

IN THE INCOME TAX APPELLATE TRIBUNAL, "F" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA. No. 4543/MUM/2023
(A.Y.2011-12)

Jitendra Udaylal Jain, Shop No.1, Muncipal Bldg, RA Kidwai Road, Wadala, Mumbai -400037.	Vs .	ITO-26(1)(4), 3 rd floor, 6 th Tower, Vashi Railywaystation, Complex, Vashi, Navi Mumbai-400703.
PAN/GIR No. AABPJ5480E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri Vimal Punmiya.AR
Revenue by	Ms.Rajeshwari Menon.Sr.DR

सुनवाई की तारीख/Date of Hearing	28.05.2024
घोषणा की तारीख/Date of Pronouncement	25.06.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) Delhi /CIT(A) passed u/sec 143(3)r.w.s147 of the Act and u/sec 250 of the Ac. The assessee has raised the following grounds of appeal:

- 1) *On the facts and circumstances of the case and law the Ld. AO erred in making addition of Rs. 3,72,49,578/- on account of alleged Long Term Capital Gain and treating it as bogus and accommodation entry under section 68 r.w.s. 115BBE of the Income Tax Act, 1961.*

2. On the facts and circumstances of the case and law the Ld. AO erred in rejecting the exemption of Rs. 3,72,49,578/- under section 10(38) of the Income Tax Act, 1961.

3. The LD AO erred in confirming the disallowance of Rs. 7,44,992/- of commission paid at the rate of 2 per cent on sale of shares by treating it as an unexplained expenditure under section 69C of the income tax act 1961.

4. On the facts and circumstances of the case the Ld AO erred in confirming the interest under section 234A, 234B, 234C and 234D of the Income Tax Act 1961.

5. On the facts and circumstances of the case the Ld AO erred in invoking Penalty proceeding under section 271(1)(c) of the Inco me Tax Act 1961.

2. The brief facts of the case are that, the assessee is engaged in business of jewellery and also investor in shares and securities. The assessee has filed the return of income for the A.Y 2011-12 on 31.03.2012 disclosing a total income of Rs. 11,69,940/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the AO has received information from Kolkata Investigation Wing on the shares traded by the assessee and the A.O after recording the reasons for reopening of assessment has issued notice u/sec 148 of the Act and the assessee has filed the return of income disclosing a total income of Rs.11,69,940/- on 19-05-2018 in compliance to notice u/sec148 of the Act. The assessee was also provided copy of reasons for reopening of assessment vide letter dated 05.09.2018 and the assessee has filed objections and the objections were disposed off by the A.O. Subsequently notice u/sec 143(2) and u/sec 142(1) of the Act are

issued and in compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and information. On perusal of the details, the Assessing Officer found that the assessee has disclosed the income from salary, income from house property, business income, short term capital gains and income from other sources. Further the assessee has disclosed and claimed the exemption U/sec10(38) of the Act being long term capital gains on sale of shares of Rs.3,41,03,340/- and called for the information. The AO on verification of the financial statements found that found that the assessee has earned long term capital gains on sale of shares of M/s Aarya Global Shares & Securities Ltd (earlier know as M/s Kuvam International Fashions Ltd) and the assessee was asked to produce the details of purchase of shares, mode of payment and relevant supporting evidences. Whereas the assessee has purchased 1,50,000 shares of Rs.10/- paid up each of M/s Kuvam International Fashions Ltd at Rs.22/- per share from the company through cheque on 22.09.2009 for Rs.33,00,000/- as per the purchase invoice bill, these shares were purchased at a premium of Rs12 per share. Subsequently these shares were split and the name of the company was changed to M/s Aarya Global Shares & Securities ltd .Further the shares were split in the ratio of 1:10 shares and the assessee was allotted 15,00,000 shares and these shares were credited to demat account and the assessee also received dividend, whereas the assessee has sold 15,00,000 shares of M/s Aarya

Global Shares & Securities Ltd in F.Y.2010-11 for a consideration of Rs. 3,72,49,578/- and earned Long Term Capital Gains (LTCG) of Rs.3,41,03,340/- and claimed exemption U/sec10(38) of the Act.

3. The AO has dealt on the purchase confirmation, sale contract notes, bank statement and demat account, statements in respect of shares purchase and relied on the modus operandi, report of the Kolkata Investigation Wing, statements recorded in the survey operations U/sec 133A of the Act on the share brokers and has doubted the earning of long term capital gains on shares. Further the AO has issued the summons u/sec 131 of the Act on the assessee on 26.11.2008 and the statement was recorded. Further the AO find that there is no correlation of price rise and the financial/ fundamental statements of the company. Finally the AO was not satisfied with the explanations and material information and observed that the transactions are not genuine and made addition of sale proceeds u/sec 68 of the Act of Rs. 3,72,49,578/- and estimated commission @ 2% on the sale value which worked out to Rs. 7,44,992/- and assessed the total income of Rs. 3,91,64,510/- and passed the order u/sec 143(3) r.w.s147 of the Act dated 18.12.2018.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the AO in respect of addition u/sec 68 & U/sec69C of the

Act, but the CIT(A) has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed appeal with the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the additions overlooking the facts and submissions that the purchase of shares are genuine through banking channels and the assessee has substantiated with various details referred in the assessment order and the CIT(A) order. Further there is no scope for the AO to make the additions based on the surmises and conjectures as the assessee has filed the voluminous documentary evidence in support of the claim. The Ld. AR explained the reasons for purchase of the shares and subsequent sale. The Ld. AR mentioned that the AO has only relied on the investigation report and no independent enquiry conducted. The Ld.AR substantiated the submissions with the synopsis, factual paper book and the judicial decisions and prayed for allowing the appeal. Contra, the Ld.DR mentioned that the transactions are not genuine and relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue is that the CIT(A) has sustained the additions u/sec 68 in respect of sale of shares and u/sec 69C in respect of estimated commission expenditure overlooking the material information and evidences filed in the course of

the assessment proceedings and appellate proceedings. The Ld. AR submitted that the assessee has furnished the information with evidences of purchase price, financial statements and summary of shares sold in F.Y 2010-11, ledger account copy, copies of bank account statement, copy of the contract notes and sale of the shares, demat account statement and copy of original share allotment certificate. The Ld.AR contentions are that the assessee has purchased 1,50,000 shares of Rs.10/- paid up each of M/s Kuvam International Fashions Ltd Rs.22/- per share from the company through cheque on 22.09.2009 for Rs.33,00,000/- as per the purchase invoice bill, these shares were purchased at a premium of Rs.12/- per share. Subsequently these shares were split and the name of the company was changed to M/s Aarya Global Shares & Securities ltd and the assessee holding of shares were split in the ratio of 1:10 shares and the assessee was allotted 15,00,000 shares and these shares were credited to demat account and the assessee and referred to page 25 to 32 of the paper book. Whereas the assessee has sold 15,00,000 shares of M/s Aarya Global Shares & Securities Ltd for a consideration of Rs. 3,72,49,578/- and earned Long Term Capital Gains (LTCG)of Rs.3,41,03,340/- and claimed exemption U/sec10(38) of the Act. The assessee has sold the shares in the financial year 2010-11 through a SEBI registered broker on stock exchange. The Ld. AR demonstrated in support of shares, sale bills/contract notes, securitization tax paid at page 1 to 81 of the paper

book-2. The Ld. AR also referred to the share purchase bill/allotment of shares at page 28 of the paper book in F.Y 2009-10 to justify the genuineness of the purchases. Further the assessee has sold the shares through recognized stock exchange where the STT has been paid in respect of listed shares and Ld.AR demonstrated the sales cum contract notes, copy of the bank statement reflecting the payment for purchase of shares at page 25 and also the bank statement at page 20 to 24 reflecting the receipt of sale value. The Ld. AR submitted that the assessee is actively trading in shares and the shares were purchased through the broker and the shares were listed and assessee has sold the shares subject to securitization Tax and the Ld. AR emphasized that the assessee is only investor and not involved in any price rigging of shares and no enquiry was conducted by the SEBI or BSE on the assessee and the Ld.AR relied on the submissions filed before the lower authorities and the judicial decisions :

1. *Sheetal Rupesh Salva Vs. ITO, ITA No. 93, 94 & 95/Mum/2023 (ITAT Trib).*
2. *Pr. CIT Vs. Champalal Gopiram Agarwal, R/Tax Appeal No. 366 of 2023 (Gujarat HC)*
3. *Priti Paras Savla Vs. ITO, R/special Civil Application No. 17756 of 2018. Gujarat HC)*
4. *Pr. CIT Vs. Kuntala Mohapratra, SLP(Civil) Diary Nos5269 of 2024 dated 4-03-2024,.*

7. Whereas the facts and circumstances of the present case are similar and identical pertains to the A.Y 2011-12 in

respect of sale of shares of M/s Aarya Global shares and securities Ltd(M/s AGSSL) dealt by the Hon'ble Tribunal in Sheetal Rupesh Savla Vs. ITO in ITA No.93/Mum/2023 A.Y 2011-12 dated 18.03.2024 and granted relief observing at Page 10 Para 12 to 33 of the order read as under:

“12. We have heard both the parties and perused the records; and we find that AO/Ld. CIT(A) has not found any infirmity in the primary documents produced by the assessee in support of claim of exemption of LTCG u/s 10(38) of the Act. We find that AO during assessment proceedings had asked the assessee to prove the claim of LTCG of Rs. 2,14,02,750/- from sale of shares of M/s KGN, and LTCG claim of Rs.93,40,000/- from sale of Shares of M/s AGSSL, pursuant to which, the assessee filed documents (refer page no. 16-36 of PB along with documents) to prove the claim, which documents have not been found by AO to suffer from any infirmity. The assessee placed evidence to prove the purchases of shares of M/s. KGN and allotment of physical share certificate no 2532, under Registered Folio No. 013658 dated 11.08.2009, for allotment of 90000 shares, a copy of which is seen from perusal of page no. 16 of PB; and likewise, assessee filed evidence to prove the purchases of shares of M/s. AGSSL and allotment of physical share certificate no 00015524, under Registered Folio No. 0005202, for allotment of 150000 shares, a copy of which is seen from perusal of page no. 17 of PB; and then the shares were dematerialized. And further, we note that assessee has purchased shares of M/s. AGSSL for total consideration of Rs.33,00,000 @ Rs. 22 per share which consideration was given through Cheque 607880 for Rs.8,25,000/- from Bank of Baroda A/c 09330100004483, Usmanpura, Ahmedabad Branch of Bank of Baroda and Cheque no 615755 for Rs.24,75,000/- drawn on HDFC Bank A/c No 00061330001791 Navrangpura Branch, Ahmedabad as evidenced by copy of Bank Statement at Pages 18 and 19 of PB. It is further noted that, assessee was allotted 9000 Shares of M/s KGN and 150000 Shares of M/s AGSSL which was later split in to 90000 shares of M/s KGN and 1500000 shares of M/s AGSSL; and later shares of M/s KGN were sold between

5.04.2010 to 22.03.2011; and sale of shares of M/s AGSSL took place between 09.03.2011 and 10.03.2011 in Bombay Stock Exchange through broker M/s. JM Financial Services Ltd (refer contract notes placed at page 23 to 33 of PB) and consideration have passed through banking channel (refer page no. 36 to 38 of PB) and STT paid on the sale transaction (refer STT certificate at Page 34,35 of PB), thus sale of shares cannot be held as bogus; and once the assessee produced all relevant evidence to substantiate the transaction of purchase, dematerialization and sale of shares then, in the absence of any contrary material brought on record, the same cannot be held as bogus transaction merely on the basis of a general investigation report wherein there is no mention of any wrong doing by assessee or of her broker, or involvement in modus-operandi as stated in Report of Ahmedabad/Bhavnagar/Mumbai Investigation Wing (referred at para 1, 4.8, 5.1, 5.9,5.10) which we note are general report and does not impute any wrong doing of assessee/broker. Similarly the SEBI Report mentioned at Para 4.8 and 4.10 of assessment order in no way incriminate assessee or her broker being part of modus-operandi to do any illegal acts as stated therein, and the Ld DR also failed to produce any evidence against the assessee / her broker to have participated in the modus operandi along with entry operators. Even before us, the revenue failed to bring on record any material or evidence to show that the SEBI has proceeded against M/s. KGN or M/s AGSSL for manipulating the share prices in stock market. According to the Ld. AR, the AO also doubted the financial prudence of the assessee to have purchased in the first place the shares of M/s. KNG and M/s AGSSL; and wondered as to how the price of shares of M/s. KGN and M/s AGSSL could have increased in a span of two years; and AO also relied on the selected statements of Mr. Deepak Vrajlal Rawal(CEO and Company Secretary) and Mr. Jethlal Jivabhai Hirani (Ex-CEO) of M/s KGN of Shri Bhavesh Makwana and Shri Deepak Rathod , directors of M/s AGSSL; and according to AO by making such a claim of LTCG/exempt income, assessee was bringing in her books unaccounted money. Thus, according to AO, assessee has laundered her black money to white and therefore, he held the transaction as bogus and added Rs.3,17,12,750/- u/s 68 of the Act.

13. *The main plea of the assessee is that such an action of the AO/Ld. CIT(A) cannot be legally sustained in the light of the fact that assessee has discharged the burden of proving the genuineness of claim regarding LTCG by submitting primary documents to substantiate the claim (LTCG) by proving the events of purchase of shares, dematerialization of the shares, allotment of share of M/s. KGN and M/s. AGSSL; and transfer of shares to demat account, and the sale happening through Bombay Stock Exchange Electronic platform. Therefore, according to Ld. AR, AO could not have drawn adverse view against the claim made by assessee without first finding any infirmity in the primary documents filed by the assessee, which in this case AO/Ld. CIT(A) have not alleged the veracity of the documents. In such a scenario, according to Ld. AR, the AO was duty bound to show from the incriminating evidences, he relies upon in the assessment order (like report of investigation wing, SEBI order, statement of director/entry providers, etc) that assessee was participant in the modus operandi to convert black money of assessee in active connivance with these statement-makers. Unless AO is able to point out from the report/statement of entry operator the role of assessee as a wrong doer or participant in the modus-operandi (as stated in the investigation wing), the impugned action of AO/Ld CIT(A), in the light of primary documents has to fall.*

14. *As noted (supra), AO/Ld. CIT(A) has been influenced by the investigation report submitted by the Investigation Wing of the Department functioning at Ahmedabad/Mumbai/Jamnagar/Kolkata. It is true that some unscrupulous entry operators had devised methods/modus-operandi to beneficiaries to facilitate laundering their black money to white through pre-planned receipt in the form of bogus LTCG, loans etc. But the discussion of lower authorities, we find to be general in nature and there is nothing in the discussion to link/connect the assessee somehow with the modus-operandi of the Investigation Wing's Report. Since there is no evidence incriminating assessee in the investigation report or being part of the nefarious conspiracy or abetment, such a report of investigation wing cannot be of any aid to the revenue and both the authorities erred in placing reliance on such report to draw adverse inference against assessee.*

15. As noted (*supra*), the lower authorities have not doubted the documents which were furnished in support of the purchases. Rather the lower authorities doubted the investment rationale of the assessee purchasing the shares of M/s. KGN and M/s AGSSL. The AO wondered as to how the assessee could have invested in such an entity which did not have any future outlook at the time of purchase, which according to him was unusual and suspicious. Moreover, the AO have not brought on record any evidence/material to show that assessee's investment in M/s. KGN and M/s. AGSSL was the outcome of any pre-planned scheme for facilitating huge gain by rigging the share market. Other than citing bald statements of Mr. Deepak Vrajlal Rawal and (CEO and Company Secretary) Mr. Jethlal Jivabhai Hirani (Ex-CEO) of M/s KGN of Shri Bhavesh Makwana and Shri Deepak Rathod, directors of M/s AGSSL there is no iota of evidence/material to connect the aforesaid persons with assessee or anyone associated with assessee in any wrong doing. And it is not the case of AO that the aforesaid persons has imputed any role of assessee in the alleged *modus-operandi* to rig the share market or that assessee was a beneficiary of accommodation entry. Without any incriminating material to connect assessee with the aforesaid persons; their statement cannot in anyway discredit the LTCG claim of assessee on sale of shares of M/s. KGN and M/s. AGSSL. Therefore, we find that statements referred by AO (of Mr. Deepak Vrajlal Rawal (CEO and Company Secretary) and Mr. Jethlal Jivabhai Hirani (Ex-CEO) of M/s KGN of Shri Bhavesh Makwana and Shri Deepak Rathod , directors of M/s AGSSL) is of any use to disbelieve/discredit the documents submitted by assessee to claim the LTCG.

16. As noted (*supra*), during the year in several lots, shares of M/s. KGN and M/s. AGSSL were sold. The assessee has placed before us the contract notes issued by registered stock broker M/s. JM Financial Services Ltd which fact is evident from page 23 to 33 of PB. The purchase/sale transaction has happened through the banking channel which has not been disputed. It is noted that none of these documents to have been found to be defective or false by any of the lower authorities. It is also noted that the broker through whom assessee had conducted then transaction M/s. JM Financial Services Ltd has also not been alleged to be guilty of any wrongdoing or

manipulation. It is also not the case of the revenue that the shares were not sold at the prices at the prevailing price on the floor of Bombay Stock Exchange on the given date of sale. Thus, we find that the assessee had discharged her burden of substantiating the sale of the listed shares which were subjected to STT, on the floor of stock exchange in order to avail the benefit of the exemption set-out in section 10(38) of the Act.

17. *AO have doubted the genuineness of the sale of the share of M/s. KGN and M/s AGSSL on the basis of unusual rise in the share prices, which according to him was not supported neither by any market factors nor the fundamentals of the scrip itself. According to him, the assessee could not properly explain the unusual price rise over two years, and therefore, the sale of shares were held to be not genuine. According to us, merely because the price of shares have gone up cannot be the basis of branding the purchase & sale of shares of M/s. KGN and M/s. AGSSL as bogus. And it is common knowledge that the prices of shares listed in a stock exchange are subject to upper and lower circuits placed by stock exchanges / SEBI and these are monitored very closely by Stock exchanges and SEBI. The fact that during the tenure of holding of shares by the assessee (from 2.05.2008 to 22.03.2011) no action was taken by SEBI against the assessee or her broker for price rigging or to be part of any illegal activity in respect of price rigging shows that the assessee has nothing to do with the change in prices of M/s KGN and M/s AGSSL.*

18. *We note that the AO has relied on the selective statement of Mr. Deepak Vrajlal Rawal (CEO and Company Secretary) and Mr. Jethlal Jivabhai Hirani (Ex-CEO) of M/s KGN who, according to AO admitted that M/s KGN is a paper entity and the AO also referred to the statement of Shri Bhavesh Makwana and Shri Deepak Rathod , directors of M/s AGSSL who was not able to justify the increase in the price of M/s. AGSSL and therefore according to AO, these statements confirm that the assessee's claim of LTCG is bogus. However, the Ld. AR pointed out that statements of Mr. Deepak Vrajlal Rawal (CEO and Company Secretary) and Mr. Jethlal Jivabhai Hirani (Ex-CEO) of M/s KGN of Shri Bhavesh Makwana and Shri Deepak Rathod , directors of M/s AGSSL cannot be relied upon by AO/Ld. CIT(A) because it was neither recorded in assessee's*

presence nor confronted to the assessee nor the AO allowed assessee to cross-examine them in spite of requesting him vide the assessee's reply dated 21.12.2018. Therefore, according to Ld AR, those statements even if incriminating cannot be used against the assessee unless cross-examined as held by Hon'ble Supreme Court in Andaman Timber Industries Vs. CCE reported in (2015) 281 CTR 241 (SC). Moreover, Ld. AR pointed out that the statements (reproduced by the AO in the assessment order) of these persons would reveal that they have not made any allegation against the assessee or her broker of any misconduct or wrong doing or being part of any illegal acts/modus-operandi to convert unaccounted money. This assertion of Ld. AR could not be controverted by revenue before us. Therefore, nothing turns on these statements of Mr. Deepak Vrajlal Rawal and Mr. Jethlal Jivabhai Hirani of M/s KGN of Shri Bhavesh Makwana and Shri Deepak Rathod , directors of M/s AGSSL to discredit the primary documents filed by assessee to prove the claim of LTCG. Therefore, the same need to be allowed. Therefore, we do not countenance the action of the lower authorities and direct the deletion of the addition u/s 68 of the Act.

19. The Ld. AR has also brought to our notice that the similar case came up before the Tribunal (LTCG claim on sale of shares of M/s.KGN) wherein the Tribunal in the case of DCIT,CC 6(2) Vs Dilip Jiwarka ITA No 2349/M/2021 where the department has accepted the genuineness of capital gains in shares of KGN Industries Ltd. The Ld AR also brought to our notice the decision of Hon'ble Delhi High Court in the case of PCIT Delhi Vs Suman Agarwal ITA No 167/2022 & CM Appl 25301/2022 where the **Hon'ble High Court** confirmed the action of Tribunal deleting the addition on account of rejection of claim of LTCG on shares of KGN Industries Ltd by observing as under :

7. The addition has been made by the AO with respect to the LTCG earned on sale of shares of **M/s KGN Industries Limited**.

8. We have perused the statement dated 3rd August, 2015 and the contents of the letter dated 31st July, 2015, both authored by Sh. Madho Gopal Agarwal. There is no reference to M/s KGN Industries Limited in either of the said documents. No other material found during search pertaining to M/s KGN Industries Ltd. has been placed on

record. The Revenue has not placed on record any incriminating material which was found as a result of the search conducted on the assessee herein. It is also the contention of the assessee that there was no surrender by her unlike Sh. Madho Gopal Agarwal and she, therefore, specifically disputed that any notice under Section 153A of the Act could have been initiated against her. The said facts are not disputed by the counsel for the Revenue.

9. On the date of search, admittedly, the assessment with respect to the AY under consideration 2011-12 admittedly stood completed. Since no assessment was pending for the relevant AY 2011-12 on the date of search and no incriminating material was found during the course of search, the issue is covered in favour of the assessee by the judgment of this Court in the case of Commissioner of Income Tax v. Kabul Chawla (supra) and Principal CIT vs. Meeta Gutgutia (2017) 395 ITR 526.

The relevant paragraphs are reproduced hereinbelow:-

10. In this view of the matter there is no infirmity in the order passed by the ITAT. In the aforesaid facts, no substantial questions of law arise for consideration. Accordingly, the present appeal is dismissed.

20. The Ld AR also brought to our notice the decision of the Tribunal in the case of ITO Vs Shri Champalal Gopiram Agarwal [ITA 592/Ahd/2020] where the Tribunal deleted the addition made on account of rejecting the claim of LTCG on sale of Shares of M/s Arya Global Shares & Securities Ltd [AGSSL] as under;-

9.1 From the preceding discussion we note that the entire basis of AO to treat the transaction as bogus was based on the information received from DDIT(Inv.), unit-6(2) Mumbai that the impugned two scrips were penny stock. However, the AO nowhere pointed out any adverse finding in such report against the assessee. We further note that assessee carried out the transaction in impugned scrip namely **M/s Arya Global Shares & Securities Ltd** and Vax Housing Finance Corp. Ltd at stock exchange through registered broker which was duly supported by the documentary evidences such as bills, Demat account, and bank statements, showing payment were done through banking

channel. The AO nowhere found any discrepancies in the documentary evidences. The dominant basis of treating the impugned transaction as bogus was based on assumption of the AO that the impugned scrip was found as penny stock by the DDIT(Inv.), unit-6(2) Mumbai. Thus, it was the onus upon the AO to bring such facts on record before making any allegations against the assessee. In the present case, the learned CIT-A after detailed verification has reached to the conclusion that the transaction carried out by the assessee was genuine and based on the documentary evidence. At the time of hearing, the learned DR has not brought any iota of evidence against the finding of the learned CIT-A. At the same time, we also note that there was no allegation against the broker through whom the assessee has purchased and sold the impugned script. What has been adopted by the AO for making the addition/disallowances was the mere assumption. To our understanding, the mere assumption, surmises and conjecture cannot be the basis of making the addition or treating the transaction in sale of share of impinged company as bogus until and unless it is supported by the material documents.

9.2 In our view, the income generated by the assessee cannot be held bogus only on the basis of the modus operandi, generalisation, and assumptions of certain facts. In order to hold income earned or loss incurred by the assessee as bogus, specific evidence has to be brought on record by the Revenue to prove that the assessee was involved in the collusion with the entry operator/ stock brokers for such an arrangements. In absence of such finding, no adverse inference can be drawn against the assessee.

9.3 Now the controversy also arises whether a person who genuinely entered into purchase and sale of particular shares at stock exchange which was rigged up by some other person or group of persons, therefore, he enjoyed the windfall from such action of other person, can he be disallowed the benefit of tax exemption or carry forward of loss. To our mind the Justice cannot be delivered in a mechanical manner. In other words, what we see on the records available before us, sometime we have to travel beyond it after ignoring the same. Furthermore, while delivering the justice, we have to ensure in this process that culprits should only be punished and no innocent should be

castigated. An innocent person should not suffer for the wrongdoings of the other parties. In the case on hand, admittedly there was no evidence available on record suggesting that the assessee or his broker was involved in the rigging up of the price of the script of M/s Arya Global Shares & Securities Ltd and Vax Housing Finance Corp. Ltd. Thus, it appears that the assessee acted in the given facts and circumstances in good-faith.

9.4 In holding so we draw support and guidance from the judgment of Hon'ble Delhi High court in case of Pr. CIT vs. Smt. Krishna Devi reported in 126 taxmann.com 80 where it was held as under:

11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under section 10(38), in a preplanned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income-tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued

under sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.

12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and

preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent.

9.5 Respectfully following the judgment of Hon'ble Delhi High Court (Supra), we hold that in absence of any specific finding against the assessee, the assessee cannot be held to be guilty or linked to the wrong acts merely on basis of surmises and assumptions. In view of the above discussion, we hold that the income earned by the assessee on the scrip of M/s Arya Global Shares & Securities Ltd and loss incurred on the scrip of Vax Housing Finance Corp. limited cannot be held bogus merely on the basis of some assumption of the AO unless cogent materials are brought on record. Therefore, we don't find any reason to disturb the finding of the learned CIT(A) and direct the AO to delete the addition and disallowances made by him. Hence the grounds of Revenue's appeal is hereby dismissed."

21. *Coming to the judgements cited before us, it is clarified that we have carefully perused the cited judgements relied upon by both the parties and but only those judgements which are found to be relevant to the case in hand, have been discussed in the ensuing paragraphs.*

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

increase in their shares prices. Therefore, the AO concluded that certain operators and brokers devised a scheme to accommodate the unaccounted monies of the assessee in guise of capital gains. The AO accordingly added the capital gains derived by the assessee under Section 68 of the Act. On appeal, the Hon'ble jurisdictional High Court upheld the Tribunal order deleting the addition, by observing as under:

“..It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been

referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

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

23. We may also gainfully refer to the decision rendered by this Tribunal in the case of **DCIT Vs Mukesh R Marolia (6 SOT 247)** (affirmed by the Hon’ble Bombay High Court in their order in ITA No. 456 of 2007 dated 07-09-2011) wherein on similar facts and circumstances the addition made by the AO on account of purported bogus LTCG derived on purchase/sale of shares (off-market) was deleted by observing as under:

“10. We heard both sides in detail and perused rival contentions in the light of the records of the case and the paper book filed by the assessee. In the return of income filed by the assessee for the year under appeal, the

purchase of flat at Colaba for a consideration of Rs. 2,06,72,904 was reflected. The assessee's contribution in the purchase of the flat was @ 70 per cent for which the investment amounted to Rs. 1,44,71,033. The source of investment was, among other things, the sale proceeds of shares of Rs. 1,41,08,484. This amount has been questioned by the revenue authorities.

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

10.2 The assessee has been declaring agricultural income in his returns of income for the assessment years from 1990-91 to 2001-02. The total agricultural income returned by the assessee up to the assessment year 1999-2000 was at Rs. 7,57,883. The amount invested in the purchase of shares as on 31-3-1999 was Rs. 4,48,160. The cash available with the assessee by way of agricultural income was much higher than the investment made by the assessee in the purchase of shares as on 31-3-1999. After making the investments in the shares, the assessee had a surplus cash balance of Rs. 3,09,000 as on 1-4-1999. Thereafter, the assessee has further returned an agricultural income of Rs. 66,000 for the assessment year 2000-01. The amount invested in the purchase of shares in the year ending on 31-3-2000 was Rs. 2,57,020. Again the assessee had a cash balance thereof of Rs. 1,18,771. Therefore, it is, very clear that the investment made by the assessee in shares during the previous periods relevant to the assessment years 1999-2000 and 2000-01 was supported by cash generated out of agricultural income. The above agricultural income have been considered in the respective assessments. Therefore, the contention of the assessing authority that the assessee

had no sufficient resourcefulness to make investments in the shares is unfounded.

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

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

10.5 The next set of evidences relied on by the assessing authority are the statements obtained from various parties. When certain persons like Radha Ashok and Sandeep D. Shah made negative statements against the assessee, persons like Satish Mandovara and Mangesh Chokshi had given positive statements in support of the contention of the assessee. But, the assessing authority sought to pick and choose the statements given by various parties. While accepting and rejecting such statements given by the

parties, the Assessing Officer has made a mistake of accepting irrelevant statements and rejecting relevant statements. During the relevant period in which the assessee transacted in shares, persons like Radha Ashok and Sandeep D. Shah were not carrying on their business of brokers as in the manner they carried on the business in the past. Even their Stock Exchange Memberships were cancelled. It was Shri Satish Mandovara who was carrying on the business mainly for and on behalf of Shri Mangesh Chokshi, Director of M/s. Richmond Securities Pvt. Ltd. Those two persons have categorically admitted before the assessing authority that they had dealings with the assessee in respect of the share transactions. They have confirmed the transactions stated by the assessee that he had with them. These positive statements made before the assessing authority supported the case of the assessee. There is no force in the action of the assessing authority in relying on the negative statements of the other parties whose role during the relevant period was either irrelevant or insignificant. Therefore, in the facts and circumstances of the case, it is, our considered view that certain statements relied on by the assessing authority do not dilute the probative value of the statements given by other persons in favour of the assessee confirming the share transactions entered into by the assessee.

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

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

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

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

we may gainfully refer to the decision of the Hon'ble ,At this juncture .**24**
 Gujarat High Court in the case of **Pr.CIT Vs Parasben K. Kochar (130 taxmann.com 176)**the assessee had ,In the decided case also .
 ,demat statements ,sfurnished all relevant documents such as contract note
 to substantiate the LTCG derived on sale .bills etc ,ledgers ,bank statements
 disputed the genuineness of the same by ,however ,The AO .of listed shares
 placing reliance on statements of certain persons obtained by the
 On appeal the Hon'ble Gujarat High Court is noted to .ngInvestigation Wi
 have upheld the order of this Tribunal holding that since the assessee was
 the addition was ,examine these persons-not given opportunity to cross
 Hon'ble High Court were as The relevant findings of the .unsustainable
 -: follows

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

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

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

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

3. Thus, the Tribunal has recorded the finding of fact that the assessee discharged his onus of establishing that the transactions were fair and transparent and further, all the

relevant details with regard to such transactions were furnished before the Income-tax authorities and the Tribunal also took notice of the fact that some of the shares also remained in the account of the appellant.

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

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

*“12. From the documents produced before us, which were also in the possession of the Assessing Officer, it is seen that the shares in question were in fact purchased by the assesseees on the respective dates and the company has confirmed to have handed over the shares purchased by the assesseees. Similarly, the sale of the shares to the respective buyers is also established by producing documentary evidence. It is true that some of the transactions were **off-market** transactions. However, the purchase and sale price of the shares declared by the assesseees were in conformity with the market rates prevailing on the respective dates as is seen from the documents furnished by the assesseees. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions.*

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

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

15. Reliance placed by the counsel for the Revenue on the decision of the apex court in the case of Sumati Dayal [1995] 214 ITR 801 is wholly misplaced. In that case, the assessee therein had claimed income from horse races and the finding of fact recorded was that the assessee therein had not participated in races, but purchased winning tickets after the race with the unaccounted money. In the present case, the documentary evidence clearly shows that the transactions were at the rate prevailing in the stock market and there was no question of introducing unaccounted money by the assesseees. Thus, the decision relied upon by the counsel for the Revenue is wholly distinguishable on the facts.

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

26. The Ld AR also brought to our notice the recent judgment rendered by the Hon'ble jurisdictional Bombay High Court in the case of **PCIT v . Ziauddin A Siddique (ITA No .2012 of 2017) dated**

04.03.2022 which is found to be relevant in the facts involved in the present case the issue before the Hon'ble , In the decided case . High Court was whether this Tribunal was right in law in deleting the sale of of the ACT in relation to LTCG derived on 68 s/addition made u market -ignoring the fact that the shares were purchased from off , shares . sources and that the sharp rise in prices were not supported by financials the Hon'ble , Answering the question raised by the Revenue in the negative sale of & re was a finding of fact that the purchase High Court held that the upon payment of STT and , shares occurred on the platform of stock exchange were supported by documentary evidences and therefore there was no ed that there The Court further not . perversity in the order of this Tribunal was no allegation against the assessee that he had participated in price . rigging in the market and therefore dismissed the appeal of the Revenue , The relevant findings of the Hon'ble High Court which is binding upon us -: are as follows

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

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

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

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly

analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.”

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

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

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

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

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

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

"..Learned ITAT has specifically held that the assessee has produced all the relevant documentary evidence to establish

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

29. *The Ld. AR of the appellant has relied on another judgment of the Hon’ble Rajasthan High Court in the case of **PCIT Vs Ritu Agarwal Shreeram Bhawan (453 ITR 520)** which has been confirmed by the Hon’ble Supreme Court as the Civil Appeal No 9/2011 of 2022 by order dated 24.04.2023 of the Department has been dismissed by the Apex Court. In the decided case, the Hon’ble High Court has upheld the order of the Tribunal allowing the LTCG claim/exemption u/s 10(38) of the Act on sale of scrip of M/s Sunrise Asean Limited. The observations of the Hon’ble Court are as under: -*

“On going through the contents of the order of learned ITAT dated 18.11.2020, it is established that before rendering the judgment the learned ITAT has considered entire facts of the case, and has given a categorical finding that in the case in hand the assessee produced all the documentary evidence to establish the genuineness of transaction. The learned Assessing Officer as per the learned ITAT has failed to produce the contrary material evidences to rebut the claim of the assessee and documents produced by him. Learned ITAT has considered the bank statement, demat account, books of account, contract notes which were external documents and were not in the control of the assessee and therefore the claim of manipulation and for treating the transaction in question is as sham and bogus were not proven and hence untenable.”

30. *We are also guided by the decision of Jurisdiction Bombay High Court referred by the Ld AR, in the case of PCIT V*

Indravadan Jain ITA 458 of 2018 where the Hon'ble Court has held that

3. Respondent had shown sale proceeds of shares in scrip Ramkrishna Fincap Ltd. (RFL) as long term capital gain and claimed exemption under the Act. Respondent had claimed to have purchased this scrip at Rs.3.12/- per share in the year 2003 and sold the same in the year 2005 for Rs.155.04/- per share. It was A.O.'s case that investigation has revealed that the scrip was a penny stock and the capital gain declared was held to be accommodation entries. A broker Basant Periwal & Co. (the said broker) through whom these transactions have been effected had appeared and it was evident that the broker had indulged in price manipulation through synchronized and cross deal in scrip of RFL. SEBI had also passed an order regarding irregularities and synchronized trades carried out in the scrip of RFL by the said broker. In view thereof, respondent's case was reopened under Section 148 of the Act.

4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various

dates in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT[A] found there was no reason to add the capital gains as unexplained cash credit under Section 68 of the Act. The tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal.

5. We also find no infirmity in the order passed by the ITAT and no substantial questions of law as proposed in the appeal arises.

31. Apart from the above, the Revenue has also relied upon several judgments rendered in the context of unexplained cash credit u/s 68 of the Act by the judicial forums. Having perused those judgments, it is noted that, the question as to whether the assessee had satisfied the three ingredients set out in Section 68 of the Act is essentially a fact finding exercise. We note that the facts involved in each of them were distinguishable to the issue involved in present case i.e. genuineness of capital gains derived on sale of shares. Since these judgments were noted to be not relevant to the present case, we do not deem it fit to discuss each of them separately. However, we discuss and distinguish some of the cases as under: -

1. The case of Harsh Win Cheddha (ITA 3088 to 3098/Del/2005) was in the case of secret commission paid in the case of Bofors matters and not an LTCG or Section 68 case.

2. The case of Sumati Dayal case ([1995] 214 ITR 801) was considered by the judgement of Hon'ble Bombay High Court in the case of Jamnadevi Agarwal (supra) and held that the

context in the case of Sumati Dayal was that there was a finding on fact that the assessee had not participated in races but purchased winning tickets are the race with unaccounted money. Whereas in the present case the documents clearly establish that the assessee has purchased the shares and sold the same in the stock market at the relevant market prices.

3. The case of Durga Prasad More (82 ITR 540SC) was on the circumstance that the documents (trust deed) furnished by the assessee was not accepted as genuine by the department and therefore in that context the Honble Court has stated that the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities

4. The case of CIT v P Mohankala (2007) 161 taxman 169 (SC) was in the context of receipt of substantial amounts of gifts from persons whose capacity to pay was doubted by the Court and in that context the Court has stated to apply the test of human probability.

5. the decision rendered in the case of ,Similarly **Sanat Kumar Vs ACIT (ITA 1881/Del/2018)** is also found to be on completely , different footing wherein the assessee was not able to produce the relevant details to justify its claim.

6. Further, the decision of Tribunal in the case of **Pooja Ajmani V ITO (ITA No.5714/Del/2018)** is rendered in 2019 where the assessee was deficient in furnishing in the documents in support of her claim of LTCG and therefore the decision was given against her but in the case of assessee , she has furnished all the evidences in support of purchase and sale of shares and therefore the case is not applicable.

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

facts present in the assessee's case and therefore this judgment relied upon by the Revenue is also found to be factually distinguishable.

8. *The case of **Udit Kalra (ITA 220/2019)** has been distinguished in the case of **Seema Tayal (supra)** discussed above.*

32. *For the various reasons discussed in the foregoing and following the judgments cited above, more particularly of the binding jurisdictional High Court in the cases of **Shyam Pawar (supra)**, **Ziauddin A Siddique (supra)**, **Mukesh R Marolia (supra)** & **Jamna Devi Agarwal (supra)**, **Indravadan Jain (supra)** **Ritu Agarwal Shreeram Bhawan (supra)** we hold that, the Ld. CIT(A) had erred both on facts and in law in upholding the AO's action of making addition u/s 68 of the Act, in relation to the proceeds derived on sale of shares of KGN and AGSSL alleging it to be bogus. We therefore direct the AO to delete the addition of Rs 3,17,12,750/- made u/s 68 of the Act and allow the claim of LTCG/exemption claimed u/s 10(38) of the Act.*

33. *In the result, the appeal of the assessee is allowed."*

8. The Hon'ble High Court of Delhi in the case of Pr. CIT Vs. Krishna Devi, 126 taxmann.com 80 has observed as under:

Section 68 of the Income-tax Act, 1961 Cash credit (Bogus LTCG on sale of shares) - Assessment years 2014-15 and 2015-16 Assessee had sold shares of a company held by it and claimed exemption under section 10(38) on account of long-term capital gain (LTCG) arose on such sale of shares - Assessing Officer noted that there was astounding 4849.2 per cent jump in share prices of said company within a span of two years and financials of said company did not show any reason for such extraordinary performance of its stock - Thus, he concluded that assessee had adopted a colourable device of LTCG to avoid tax and, accordingly, made addition under section 68 treating such LTCG arose on sale of such shares as bogus It was noted that there was no dispute that shares of said company were purchased by assessee online and payments were made through banking channel - Shares were dematerialized and sales were

routed from demat account and consideration was received through banking channels Assessing Officer simply proceeded on basis of financials of company to come to conclusion that transactions were bogus Assessing Officer had not made its conclusion on basis of any cogent material Finding of Assessing Officer was thus purely an assumption based on conjecture made by Assessing Officer Whether, on facts, impugned addition made under section 68 by treating impugned LTCG as bogus was unjustified and same was to be deleted - Held, yes [Paras 11 and 13 in favour of assessee]

11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under Section 10(38), in a preplanned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income Tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under Sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh.

Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.

12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said

observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on Suman Poddar v. ITO (supra) and Sumati Dayal v. CIT (supra) is of no assistance. Upon examining the judgment of Suman Poddar (supra) at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of Sumati Dayal v. CIT (supra) too turns on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.

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

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

9. Similarly the Jurisdictional High Court of Bombay in the case of CIT Vs. Shyam R. Pawar, 54 taxmann.com 108 has observed as under:

Section 68 of the Income-tax Act, 1961 Cash credit (Share dealings) - Assessment years 2003-04 to 2006-07 Assessee declared capital gain on sale of shares of two companies. Assessing Officer, observing that transaction was done through brokers at Calcutta and performance of concerned companies was not such as would justify increase in share prices. held said transaction as bogus and having been done to convert unaccounted money of assessee to accounted income and,

therefore, made addition under section 68 - On appeal, Tribunal deleted addition observing that DMAT account and contract note showed credit/details of share transactions; and that revenue had stopped inquiry at particular point and did not carry forward it to discharge basic onus Whether on facts, transactions in shares were rightly held to be genuine and addition made by Assessing Officer was rightly deleted Held, yes [Para 7] [In favour of assessee]

It was revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange- words showed that the shares were purchased for code numbers S003 and R121 of STPL and RMPL pectively. Out of these two, only RMPL is listed in the appraisal report and it is stated to be involved in dus operandi It is on this material that the Assessing Offices holds that the transactions of sale and purchase of shares are doubtful and not genuine. In relation to assessee's role in all this, all that the Commissioner observed is that the assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the assessee to the accounted income and the assessee utilized the scheme Para 5]

The Tribunal concluded that there was something more which was required, which would connect the assessee to the transactions and which are attributed to the promoters/directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not cared forward by the revenue. A copy of the DMAT account, placed before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available which gave details of the transactions. The contract note is a system generated and prescribed by the stock exchange. From this material, the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client code has been referred to. But the Tribunal concluded that same, by itself, is not enough to prove that the transactions in the

impugned shares were bogus sham. The details received from stock exchange have been relied upon for the purposes of faulting the revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in the Tribunal's order are not vitiated by any error of law apparent on the face of the record either. [Para 6]

10. Hon'ble Supreme Court in the case of Pr. CIT Vs. Parasben Kasturchand Kochar, 130 taxmann.com 177 (SC) has observed as under:

Section 10(38) of the Income-tax Act, 1961 Capital gains Income arising from transfer of long-term securities (Shares) Assessment year 2014-15 Assessee-individual engaged in business of trading in shares claimed long term capital gains arising out of sale of shares as exemption under section 10(38) - Assessing officer denied claim and made certain additions into assessee's income on grounds that said gains were earned through bogus penny stock transactions and companies to whom sold shares belonged were bogus in nature Tribunal observing that assessee by submitting records of purchase bills, sale bills, demat statement, etc., had discharged his onus of establishing said transactions to be fair and transparent, same not being earned from bogus companies was eligible for exemption under section 10(38) High court by impugned order held that no substantial question of law. arose from Tribunal's order - Whether SLP against said impugned order was to be dismissed -Held, yes (Para 2) (In favour of assessee)

11. Similarly Hon'ble High Court in the case of Pr. CIT Vs. Prem Pal Gandhi, (401 ITR 0253) (P & H) has observed as under:

Capital gain-Share transaction-Addition-Deletion thereof-During course of assessment proceedings u/s 153A, it was noticed by AO that assessee had shown long term capital gain on sale of shares of company-AO treated share transaction as non-genuine

transaction and amount was shown as long term capital gain on share transaction was added to income of assessee-CIT(A) deleted addition-Tribunal upheld order passed by CIT(A) and dismissed appeal of revenue-Held, assessee sold shares through MTL shares and Stock Broker limited which was SEBI registered Stock Broker-Payment for sale of shares was received through banking channels-All documentary evidence being in favour of assessee, deletion of addition made by CIT(A) was upheld by Tribunal-All these documentary evidences in favour of assessee were rejected by AO merely on basis of some casual replies given by assessee to AO- Documentary evidences were in favour of assessee and CIT(A) had passed very reasoned and speaking order-Dividend amount was received with regard to holding of shares and said amount was disclosed by assessee in his return of income and exemption was claimed accordingly-Thus, addition being without any logical basis was deleted-Revenue's appeal dismissed.

Held:

The CIT(A) examined the matter and the comments of the Assessing Officer in the remand report. It has been recorded by the CIT(A) that the purchase of shares in the financial year 2006-07 for an amount of Rs. 11 lakhs had been physically transferred in favour of the assessee in the books of the company namely GeeFCee Finance Limited. Further, the said shares were dematerialized and credited in the assessee's account maintained with depository participant i.e. HDFC on 16.10.2006. The dividend amount of Rs. 1,50,000/- had been received with regard to aforementioned holding of shares on 23.10.2007. The said amount had been disclosed by the in his return of income and exemption was claimed accordingly. Thus, the addition being without any logical basis was directed to be deleted. (Para 4)

Assessee had sold shares through MTL shaes and Stock Brokers Limited as is noted by Assessing Officer in reply to question No.24 which is a SEBI registered Stock Broker. Furthermore the payment for sale of shares was received through Banking channels. All these documentary evidences in favour of the assessee were rejected by Assessing Offiver merely on the basis of some casual replies given by assessee to the Assessing Officer. However, the fact remains that all the documentary

evidences are in favour of assessee and learned CIT(A) has passed a very reasoned and speaking order and we do not find any infirmity in the same."

12. The Hon'ble High Court of Bombay in the case of CIT Vs. Smt. Jamnadevi Agrawal, 328 ITR 656 (Bom) has observed as under:

Income-Cash credit-Genuineness of share transactions-Assessee offered long-term capital gains arising from sale of shares-On the basis of material seized during the search in the case of various assessee who belong to H group, AO did not accept the capital gains and treated the entire sale proceeds of the shares as income from undisclosed sources under s. 68-Not justified-Fact that the assessee in the group have purchased and sold shares of the same companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence has been produced to establish the genuineness of the sale- Company has confirmed that it has handed over the shares purchased by the assessee-Similarly, the sale of shares to the respective buyers is also established by producing documentary evidence-Purchase and sale price of the shares declared by the assessee is in conformity with the market rates prevailing on the respective dates-Thus, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions-Tribunal has arrived at a finding of fact that the transactions were genuine-Nothing has been brought on record to show that the findings recorded by the Tribunal are contrary to the documentary evidence-Also, no fault can be found with the finding recorded by the Tribunal that the cash credits in the buyers' bank accounts cannot be attributed to the assessee-Therefore, the decision of the Tribunal is based on findings of fact and no substantial question of law arises.

The fact that the assessee in the group have purchased and sold shares of similar companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence was produced to establish the genuineness of the claim. From the documents produced, it is seen that the shares in question were in fact

purchased by the assesseees on the respective dates and the company has confirmed to have handed over the shares purchased by the assesseees. Similarly, the sale of the shares to the respective buyers is also established by producing documentary evidence. It is true that some of the transactions were off-market transactions. However, the purchase and sale price of the shares declared by the assesseees were in conformity with the market rates prevailing on the respective dates as is seen from the documents furnished by the assesseees. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions. The statement of the broker P that the transactions with the H Group were bogus has been demonstrated to be wrong by producing documentary evidence to the effect that the shares sold by the assesseees were in consonance with the market price. On perusal of those documentary evidence, the Tribunal has arrived at a finding of fact that the transactions were genuine. Nothing is brought on record to show that the findings recorded by the Tribunal are contrary to the documentary evidence on record. The Tribunal has further recorded a finding of fact that the cash credits in the bank accounts of some of the buyers of shares cannot be linked to the assesseees. Moreover, in the light of the documentary evidence adduced to show that the shares purchased and sold by the assesseees were in conformity with the market price, the Tribunal recorded a finding of fact that the cash credits in the buyers' bank accounts cannot be attributed to the assesseees. No fault can be found with the above finding recorded by the Tribunal. Therefore, the decision of the Tribunal is based on finding of facts. No substantial question of law arises from the order of the Tribunal.-Asstt. CIT vs. Kamal Kumar S. Agrawal (Indl.) & Ors. (2010) 41 DTR (Nag) (Trib) 105: (2010) 133 TT (Nag) 818 affirmed; Sumati Dayal vs. CIT (1995) 125 CTR (SC) 124: (1995) 80 Taxman 89 (SC) distinguished. (Paras 11 to 14 & 16)

Conclusion:

Assessee having established the genuineness of purchase and sale of shares by producing documentary evidence and declaring the purchase and sale price of shares in conformity with the market rates prevailing on the respective dates, the finding of

the Tribunal that the transactions were genuine is a finding of fact based on documentary evidence on record and, therefore, no substantial question of law arises from the order of the Tribunal deleting the addition under s. 68.

13. Similarly Hon'ble High Court of Bombay in the case of Pr.CIT-3 Vs. Ziauddin A Siddique. Income Tax Appeal No 2012 of 2017 order dated 4 March 2022 has observed as under:

1. *The following question of law is proposed:*

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

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

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

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

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

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

14. The Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax Vs. Smt. Renu Aggarwal (2023) 456 ITR 249 (SC) dated 3-07- 2023 has observed as under

“CASH CREDITS-TRANSACTIONS IN PENNY STOCKS-FINDING THAT THERE WAS NO ADVERSE COMMENT FROM STOCK EXCHANGE OR COMPANY WHOSE SHARES INVOLVED-ASSESSING OFFICER QUOTING FACTS PERTAIN- ING TO COMPLETELY UNRELATED PERSONS NAME OF ASSESSEE NEITHER QUOTED BY ANY SUCH PERSONS NOR MATERIAL RELATING TO ASSESSEE FOUND IN INVESTIGATION-TRIBUNAL AFFIRMING AND HIGH COURT DIS- MISSING DEPARTMENT'S APPEAL-SUPREME COURT-SPECIAL LEAVE PETI- TION DISMISSED-INCOME-TAX ACT, 1961, ss. 68, 260A.

Where the High Court dismissed the Department's appeal saying that no question of law arose from the order of the Tribunal affirming the order of the Commissioner (Appeals) allowing relief to the assessee, and the findings of the Commissioner (Appeals) to the effect that there was no adverse comment from the stock exchange or the company whose shares were involved in these transactions, that the Assessing Officer quoted the facts pertaining to completely unrelated persons whose statements were recorded and on the basis of unfounded presumptions, that the name of the assessee was neither quoted by any of such persons nor was any material relating to the assessee found at any place where investigation was done

by the Investigation Wing, on a petition for special leave to appeal to the Supreme Court special leave to appeal to the Supreme Court

The Supreme Court dismissed the petition. Decision of the Allahabad High Court (printed below) affirmed.

Petition for Special Leave to Appeal (C) No. 13033 of 2023.

Petition under article 136 of the Constitution for special leave to appeal from the judgment and order dated July 6, 2022, of the Allahabad High Court in I. T. A. No. 44 of 2022. The judgment of the High Court (coram: SURYA PRAKASH KESARWANI and JAYANT BANERJI JJ.) ran as follows:

"JUDGMENT

Heard Sri Krishna Agarawal, learned counsel for the appellant. This appeal under section 260A of the Income-tax Act, 1961 has been filed challenging the order dated January 17, 2022, passed by the Income- tax Appellate Tribunal, Lucknow Bench 'SMC' Lucknow in IT. A. No. 205 of 2020 (assessment year 2014-15).

The basic question involved in the present appeal is with regard to deletion of some amount which was added by the Assessing Officer on the allegation of penny stock.

The appeal of the respondent-assessee was allowed against the assessment order The appeal filed by the assessee was allowed by the Com- missioner (Appeals)Against the appellate order the Revenue had filed the aforesaid income-tax appeal which has been dismissed by the Income-tax Appellate Tribunal.

After detailed discussion, the Income-tax Appellate Tribunal has recorded the following findings of fact

The above findings recorded by the learned Commissioner (Appeals) are quite exhaustive whereby he has discussed the basis on which the Assessing Officer had made the additionsWhile allowing relief to the assessee, the learned Commissioner (Appeals) has spe- cifically held that there is no adverse comment in the form of general and specific statement

by the principal officer of the stock exchange or by the company whose shares were involved in these transactions and he held that the Assessing Officer only quoted the facts pertaining to various completely unrelated persons whose statements were recorded and on the basis of unfounded presumptions. He further held that the name of the appellants were neither quoted by any of such persons nor any material relating to the assessee was found at any place where investigation was done by the Investigation Wing. The learned Commissioner (Appeals) relying on various orders of the Lucknow Benches and other Benches has allowed relief to the assessee by placing reliance on the evidence filed by the assessee before the Assessing Officer. I do not find any adversity in the order of the learned Commissioner (Appeals) specifically keeping in view the fact that the Lucknow Benches in a number of cases after relying on the judgment of the hon'ble Delhi High Court in the case of Krishna Devi had allowed relief to various assessees."

The concurrent findings of fact have been recorded by the first appellate authority and the Income-tax Appellate Tribunal. Thus, no substantial question of law is involved in the present appeal. The matter is concluded by findings of fact.

For the reasons aforesaid, we do not find any good reason to entertain this appeal. Consequently, it is dismissed. Balbir Singh, Additional Solicitor General, (Raj Bahadur Yadav, Prahlad Singh, Samarvir Singh and Prashant Rawat, Advocates, with him) for the petitioner."

15. The Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax Vs. Kuntala Mohapatra, [2024] 160 taxmann.com 608 (SC), dated 04.03.2024 has observed as under:

SLP dismissed against order of High Court that where shares were purchased via account payee cheques, held in Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax assessee was eligible to claim exempt u/s 10(38) for long term capital gains.

“Section 10(38), read with sections 68 and 69, of the Income-tax Act, 1961 Capital gains Income arising from transfer of long long term securities (Illustrations) - Assessment year 2014-15 Assessee filed its return for relevant year - Subsequently, pursuant to a survey assessee filed revised return and claimed exemption in respect of long-term capital gains on shares under section 10(38) - Assessing Officer rejected assessee's plea and made additions under sections 68 and 69 by relying on statements from 'entry operators' On appeal, Commissioner (Appeals) accepted assessee's claim, noting that shares were purchased via Account Payee Cheques, held in a Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax Tribunal upheld Commissioner (Appeal)'s decision, emphasizing assessee's right to correct mistakes and criticized Assessing Officer's reliance on statements from 'entry operators' to support additions under sections 68 and 69 as those statements were recorded in unrelated proceedings before survey on assessee, and assessee was not afforded an opportunity to challenge or cross-examine providers of those statements - On revenue's appeal, High Court confirmed order of Tribunal - Whether there was no reason to interfere with order passed by High Court and therefore, SLP was to be dismissed Held, yes [Para 3] [In favour of Assessee.”

16. We have considered the overall facts, submissions and the information find that the assessee has furnished the financials, details of broker and the transactions status. The AO has doubted the purchase and sale of shares and observed that the price rise is not commensurate with the financials of the investee company. The assessee has substantiated with all details and information and the AO has relied on the investigation report of income tax department and treated the long term capital gains on sale of shares as not genuine. The Ld.AR has referred to the SEBI order dated 30-11-2017 placed at page 62 to 74 of the legal paper book in particular Para 13 to 15, highlighting on the facts that the assessee was only a investor and was not involved/connected in price manipulation of scrip. Further the A.O. has not made any enquiry or independent investigation and relied on the statement of the parties in the survey U/sec133A of the

Act and the assessee's name is not included in the list of investigation report. The fact remains that the assessee has submitted the requisite details in respect of purchase and sale of shares were not disproved. The Ld.AR referred to the MCA company information on the status of the company. The transaction of purchase and sale of shares is through banking channel. Further as discussed in the above paragraphs the Honble Tribunal dealt on the same scrip of share and for the same assessment and has granted relief to the assessee. Accordingly, considering facts, circumstances, ratio of judicial decisions, submissions, evidences and rely on the judicial precedents and set aside the order of the CIT(A) and direct the assessing officer to delete the additions and allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 25.06.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated:25/06/2024

KRK.PS

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent

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

//True Copy//

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