceeds of shares u/sec 68 of the Act and has confirmed the action of the AO and dismissed the assessee's grounds of appeal on these disputed issues and the CIT(A) has granted partial relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed appeal with the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the addition of the AO u/sec 68 of the Act overlooking the facts and submissions that the purchases and sale of shares are supported by evidences and are genuine and the assessee has substantiated with various details with the authorities.

Further there is no scope for the AO to make the additions based on the surmises and conjectures as the assessee has filed the voluminous documentary evidence in support of the claim. The Ld. AR explained the reasons for purchase of the shares by cheque in F.Y 2011-12 and credited to the demat account on 20-06-2023 after split of the shares and name change of the company. The Ld.AR mentioned that no independent enquiry was conducted by the AO and substantiated the submissions with the fact sheet, paper book, and judicial decisions and prayed for allowing the assessee appeal. Per Contra, the Ld.DR submitted that the share transactions are doubted and are not genuine and relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue is that the CIT(A) has sustained the addition u/sec 68 in respect of sale of shares overlooking the material information and evidences filed in the course of the assessment proceedings and appellate proceedings. The Ld. AR submitted that the assessee has furnished the information with evidences of purchase price, financial statements and summary of shares sold in F.Y 2013-14, ledger account copy, copies of bank account statement, copy of the contract notes and sale of the shares, demat account statement and copy of physical share certificate. The Ld. AR contentions are that the assessee has purchased 20,000 shares of M/s Asianlak Capital & Finance Ltd at Rs.10/- per share from KKJ Stock &

company for Rs. 2 lakhs through cheque dated 10.09.2011 as per purchase/invoice bill dated 13-09-2011. Subsequently equity shares of M/s Asianlak Capital & Finance Ltd were split in the ratio of (1:10) i.e 20,000 equity shares of Rs.10/- paid up are split into 2 lakh shares of Rs.1/- paid up each on 14.12.2012 and the name of the company was changed from M/s Asianlak Capital & Finance Ltd to M/s Global Infratech & Finance Ltd. Further the assessee has dematerialized the shares on 20.06.2013 and during the F.Y 2013-14, the assessee has sold 87,500 shares on 25.02.2014 & 03.03.2014 for a consideration of Rs. 49,51,255/- and claimed exemption of Long term capital gains u/s 10(38) of the Act. The assessee has sold the shares in the financial year 2013-14 through a SEBI registered, BSE & NSE broker M/s J.M. Financial services Limited. The Ld. AR demonstrated in support of shares, sale cum bills contract notes, securitisation tax (STT) at page 17&18 of the paper book. Similarly the Demat account statement reflecting the sale transactions of shares during 1-01-2014 to 31-03-2014 placed at page 20 of the paper book, the Ld. AR also referred to the share purchase bills at page 12 of the paper book in F.Y 2011-12 to justify the genuineness of the purchases, sales and the long term capital gains as the assessee has sold the shares through recognized stock exchange where the STT has been paid in respect of listed shares and held for more 12 months and Ld.AR demonstrated the sales cum contract notes, computation of

long term capital gains at page 9 of the paper book, invoice and copy of the bank statement reflecting the payment for purchase of shares at page 11 to 14 and also the bank statement at page 23 reflecting the receipt of sale value/consideration.

7. Further the Ld. AR relied on the submissions dated 30-09-2021 filed before CIT(A) on the share transactions and also the case laws on the same scrip sale. The Ld. AR submitted that the assessee is actively trading in shares and also referred to the details with respect to dematerialization of other shares. The Ld. AR submitted that the shares were purchased earlier through the broker and the shares were got listed on BSE and assessee has sold the shares subject to securitization charges/STT. The Ld. AR has referred to the Demat statement reflecting the debit on account of sale of shares. The assessee has held the shares for more than one year from the date of purchase and the statement of third parties in the investigation was relied and no independent inquiry was conducted. The Ld. AR emphasized that the assessee is only investor and was not involved in any price rigging of shares. The Ld. AR relied on the following judicial decisions in support of submissions:

1. The High Court Of Delhi, Principal Commissioner Of Income-Tax V/S Rajat Finvest, ITA NOS. 13 TO 15 OF 2023† January 12, 2023

ITA. No. 4419/MUM/2023 (A.Y.: 2014-15)

Nawal Basudeo Agarwal, Mumbai

2 In The Income Tax Appellate Tribunal Mumbai "A" Bench, Mumbai, Lalitaben Pravin Shah V/S CIT(A) New Delhi, I.T.A. No. 2008/Mum/2023 (A.Y. 2014- 15)

3 In The Income Tax Appellate Tribunal, 'C' Bench Mumbai, Shri Pannalal Hastimal Gulecha v/s The ITO, Ward23(2)(7), Mumbai, ITA No.2228/Mum/2023 (Assessment Year : 2012-13),

Smt. Pawanben Pannalal Gulecha v/s The ITO, Ward- 18(2)(5), Mumbai, ITA No.2844/Mum/2023 (AY :2010-11)

4 In The Income Tax Appellate Tribunal Mumbai Bench "Smc", Mumbai, Aadesh Commodities Pvt Ltd V/S National Faceless Assessment Centre, Delhi, ITA No.4035/Mum/2023 (AY 2015-16)

5 The Income Tax Appellate Tribunal "D" Bench, Ahmedabad Deputy Commissioner of Income Tax Vs. Shri Rajnikant Prabhudas Mandavia,

ITA No. 401 & 402/Ahd/2019

AY:- 2014-2015 & 2015-16

6 In The Income Tax Appellate Tribunal "SMC" Kolkata Bench, Kolkata Mangilal Jain v.s. Income Tax Officer Ward- 3(3), Nr. Lal Kothi ITA No. 729/Kol/2018, AY-2014-15

7. In The Income Tax Appellate Tribunal "A" Bench, Mumbai

Anita Sanjay Agarwal Versus ITA No. 2399/Mum/2023 Income Tax Officer Ward 24(1)(2), ITA No. 2399/Mum/2023, AY-2014-15

8. In the Supreme Court Of India, Principal commissioner Of Income Tax Vs Kuntala Mohapatra. SLP (Civil) Dairy Nos. 5269 of 2024 AY-2014-15

9. In The Income Tax Appellate Tribunal "C" Bench, Mumbai Chirag Tejprakash Dangi Versus Income Tax Officer Ward 26(1)(5), ITA No. 3256/Mum/2022 AY-2014-15

10. PCIT-31 Mumbai Vs Indravadan Jain Huf ITA NO. 454 OF 2018 dated 12-07-2023.

11. PCIT VS Renu Aggarwal(2023)(456 ITR 249)(SC)

12. *Shri Abhishek Doshi Vs Acit -19(1) ITA.NO 3122/M/2022.*

13.. *Vipul M Shah Vs. The ITO 17(3)(5) Mumbai. ITA No. 1030 /Mum/2023*

14. *Sanjay Basudeo Agarwal Vs ITO ward 25(1) Mumbai ITA.No.2398/Mum/2023. A.Y.2014-15.*

8. Further the facts and circumstances of the present case is similar and identical and pertains to the A.Y 2014-15 dealt by the Coordinate Bench of the Tribunal in ITA No. 194/Kol/2018 in the case of Kaushalya Agarwal Vs ITO and granted relief observing at page 5 Para 6 to 8 of the order as under:

“6. Having heard both the parties and carefully perusing the documents on record, we note that the assessee had purchased 40,000 shares of M/s. ACFL on 13.09.2011 from M/s KKJ Staocks & Co (the Contract Note is available at page 13 of assessee’s paper book wherein quantity of 40,000 shares of M/s. ACFL had been purchased by assessee for an amount of Rs. 4,00,000/- dated 13.09.2011 is found). We note that the payment was made by account payee bank transaction on 13.09.2011 which is evident from page 14 of the paper book which is the bank statement of the assessee maintained at Vijaya Bank. We note that M/s. ACFL changed its name to M/s. GIFL on 28.02.2012 which is evident from Certificate of Incorporation issued by Ministry of Corporate Affairs, which is available at page 15 of the paper book. The shares have been purchased from M/s. KKJ Stocks & Co. which is evident from perusal of the copy of the purchase bill. The copy of the share transfer deed and the transfer advice, share transfer forms along with share certificate is found placed at pages 10-11 of paper book and the transfer letter from the company duly transferring the shares in the name of the assessee has been filed. Further, we note that the shares have been sub-divided into 4,00,000 equity shares certificates of which has also been filed and is available at page 12 in the paper book. The assessee has purchased the shares from the off market and was in the physical form and later on it was dematerialised. The shares were credited into the assessee’s demat account on 20.06.2013. Later on the shares were listed

in the BSE and the assessee had sold the shares through M/s. J.M. Financial Services, Mumbai. Copy of Contract Note of sale is placed at pages 16 to 17 of the paper book. Copy of demat statement is available at pages 20 to 24 of the paper book from which statement we note that it reflects debit entry for the shares from the account. Ledger copy of the broker M/s. J. M. Financial Services also has been filed at page 18 of the paper book. The sale considerations have happened through the banking channel (Vijaya Bank) and are placed at page 19 of the paper book. We note that the AO has reproduced certain portions of the general report of Investigation Wing of the Income Tax Department. Nowhere from the general report of Investigation Wing is it seen that the assessee has indulged in any nefarious activities or her broker has carried out any stage managed/pre determined sale of 6 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15 the shares as contended by the AO. SEBI's report also does not in any way point out any wrong action against the assessee's broker or the scrips. We note that there is no specific evidence which have been collected by the AO in coming to a conclusion that the sale consideration from the sale of shares of M/s. GIFL is bogus. We note that the Tribunal had an occasion to examine the claim of an assessee on the same scrip namely, M/s. GIFL and has allowed the claim of the assessee, which we find at page 44 of the order passed in ITA No. 2260/Kol/2018 Aditya Saraf (HUF) Vs. ITO & Ors. dated 15.03.2019. We also note that the Tribunal in ITA No. 711/Kol/2018 Kanwarlal Agarwal (HUF) Vs. ITO for AY 2014-15 by order dated 01.02.2019 has taken into consideration the Ld. AR's submission and reliance placed by him on the decision of ITAT, Chennai Bench in the case of M/s. Pankaj Agarwal & Sons (HUF) Vs. ITO & Ors. in ITA No. 1413/CHNY/2018 & Ors. dated 06.12.2008 as well as the Hon'ble Bombay High Court decision in Sanjay Bimalchand Jain Vs. Pr. CIT 89 taxman.com 196, wherein the Tribunal vide para 6 and 7 has observed as under:

"6. Regarding the case laws relied upon by the Id. Departmental Representative, I find that, in the case of M/s. Pankaj Agarwal & Sons (HUF)(supra), the issue was decided against the assessee for the reason that, the assessee could not justify his claim as genuine by producing evidence and was only arguing for the matter to be set aside to the lower authorities on the ground of natural justice. As similar

arguments were not raised before the lower authorities by the assessee, the ITAT rejected these arguments. In the case on hand, all evidences were produced by the assessee. In the case of Sanjay Bimolchand Jain, legal heir of Santi Devi Bimalchand Jain, the Hon'ble High Court upheld the stand of the Revenue that the transaction in question is an adventure in nature of trade and the profit of the transactions is assessable under the head of 'Business Income'. In the case on hand, the Ld. Assessing Officer has not assessed this amount as 'Business Income'. In any event, I am bound to follow the judgment of the Jurisdictional High Court in this matter. I find that the assessee has filed all necessary evidences in support of the transactions. Some of these evidences are (a) evidence of purchase of shares, (b) evidence of payment for purchase of shares made, by way of account payee cheque, copy of bank statements, (c) copy of balance sheet disclosing investments, (d) copy of demat statement reflecting purchase, (e) copy of merger order passed by the High Court, (f) copy of allotment of shares on merger, (g) evidence of sale of shares through the stock exchange, (h) copy of demat statement showing the sale of shares, (i) copy of bank statement reflecting sale receipts, (j) copy of brokers ledger, (k) copy of Contract Notes etc. 7. The proposition of law laid down in these case laws by the Jurisdictional High Court as well as by the ITAT, Kolkata on these issues are in favour of the assessee. These are squarely applicable to the facts of the case. The Ld. Departmental Representative, though not leaving his ground, could not controvert the claim of the Ld. Counsel for the assessee that the issue in 7 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15 question is covered by the above cited decisions of the Hon'ble Jurisdictional Calcutta High court and the ITAT. I am bound to follow the same.”

7. Therefore, in the light of the aforesaid facts and circumstances, we do not find any material to hold that the assessee's claim of LTCG is bogus. For doing so, we rely on the decision in the case of ITA Nos. 1197, 1054 & 1198/Kol/2018 in Mr. Sanjiv Shroff Vs. ACIT & Ors for AY 2014-15 dated 02.01.2019 (though the scrip in that case was M/s. KAFL wherein on similar reasons the AO held the claim of LTCG as bogus) wherein it has been held as under:

“20. We note that the sale of shares of M/s. KAFL which was dematerialized in Demat account has taken place through recognised stock exchange and assessee received money through banking channel. So, assessee has explained the nature and source of the money with supporting documents and thus has discharged the onus casted upon him by producing the relevant documents mentioned in para 15 (supra), accordingly, the question of treating the said gain as unexplained cash credit under section 68 of the Act cannot arise unless the AO is able to find fault/infirmity with the same. We note that the source of the receipt of the amount has been explained and the transaction in respect of which the said amount has been received by assessee has not been cancelled by the stock exchange/SEBI. So, it is difficult to countenance the action of AO/Ld. CIT(A) in the aforesaid facts and circumstances explained above.

21. Even assuming that the brokers may have done some manipulation then also the assessee cannot be held liable for the illegal action of the brokers when the entire transactions have been carried out through banking channels duly recorded in the Demat accounts with a Government depository and traded on the stock exchange unless specific evidence emerges that the assessee was in hand in gloves with the broker for committing the unscrupulous activity to launder his own money in the guise of LTCG is brought on record by the AO.

22. There is also nothing on record which could suggest that the assessee gave his own cash and got cheque from the alleged brokers/buyers. The assessment is based upon some third parties statements recorded behind the back of the assessee and the assessee has not been allowed to cross examine those persons, so the statements even if adverse against the assessee cannot be relied upon by the AO to draw adverse inference against the assessee in the light of the documents to substantiate the claim of LTCG, which has not been found fault with by the AO.

23. Let us look at certain judicial decisions on similar facts:-

24. The case of the assessee's is similar to the decision of Hon'ble Bombay High Court, Nagpur Bench in CIT vs. Smt. Jamnadevi Agrawal & Ors. dated 23rd September, 2010 reported in (2010) 328 ITR 656 wherein it was held that:

"The fact that the assesseees in the group have purchased and sold shares of similar companies through the same broker cannot be a ground to hold that the transactions are sham 8 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15 and bogus, especially when documentary ITA Nos. 93 to 99/RPR/2014 & C.O. Nos. 12 to 18/RPR/2014 . A.Y. 2004-05 10 produced to establish the genuineness of the claim. From the documents produced, it is seen that the shares in question were in fact purchased by the assesseees on the respective dates and the company has confirmed to have handed over the shares purchased by the assesseees. Similarly, the sale of the shares to the respective buyers is also established by producing documentary evidence. It is true that some of the transactions were off-market transactions. However, the purchase and sale price of the shares declared by the assesseees were in conformity with the market rates prevailing on the respective dates as is seen from the documents furnished by the assesseees. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions. The statement of the broker P that the transactions with the H Group were bogus has been demonstrated to be wrong by producing documentary evidence to the effect that the shares sold by the assesseees were in consonance with the market price. On perusal of those documentary evidence, the Tribunal has arrived at a finding of fact that the transactions were genuine. Nothing is brought on record to show that the findings recorded by the Tribunal are contrary to the documentary evidence on record. The Tribunal has further recorded a finding of fact that the cash credits in the, bank accounts of some of the buyers of shares cannot be linked to the assesseees. Moreover, yn the light of the documentary evidence adduced to show that the shares purchased and sold by the assesseees were in conformity with the market price, the Tribunal recorded a finding of fact that the cash credits in the buyers' bank accounts cannot be attributed to the assesseees. No fault can be found with the above finding recorded by the Tribunal. Therefore, the decision of the Tribunal is based on finding of facts. No substantial question of law arises from the order of the Tribunal.—Asstt. CIT vs. Kamal Kumar S. Agrawal (Indl.) & Ors. (2010) 41 DTR (Nag) (Trib) 105: (2010) 133 TTJ (Nag) 818 affirmed; Sumati Dayal vs. CIT (1995) 125 CTR (SC) 124: (1995) 80 Taxman 89 (SC) distinguished." 12. The

Hon'ble High Court of Rajasthan in CIT vs. Smt. Pushpa Malpani - reported in (2011) 242 CTR (Raj.) 559; (2011) 49 DTR 312 dismissed the appeal of department observing 'Whether or not there was sale of shares and receipt of consideration thereof on appreciated value is essentially a question of fact. CIT(A) and Tribunal have both given reasons in support of their findings and have found that at the time of transactions, the broker in question was not banned by SEBI and that assessee had produced copies of purchase bills, contract number share certificate, application for transfer of share certificate to demat account along with copies of holding statement in demat account, balance sheet as on 31st March, 2003, sale bill, bank account, demat account and official report and quotations, of Calcutta Stock Exchange Association Ltd. on 23rd July, 2003. Therefore, 'the prese/itdppael does not raise any question of law, much less any substantial question of law.'

25. *The Hon'ble High Court of Punjab and Haryana in the case of Anupam Kapoor 299 ITR 0179 has held as under:-*

"The Tribunal on the basis of the material on record, held that purchase contract note, contract note for sates, distinctive numbers of shares purchased and sold, copy of share certificates and the quotation of shares on the date of purchase and sale were sufficient material to show that the transaction was not bogus but a genuine transaction. The purchase of shares was made on 28th April, 1993 i.e.. asst. yr. 1993-94 and that assessment was accepted by the Department and there was no challenge to the purchase of shares in that year. It was also placed before the relevant AO as well as before the Tribunal that the sale proceeds 9 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15 have been accounted for in the accounts of the assessee and were received through account payee cheque. The Tribunal was right in rejecting the appeal of the Revenue by holding that the assessee was simply a shareholder of the company. He had made investment in a company in which he was neither a director nor was he in control of the company. The assessee had taken shares from the market, the shares were listed and the transaction took place through a registered broker of the stock exchange. There was no material before the AO, which could have lead to a conclusion that the transaction was

simplicitier a device to camouflage activities, to defraud the Revenue. No such presumption could be drawn by the AO merely on surmises and conjectures. In the absence of any cogent material in this regard, having been placed on record, the AO could not have reopened the assessment. The assessee had made an investment in a company, evidence whereof was with the AO. --Therefore, the AO could not have added income, which was rightly deleted by the CIT(A) as well as the Tribunal. It is settled law that suspicion, howsoever strong cannot take the place of legal proof. Consequently, no question of law, much less a substantial question of law, arises for adjudication.— C. Vasantlal & Co. vs. CIT (1962) 45 ITR 206 (SC), M.O. Thomakutty vs. CIT (.1958) 34 ITR 501 (Ker)) and Mukand Singh vs. Sales Tax Tribunal (1998) 107 STC 300 (Punjab) relied on; Umacharan Shaw & Bros. vs. CIT (1959) 37 ITR 271 (SC) Applied; Jaspal Singh vs. CIT (2006) 205 CTR (P & H) 624 distinguished”

26. The Co-ordinate Bench of Ahmedabad in ITA Nos. 501 & 502/Ahd/2016 had the occasion to consider a similar issue which was wherein the assessment was framed on the strength of the statement of a broker. The relevant part reads as under:-

“14. The entire assessment is based upon the statement of Shri Mukesh Choksi. It is an undisputed fact that neither a copy of the statement was supplied to the assessee nor any opportunity of cross-examination was given by the Assessing Officer/CIT(A). The Hon’ble Supreme Court in the case of Andaman Timber Industries in Civil Appeal No. 4228 of 2006 was seized with the following action of the Tribunal:-

“6. The plea of no cross examination granted to the various dealers would not help the appellant case since the examination of the dealers would not bring out any material which would not be in the possession of the appellant themselves to explain as to why their ex factory prices remain static. Since we are not upholding and applying the ex factory prices, as we find them contravened and not normal price as envisaged under section 4(1), we find no reason to disturb the Commissioners orders.”

15. The Hon’ble Apex Court held as under:-

“According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he 10 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15 has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal

on merits giving its reasons for accepting or rejecting the submissions.

In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause.

We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal.”

16. On the strength of the aforementioned decision of the Hon’ble Supreme Court, the assessment order has to be quashed.

17. Even on facts of the case, the orders of the authorities below cannot be accepted. There is no denying that consideration was paid when the shares were purchased. The shares were thereafter sent to the company for the transfer of name. The company transferred the shares in the name of the assessee. There is nothing on record which could suggest that the shares were never transferred in the name of the assessee. There is also nothing on record to suggest that the shares were never with the assessee. On the contrary, the shares were thereafter transferred to demat account. The demat account was in the name of the assessee, from where the shares were sold. In our understanding of the facts, if the shares were of some fictitious company which was not listed in the Bombay Stock Exchange/National Stock Exchange, the shares could never have been transferred to demat account. Shri Mukesh Choksi may have been providing accommodation entries to various persons but so far as the facts of the case in hand suggest that the transactions were genuine and therefore, no adverse inference should be drawn. 11 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15

18. In the light of the decisions of the Hon’ble Supreme Court in the case of Andaman Timber Industries (supra) and considering the facts in totality, the claim of the assessee cannot be denied on the basis of presumption and surmises in respect of penny stock by disregarding the direct evidences on record relating to the sale/purchase transactions in shares supported by broker’s contract notes, confirmation of receipt of

sale proceeds through regular banking channels and the demat account.

19. Accordingly, we direct the A.O. to treat the gains arising out of the sale of shares under the head capital gains- "Short Term" or "Long Term" as the case may be. The other grievance of the assessee becomes infructuous."

27. The assessee has furnished all evidences in support of the claim of the assessee that it earned LTCG on transactions of his investment in shares. The purchase of shares had been accepted by the AO in the year of its acquisition and thereafter until the same were sold. The off market transaction for purchase of shares is not illegal as was held by the decision of Co-ordinate Bench of this Tribunal in the case of Dolarrai Hemani vs. ITO in ITA No. 19/Kol/2014 dated 2.12.2016 and the decision by Hon'ble Calcutta High court in PCIT Vs. BLB Cables & Conductors Pvt. Ltd. in ITAT No. 78 of 2017 dated 19.06.2018 wherein all the transactions took place off market and the loss on commodity exchange was allowed in favour of assessee. The transactions were all through account payee cheques and reflected in the books of accounts. The purchase of shares and the sale of shares were also reflected in Demat account statements. The sale of shares suffered STT, brokerage etc. In the facts and circumstances of the case, it cannot be held that the transactions were bogus. The following judgments of Hon'ble Jurisdictional High Court:-

(i) The Hon'ble Calcutta High Court in the case of Principal Commissioner Of Income vs M/S. Blb Cables And Conductors; ITAT No.78 of 2017, GA No.747 of 2017; dt. 19 June, 2018, had upheld the order of the Tribunal by observing as follows:-

"4. We have heard both the side and perused the materials available on record. The ld. AR submitted two papers books. First book is running in pages no. 1 to 88 and 2nd paper book is running in pages 1 to 34. Before us the ld. AR submitted that the order of the AO is silent about the date from which the broker was expelled.

There is no law that the off market transactions should be informed to stock exchange. All the transactions are duly recorded in the accounts of both the parties and supported with the account payee cheques. The ld. AR has also

submitted the IT return, ledger copy, letter to AO and PAN of the broker in support of his claim which is placed at pages 72 to 75 of the paper book. The ld. AR produced the purchase & sale contracts notes which are placed on pages 28 to 69 of the paper book. The purchase and sales registers were also submitted in the form of the paper book which is placed at pages 76 to 87. The Board resolution passed by the company for the transactions in commodity was placed at page 88 of the paper book. On the other hand the ld. DR relied in the order of the lower authorities.

4.1 From the aforesaid discussion we find that the assessee has incurred losses from the off market commodity transactions and the AO held such loss as bogus and inadmissible in the eyes of the law. The same loss was also confirmed by the ld. CIT(A). However we find that all the transactions through the broker were duly recorded in the books of the assessee. The broker has also declared in its books of accounts and offered for taxation. In our view to 12 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15 hold a transaction as bogus, there has to be some concrete evidence where the transactions cannot be proved with the supportive evidence.”

ii) *M/s Classic Growers Ltd. vs. CIT [ITA No. 129 of 2012] (Cal HC)* – In this case the ld AO found that the formal evidences produced by the assessee to support huge losses claimed in the transactions of purchase and sale of shares were stage managed. The Hon’ble High Court held that the opinion of the AO that the assessee generated a sizeable amount of loss out of prearranged transactions so as to reduce the quantum of income liable for tax might have been the view expressed by the ld AO but he miserably failed to substantiate that. The High Court held that the transactions were at the prevailing price and therefore the suspicion of the AO was misplaced and not substantiated.

iii) *CIT V. Lakshmanagarh Estate & Trading Co. Limited [2013] 40 taxmann.com 439 (Cal)* – In this case the Hon’ble Calcutta High Court held that on the basis of a suspicion howsoever strong it is not possible to record any finding of fact. As a matter of fact suspicion can never take the place of proof. It was further held that in absence of any evidence on record, it

is difficult if not impossible, to hold that the transactions of buying or selling of shares were colourable transactions or were resorted to with ulterior motive.

iv) CIT V. Shreyashi Ganguli [ITA No. 196 of 2012] (Cal HC) – In this case the Hon’ble Calcutta High Court held that the Assessing Officer doubted the transactions since the selling broker was subjected to SEBI’s action. However the transactions were as per norms and suffered STT, brokerage, service tax, and cess. There is no iota of evidence over the transactions as it were reflected in demat account. The appeal filed by the revenue was dismissed.

v) CIT V. Rungta Properties Private Limited [ITA No. 105 of 2016] (Cal HC) – In this case the Hon’ble Calcutta High Court affirmed the decision of this tribunal , wherein, the tribunal allowed the appeal of the assessee where the AO did not accept the explanation of the assessee in respect of his transactions in alleged penny stocks. The Tribunal found that the AO disallowed the loss on trading of penny stock on the basis of some information received by him. However, it was also found that the AO did not doubt the genuineness of the documents submitted by the assessee. The Tribunal held that the AO’s conclusions are merely based on the information received by him. The appeal filed by the revenue was dismissed.

vi) CIT V. Andaman Timbers Industries Limited [ITA No. 721 of 2008] (Cal HC) – In this case the Hon’ble Calcutta High Court affirmed the decision of this Tribunal wherein the loss suffered by the Assessee was allowed since the AO failed to bring on record any evidence to suggest that the sale of shares by the Assessee were not genuine.

vii) CIT V. Bhagwati Prasad Agarwal [2009- TMI-34738 (Cal HC) in ITA No. 22 of 2009 dated 29.4.2009] – In this case the Assessee claimed exemption of income from Long Term Capital Gains. However, the AO, based on the information received by him from Calcutta Stock Exchange found that the transactions were not recorded thereat. He therefore held that the transactions were bogus. The Hon’ble Jurisdictional High Court, affirmed the decision of the Tribunal wherein it was found that the chain of transactions entered into by the assessee have been proved, accounted for, documented and

supported by evidence. It was also found that the assessee produced the contract notes, details of demat accounts and produced documents showing all payments were received by the assessee through banks. On these facts, the appeal of the revenue was summarily dismissed by High Court. 13 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15

28. We note that since the purchase and sale transactions are supported and evidenced by Bills, Contract Notes, Demat statements and bank statements etc., and when the transactions of purchase of shares were accepted by the ld AO in earlier years, the same could not be treated as bogus simply on the basis of some reports of the Investigation Wing and/or the orders of SEBI and/or the statements of third parties. In support of the aforesaid submissions, the ld AR, in addition to the aforesaid judgements, has referred to and relied on the following cases:-

(i) Baijnath Agarwal vs. ACIT – [2010] 40 SOT 475 (Agra (TM))

(ii) ITO vs. Bibi Rani Bansal – [2011] 44 SOT 500 (Agra) (TM)

(iii) ITO vs. Ashok Kumar Bansal – ITA No. 289/Agra/2009 (Agra ITAT)

(iv) ACIT vs. Amita Agarwal & Others – ITA Nos. 247/(Kol)/ of 2011 (Kol ITAT)

(v) Rita Devi & Others vs. DCIT – IT(SS))A Nos. 22-26/Kol/2p11 (Kol ITAT)

(vi) Surya Prakash Toshniwal vs. ITO – ITA No. 1213/Kol/2016 (Kol ITAT)

(vii) Sunita Jain vs. ITO – ITA No. 201 & 502/Ahd/2016 (Ahmedabad ITAT)

(viii) Ms. Farrah Marker vs. ITO – ITA No. 3801/Mum/2011 (Mumbai ITAT)

(ix) Anil Nandkishore Goyal vs. ACIT – ITA Nos. 1256/PN/2012 (Pune ITAT)

(x) CIT vs. Sudeep Goenka – [2013] 29 taxmann.com 402 (Allahabad HC)

(xi) *CIT vs. Udit Narain Agarwal* – [2013] 29 taxmann.com 76 (Allahabad HC)

(xii) *CIT vs. Jamnadevi Agarwal* [2012] 20 taxmann.com 529 (Bombay HC)

(xiii) *CIT vs. Himani M. Vakil* – [2014] 41 taxmann.com 425 (Gujarat HC)

(xiv) *CIT vs. Maheshchandra G. Vakil* – [2013] 40 taxmann.com 326 (Gujarat HC)

(xv) *CIT vs. Sumitra Devi* [2014] 49 Taxmann.com 37 (Rajasthan HC)

(xvi) *Ganeshmull Bijay Singh Baid HUF vs. DCIT* – ITA Nos. 544/Kol/2013 (Kolkata ITAT)

(xvii) *Meena Devi Gupta & Others vs. ACIT* – ITA Nos. 4512 & 4513/Ahd/2007 (Ahmedabad ITAT)

(xviii) *Manish Kumar Baid* ITA 1236/Kol/2017 (Kolkata ITAT)

(xix) *Mahendra Kumar Baid* ITA 1237/Kol/2017 (Kolkata ITAT)
14 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15

29. The ld AR also brought to our notice that once the assessee has furnished all evidences in support of the genuineness of the transactions, the onus to disprove the same is on revenue. He referred to the judgement of Hon'ble Supreme Court in the case of *Krishnanand Agnihotri vs. The State of Madhya Pradesh* [1977] 1 SCC 816 (SC). In this case the Hon'ble Apex Court held that the burden of showing that a particular transaction is benami and the appellant owner is not the real owner always rests on the person asserting it to be so and the burden has to be strictly discharged by adducing evidence of a definite character which would directly prove the fact of benami or establish circumstances unerringly and reasonably raising inference of that fact. The Hon'ble Apex Court further held that it is not enough to show circumstances which might create suspicion because the court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence. The ld AR submitted that similar view has been taken in the following judgments while deciding the issue

relating to exemption claimed by the assessee on LTCG on alleged Penny Socks

(i) ITO vs. Ashok Kumar Bansal – ITA No. 289/Agr/2009 (Agra ITAT)

(ii) ACIT vs. J. C. Agarwal HUF – ITYA No. 32/Agr/2007 (Agra ITAT)

30. Moreover it was submitted before us by ld AR that the AO was not justified in taking an adverse view against the assessee on the ground of abnormal price rise of the shares and alleging price rigging. It was submitted that there is no allegation in orders of SEBI and/or the enquiry report of the Investigation Wing to the effect that the assessee, the Companies dealt in and/or his broker was a party to the price rigging or manipulation of price in CSE. The ld AR referred to the following judgments in support of this contention wherein under similar facts of the case it was held that the AO was not justified in refusing to allow the benefit under section 10(38) of the Act and to assess the sale proceeds of shares as undisclosed income of the assessee under section 68 of the Act :-

(i) ITO vs. Ashok Kumar Bansal – ITA No. 289/Agr/2009 (Agra ITAT)

(ii) ACIT vs. Amita Agarwal & Others - ITA Nos. 247/(Kol)/ of 2011 (Kol ITAT)

iii) Lalit Mohan Jalan (HUF) vs. ACIT – ITA No. 693/Kol/2009 (Kol ITAT)

(iv) Mukesh R. Marolia vs. Addl. CIT – [2006] 6 SOT 247 (Mum) 31. We note that the ld. D.R. had heavily relied upon the decision of the Hon'ble Bombay High Court in the case of Bimalchand Jain in Tax Appeal No. 18 of 2017. We note that in the case relied upon by the ld. D.R, we find that the facts are different from the facts of the case in hand. Firstly, in that case, the purchases were made by the assessee in cash for acquisition of shares of companies and the purchase of shares of the companies was done through the broker and the address of the broker was incidentally the address of the company. The profit earned by the assessee was shown as

capital gains which was not accepted by the A.O. and the gains were treated as business profit of the assessee by treating the sales of the shares within the ambit of adventure in nature of trade. Thus, it can be seen that in the decision relied upon by the ld. DR, the dispute was whether the profit earned on sale of shares was capital gains or business profit. 15 ITA No 194/Kol/2018 Kaushalya Agarwal AY-2014-15

32. It is clear from the above that the facts of the case of the assessee are identical with the facts in the cases wherein the co-ordinate bench of the Tribunal has deleted the addition and allowed the claim of LTCG on sale of shares of M/s KAFL. We, therefore, respectfully following the same, and set aside the order of Ld. CIT(A) and direct the AO not to treat the long term capital as bogus and delete the consequential addition.”

So, respectfully following the decisions of Hon’ble Supreme Court, orders of Hon’ble jurisdictional High Court and the decisions of the coordinate bench of the Tribunal and especially taking into consideration the facts narrated in para 6 above, we hold that the lower authorities erred in holding the assessee’s claim on LTCG from the sale of shares of M/s. GIFL as bogus. Therefore, we are inclined to allow the assessee’s LTCG claim and, therefore, the appeal of assessee is allowed.

8. In the result, appeal of assessee is allowed.

9. The Coordinate Bench of this Honble Tribunal in the case of Sangeeta Newal Agarwal Vs. ITO in ITA No. 1806/Mum/2022 (A.Y.2014-15) dated 28-11-2022 has dealt on the same scrip and granted relief observing at Page 4 Para 6 to 11 as under:

“6. We heard rival contentions and perused the record. There is no dispute with regard to the fact that the assessee had purchased the shares of M/s Global Infratech and Finance Ltd (formerly known as M/s Asianlak Capital & finance Ltd) in the year 2011 in physical format by paying money through banking channels. Subsequently, he has dematerialised the shares and it has entered the demat account of the assessee.

Subsequently, the assessee has sold the shares during the year under consideration after holding it for two years. They were sold through stock exchange using the services of a reputed broker named J M Financial Services Ltd. The Sale proceeds have also been received through banking channels. There is no dispute that the assessee has explained the transactions of purchase and sale of shares through proper evidences. The transactions carried out in demat account and bank account of the assessee would prove that the assessee has actually purchased and sold the shares.

7. We notice that the AO has disbelieved the transactions of purchase and sale of shares only for the reason that the shares of M/s Global Infratech and Finance Ltd is identified as one of the penny stocks by the investigation wing of Income tax department. Accordingly, the AO has taken the view that the assessee herein has availed accommodation entry for generating bogus long term capital gains. We notice that the AO has not found fault with any of the evidences furnished by the assessee. The AO has also not bring any material on record to disprove those evidences. The AO has also not shown that the assessee was part of the ring which alleged to have rigged the prices of penny stocks. Thus, we notice that the AO has simply placed his reliance on the report given by the investigation wing of the department in order to disbelieve the claim of long term capital gain earned by the assessee. Hence, there is merit in the submission of Ld A.R that the assessee has invested in the shares of M/s Global infratech and Finance Ltd as an ordinary investor on the basis of some market information.

8. We notice that an identical case of allegation that the assessee has availed accommodation entries by way of capital gains in order to convert unaccounted money into accounted one, was examined by the Hon'ble jurisdictional Bombay High Court in the case of Shyam Power (2015)(54 taxmann.com 108)(Bom). The decision rendered by Hon'ble Bombay High Court in the above said case is extracted below:-

“3. Mr.Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the

Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Sureshkumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr.Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

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.

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.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.”

In the instant case also, we noticed that the AO has simply relied upon the report of the investigation department and held that the long term capital gains declared by the assessee are not genuine. We noticed that the shares were purchased on 13.09.2011 through stock-trade KJ Stocks & Company

having office in Chennai. The name of this broker does not find mention in paragraph 9.11 of the assessment order wherein in the name of stock brokers, who have admitted to providing accommodation entry of bogus long term capital gains have been mentioned. It is also not the case of the Revenue that the Appellant was a part of syndicate of people that acted as accommodation entry providers. On perusal of the extract of the statement of the Appellant recorded during the assessment proceedings (as reproduced in paragraph 13 of the assessment order) shows that the Appellant had stated that her brother-in-law was taking care upon trading/investment in shares and that her brother-in-law was in turn, advice for investment consultant. It is pertinent to note that the Assessing Officer has not shown that brother-in-law or investment consultant were part of syndicate. On perusal of paragraph 19.9 of the assessment order, it can be seen that the Assessing Officer relied upon the price fluctuations between 18.11.2011 to 08.03.2013 to conclude that there was ragging of prices during the aforesaid period, whereas in the present case, the sales was made during 24.02.2014 to 28.02.2014 when the closing price had fallen to around Rs. 55.4 Per share from the highest trading closing price of Rs. 91.95 per shares. The shares were sold through D-mat account maintained with JM Financial Services Ltd. The Appellant continue to hold 12,837 shares as per statement dated 02.07.2018 placed at page 25 of the paper-book. No other material was brought on record by the AO to prove that the assessee has indeed availed only accommodation entries. We noticed that the assessee has furnished all documents relating to purchase and sale of securities. The shares have entered and exited his demat account. The purchase and sale transactions have been routed through the bank accounts of the assessee. All these documentary evidences produced by the assessee have not been disproved. Accordingly, we are of the view that the decision rendered by the jurisdictional Hon'ble Bombay High Court in the above said case of Shyam R Pawar (supra) is squarely applicable to the facts of the present case.

9. Accordingly, we are of the view that there is no reason to suspect the genuineness of long term capital gains declared by the assessee. Accordingly, we set aside the order passed

by Ld CIT(A) on this issue and direct the AO to delete the addition made by him.

10. Since we have held that the long term capital gains declared by the assessee has to be accepted, the addition relating to expenses is also liable to be deleted. We order accordingly.

11. In the result, the appeal filed by the assessee is allowed”

10. We have Considered the overall facts, submissions and the information and find that the assessee has furnished the financials, details of broker and the transactions status. The AO has doubted the purchase and sale of shares and observed that the price rise is not commensurate with the financials of the investee company. The assessee has substantiated with all details and information and the AO has relied on the investigation report of income tax department and treated the long term capital gains on sale of shares as not genuine. Further the A.O. has not made any enquiry or independent investigation and relied on the statement of the parties and the assessee's name is not included in the list of investigation report. The fact remains that the assessee has submitted the requisite details in respect of purchase and sale of shares and were not disproved. The Ld.AR has referred to the SEBI order dated 16-07-2021 placed at page 155 to 167 of the paper book in particular Para 56 to 59, highlighting on the facts that the assessee was only a investor and was not involved/connected in price manipulation of scrip. Whereasthe transaction of purchase and sale of shares is through banking channel. Further as

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

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

Order pronounced in the open court on 10.05.2024.

Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 10/05/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai