

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 125/JPR/2023
निर्धारणवर्ष / Assessment Years : 2014-15

Agrasen Primses Private Limited 60, Rajamal Ka Talab, Chandi Ki Taksal, Jaipur.	बनाम Vs.	ITO, Ward-5(1), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AADCA2213R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms. Parba Rana (Adv.) &
Shri Athrav Mundra (Adv.)
राजस्व की ओर से / Revenue by: Shri A.S. Nehra (CIT)

सुनवाई की तारीख / Date of Hearing : 06/03/2023
उदघोषणा की तारीख / Date of Pronouncement: 30/05/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the Ld. CIT(A) dated 27.02.2023, National faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] for the assessment year 2014-15, which in turn arise from the order dated 30.12.2016 passed under section 143(3) of the Income Tax Act (here in after "Act") by the ITO, Ward-5(1), Jaipur.

2. The assessee has raised the following grounds of appeal:-

“1. On the facts & circumstance of the case & in law also Ld. CIT(Appeals) grossly erred on facts and in law confirming the addition made by the Ld. AO of Rs. 1,62,15,971/- by disallowing claim of business loss.

2. On the facts & circumstance of the case & in law also Ld. CIT(Appeals) grossly erred on facts and in law confirming the addition made by the Ld. AO of Rs. 9,72,958/- on account of alleged commission.”

3. Brief facts of the case are that the assessee is a private Limited company doing the business of Real Estate, Share and Securities. The return of income was filed by the assessee on 25.11.2014 declaring loss of Rs. 1,849/-. The case was selected for scrutiny through CASS. Accordingly, a notice u/s 143(2) was issued on 18.09.2015 fixing hearing for 24.09.2025, which was duly served on the assessee. Notice u/s 142(1) along with questionnaire were issued on various dates the ld. AR of the assessee, attended the proceedings, and filed written replies and documents which have been placed on record; produced supporting details in respect of ROI filed which are test checked and the facts of the case were discussed by the ld. AO.

3.1 On account of the searches conducted on account of the searches conducted by the Investigation Wing of the Department at various places throughout the country. During the searches & as per the information made

public by the SEBI, it is discovered that various syndicates have arranged accommodation entry of bogus LTCG, Bogus STCG, Bogus Long/short term Capital Loss through trading of shares of Penny Stocks. The modus operandi found is that the investors/beneficiaries hold these shares for one year or so and then sale it to one of the shell private limited companies of the operator. These facts were confirmed by the stake holders viz. Operators/Syndicate members/Brokers which were providing accommodation entries in statements recorded during action u/s 133A of the I.T. Act. It has been manifestly accepted by them that such penny stock companies are the conduit for converting untaxed money brought on record by paying no taxes in the garb of exempted income/bogus losses. It is further detected that Turbotech, Global Infratech, Indian Infotech and SRK Ind. are penny stocks listed companies. These have a very small capital base but their market capitalization is multifold to its capital base. Further, information in respect of trading in penny stock i.e. Turbotech, Global Infratech, Indian Infotech and SRK Ind. are also available at ITS Data/AIR.

3.2 From the perusal of details filed during the course of scrutiny proceedings and on examination of ITS details in the case of the assessee,

it is seen that purchase and sale of shares of Turbotech, Global Infratech, Indian Infotech and SRK Ind. During the year under consideration is as under:-

S. No.	Scrip Name	Buy or sell	Quality	Trade value	Loss
1.	Turbotech	Buy	15000	Rs. 70,29,898	
2.	Turbotech	Sell	15000	Rs. 3,02,000	Rs. 67,27,898
3.	GBL Infra	Buy	20000	Rs. 13,88,160	
4.	GBL Infra	Sell	20000	Rs. 8,04,162	Rs. 5,83,998
5.	Indian Infotech	Buy	157000	Rs. 69,08,121	
6.	Indian Infotech	Sell	157000	Rs. 9,78,272	Rs. 59,29,849
7.	SRK Ind.	Buy	22400 including bonus shares of 11200)	Rs. 38,06,081	
8.	SRK Ind.	Sell	22400	Rs. 8,31,855	Rs. 29,74,226
	Total				Rs. 1,62,15,971

The assessee from these purchase & sales undertaken within 7-9 months thereby resulting in huge loss shown of Rs. 1,62,15,971/- in such a short time span which appears quite unrealistic and unreasonable so, based on these facts and relying the report of the Investigation Wing of the department which has been discussed in details such modus operandi in the assessment order. The Id. AO has disallowed the loss of Rs. 1,62,15,971/-, claimed by the assessee out of these purported share transactions during the financial year 2013-14 (AY 2014-15). It is also unearthed during the course of investigation by the Wing that the beneficiaries have paid commission @ 6% or more on acquiring accommodation entries for bogus short term loss. Therefore, 6% commission paid i.e. Rs. 9,72,958/- (6% of Rs.

1,62,15,971/-) is treated as undisclosed expenditure for acquiring accommodation entry as discussed above.

4. Aggrieved from the order of the assessing officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds of the appeal so raised by the assessee, the relevant finding of the Id. CIT(A) is reiterated here in below:-

“4.5 I have considered the submission of Ld. A/R and carefully gone through the material available on record. The Assessing Officer disallowed the bogus loss claimed of Rs. 1,62,15,971/- by the appellant and also made addition of commission of Rs. 9,72,958/- paid for acquiring accommodation entry. The AO mentioned following reasons for making the addition-

a. The investigation wing of income tax department conducted searches and it is found that there is syndicate operating to provide accommodation entry of bogus gain and Bogus loss. Detailed findings of investigation made by the Department are given by the AO in the assessment order.

b. Similar information is also made public by SEBI. Details of action taken by SEBI against such operators and companies is also provided by the AO in the assessment order.

c. Such entry providers confirmed that they were involved in providing accommodation entries before the Investigation wing during search and survey proceedings. Some of the statements so recorded are reproduced by the AO in the assessment order.

d. Penny stocks listed companies detected in such transactions were Turbotech, Global Infratech, Indian Infotech and SRK Ind. in addition to other companies. These companies have small capital base but their market capitalization is multifold.

e. The appellant is involved in transaction of these shares and it sold all shares within 7-9 months resulting in huge loss of Rs. 1,62,15,971/-

f. There is astronomical rise and fall in prices of these shares which are not related to the fundamentals or any projections made by these companies. The rise and fall were disproportionate to real financial position of the company. Steep decline in the shares purchased by the appellant was also not related to financials of the companies. The pattern of chart of share price of these companies is bell shaped typical to these types of manipulated stocks where the price rises without any reason and falls without any reason. The prices were clearly manipulated by the operators.

g. As a result of search and survey operations money trail from cash deposit to beneficiary via share broker was established and various operators confessed their role in bogus LTCG scam.

h. Bogus entry of long term capital gain which was exempt is provided to the persons who wanted to convert their unaccounted cash into accounted money without payment of income tax. The cash is introduced in layers for the purpose of these transactions. Reverse modus operandi is adopted to provide entry of bogus short term loss to the persons who need such accommodation entry. The appellant is beneficiary of entry of loss. The appellant has avoided payment of tax by setting of the taxable income against such bogus loss.

i. Hefty commission is also charged by these operators from the beneficiaries of these accommodation entries.

j. The share prices and sale purchase transactions are not genuine but planned to provide entries of fictitious gains and losses to the beneficiaries by these operators.

k. The appellant failed to justify purchase and sale of these shares.

l. The appellant has not given name of the person who recommended purchase of these shares to the appellant

m. The appellant is not even aware about the person after talking with whom the order to purchase these shares were placed.

n. These transactions undertaken by the appellant are sham transactions and colorable device to evade tax.

o. The AO has applied test of human probabilities and genuineness and relying on the judgment of Hon'ble Supreme Court in the case of Sumati Dayal Vs CIT (214 ITR 801) and other decisions the AO held that transactions undertaken by the appellant are not genuine.

p. The appellant failed to prove that there was no such scheme as identified by the Income Tax Department,

q. The appellant failed to prove that no benefit derived by it from such scheme.

Per contra the appellant argued that the above referred transaction of sale & Purchase are genuine as all transactions of sale and purchase are as per norms. The assessing officer has not pointed out any defect in the evidences furnished in support of these transactions. It is argued that they do not know the persons whose statement is recorded. Opportunity

of cross examination was not provided to the appellant. It is argued that the addition by AO is on the basis of assumptions and without conducting specific enquiries.

After careful perusal of facts of the case it is noted that the addition made by the AO is based on the findings of search and survey proceedings conducted by investigation wing where syndicate operating to provide accommodation entry of bogus gain and Bogus loss is detected. Such entry providers confirmed that they were involved in providing accommodation entries before the Investigation wing during search and survey proceedings. There is astronomical rise and fall in prices of these shares which are not related to the fundamentals or any projections made by these companies. The rise and fall were disproportionate to real financial position of the companies. Steep decline in the shares purchased by the appellant was also not related to financials of the companies. The pattern of chart of share price of these companies is bell shaped typical to these types of manipulated stocks where the price rises without any reason and falls without any reason. The prices were clearly manipulated by the operators. The share prices and sale purchase transactions are not genuine but planned to provide entries of fictitious gains and losses to the beneficiaries by these operators. The appellant failed to justify purchase and sale of these shares. The appellant has not given name of the person who recommended purchase of these shares to the appellant. The appellant is not even aware about the person after talking with whom the order to purchase these shares were placed. The appellant failed to prove that there was no such scheme as identified by the Income Tax Department. The appellant failed to prove that no benefit derived by it from such scheme. In fact as per return of Income there is nominal loss of Rs. (-) 1849. This clearly establishes that the appellant got the entry of loss to set off with the positive income so that there is no tax liability for him..

On the facts of this case the decision of hon'ble High Court of Calcutta in the case of Commissioner of Income Tax Vs Swati Bajaj (2022) 446 ITR 56 (Calcutta) is applicable. Hon'ble High Court held as under -----

In this case also the appellant has not specifically indicated as to how he was prejudiced by not providing of cross examination. Unless and until the appellant shows and proves that she/he was prejudiced on account of such report/statement mere mentioning that non-furnishing of the report or non-availability of the person for cross examination cannot vitiate the proceedings. The assessee has miserably failed to prove the test of prejudice or that the test of fair hearing has not been satisfied in their individual cases.

It is well settled principle of law as declared by the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT (214 ITR 801) (SC) that the true nature of transaction have to be ascertained in the light of surrounding circumstances. It needs to be emphasized that standard of proof beyond reasonable doubt has no applicability in determination of matters under taxing statutes. In the present case, it is clear that apparent is not the real as evidenced from the investigation done by the department. Further, the Hon'ble Supreme Court, in the case of Chuhar Mal Vs CIT (1988) 172 ITR 250, highlighted the fact that the principle of evidence law are not to be ignored by the authorities, but at the same

time, human probability has to be the guiding principle, since the AO is not fettered, by technical rules evidence, as held by the Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills v CIT (1954) 261 TR 775. The Hon'ble Supreme Court, in the case of Chuhar Mel V CIT (supra) held that what was meant by saying that evidence Act did not apply to the proceedings under Income-tax Act, 1961, was that the rigors of Rules of evidence, contained in the Evidence Act was not applicable; but that did not mean that when the taxing authorities were desirous of invoking the principles of Evidence Act, in proceedings before them, they were prevented from doing so. It was further held by the Hon'ble Apex Court that all that Section 110 of the Evidence Act, 1872 did, was 'to embody a salutary principle of common law, jurisprudence viz, where a person was found in possessing of anything, the onus of proving that he was not its owner, was on that person. Thus, this principle could be attracted to a set of circumstances that satisfies its conditions and was applicable to taxing proceedings.

I am in agreement with the AO that the transactions relating to the claim of loss come within the ambit of "suspicious transactions", and therefore the rules of suspicious transactions would apply to the case. Payment through Banks, performance through stock exchange and other such features are only apparent features. The real features are the manipulated and abnormal price of off load and the sudden dip thereafter. Therefore, I have to reach the inevitable conclusion that the transactions as discussed by the AO fall in the realm of "suspicious" and "dubious" transactions. The AO has therefore necessarily to consider the surrounding circumstances, which he indeed has done in a very meticulous and careful manner.

The tax liability in the cases of suspicious transactions, is to be assessed on the basis of the material available on record, surrounding circumstances, human conduct, preponderance of probabilities and nature of incriminating information/ evidence available with AO. In the case of Sumati Dayal V. CIT (1995) 80 Taxman 89 (SC), the Hon'ble Supreme Court has dealt with the relevance of human conduct, preponderance of probabilities and surrounding circumstance, burden of proof and its shifting on the Department in cases of suspicious Circumstances, by following observations:

"..... It is, no doubt, true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee, But in view of section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie evidence against the assessee, viz, the receipt of money, and if he fails to rebut the same, the said evidence being un-rebutted, can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record, an

inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the findings that the said amounts were income of the appellant from, other sources was not based on evidence"

It would, at this stage, be relevant to consider the admissibility and use of circumstantial evidence in income tax proceedings. Circumstantial evidence is evidence of the circumstances, as opposed to direct evidence. It may consist of evidence afforded by the bearing on the fact to be proved, of other and subsidiary facts, which are relied on as inconsistent with any result other than the truth of the principal fact. It is evidence of various facts, other than the truth of the principal fact. It is evidence of various are so associated with the fact in issue, that taken together, they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact. In the appreciation of circumstantial evidence, the relevant aspects, as laid down from time to time are (1) the circumstances alleged must be established by such evidence, as in the case of other evidence. (2) the circumstances proved must be of a conclusive nature and not totally inconsistent with the circumstances or contradictory to other evidence. (3) although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced, some of these links may have to be inferred from the proved facts; (4) in drawing those inferences or presumptions, the Authorities must have regard to the common course of natural events, to human conduct and their relation to the facts of the particular case. (5) The circumstantial evidence can, with equal facility, be restored to in proof of a fact in issue which arises in proceedings for the assessment of taxes both direct and indirect, circumstantial evidence can be made use of in order to prove or disprove a fact alleged or in issue. In fact, in whatever proceedings or context inferences are required to be drawn from the evidence or materials available or lacking, circumstantial evidence has its place to assist the process of arriving at the truth.

It will also be worthwhile to consider the nature of burden of proof on the AO for proving a fact or circumstances in the income tax proceedings. The questions raised about the tax liability by the AO are to be answered by the assessee by furnishing reasonable and plausible explanations. If assessee is not forthcoming with proper or complete facts or his statement or explanation is contradictory, drawing of suitable inferences and estimation of facts is inevitable.

In view of the above discussion, the arguments raised by the appellant are found to be not acceptable and the addition made by AO with regard to disallowance of bogus loss and unexplained expenditure on commission paid for procuring these entries of loss is found to be justified. Therefore, the order of the AO is confirmed.

This ground of appeal is treated as dismissed."

5. Feeling dissatisfied with finding so recorded in the order of the ld. CIT(A) the assessee has preferred this appeal on the grounds as reiterated here in above. Apropos to the grounds so raised the ld. AR of the assessee submitted the following written submissions:

“This appeal has been filed on 10.03.2023 against the order passed by the Ld. CIT Appeals u/s 250 of the Income Tax act, 1961 (Herein after called “the Act”) dated 27.02.2023. The appeal was filed well within time and request to allow.

2. The Grounds of appeals are as unde:-

GOA 1

On the facts & circumstances of the case & in law, also Ld. CIT (Appeals) grossly erred on facts and in Law confirming the addition made by the Ld. AO. of Rs. 1,62,15,971 by disallowing the claim of business loss.

GOA 2

On the facts & circumstances of the case & in law, also Ld. CIT (Appeals) grossly erred on facts and in Law confirming the addition made by the Ld. AO. of Rs. 9,72,958 on account of alleged commission.

The Ground wise submission is as under:-

3. GOA 1

On the facts & circumstances of the case & in law, also Ld. CIT (Appeals) grossly erred on facts and in Law confirming the addition made by the Ld. AO. of Rs. 1,62,15,971 by disallowing the claim of business loss.

4. Assessee submits as under:-

FACTS, FINDING AND ORDER BY LD. AO

4.1. Yourhonour the assessee is Pvt Ltd. Company doing the business of Real Estate & Share & Securities. During the year under consideration the assessee incurred losses of Rs 1,62,15,971 form the business of shares & securities. The assessee made following transactions of purchases and sale in shares:-

S. No.	Scrip Name	Buy		Sell		Loss (in Rs.)
		Qty	Trade	Qty	Value	
1	Turbotech	15000	70,29,898	15000	3,02,000	67,27,898
2	GBL Infra	20000	13,88,160	20000	8,04,162	5,83,998
3	Indian Infotech	157000	69,08,121	157000	9,78,272	59,29,849
4	SRK Ind	22400	38,06,081	22400	8,31,855	29,74,226
Total			1,62,15,971			

4.2. In response to show cause notice the assessee furnished as appearing in the Ld. AO order page no. 33 to 36. The point wise query and submission on 15.12.2016 made placed on record during the assessment proceeding is as under:-

A. INVOLVED IN BOGUS ACCOMMODATION ENTRIES

Hon'ble Sir, the Ld. AO mentioned that Director of Income Tax (Inv) Kolkata conducted a survey u/s 133A on various share brokers and as per their enquiry a huge syndicate of entry operators, share brokers, money lenders involved in bogus accommodation entries were unearthed.

In reply the assessee requested to provide the details of such enquiries a/w evidences the assessee may analyzed that how & in which reference the assessee company's name was found in the above enquiry. The assessee also made the request to provide the details in reference to assessee Company.

B. UNACCOUNTED CASH IS UTILIZED TO PURCHASE SHARE AT A VERY ARTIFICIALLY INFLATE PRICE

The Ld. AO mentioned that large scale manipulations has been done in the market price of share of certain companies listed in the BSE. It was also stated that the unaccounted cash of such persons (beneficiaries) is utilized to purchase share of such companies at a very artificially inflate price.

The assessee submitted the response that the BSE controls the manipulations in the prices of shires and take stern action on such companies. Even trading is stopped in such shares. Kindly let us know about any such action from the BSE on the companies in which the assessee company dealt with, if this is so the assessee can take legal action against the Company and against the BSC because the assessee Company has

increased huge losses in the transactions. It is further submitted that in this case assessee has made the payment of purchases through banking channel and it is not the case where unaccounted cash of beneficiary i.e. the assessee company has used by such alleged syndicate of entry operators. It is also not the case where such alleged syndicate of entry operators have purchased shares at artificially inflated prices.

C. PAID UNACCOUNTED CASH TO THE ALLEGED SYNDICATE OF ENTRY OPERATORS

The assessee submitted on this issue that the Ld. AO failed to give any finding that the assessee has paid any unaccounted cash to the alleged syndicate of entry operators.

D. PAPER COMPANIES AND DO NOT EXIST IN REALTY

The assessee submitted on this issue that the assessee dealt in the shares of following companies during the year under consideration.

- a. SRK Ind. Ltd.
- b. Indian Infotech & Software Ltd.
- c. Global Infratech & Finance Ltd.
- d. TurbotechEngg. Ltd.

The assessee submitted as under:-

- i. The assessee furnished copies of master data of all above companies in proof of the fact that
 1. all such companies are still active & listed on the BSE.
 2. that all of these companies are in existence even today.
 3. All of them are having authorized capital & paid up capital in crores.
- ii. The assessee further requested to provide evidence if any, that these companies are paper companies. The Ld. AO failed to prove that these companies are paper companies and do not exist.
- iii. The assessee further requested to let us know whether your good self has made any enquiry from the above companies or from the directors of the company.

E. CLAIM OF LOSS AS BOGUS OF RS. 1,62,15,971/-

The Ld. AO had not revealed any adverse inference with evidence on the

submission that so called allegation regarding claim of loss of Rs. 1,62,15,971/- is bogus though it carried from audited books of accounts.

F. CLAIM NO ADVERSE INFERENCE ON SUBMISSION OF THE ASSESSEE

The assessee submitted as under:-

- 1) We also submit that all above transactions of sale and purchase of shares are donethrough online in Bombay Stock Exchange which is a Govt. Controlled Agency.
- 2) All the transactions are mentioned in assessee's demat a/c.
- 3) Contract notes for all the above transactions have already been submitted vide our letter dated 06.12.2016.
- 4) We are submitting copy of Demat account as available with the assessee; however detailed copy may also be called from the broker by your honour.
- 5) All payments for above transactions are reflected in J&K bank a/c of the assessee co.
- 6) The assessee purchased shares of all companies having high net worth of more than Rs. 25 crore and listed on BSE. Therefore, these companies cannot be called penny stock companies.
- 7) All shares are purchased in expectation of earning profit at the market price.
- 8) The assessee have to sold shares at low price because the share index was going down continuously and to save further loss.
- 9) The assessee have no control over the fluctuating prices of shares. Price of shares fluctuate on demand and supply. There are so many shares of which prices are very fluctuating time to time.

- 10) Reliance was also placed by the assessee on the decision of the Hon'ble Supreme Court of India in the case of Andaman Timber industries v/s CCE, Kolkata II (Civil Appeal No. 4228 of 2006 vide order dated 02/09/2015), wherein the Hon'ble Lordship has held the order to be illegal in absence of allowing opportunity of cross examination to the assessee.

The assessee also rely on various case laws as detailed as under:-

- 1) Mahesh Mundra Mumbai vs ITO 21(1) ITA No. 1176/Mum/2012.
- 2) ITO ward 20(1) vs Naveen Gupta in ITA No. 696 (Delhi) SOT 2006 94 Delhi.
- 3) Mayur M Shah HUF Mumbai v\$ ITO 25<3) ITA No. 2390/MUM/2013
- 4) ITO vs Smt. Kusumlata in ITA No. 387 105 TTJ (2006) 265 Jodhpur

- 5) Dalpat Singh Choudhary vs ACIT (2012) 143 TTJ 500 (Jodhpur Trib)
 - 6) ACIT V Shri Ravindra Kumar Toshnival ITA No. 5302/Mum/2008.
 - 7) Mukesh R Marolia v Addl. CIT 6 SOT 247 (Mumbai HC)
 - 8) Mrs. Rajni Devi A Choudhary v ITO ITA No. 6455/M/07 dated 30/04/2008.
- 11) It was therefore sincerely requested that no adverse view may kindly be formed prior to allowing a fair opportunity to the assessee to examine all the evidences available with your honour and are being intended to be used by the assessee.
- 4.3. After considering the submission of the assessee against the show cause notice the Ld. AO gave finding as appearing in the Ld. AO order page no. 36 to 38. The relevant portion is as under:-
- 1) The ld. AO stated that after carefully considering the submissions, the Ld. AO holds that the reply is not tenable since the assessee made investment In scrips Turbotech, Global Infratech, Indian Infotech and SRK Ind. The Ld. AO presumed that these stocks were Pennystocks.
 - 2) The Ld. AO stated that it is the part of the modus operandi of the persons providing accommodation entries that these penny stocks are used not only for obtaining bogus long term capital gain but also to obtain short term capital loss/business loss as discussed above. The Ld. AO gave above general statement and by stating that Ld. AO presumed that these stocks were Pennystocks.
 - 3) The Ld. AO stated that no justification has been furnished for the purchase of shares of Turbotech, Global Infratech, Indian Infotech and SRK Ind whereas the fact is that assessee stated that all shares are purchased in expectation of earning profit at the market price. The assessee purchased shares of all companies having high net worth of more than Rs. 25 crore and listed on BSE.
 - 4) The assesses had failed to tell the name of the person who had recommended the purchase of these shares whereas the fact is that assessee stated that all shares are purchased in expectation of earning profit at the market price. Further your honour it was the trade decision for which the assessee is always free to take the decision.
 - 5) The assessee is not even able to tell the detail of the person with whom he had spoken/instructed for placing orders for purchase of shares of Turbotech,

Global Infratech, IndianInfotech and SRK Ind. Whereas the assessee clearly stated that the all above transactions of sale and purchase of shares are donethrough online in Bombay Stock Exchange which is a Govt. Controlled Agency.

- 6) Without considering the submission made by the assessee he Ld. AO with predetermined mind the Ld. AO stated that on the basis of above analysis, documentary evidences, circumstantial evidences human conduct and preponderance of probabilities, the Ld. AO hold, without bringing any evidence, that what is apparent in this case is not real, that these financial transactions were sham ones and that this entire edifice was only a colourable device used to evade tax.
- 7) The Ld. AO without bringing any evidence hold with imagination that the assessee sold the shares when the prices of shares have been reduced to an optimal level or so, with the connivance of various entities in a very short period.
- 8) The Ld. AO stated a general observation that the shares in which the assessee has claimed to have made a deal, are identified as Penny Shares by the investigation wing of the department because rates of these shares are not based on business results of the companies but same are fluctuated by insider's trading from very less value to very high price and vice versa without any reason or basis to accommodate or generate bogus capital gain or loss. The Ld. AO failed to bring any evidence that this general observation is applicable in the case of the assessee but applied this general rule on the assessee.
- 9) The Ld. AO hold that, as per the chart of loss on sale of shares furnished by the assessee as per its books of accounts during the course of assessment proceedings, the above loss have been claimed as Rs1,62.15,971/- from Turbotech, GlobalInfratech, Indian Infotech and SRK Ind. which appears quite unrealistic and unreasonable. Your honor, the above addition is based only on belief and by assuming that general theory imaging is applicable on the assessee also.
- 10) The Ld. AO further hold that This, further, substantiate that the assessee has indulged in a managed/bogus transaction so as to obtain bogus loss It also substantiate that assessee is having knowledge of whole scheme of Price rigging of shares and proves his indulgement. It is just assumption.
- 11) The Ld. AO stated that according to Oxford English dictionary SHAM means 'A thing that is not what it is purported to be'. In this instant case even though prima facie it appears that the assessee received the aforementioned proceeds out of sale of shares of the scrip, in reality it was his own cash which he received back through some clandestine deals. It is also just

assumption.

- 12) The Ld. AO further stated that this entire edifice through which the assessee claimed to have earned huge bogus loss within a very short span of time fails the tests of both genuineness and human probabilities. In the case of Sumati Dayal Vs CIT (214 ITR 801) the apex court propounded the principle of human probabilities and applying it in that case held that whether apparent is real is to be decided on the basis of incriminating circumstances. The supreme court even took note of the scheme of converting black money into white through the route of lottery winnings etc by stating that "In this context it would be relevant to mention that In order to give effect to the recommendations of the Direct Taxes Enquiry Committee (under the Chairmanship of Justice K N. Wanchoo, retired Chief Justice of India) the definition of 'income' in section 2(24) of the Act was amended with effect from April 1, 1972 by the Finance Act, 1972 so as to include within its ambit, winnings from lotteries, cross word puzzles, races including horse races, card games and other games of any sort or from, gambling or betting of any form or nature whatsoever. The reason underlying the said amendment was that exemption from tax that was enjoyed in respect of such winnings had provided scope for conversion of "black' money into 'white' income.' The apex court concluded that 'There is no dispute that the amounts were received by the appellant from various race clubs on the basis of winning tickets presented by her. What is disputed is that they were really the winnings of the appellant from the races. This raises the question whether the apparent can be considered as real. As laid down by this Court, apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities.' Reliance is also placed on the decision of the Apex court in the case of Durga Prasad More Vs CIT wherein the principle of human probabilities was relied upon by the court in deciding the case in favour of revenue. Hence, the Ld. AO hold that at the cost of repeating It is reiterated that the humongous loss i.e. Rs. 1,62,15,971/- claimed by the assessee in a penny scrip devoid of any fundamentals defies any logic or human probabilities and therefore cannot be genuine.
- 13) The Ld. AO assumed that the objective of such edifice as employed by the assessee. It is evident from the outset that the assessee claimed huge loss from these transactions which he claimed against the profit arising out of sale of land during the year under consideration. This entire edifice was basically a colourable device to give the colour of genuineness to these transactions

through which he was successful in setting off his profit from sale of land without any need to pay tax Supreme Court in the case of McDowell Vs CTO has given strong verdict against any such arrangements by stating that 'Colourable devices cannot be part of tax planning and It is wrong to encourage or entertain the belief that It is honourable to «void the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.' In view of the Apex Court verdict, this entire arrangement is held as a mere colourable device, devised with the aforementioned objectives.

- 14) The Ld. AO hold that the detailed analysis of evidences available on record and the case laws quoted above provide enough support against the argument of the assessee regarding assessment being based on mere suspicion or presumption That there was a scheme is not in doubt and that the assessee is a beneficiary is also an admitted fact. The onus was therefore, on the assessee to prove that either there was no such scheme and even if there was one, the benefit to the assessee was as a result of genuine transaction The assessee has failed to discharge this onus and therefore, the only inescapable conclusion is that the assessee has taken entry of bogus loss.
- 15) And accordingly, the Ld. AO disallow the loss of Rs, 1,62,15,971/-, claimed by the assessee out of these purported share transactions during the financial year 2013-14 (AY 2014-15).

4.4. Being aggrieved the assessee filed an appeal before the Ld. CIT (Appeals) and submitted as appearing in Ld. CIT (Appeals) Order page no. 04-14. The relevant portion is as under:-

- 1) Your honour the assessee is a Pvt. Ltd. company doing the business of Real Estate & Share & securities. During the year under consideration the assessee incurred losses of Rs. 1,62,15,971/- from the business of Shares and Securities The assessee made following transaction of purchase and sale in shares -

S. No.	Scrip Name	Buy		Sell		Loss (in Rs.)
		Qty	Trade	Qty	Value	
1	Turbotech	15000	70,29,898	15000	3,02,000	67,27,898
2	GBL Infra	20000	13,88,160	20000	8,04,162	5,83,998
3	Indian Infotech	157000	69,08,121	157000	9,78,272	59,29,849
4	SRK Ind	22400	38,06,081	22400	8,31,855	29,74,226
Total			1,62,15,971			

- 2) To prove that the sales and purchase of these transaction the assessee the assessee furnished complete details of sales and purchase along with the audited set of books of accounts and financial results before Ld. CIT (Appeals).
- 3) Apart from these the assessee submitted following evidences and documents before Ld. CIT (Appeals).
 1. Copies of the contract note of sales and purchases.
 2. Copy of account with Master Capital Services Ltd. For the period 01/04/2013 to 31/03/2014.
 3. Copies of bank account to prove the receipts and payment.
 4. Address and contact No. of brokers.
 5. Copies of DMat A/c
 6. Copies of latest Master Data of all the companies
 7. Payment of consideration for the purchases and receipts of consideration on sales were made received through banking channel.
- 4) Your honour, the assessee submitted before Ld. CIT (Appeals) that from the above facts, it is clear that the above mentioned transactions of sale & purchase are genuine. Purchases were made from identifiable person. Payment of purchases were made through a/c payee cheque. Transaction in the shares have been recorded in the books of accounts. Sale of shares was made through registered broker of Stock Exchange. The broker issued contact notes to the assessee. The shares were sold and purchased on the price of Stock Exchange of the particular date & particular time. Scrutiny transaction tax, service tax, turnover tax etc were paid on every transaction and the assessee lawfully claimed the business loss.. Payments of sales were received through banking channel.
- 5) The assessee submitted before Ld. CIT (Appeals) that Ld. AO on the basis of assumption, presumptions surmises and conjectures made the disallowance of claim made by the assessee. Ld. Assessing Officer made the disallowance by relying on the following.-
 - a) SEBI has suspended trading in 26 scripts and almost 84 listed companies are being used for providing accommodation entries and are penny stock companies.
 - b) On the date of transaction the trading in the shares of Turbotech engineers Pvt. Ltd, Global Infratech Ltd, SRK Ind Ltd and Indian Infotech Ltd were active. Ld. Assessing Officer has not stated the date of suspension of trading in the shares of above referred companies Ld. AO has not mentioned that how these companies are penny stock companies. Penny stock companies have not been defined in the Act. It is also submitted that these companies whether penny stock company or

not were permitted for trading in the stock exchanges by SEBI. The transaction made by the assessee is genuine.

- c) Statement of Sh. Sanjay Vora looking after the office of Ms Anand rathi Shares & Stock Brokers limited were taken during a survey operation on 8th April 2015 and as per Ld Assessing Officer he accepted that he allowed Sh. Deepak Patwari, Sh. Parvesh Beriya and others to trade without any verification due to old relationship.
- 6) The assessee submitted before Ld. CIT (Appeals) that the assessee company does not know either Sh. Sankay Vora or Sh. Deepak Patwari or Sh. Parvesh Beriya and have relation with M/s Anand rathi Shares & Stock Brokers limited. Moreover in the entire statement of Sh. Sanjay Vora the name of the assessee company has not been stated by him. The transaction made by the assessee has also not been discussed In his statement. Assessee has not made any transaction with M/s Anand Rathi Shares & Stock Brokers limited. Moreover no opportunity of cross examination was provided to the assessee. Date of statement is after the end of F. Y.
- 7) In this respect the assessee submitted before Ld. CIT (Appeals) that the assessee is not related at all with Shy Jai Kishan Poddar or with the companies managed by him. The assessee does not know Sh. Jai Kishan Poddar and has not done any business or sale or purchase with him. The name of assessee or the transaction made by the assessee has not been mentioned in the statements given by him. Therefore it is totally irrelevant statements. Moreover no opportunity. of cross examination was given to assessee. It has also not been stated by Ld A.O. that how the statements of Sh. Jai kishan Poddar are reliable. What is the locus stand of Sh. Poddar to comment upon on the Global Infratech and Finance Ltd. What evidences were available with him?
- 8) Your honour Ld A.O. has referred the decisions of Hon'ble Apex court in the case of Sumati Dayal w/s GIT 214/ITR/801, the case of Durga Prasad More vis CIT and the case of MacDowell v/s CTO. In this respect it is submitted that facts of these cases are different as it is not the case to convert black money into white as the assessee company lost his capital. The transactions made by assessee are real and genuine and the entire additions have been made Without making any enquiry with the brokers of the assessee or with the Bombay Stock Exchange Ltd and made the addition simply on the basis

of assumptions, presumptions, surmises and conjectures. No opportunity of cross examination to the alleged brokers/persons was given to the assessee. It was not at all a colourable device. Therefore above decisions quoted by Ld A.O, are not applicable on the facts of case of the assessee. Rather, LD A.O. has not discharged his burden to prove the transactions made by the assessee not real and not genuine. We place our reliance on the following case Laws:-

1. Hon'ble ITAT Mumbai Bench Mumbai in the case of ITO v/s Arvind Kumar Jain HUFITA No. 4862/Mum/2014.
2. Hon'ble Raj. High Court in the case of CIT v/s Smt. Pooja Agarwal, Jaipur.
3. Smt. Bharti Arvind Jain v/s ITO (ITA No 6102/Mum/2016)- ITAT SMC Bench, Mumbai.
4. ITO v/s Mis Indravadan Jain HUF (ITA No. 4861/Mum/2014)- ITAT ' Bench, Mumbai
5. Chandrakant babulal Shah vs The Assessing Officer, ward-16 (2)(4) (ITA No.6108/Mum/2009)- ITAT 'C' Bench, Mumbai
6. Mayur M. Shah (HUF) v/s ITO (ITA No. 2390/Mum/2013)-ITAT 'SMC' Bench, Mumbai.
7. Asst.Commissioner of LT. 14(3) vs Shri Ravindrakumar Toshniwal (ITA No.5302/Mum/2008)-ITAT 'D' Bench, Mumbai.
8. Smt. Durgadevi Mundra vs. ITO (ITA No. I 1 75/Mum/2012)- ITAT 'SMC' Bench, Mumbai.
9. Dalpat Singh Choudhary vs. Asstt. CIT 2012 Taxpub (DT) 0923 (Jod Trib): (2012) 143 TTJ 0500: (2012) 065 DTR 0148
10. Mr. Arvind Asmal Mehta v/s /TO Mumbai (ITA No. 2799/Mum/2015) ITAT 'SMC' BenchMumbai.

- 9) In this respect the assessee submitted before Ld. CIT (Appeals) that On the date of transaction the trading in the shares of Turbotech engineers Pvt. Ltd, Global Infratech Ltd, SRK Ind Ltd and Indian infotech Ltd were active. Ld Assessing Officer has not stated the date of suspension of trading in the shares of above refereed companies Ld A.O. has not mentioned that how these companies are penny stock companies. Penny stock companies have not been defined in the Act. It is also submitted that these companies whether penny stock company or not were permitted for trading in the stock exchanges by SEBI. The transaction made by the assessee is genuine.
- 10) In this respect the assessee submitted before Ld. CIT (Appeals) that the

assessee company does not know either Sh. Sanjay Vora or Sh. Deepak Patwari or Sh. Parvesh Beriya and have no relation with M/s Anand Rathi Shares & Stock Brokers limited. Moreover, in the entire statement of Sh. Sanjay Vora the name of the assessee company has not been stated by him. The transaction made by the assessee has also not been discussed in his statements. Assessee has not made any transaction with M/s Anand Rathi Shares & Stock Brokers limited. Moreover no opportunity of cross examination was provided to the assessee. Date of statement was after the end of F.Y.

- 11) Statement of Sh. Jai kishan Poddar were taken u/s 131 of the Act on dated 11 September 2015 and as per Ld Assessing Officer he has accepted that M/s Global Infratech & Finance ltd. is one of bogus script/penny stock which has been used for providing accommodation entries. In this respect the assessee submitted before Ld. CIT (Appeals) that the assessee is not related at all with Sh. Jai kishan Poddar or with the companies managed by him. The assessee does not know Sh. Jai kishan Poddar and has not done any business or sale or purchase with him. The name of assessee or the transaction made by the assessee has not been mentioned in the statements given by him. Therefore it is totally irrelevant statements. Moreover no opportunity of cross examination was given to assessee. It has also not been stated by Ld A.O. that how the statements of Jai kishan Poddar are reliable. What is the locus standi of Sh. Poddar to comment upon on the Global Infratech and Finance Ltd. what evidences were available with him?
- 12) The Ld AO has mentioned in the assessment order that M/s East India Securities Ltd., M/s Fort Share Broking Pvt. Ltd. & the key persons, M/s Manu Stock Broking Pvt. Ltd; M/s Madhya Pradesh Stock Exchange Ltd and their sub broker Mr. Bhagwan Das Agarwal and Pawan Kumar Purohit, M/s Nakamichi Securities Ltd; M/s Intellect Stock Broking Ltd., M/s SMC Global Securities Ltd and their sub broker Pawan Kumar Kayan were surveyed. As per Ld AO they have admitted that they have dealt in providing entries in Global Infratech and SRK Ind. In this respect the assessee submitted before Ld. CIT (Appeals) that the assessee does not know these persons. No transaction of sale or purchase of shares or any business has been done by the assessee with these persons. It has not been stated by Ld AO that the assessee has done any business with the persons. Assessee is not aware about the locus standi of these persons in respect of transactions made by the assessee. Penny Stock Company has not been defined in the act. There was no ban in purchasing and selling of Global Infratech and SRK Ind. at the time when the assessee entered into purchase and sale transactions. Copies of their statements were not provided to the

assessee. Statements were taken at the back of assessee. Assessee is not aware what was stated and in which respect it was stated. Assessee Company again humbly submit that the transactions of sale and purchase of shares made by them are genuine transactions. The transactions made by them may or may not be wrong or illegal but the assessee has made genuine transactions on the portal through member of stock exchange. No enquiry was made by Ld A.O. from the member through which transactions were made by the assessee company. All the contract notes have been submitted before Ld A.O. No defect in the contract notes were brought on the record by Ld A.O. No defect in the 'D'Mat a/c was pointed out. Payments of purchases were made through banking channel. Payments of sales were received through banking channel. Books of accounts of the assessee company are duly audited and all the transactions are duly recorded therein. No defect whatsoever was pointed out by Ld A.O. No ingenuineness of transaction was proved. Simply on the assumptions, presumption, surmises & conjectures loss claimed by the assessee company has been disallowed.

- 13) The assessee submitted before Ld. CIT (Appeals) that Penny Stock Company has not been defined in the act. There was no ban in purchasing and selling of Turbotech, Global Infratech and SRK Ind. at the time when the assessee entered into purchase and sale transactions. Copies of their statements were not provided to the assessee. Statements were taken at the back of assessee. The assessee was not aware what was stated and in which respect it was stated. Assessee Company again humbly submit that the transactions of sale and purchase of shares made by them are genuine transactions. The transactions made by M/s SMC Global Securities Ltd or Shri Pawan Kumar Kayan may or may not be wrong or illegal but the assessee has made genuine transactions on the portal through member of stock exchange. No enquiry was made by Ld A.O. from the member through which transactions were made by the assessee company. All the contract notes have been submitted before Ld A.O. No defect in the contract notes were brought on the record by Ld A.O. No defect in the 'D'Mat a/c was pointed out. Payments of purchases were made through a banking channel. Payments of sales were received through banking channel. Books of accounts of the assessee company are duly audited and all the transactions are duly recorded therein. No defect whatsoever was pointed out by Ld A.O. No ingenuineness of transaction was proved. Simply on the assumptions, presumptions, surmises and conjectures loss claimed by the assessee company has been disallowed.
- 14) Yourhonour it was submitted before Ld A.O. that all the purchases and sales of shares were made online on the portal of stock exchange through the

broker M/s Master Capital services Ltd. All the contract notes of purchases and sales were submitted before Ld A.O. Copy of D Mat account was also submitted to Ld A.O.

- 15) Payment of all the purchases were made through cheque /RTGS, all the payments of sales were received through banking channel. All of these evidences were found correct by Ld A.O. as nothing was brought on record to prove these wrong.
- 16) Yourhonour Ld A.O. did not make any enquiry from the Bombay Stock Exchange or from the broker M/s Master Capital Services Ltd. The addition has been made simply on the basis of assumptions, presumptions, sunnises and conjectures.
- 17) The Ld A.O. made the additions on the assumptions that all the transactions of sales and purchases in above referred for companies are accommodation entries, there is no basis of these assumptions. Assessee Company has made genuine transactions and without bringing any single material against the assessee, the addition has been made unlawfully. It is also surprising that Ld A.O. has not discussed even a single transaction in above four companies, which is ingenuine.
- 18) Yourhonour the another assumption of Ld A.O. was that since some of the brokers have stated in their statements that they were involved in providing accommodations entries in above referred companies and all the transactions made by the brokers are accommodations entries. In this respect it is submitted that the assessee has not made any transaction of sales and purchases in the shares of above referred companies with the help of above referred alleged brokers. Even those brokers in their statements have not stated the name of Assessee Company as a beneficiary receiving accommodation entries. The assessee company has made purchase and sale on the portal, they have paid Security Transaction Tax, Service Tax, Turnover Tax etc on the transactions made by them. Therefore the transactions made by the assessee company are genuine transactions.
- 19) The third assumptions assumed by the Ld A.O. was the modus operandi adopted by some persons for providing accommodation entries by way of price rigging, circular trading etc. In this respect it is submitted that the assessee was not part of modus operandi as stated by Ld A.O. and no price rigging or circular trading, was proved in the case of transactions made by the assessee company.
- 20) Yourhonour the other assumption taken by Ld A.O. were that the assessee did not submit the justification for the purchase of shares of above referred companies and the assessee could not tell the name of persons who recommended the purchases of these shares and could not tell the details of

persons with whom he spoke to purchase shares. In this respect it is submitted that the purpose to purchases of these shares was to earn the profit and the prices of these share were on increasing trend. The other assumptions that who told or recommended about the purchases or to whom the order were given are irrelevant questions as in this electronic age the tips of purchases and sales are received online from unknown persons also and the order of purchases and sales were given to the broker M/s Master Capital Service Ltd. It is not material that in the office of the broker who was looking after the work.

- 21) The another assumptions and presumptions taken by Ld A.O. that the assessee hold the shares for a very short period, is also irrelevant because when the assessee company found that there are continue losses and the company is losing entire capital, the company took the decision of exit.
- 22) The other assumptions and presumptions taken by Ld A.O. are without any material and have no relevance with the transactions made by the assessee.
- 23) Your honour Ld A.O. has referred the decisions of Hon'ble Apex court in the case of Sumati Dayal v/s CIT 214/ITR/801, the case of Durga Prasad More v/s CIT and the case of MacDowell v/s CTO. In this respect it is submitted that facts of these cases are different as it is not the case to convert black money into white as the assessee company lost his capital. The transactions made by assessee are real and genuine and the entire additions have been made without making any enquiry with the brokers of the assessee or with the Bombay Stock Exchange Ltd and made the addition simply on the basis of assumptions, presumptions, surmises and conjectures. No opportunity of cross examination to the alleged brokers/persons was given to the assessee. It was not at all a colourable device. Therefore above decisions quoted by Ld A.O. are not applicable on the facts of case of the assessee. Rather, LD A.O. has not discharged his burden to prove the transactions made by the assessee not real and not genuine. We place our reliance on the following case laws:-

1. Hon'ble IT AT Mumbai Bench Mumbai in the case of ITO v/s Arvind Kumar Jain HUF ITA No. 4862/Mum/2014.
2. Hon'ble Raj. High Court in the case of CIT v/s Smt. Pooja Agarwal, Jaipur.
3. Smt. Bharti Arvind Jain v/s ITO (ITA No 6102/Mum/2016)- ITAT SMC Bench, Mumbai.
4. ITO v/s M/s Indravadan Jain HUF (ITA No. 4861/Mum/2014)- ITAT 'T' Bench, Mumbai
5. Chandrakant babulal Shah v/s The Assessing Officer, ward-16 (2)(4)

(ITA No. 6108/Mum/2009)- ITAT 'C' Bench, Mumbai

6. Mayur M. Shah (HUF) v/s ITO (ITA No. 2390/Mum/2013)-ITAT 'SMC' Bench, Mumbai.
7. Asst.Commissioner of I.T. 14(3) vs Shri Ravindrakumar Toshniwal (ITA No. 5302/Mum/2008) - ITAT 'D' Bench, Mumbai.
8. Smt. Durgadevi Mundra vs. ITO (ITA No. 1175/Mum/2012)- ITAT 'SMC' Bench, Mumbai.
9. Dalpat Singh Choudhary vs. Asstt. CIT 2012 Taxpub (DT) 0923 (Jod-Trib):(2012) 143 TTJ 0500: (2012) 065 DTR 0148
10. Mr. Arvind Asmal Mehta v/s ITO Mumbai (ITA No. 2799/Mum/2015)- ITAT 'SMC' Bench Mumbai.

4.5. The Ld. CIT Appeals gave findings and order as appearing in the Ld. CIT Appeal order page no. 14-22. The submitted as appearing in Ld. CIT (Appeals) Order page no. 04-14. The relevant portion is as under:-

- A. After careful perusal of facts of the case it is noted that the addition made by the AO is based on the findings of search and survey proceedings conducted by investigation wing where syndicate operating to provide accommodation entry of bogus gain and Bogus loss is detected.
- B. Such entry providers confirmed that they were involved in providing accommodation entries before the Investigation wing during search and survey proceedings.
- C. There is astronomical rise and fall in prices of these shares which are not related to the fundamentals or any projections made by these companies.
- D. The rise and fall were disproportionate to real financial position of the companies. Steep decline in the shares purchased by the appellant was also not related to financials of the companies. The pattern of chart of share price of these companies is bell shaped typical to these types of manipulated stocks where the price rises without any reason and falls without any reason. The prices were clearly manipulated by the operators. The share prices and sale purchase transactions are not genuine but planned to provide entries of fictitious gains and losses to the beneficiaries by these operators.
- E. The appellant failed to justify purchase and sale of these shares.
- F. The appellant has not given name of the person who recommended purchase of these shares to the appellant.
- G. The appellant is not even aware about the person after talking with whom the order to purchase these shares were placed. The appellant failed to prove that there was no such scheme as identified by the Income Tax Department.
- H. The appellant failed to prove that no benefit derived by it from such scheme.

- I. In fact as per return of Income there is nominal loss of Rs. (-)1849. This clearly establishes that the appellant got the entry of loss to set off with the positive income so that there is no tax liability for him.
- J. On the facts of this case the decision of hon'ble High Court of Calcutta in the case of Commissioner of Income Tax Vs Swati Bajaj (2022) 446 ITR 56 (Calcutta) is applicable. Hon'ble High Court held as under.

"The report submitted by the Investigation department could not be thrown out on the grounds urged on behalf of the assessee. The assessee has not been shown to be prejudiced on account of non-furnishing of the investigation report or non-production of the persons for cross examination as the assessee has not specifically indicated as to how he was prejudiced, coupled with the fact as admitted by the revenue, the statements do not indict the assessee. That apart, the investigation has commenced targeting the individuals who dealt with the penny stocks and after examining the modus seeing the cash trail the report has been submitted recommending the same to be placed before the DGIT (investigation) of all the States of the country. It is thereafter the concerned Assessing Officers have been informed to consider as to the bona fides and genuineness of the claims of LTCG/LTCL of the respective assessee qua the findings which emanated during the investigation conducted on the individuals who dealt with the penny stocks. Therefore, the assessments have commenced by the Assessing Officers calling upon the assessee to explain the genuineness of the claim of LTCG/LTCL made by them. In all the assessment orders, substantial portion of the investigation report has been noted in full. A careful reading of the same would show that the assessee has not been named in the report. If such be the case, unless and until the assessee shows and proves that she/he was prejudiced on account of such report/statement mere mentioning that non-furnishing of the report or non-availability of the person for cross examination cannot vitiate the proceedings. The assessee has miserably failed to prove the test of prejudice or that the test of fair hearing has not been satisfied in their individual cases. In all the cases, the assessee has been issued notices under sections 143(2) and 142(1) they have been directed to furnish the documents, the assessee has complied with the directions, appeared before the Assessing Officer and in many cases represented by Advocates/Chartered Accountants, elaborate legal submissions have been made both oral and in writing and thereafter the assessments have been completed. Nothing prevented the assessee from mentioning that unless and until the report is furnished and the statements are provided, they would not be in a position to take part in the inquiry which

is being conducted by the Assessing Officer in scrutiny assessment under section 143(3). The assessee were conscious of the fact that they have not been named in the report, therefore made a vague and bold statement that the non-furnishing of report would vitiate the proceedings. Therefore, merely by mentioning that statements have not been furnished can in no manner advance the case of the assessee. If the report was available in the public domain as has been downloaded and produced by the revenue, nothing prevented the assessee who are ably defended by the Chartered Accountants and Advocates to download such reports and examine the same and thereafter put up their defence. Therefore, the based on such general statements of violation of principles of natural justice the assesses have not made out any case. [Para 65]"

- K. In this case also the appellant has not specifically indicated as to how he was prejudiced by not providing of cross examination. Unless and until the appellant

shows and proves that she/he was prejudiced on account of such report/statement mere mentioning that non-furnishing of the report or non-availability of the person for cross examination cannot vitiate the proceedings. The assessee have miserably failed to prove the test of prejudice or that the test of fair hearing has not been satisfied in their individual cases.

- L. It is well settled principle of law as declared by the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT (214 IT 801) (SC) that the true nature of transaction have to be ascertained in the light of surrounding circumstances. It needs to be emphasized that standard of proof beyond reasonable doubt has no applicability in determination of matters under taxing statutes. In the present case, it is clear that apparent is not the real as evidenced from the investigation done by the department. Further, the Hon'ble Supreme Court, in the case of Chuhar Mal Vs CIT (1988) 172 ITR 250, highlighted the fact that the principle of evidence law are not to be ignored by the authorities, but at the same time, human probability has to be the guiding principle, since the AO is not fettered, by technical rules evidence, as held by the Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills v CIT(1954) 261 TR 775. The Hon'ble Supreme Court, in the case of Chuhar Mel V CIT (supra) held that what was meant by saying that evidence Act did not apply to the proceedings under Income-tax Act, 1961, was that the rigors of Rules of evidence, contained in the Evidence Act was not applicable; but that did not mean that when the taxing authorities were desirous of

invoking the principles of Evidence Act, in proceedings before them, they were prevented from doing so. It was further held by the Hon'ble Apex Court that all that Section 110 of the Evidence Act, 1872 did, was to embody a salutary principle of common law, jurisprudence viz, where a person was found in possessing of anything, the onus of proving that he was not its owner, was on that person. Thus, this principle could be attracted to a set of circumstances that satisfies its conditions and was applicable to taxing proceedings.

- M. The Ld. CIT Appeals was in agreement with the AO that the transactions relating to the claim of loss come within the ambit of "suspicious transactions", and therefore the rules of suspicious transactions would apply to the case. Payment through Banks, performance through stock exchange and other such features are only apparent features. The real features are the manipulated and abnormal price of off load and the sudden dip thereafter. Therefore, the Ld. CIT Appeals stated that he has to reach the inevitable conclusion that the transactions as discussed by the AO fall in the realm of "suspicious" and "dubious" transactions. The AO has therefore necessarily to consider the surrounding circumstances, which he indeed has done in a very meticulous and careful manner.
- N. The Ld. CIT Appeals hold that the tax liability in the cases of suspicious transactions, is to be assessed on the basis of the material available on record, surrounding circumstances, human conduct, preponderance of probabilities and nature of incriminating information/ evidence available with AO. In the case of Sumati Dayal V. CIT (1995) 80 Taxman 89 (SC), the Hon'ble Supreme Court has dealt with the relevance of human conduct, preponderance of probabilities and surrounding circumstance, burden of proof and its shifting on the Department in cases of suspicious Circumstances, by following observations:

".. It is, no doubt, true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that It is within the taxing provision and if a receipt is in the nature of income; the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee, But in view of section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie evidence against the assessee, viz., the receipt of money, and if he fails to rebut the same, the said evidence being un-rebutted, can be used against him by holding that it is a receipt of an income nature.. While considering the explanation of the assessee, the department cannot, however, act unreasonably. Having regard

to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record, an inference could reasonably be drawn that the winning tickets. were purchased by the appellant after the event. The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the findings that the said amounts were income of the appellant from, other sources was not based on evidence."

- O. The Ld. CIT Appeals further observed that It would, at this stage, be relevant to consider the admissibility and use of circumstantial evidence in income tax proceedings. Circumstantial evidence is evidence of the circumstances, as opposed to direct evidence. It may consist of evidence afforded by the bearing on the fact to be proved, of other and subsidiary facts, which are relied on as inconsistent with any result other than the truth of the principal fact. It is evidence of various facts, other than the truth of the time to time are - (1) the circumstances alleged must be established by such evidence, as in the case of other evidence. (2) the circumstances proved must be of a conclusive nature and not totally inconsistent with the circumstances or contradictory to other evidence. (3) although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced; some of these links may have to be inferred from the proved facts; (4) in drawing those inferences or presumptions, the Authorities must have regard to the common course of natural events, to human conduct and their relation to the facts of the particular case. (5) The circumstantial evidence can, with equal facility, be used in proof of a fact in issue which arises in proceedings for the assessment of taxes both direct and indirect, circumstantial evidence can be made use of in order to prove or disprove a fact alleged or in issue. In fact, in whatever proceedings or context inferences are required to be drawn from the evidence or materials available or lacking, circumstantial evidence has its place to assist the process of arriving at the truth.
- P. It will also be worthwhile to consider the nature of burden of proof on the AO for proving a fact or circumstances in the income tax proceedings. The questions raised about the tax liability by the AO are to be answered by the assessee by furnishing reasonable and plausible explanations. If assessee is not forthcoming with proper or complete facts or his statement or explanation is contradictory, drawing of suitable inferences and estimation of facts is inevitable.

- Q. The Ld. CIT Appeals hold that in view of the above discussion, the arguments raised by the appellant are found to be not acceptable and the addition made by AO with regard to disallowance of bogus loss and unexplained expenditure on commission paid for procuring these entries of loss is found to be justified. Therefore, the order of the AO was confirmed.

4.6. SUBMISSION OF THE ASSESSEE

- A. Your honour, the assessee is a Pvt. Ltd. company doing the business of Real Estate & Share & securities. During the year under consideration the assessee incurred losses of Rs. 1,62,15,971/- from the business of Shares and Securities. The assessee made following transaction of purchase and sale in shares -

S. No.	Scrip Name	Buy		Sell		Loss (in Rs.)
		Qty	Trade	Qty	Value	
1	Turbotech	15000	70,29,898	15000	3,02,000	67,27,898
2	GBL Infra	20000	13,88,160	20000	8,04,162	5,83,998
3	Indian Infotech	157000	69,08,121	157000	9,78,272	59,29,849
4	SRK Ind	22400	38,06,081	22400	8,31,855	29,74,226
Total			1,62,15,971			

- B. To prove that the sales and purchase of these transaction the assessee the assessee furnished complete details of sales and purchase along with the audited set of books of accounts and financial results before Ld. CIT (Appeals).
- C. Apart from these the assessee submitted following evidences and documents before Ld. CIT (Appeals).
1. Copies of the contract note of sales and purchases.
 2. Copy of account with Master Capital Services Ltd. For the period 01/04/2013 to 31/03/2014.
 3. Copies of bank account to prove the receipts and payment.
 4. Address and contact No. of brokers.
 5. Copies of DMat A/c
 6. Copies of latest Master Data of all the companies
 7. Payment of consideration for the purchases and receipts of consideration on sales were made received through banking channel.
- D. Your honour, the assessee submitted before Ld. CIT (Appeals) that from

the above facts, it is clear that the above mentioned transactions of sale & purchase are genuine.

- E. Purchases were made from identifiable person.
- F. Payment of purchases were made through a/c payee cheque.
- G. Transaction in the shares have been recorded in the books of accounts.
- H. Sale of shares was made through registered broker of Stock Exchange. The broker issued contact notes to the assessee.
- I. The shares were sold and purchased on the price of Stock Exchange of the particular date & particular time.
- J. Scrutiny transaction tax, service tax, turnover tax etc were paid on every transaction and the assessee lawfully claimed the business loss..
- K. Payments of sales were received through banking channel.
- L. The Ld. AO on the basis of assumption, presumptions surmises and conjectures made the disallowance of claim made by the assessee.
- M. The Ld. AO has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently, the addition made by the Ld. AO cannot be sustained. As per Hon 'ble Jurisdictional High Court in the case cited as CIT Vs Vishal Holding and Capital Pvt. Ltd. vide order dated 9th August 2010.
- N. Nothing has been brought on record to show that the persons investigated, including entry operators or stock brokers, have named that the assessee was in collusion with them. In absence of such finding how is it possible to link their wrong doings with the assessee. In fact, the investigation wing is a separate department which has not been assigned assessment work and has been delegated the work of only making investigation.
- O. The assessee relied on the decision held in the case cited [2023] 150 taxmann.com 90 (Ahmedabad - Trib.)/[2023] 201 ITD 132 (Ahmedabad - Trib.)[15-03-2023] in the case of AtulbhaiAmritlal Mehta v. Deputy Commissioner of Income-tax(paper book page no. 1-4) wherein it was held that
- P. As regards the sales consideration when the assessee has shown the share sales consideration paid through his bank account and the Ld. AO has not brought on record any material to show that apart from the share sales consideration paid through bank account the assessee has brought his own money back as unaccounted money. The Ld. AO has passed the assessment order based on the statement of third party recorded by the Investigation Wing however, the assessee has specifically demanded the cross examination. Your honour, 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 Notice. Therefore, your honour, the statement of witness cannot be sole basis of the assessment without given an opportunity of cross examination and consequently it is a serious flaw which renders the order a nullity. The Mumbai Special of the Tribunal in case of GTC Industries vs. ACIT (supra) had the occasion to consider the addition made by the AO on the basis of suspicion and surmises and observed in para 46 as under:-
.....

- Q. Therefore, when the Ld. AO has not brought any material on record to show that the assessee has paid over and above the purchase consideration as claimed and evident from the bank account then, in the absence of any evidence it cannot be held that the assessee has got bogus short term capital loss. The Hon'ble Jurisdiction High Court in case of CIT vs. Smt. Pooja Agrawal (supra) has upheld the finding of the Tribunal on this issue in para 12 as under:-.....
- R. In view of the above facts and circumstances of the case, the assessee request that the disallowance made by the AO is based on mere suspicion and surmises without any cogent material to show that the assessee has taken bogus loss. On the other hand, the assessee has brought all the relevant material to substantiate its claim that transactions of the purchase and sale of shares are genuine. Even otherwise the holding of the shares by the assessee is not in doubt, therefore, the transaction cannot be held as bogus.
- S. Your honour, in case of ITO vs Shri Lalit Kumar Biyani (supra), the Coordinate Jaipur Benches of the Tribunal had an occasion to examine similar issue and taking into consideration various decisions of the Tribunal as well as the decisions of Hon'ble Jurisdictional High Court and that of the Hon'ble Delhi High Court in case of Suman Poddar (supra). Your honour, similar facts are appearing in the case of Nilesh Agarwal HUF Vs. The Income Tax Officer, before your honour bench, vide ITA No. 222/JP/2020 Assessment Year :2014-15 Date of Hearing : 10/12/2020 Date of Pronouncement : 09/02/2021 and your honour after considering facts passed the order. The relevant scanned portion of page no. 38-47, para 5.

Hence, your honour, is requested, kindly allow this ground and delete the addition

made by the Ld. AO and erroneously confirmed by the Ld. CIT (Appeals) of Rs. 1,62,15,971/- by disallowing the claim of business loss.

5. GOA 2

On the facts & circumstances of the case & in law, also Ld. CIT (Appeals) grossly erred on facts and in Law confirming the addition made by the Ld. AO. of Rs. 9,72,958 on account of alleged commission.

Your honour Ld A.O. has also made an addition of Rs. 9,72,958/- being commission paid for acquiring the above referred alleged accommodation entries for bogus short term loss @ 6% of Rs. 1,62, 15,971/- In this respect it is submitted that entire transaction of sales and purchases are genuine. There is no evidence with Ld A.O, of making payment of commission. No question does arise of paying any commission because the transactions are genuine the brokerage has been charged by the brokers in the bills of purchases and sales, which is verifiable.

Hence, your honour, is requested, kindly allow this ground and delete the addition made by the Ld. AO and erroneously confirmed by the Ld. CIT (Appeals) of Rs. 9,72,958/- on account of alleged commission.

Your honour is requested to kindly allow the appeal and provide relief to the assessee.”

5.1 In addition to the above to the written submission the ld. AR of the assessee filed the following evidences in support of the contentions raised in the written submissions:-

SNo	Particulars	Page No
1	Copy of reply of dated 06/12/2016	001-004
2	Copy of Master Date of Indian Infotech and Software Ltd.	005-007
3	Copy of Master Data of SRK industries Ltd.	008-010
4	Copy of Master Date of Global Infratech & Finance Ltd.	011-014
5	Copy of Reply dated 25/12/2016	015-018
6	Copy of Account of Agrasen Premises Pvt. Ltd. In the books of Master Capital Service Ltd.	019-020
7	Copy of Contract Notes	021-039
8	Copy of account of Sale and Purchase of shares in the books of assessee.	040-041
9	Copy of order ITA No. 4862/MUM/2014 in the case of ITO v/s Arvind Kumar Jain HUF dated 18/09/2017	042-046
10	Copy of Order ITA No. 4861/MUM/2014 in the case of ITO v/s M/s Indravadan Jain HUF and ITA No. 5168/MUM/2014 in the case of ACIT v/s M/s Indravadan Jain HUF dated 27/05/2016	047-062
12	Copy of Order ITA No. 2799/MUM/2015 in the case of	063-071

	Mr. Arvind Asmal Mehta v/s ITO dated 29/02/2016	
13	Copy of case law in the case of Dalpat Singh Choudhary v/s CIT 2012 TaxPub (DT) 0923 (Job-trib, (2012) 143 TTJ 0500 and 065 DTR0 148	072-084
14	Copy of order in the Rajasthan High Court ITA No. 385/2011 in the case of CIT v/s Smt. Pooja Agarwal dated 29/02/2016	085-090
15	Copy of order IN THE SUPREME COURT OF INDIA Andaman Timber industries v/s CCE, Kolkata II (Civil Appeal No. 4228 of 2006 vide order dated 02/09/2015)	091-096
16	Copy of order IN THE ITAT AHMEDABAD BENCH 'SMC' AtulbhaiAmritlal Mehta v. Deputy Commissioner of Income-tax vide I.T. APPEAL NO. 426 (AHD.) OF 2022 [A.Y. 2011-12] on dated 15.03.2023	097-100
17	Copy of order IN THE ITAT, JAIPUR BENCHES 'B' Nilesh Agarwal HUF Vs The ITO on dated 09/02/2021 vide ITA No. 223/JP/2020	101-147

6. The ld. AR of the assessee in addition to the written submission vehemently inviting our attention to page 4 of the order of the ld. CIT(A) wherein the assessee has undisputedly submitted all the details related to the loss suffered by the assessee. Therefore, she argued that the claim based on the investigation report prepared by the revenue that the assessee's misused the claim of bogus long term capital as exempt from tax u/s. 10(38) is not correct and there is no such case of the assessee. The assessee out of the regular income invested in the stock of companies with a view to earn the profit but in fact the company was suffering from the price reduction even though staying invested for 7-8 months and therefore, with a view to save from the further loss sold the investment and has incurred the loss. The purchase of these shares by the assessee is from open market, supported by the SEBI registered broker, the purchase transaction is supported by the bill of the

broker having the day, date, and time of purchase of security and therefore, the purchase is from the explained sources. On the other hand even the sale is on account of the continuation down fall of the amount invested by the assessee and to avoid further reduction in the capital invested the assessee has sold these shares in the open market having invoice from the registered broker who have given the invoice having day, date and time of selling the security and have transferred the money from the normal banking channel. The report of the investigation wing relied and reproduced some of the content of its is in relation to the claim of the unaccounted income into the claim of exempt income without payment of tax, whereas the fact in this case the assessee has invested the money out of the disclosed source and the same was invested but since the assessee was continuation seeing down fall in the price to save the company from further loss sold the shares for which the amount invested. All the records produced and placed on record are correct and have not been disbelieved by the lower authority. All the purchase and sales are routed through the online mode neither the sale nor the purchase is on offline mode which is the modus oprendi discussed in the investigation report relied upon by the revenue. The ld. AO has not examined the broker from where the assessee made purchase and sale transactions the statement relied upon by the ld. AO are recorded behind the back of the assessee. In the statement so relied upon by the revenue there is no reference or name of the assessee having indulged

into the evasion of the legitimate tax by the assessee and therefore, those statement cannot bind the assessee. All the transactions are done at the online platform and all the details related to those transactions were placed on record the ld. AO did not examine those transaction with that platform provider which are recognized.

7. Per contra, the ld. DR relied upon the orders of the lower authority wherein the detailed finding is recorded giving reasoned finding that the loss claimed by the assessee is not correct and therefore, the disallowance of loss and the addition related to the commission paid by the assessee is required to be sustained.

8. We have heard the rival contentions and perused material available on record. In this case the fact related to the dispute is that the assessee has incurred a loss of Rs. 1,62,15,971/- which the Assessing Officer has disallowed considering it as a bogus loss claimed by the assessee. The fact related to that claim is that the assessee has made out of the disclosed sources in the shares of the companies as mentioned herein below, after making the investment in 7 – 8 month the assessee company noted that the investment made by the assessee getting deteriorated and therefore, sold those share purchased by the assessee and in that process the assessee has suffered the loss. Thus, as it is evident that the primary onus that is casted

upon the assessee has discharged by the assessee and the revenue has merely based on the generalized way and that too while dealing with the cases of 10(38) relied upon the detailed investigation report where in there is no reference as the broker of the assessee with whom the assessee has undertaken the transaction is not discussed or covered and there is no reference of either of the assessee or to his broker the addition cannot be made in the hands of the assessee. We get support of our view in a case having similar set of facts where the Gujarat high court has held the same view in favour of the assessee in case of Principle Commissioner of Income Tax (Central) Vs. Affluence Commodities (P) Ltd., [161 taxmann.com 476 (Guj)] and the relevant finding of the Gujarat high court is reiterated herein below :

“2. By this Tax Appeal under section 260A of the Income Tax Act,1961 [‘the Act’ for short] the appellant-Revenue has proposed the following questions of law arising out of the order dated 24.04.2023 passed by the Income Tax Appellate Tribunal [for short ‘the Tribunal’] in ITA No. 593/AHD/2020 for A.Y. 2015-16:

"a. Whether in the facts and circumstances of the case and in law, the learned ITAT has erred in restricting the disallowance u/s. 14A of the Income Tax Act read with Rule 8D(iii) of the Income Tax Rules, to the extent of exemption income, which is contrary to circular 5/2014 issued by CBDT?

b. Whether the impugned order of the learned ITAT restricting the disallowance u/s. 14A of the I.T.Act upto the exempt income earned by the assessee during the year under consideration is contrary to the clarificatory amendment by way of Explanation to Section 14A inserted by the Finance Act,2022?

C. Whether Explanation to Section 14A of the I.T.Act inserted by the Finance Act,2022 being clarificatory in nature has retrospective effect?

d. Whether in the facts and circumstances of the case in law, the learned ITAT has erred in deleting the addition of Rs. 73,12,905/- made by the AO on account of disallowance of losses booked in pennystocks namely "Kappac Pharma" and "Alang Industries Gases Ltd"?"

3. Learned advocate Mr. Patel for the appellant-Revenue submitted that Questions a,b and c of the proposed questions would be taken care of by the questions which are already admitted by this Court in Tax Appeal No. 312 and 321 of 2022 in case of the respondent. Accordingly, the following question is admitted:

"Whether in the facts and in the circumstances of the case and in law the Appellate Tribunal has erred in holding that disallowance under section 14A of the Act cannot exceed the exempt income earned by the assessee?"

4. With regard to question No.d, it was submitted that the Assessing Officer made an addition of Rs. 73,12,905/- on account of disallowance of losses booked in pennystocks namely Kappac Pharma Ltd. as there was a price fluctuation in the stock exchange. It was submitted that both the CIT(A) and the Tribunal have committed an error by setting aside the addition made by the Assessing Officer as the assessee failed to prove the genuineness of such transaction before the Assessing officer.

5. It was submitted that the assessee claimed the loss on account of the low market value in case of Kappac Pharma Ltd as the same was shown as stock-in-trade and therefore, the loss could not have been allowed as held by the Assessing Officer.

6. It appears that the CIT(A) while considering the ground of appeal filed by the assessee on addition of Rs. 73,12,905/- on sale of shares of Alang Industries Gas Ltd and loss on account of low market price in case of Kappac Pharma Ltd has held as under:

"5.3 It was gathered by the Deptt/the Assessing Officer that during the year under consideration the appellant had dealt in some pennystocks namely share of M/s. Alang Industries Gases Ltd and M/s. Kappac Pharmaceuticals Ltd., that it had purchased these stocks in AY 2014-15 at high manipulated rate and sold them at very low rate to book business losses and to set off the profits earned in commodities transaction on NMCE platforms. The details are as under:

Alang Industries Gases Ltd							
Date	QTY	Rate	Value	Date	QTY	Rate	Value
12.04.2013	15,000	110.74	1661150	08.12.2015	20,000	10.25	2,05,000
15.04.2013	5,000	110.86					
Total	20,000		2215450	Total	20,000		2,05,000
PROFIT/LOSS Rs. 20,10,450/-							
KAPPAC PHARMA							
Date	QTY	Rate	Value	Date	QTY	Rate	Value

25.11.2014	37,912	252.71	95,80,824		37,912	112.85	42,78,369
Total	37,912		95,80,824	Total	37,912		42,78,369
PROFIT/LOSS Rs. 53,02,455/-							

5.4 It was submitted by the appellant before the AO that the stock of Kappac Pharma was suspended and the last trading price was of Rs. 112.85 and that those scripts were still held by the appellant as stock in trade in the books of accounts. However, the AO ignored the submissions based on the premises that the transactions were incurred to reduce the profit earned and on the information that the SEBI had barred various entities for using the exchange platform for tax evasion and for allegedly engaging in fraudulent and manipulative trades in shares of BSE listed firms and that Kolkata Investigation Directorate (of the Income Tax Department) had unearthed large number of pennystocks companies whose shares prices were artificially raised in the stock exchanges in order to book bogus claims of long term capital gains or short term capital losses by various beneficiaries. The AO noted that the appellant had shown purchase of scripts of Alang Industrial Gases Ltd @ Rs. 110 per share and sold the same @ Rs. 10.25 per share. Similarly shares of KappacPharma was purchased in November, 2014 at the rate of Rs. 252.71 per share and the book value on 31.03.2015 was taken at Rs. 112.85 per share. It is the case of the AO that no valid explanation was furnished in the matter except claiming that the transactions were made through recognized stock exchanges. The AO disallowed loss amounting to Rs. 73,12,905/- claimed in the said pennystocks."

7. Being aggrieved, the Revenue has preferred appeal before the Tribunal and the Tribunal has held as under:

"9. The 3rd ground namely losses booked under pennystocks of Rs. 73,12,905/- on sale of Alang Industrial Gases Ltd. Shares. The assessee has proved the genuineness of the transactions beyond doubt by furnishing contract notes, ledger accounts, bank transactions from books of brokers whereas the AO without any material evidence disallowed the losses of in scripts of Alang Industrial Gases Ltd. And the valuation of the closing stock in Kappac Pharma just bases on the SEBI general information and Investigation Wing, Kolkatta. The AO made the disallowance without documentary proof whereas the assessee proved the genuineness of the transactions and established on online trading platforms and it had no control whatsoever on share prices and thus incurred losses in shares of Alang Industrial Gases Ltd. It is the case of the assessee that it sold only part of the shares and remaining shares have been held by the assessee in subsequent assessment year also. Thus following Jurisdictional High Court Judgement, the Ld. CIT(A) deleted the addition.

11. Respectfully following the above Jurisdictional High Court judgements and also the fact that the assessee is retaining Kappac Pharma shares as stock-in-trade and the closing stock is valued at the market rate. Since the market rate is lower it has incurred a business loss of Rs. 53,02,455/- though the shares are not sold. The difference is only because the valuation of shares which is as per the Accounting standard and the share of Kappac Pharma are still forming part of closing stock of the assessee company as on 31.03.2019. Thus, we have no hesitation in deleting the disallowance made by the AO which was correctly deleted by the Ld. CIT(A). Thus the grounds raised by the Revenue is without any basis and the same is liable to be rejected. The remaining ground Nos. 4 to 6 are general in nature, which does not require specific adjudication."

8. We have considered the concurrent findings of fact arrived at by the CIT(A) and Tribunal and are in complete agreement with such findings to the effect that the assessee has proved the genuineness of the transactions and established on online trading platforms that it had no control whatsoever on share prices and thus, incurred losses in shares of Alang Industries Gas Ltd. It was also found by both the authorities that the assessee sold only the part of the shares and remaining shares have been held by the assessee in the subsequent assessment year also. With regard to shares of Kappac Pharma Ltd., it was rightly held by the Tribunal that since the market rate was lower, the assessee had incurred business loss though the shares are not sold.

9. In view of the above concurrent findings of fact, no questions of law much less any substantial question of law would arise and accordingly, the appeal, being devoid of any merits, is dismissed."

Since, the fact of the case as decided here in above the Gujarat high court and the fact of the case of the assessee being similar respectfully following the view of the Gujarat high court the appeal of the assessee in ground no. 1 raised by the assessee is allowed.

9. Ground no. 2 raised by the assessee is estimation of alleged commission on loss claimed by the assessee. Since in ground no 1 we have

considered the loss as genuine the addition made in the hands of the assessee does not survive and therefore, the same is directed to be deleted.

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

Order pronounced in the open court on 30/05/2024.

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/05/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Agrasen Primses Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(1), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त (अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File ITA No.125/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar