



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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 1120/MUM/2024

A.Y.2014-15

ITO,28.3.1,  
Mumbai

Seema Narendra Bapna,  
Flat No.A 2701, Plot No.  
R3 B Emerald Bay, Sector  
Vs. 14 Nerul, Navi Mumbai,  
Thane 400706

(Appellant)

(Respondent)

PAN

ALGPS6788Q

Assessee by  
Revenue by

Shri Prakash G. Jhunjunwala  
Shri Ashok Kumar Ambastha,  
Sr. (DR),

Date of hearing  
Date of pronouncement

22<sup>nd</sup> August, 2024  
10 October 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. ITA number 1120/M/2024 is filed by The Income Tax Officer – 28 (3) (1), Navi Mumbai (the learned AO) against appellate order passed by the National faceless appeal Centre, Delhi (the learned CIT – A) for assessment year 2014 – 15 on 16/1/2024 in which the appeal filed by the assessee against the assessment order passed under



section 143 (3) read with section 147 of The Income Tax Act, 1961 (The Act) passed by the learned assessing officer on 29/12/2017, was allowed.

2. The learned assessing officer is aggrieved with the same has preferred this appeal raising following 2 grounds of the appeal is under: –
  - i. Whether on the facts and circumstances of the case and in law, the learned CIT (A) erred in allowing the assessee's appeal without appreciating the fact that in this case after receiving a detailed report from the investigation Wing, the AO has brought out the circumstances of evidence is in the assessment order wherein the AO has detected the abnormal price rise in the penny stock script of should be chemicals and investment Ltd with having strong financial status
  - ii. Whether on the facts and circumstances of the case and in law, the learned CIT (A) erred in allowing the assessee's appeal without appreciating the facts and that in the assessment order the AO has established the facts that the assessee could not explain about the huge long-term capital gain transaction and was also ignorant about the financials of the company in which she invested.
3. Brief facts of the case shows that assessee is an individual, filed her return of income declaring a total income of Rs. 956,480/- on 31/1/2015. The return of income was not picked up for scrutiny. Subsequently after obtaining the prior approval of The Joint Commissioner



of Income Tax, range 28 (3), Mumbai on 22/9/2016 notice under section 148 of The Income Tax Act was issued on 22/9/2016. The assessee filed her return of income on 21/6/2017 in response to that notice. As per the request of the assessee, copy of the reasons for reopening was provided on 17/7/2017 and subsequently notice under section 143 (2) was issued on 29/9/2017. The assessee did not raise any objection against the reopening and assessment proceedings was completed thereafter on merit.

4. The case of the assessee was reopened because: -

“The Principal Director Of Income Tax (Investigation), Kolkata vide his letter number 705/2015 – 16/257/279 dated 27/4/2015 has intimated that they had undertaken investigation of accommodation entry of long-term capital gain (LTCEG) which resulted into unearthing of a huge syndicate of entry operator, share broker and money-laundering who are involved in providing bogus accommodation entries of long-term capital gain, long-term capital loss and others. During the investigation it was also observed that large-scale manipulation has been/is being done in market price of shares of certain companies listed on Bombay stock exchange by certain persons working in a syndicate to provide accommodation entries of tax-exempt long-term capital gain to large number of people’s in lieu of unaccounted cash.



In this case, the assessee has filed return of income on 31/1/2015 but the capital gain was shown by her in return of income for assessment year 2014 - 15 at Rs. 22,652,350/- and claimed exempt long-term capital gain from transaction on which securities transaction tax is paid. Information has been received regarding transaction in penny stock shares entered by Shrimati Seema Parasmal Soni [ ALGPS6788Q] with a view to earning of exempt long-term capital gain on which no tax liability arises. It has been gathered that assessee has entered this transaction in penny stock which are structured in such a way that there is a large and abnormal rise in prices of such shares. Shares have been identified by regulatory bodies such as BSE/NSE and SEBI through their surveillance system wherein abnormal price rise have been observed to enable certain persons to generate an abnormal earning in the form of long-term capital gain/loss. The penny stock shares have been subject matter of price manipulation on the stock exchange i.e., price rigging with a view to enable sales at inflated prices and stock exchange which is not commensurate with the performance of prospects of the company. The assessee has made transaction in penny stock during financial year 2013 - 14 relevant to assessment year 2014 - 15, details of which are given below.

Serial	Script	Script	Quantity	Trade	Total of sale
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number	code	name	sold	account	value (in rupees)
1	512311	Surabhi Chemicals & I	6,25,000	517	3,68,93,925

Assessee is one of the beneficiaries of the penny share price manipulation and has participated in that this process to avoid tax liability by generation of long-term capital gain and claiming exemption under section 10 (38).

In view of the above, it is proposed for approval of your good self for assessing the income of the assessee under section 147 of the income tax act, 1961 by issuing notice under section 148 of the income tax act 1961, if deemed fit.”

5. During assessment proceedings, the learned assessing officer issued notice under section 142 (1) of the act and statement on oath of Mrs Seema Parasmal Soni [ Assessee] and Sri Lalit Shantilal Jain [brother-in-law of the assessee] were recorded under section 131 of the act. The learned assessing officer found that assessee has earned long-term capital gain claimed exempt under section 10 (38) of the act of Rs. 22,652,350/- on sale of shares of Surabhi Chemicals & Investments Limited. Assessee has also shown short-term capital gain on sale of the shares of same company for Rs. 34,053 in respect of trade made on 1/1/2014. The learned assessing officer in paragraph number 4 of the order recorded the suspicious of revenue



and in paragraph number five has recorded the findings of the investigation wing where above company is one of the scrips which is identified by the Calcutta investigation directorate being used in providing accommodation entries to the beneficiaries. Thereafter in paragraph number 6 the learned assessing officer recorded the findings in the case of the assessee as under: -

- a. The assessee in her return of income does not show substantial trading activity or investment in shares of listed company and as per the statement she does not even know as to whether she has made transaction in share market during last 6 years and she was completely ignorant about the share transaction of Surabhi chemical and investments Ltd. Further she denied having ever seen the share certificate of the above company and expressed complete ignorance about utilisation of funds out of the sale proceeds of the shares. The AO found that on the one hand in return of income of the assessee exempt long-term capital gain of Rs. 22,652,350/- has been declared on the other hand the assessee herself is showing complete ignorance about the transaction on which such exempt long-term capital gain is claimed. It was stated by her that her brother-in-law may answer all the queries. Therefore, the statement of his brother-in-law was also recorded wherein it is seen that he is involved in steel trading business and besides having irregular



share activities is also not actually actively engaged in share trading. The learned assessing officer reached at a conclusion that the move of the assessee to acquire the shares of the above company is a predetermined move which had sole aim to bring back unaccounted money.

- b. The purchase of the shares in a huge quantity was made when the company had no proven financial results is an indicator to the events to be offering in the future. Statement of Assessee has denied having any knowledge as to whether at the time of purchase that company was a profit-making concern or loss bearing one.
- c. Assessee has purchased one 26/3/2012, 4000 shares of this company from Sarvottam advisory private limited at the rate of Rs. 250 per share. Total purchase price of 4000 share his return at Rs. 11,00,000 whereas the assessee has furnished bill of Rs. 10 lakhs.
- d. He further found that the price of the above company which was having a market price of share of Rs. 0.57 in October 2012 reached at Rs. 81 in March 2014. He gave a pictorial graph of rise in the share price and further has also extracted the day wise trade in the above company. Based on this, he held that it is evident from the chart that how the price was rigged from August 2012 to September 2013 with very few trades and volume to take up the



script to the level of the price of that where exit can be provided to the beneficiaries of bogus long-term capital gain.

- e. He further referred to the increase of share price and held that it does not commensurate with the financial results of that company. According to him that company had net worth between Rs. 150,000,00 to Rs. 32 crores during last five years and company had turnover between Rs Nil toRs 2.22 crores and employee cost between Rs. 0.04 crore Rs. 0.06 crores. He further noted that the Bombay stock exchanges suspended the trade in the above company from 1/1/2015 as per the direction of securities and Exchange board of India. Therefore, the price of the company shares was jacked up artificially.
- f. He further held that there is an unrealistic return on investment earned by the assessee as the investment or acquisition of shares Rs. 10 lakhs and same is sold for Rs. 236,52,350 in the shares of a company which does not have strong performance.
- g. He further held that there is no purpose of making an investment in the shares of this company by the assessee shown by the assessee in her statement as well as in statement of her brother-in-law as both are unaware about the nature of the business of the company, directors, place of business, whether it was a profit making or loss-making concern and



- even after purchase, financial performance of the same company was not tracked.,
- h. The AO has issued a notice under section 133 (6) of the act to the person from whom the shares were acquired, however no response was received, and he was not produced. He further relied on the statement of some of the beneficiaries and noted about suspicious exit providers.
6. Thus, the AO issued a show cause notice once again on 5/12/2017 which was replied to by the assessee on 19/12/2017. The assessee submitted the details of the long-term capital gain providing.
- i. Copies of Purchase bill giving name and address of the party along with PAN
  - ii. Details of Payment by cheque for purchase
  - iii. Receipt of sellers of shares to the assessee
  - iv. Bank account of assessee where shares purchase consideration paid.
  - v. Photocopy of physical shares of the above company
  - vi. Demat account where the physical shares were dematerialised.
  - vii. Copy of Financial express where the sellers of the shares issued notice of sale of the shares.
  - viii. Notice of Bonus and split shares of the above company to respective stock exchanges
  - ix. Receipt of split shares and bonus shares in the demat account of the assessee



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- x. Balance sheet to show the shares shown as investment in the year of acquisition.
  - xi. Sale of shares showing contract notes
  - xii. Bills of the share broker
  - xiii. Copy of confirmation of the broker
  - xiv. Receipt of sale consideration through broker by cheques
  - xv. DEmat account where from the shares are transferred.
  - xvi. Bhav Copy to show that shares traded are at market rate.
  - xvii. Master data of Surabhi Chemicals & Investments to show that company has changed its name and who are the directors of that company with their DIN.
  - xviii. Computation of long-term capital gain
  - xix. Computation of short-term capital gain
7. The learned assessing officer after considering the explanation of the assessee held that there are exit providers in case of the assessee and her family members. The learned assessing officer noted that however due to paucity of time further enquiries could not be completed and therefore based on the above facts, he held that it is established beyond doubt that the several exit providers entities were working for the whole scheme of providing accommodation entry of exempt long-term capital gain. He further considered several judicial precedents relied upon by the assessee and further relied upon several



judicial precedents held that the sale consideration of Rs. 23,652,350/- shown by the assessee and sale consideration received for the sale of above shares is an unexplained cash credit and therefore addition under section 68 of the income tax act was made. He further assumed a commission at the rate of 5% of the long-term capital gain amounting to Rs. 1,182,617 for obtaining the accommodation entry under section 69C of the act.

8. Accordingly, the total income of the assessee was assessed at Rs. 25,791,450/- by assessment order passed under section 143 (3) read with section 147 of The Income Tax Act 1961 by an assessment order dated 29/12/2017.
9. Assessee challenged the assessment order before the National faceless appeal Centre Delhi wherein the learned CIT - A deleted the addition under section 68 of Rs. 23,652,350 and addition under section 69C of Rs. 1,182,617/- as per paragraph number 7 - 8 of the appellate order.
10. The learned assessing officer is aggrieved with the same and has raised grounds in this appeal.
11. The learned departmental representative vehemently supported the order of the learned assessing officer stating that.
  - a. Assessee has earned abnormally huge capital gain on sale of shares of a company which does not have any financial strength to have resulted into such a huge capital gain.



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- b. learned assessing officer has categorically found that the assessee is not aware about the financial of the company or its operation, directors etc. In the statement recorded of the assessee as well as the brother-in-law of the assessee also did not justify the investment made by the assessee in the above company.
- i. Merely submitting the paper documents does not help the case of the assessee.
  - ii. Assessee has not justified the genuineness of the transaction as the price of the shares on stock exchange has substantial increased in the short span of time in such increases not in consonance with the financial results of the listed company.
  - iii. Though the assessee has sold the shares on online platform of the Bombay stock exchange which has been correspondingly purchased by the entry operator/exit providers who are engaged in manipulating the sale price and the notices issued under section 133 (6) to the extent providers have remained not complied with.
  - iv. Assessee in response to summons issued under section 131 of the act could not justify the genuineness of the transaction.
  - v. The assessee had purchased the shares at the rate of Rs. 250 per share against the prevailing



- price of Rs. 2.52 per share and therefore this itself shows that that transaction of the purchase of the share is bogus.
- vi. The SEBI order dated 27/1/2021 has held that Sarvottam Advisors private limited from whom the share assessee has purchased has been restrained from trading in shares for six months.
- vii. The call data records obtained from the Mahanagar Telephone Nigam Ltd of the assessee and her relatives show that neither the assessee nor any of his relative had any incoming/outgoing calls made from or to Sarvottam advisory private limited from whom assessee has claimed to have made the purchases of the share and therefore the purchase of share is bogus.
- viii. The learned CIT - A deleted the addition merely based on the judicial precedents and submission made by the assessee and therefore the order of the learned CIT - A is not sustainable.
12. The learned authorised representative submitted a paper book containing 88 pages. It was submitted that assessee has claimed long-term capital gain exempt under section 10 (38) of the act on sale of shares of Surabhi chemical and investment Ltd. The shares were purchased on 27/3/2012 in quantity of 4000 shares for Rs. 10 lakhs.



Further on 23/8/2012 the company issued bonus shares of 36,000 shares and further the shares of the company were split resulting into total acquisition of 4 lakhs shares for a cost of Rs. 10 lakhs. To substantiate the same the assessee has submitted the purchase bill dated 26/3/2012, the bank statement disclosing the payment made on 27/3/2012 for purchase consideration. Money receipt is also produced. He further stated that the assessee came to know about the sale of the above shares as advertisement appeared in the newspaper issued by the Sarvottam Advisory service Pvt Ltd placed at page number 17 of the paper book. He further referred to the share certificate dated 28/6/2012 at page number 18 and 19 of the paper books. He further referred to the Demat statement of the assessee dated 5/7/2012 placed at page number 20 of the paper book wherein the shares of the company were credited to the account of assessee. He further stated that there was a corporate announcement of the company for issue of bonus shares and subdivision of shares. These shares were acquired in earlier years and for this the assessee has disclosed the same as an investment in her balance sheet for earlier years for which the return of income was filed. He submitted that the purchase is not disputed. With respect to the sale of the shares he submitted the sales bill, contract notes dated 31/12/2013 & 27/1/2014 placed at page number 2 - 5 of the paper books. He further submitted the Ledger account of the stockbroker placed at page number six, and the



bank statement of the assessee wherein the receipt was received through banking channel on pay out from the Bombay stock exchange. He further referred to the Demat statement of the assessee wherein sale was recorded on 31/12/2013 wherein the number of shares has been transferred. He further referred to the Bhav copy to show that when the shares were sold the price of the script at Bombay stock exchange was the same. He further referred to the master data of the company in who shares the assessee has traded in the name of the company has changed to super space infrastructure Ltd which is listed and active. He further stated that there is a name of the various directors of the company mentioned therein. It was further the claim of the assessee that assessee is engaged in the investment in shares on long-term basis. The assessee to justify the genuineness of the long-term capital gain filed the documentary evidence such as contract notes, confirmation of SEBI registered stockbrokers, purchase bills, payment receipt, share certificate, Demat statement, bank statements, rate publication of Bombay stock exchange, advertisement issued by the seller in newspaper and other documents. Though the assessee had made off market purchase of the shares, but the payment has been made through banking channels and same has not been disputed. Off market purchase of shares is not prohibited. This investment was also disclosed in the balance sheet of the earlier years. The shares were also transferred in the Demat account of



the assessee. To the sale the entire sale of shares was made through online mechanism on floor of Bombay stock exchange through/broker M/s LFC securities private limited on making the payment of securities transaction tax, service tax and stem duty et cetera. The shares were also delivered by the assessee through Demat account on sale of the shares. With respect to the statement of the assessee on oath recorded under section 131 of the act it was submitted that assessee has declared the transaction as genuine. He further submitted that the securities and Exchange board of India had not issued any notice to the assessee and has not claimed any adverse charges against the assessee and stockbroker of the assessee to establish the involvement of the assessee in manipulation of share prices. The learned assessing officer has not disproved the transaction and has not pointed out a single discrepancy in the above stated documents filed on record. Therefore, according to him the transaction of purchase and sale of shares cannot be disbelieved.

13. He further submitted that the learned assessing officer has alleged that assessee has not justified the genuineness of the transaction as the price of share in stock exchange had increase in a short span of time in such increases not in consonance to its financial results of the listed company. The learned authorised representative submitted that assessee has purchased and sold the said shares at fair market price prevailing at the relevant point of time further the shares have been also subdivided and



bonus was issued by the above company. He submitted that the sale price in stock exchange is based on several factors such as market sentiment, risk appetite, market volatility, volume of trade, future growth of industry and return on investment. He further relied upon the decision of the honourable jurisdictional High Court in case of CIT versus Jamuna Devi Agarwal 328 ITR 5 65 wherein it has been held that if the purchase and sale of shares are in conformity with the market rate prevailing on respective dates, then the transaction cannot be held as nongenuine. He further relied upon the decision of the honourable Bombay High Court in case of CIT versus Shyam R Pawar (229 taxman 256)

14. With respect to the allegation of the learned assessing officer that the above transaction is sham because of the reason that the entry operators and exit providers were issued notices under section 133 (6) remained non complied with, he submitted that the assessee has sold the entire sales through online platform of Bombay stock exchange through computer-generated trading system. The assessee is unaware of corresponding buyers of trades executed at Bombay stock exchange. The assessee is not related to any operators/exit providers and none of them have named the assessee, therefore it does not have any control over the trading activities of third-party/unrelated person. The entire consideration on sale of shares had been received from the Bombay stock exchange through SEBI registered/broker and the Bombay



stock exchange had confirmed the sale of shares made by the assessee at prevailing market price. Ld AO has not brought any material to show that exit providers do exist in case of the assessee and those are bogus.

15. With respect to the allegation of the learned assessing officer that in response to summons issued under section 131 of the act, assessee could not justify the genuineness of the transaction, he submitted that assessee appeared before the learned assessing officer and categorically confirmed the genuineness of the transaction of purchase and sale of shares and also filed the copies of the contract made, confirmation of stockbroker, purchase bill, payment receipt, share certificate, Demat statement, bank statements, rate publication of Bombay stock exchange and advertisement issued by the seller in the newspaper. He further referred that open offer for buyback of shares and other documents are also submitted before the learned assessing officer.
16. He further submitted that the contention of the learned departmental representative that assessee has purchased the shares at the rate of Rs. 250 per share against the prevailing share price of Rs 2.52 per share is devoid of any merit. He submitted that assessee has purchased the shares at the prevailing market price at the rate of Rs. 250/- and further the listed company had made public offer to buy back the shares on 14/3/2012 at the rate of Rs. 232/- per share. The learned assessing officer has



incorrectly disclosed the price ignoring the allotment of bonus shares and splitting of the shares.

17. He further referred to the contention of the learned departmental representative on the order of the SEBI dated 27/1/2021 wherein shares purchased from sarvottam advisory private limited was restrained from trading in shares for six months, it was submitted that the SEBI order was passed against that company from whom the assessee has purchased the shares would not disprove the benefit transaction of the assessee for the reason that the period of investigation pertain to 10/4/2013 24/9/2013 whereas the assessee had purchased the shares on 26/3/2012. Therefore, there is a difference in the period for which the seller of the share was ordered by SEBI. He further stated that in subsequent order of the SEBI on 30/9/2000 penalty of Rs. 2 lakhs on two shareholders, had been imposed, no penalty on the person from whom the assessee has purchased the shares was levied. He further stated that there is absolutely no reference of the assessee's name and transaction in the SEBI investigation and the SEBI as on today had not even issued any notice to the assessee. It was further stated that in any case, the shares purchased by the assessee cannot be believed since shares had been dematerialised on 5/7/2012 and the said certificate discloses the transfer of shares in the name of the assessee on 28/6/2012 and the period of holding such shares in assessee's Demat account exceeded 18 months.



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18. He further stated that the learned AO's contention that the call record obtained from Mahanagar Telephone Nigam Ltd of the assessee and her relatives did not contain any incoming/outgoing calls made from/to the seller of the share and therefore the purchase of shares is disbelieved, he submitted that the learned assessing officer has obtained the call record of the assessee and her relatives and matched with the telephone numbers of the promoters, accommodation entry providers and exit providers etc, however could not find any direct or indirect link with the non-genuine person/entity and therefore did not disbelieved the genuineness of the sale transaction of shares. As the assessing officer could not find any calls received or made to Sarvottam advisory private limited from whom the assessee has purchased shares, incorrectly presumed that the purchase of shares by the assessee is nongenuine.
19. When Id AO has call records of Sarvottam Advisory services Pvt Ltd, that itself proves that that party exist, so issue of notice u/s 133 (6) to that party and its non compliances does not go against the assessee.
20. He further referred to the decision of the honourable jurisdictional High Court and other courts as under: -
- i. PCIT versus Indravadan Jain HUF (ITA number 454 of 2018) Bombay High Court
  - ii. CIT versus Shyam R Pawar 54 taxmann.com 108 Bombay High Court



- iii. CIT versus jamnadevi Agarwal 20 taxmann.com  
529 Bombay High Court
- iv. PCIT versus Krishna Devi 126 taxmann.com 80  
Delhi High Court
- v. CIT v Nilesh Jain HUF 163 taxmann.com 229  
(MP)
- vi. PCIT V Ambalal Chimanlal Patel 162  
taxmann.com 892 (Gujarat)
- vii. PCIT versus Kishore Kumar Mohapatra 162  
taxmann.com 4 (Orissa)
- viii. PCIT versus Mahapatra 160 taxmann.com 567  
(Orrisa)
- ix. PCIT versus Renu Agarwal (all about) 153  
Taxman.com 578
- x. PCIT versus Rita Aggarwal (Rajasthan) 152  
taxmann.com 181

21. He further referred to the several decisions of the coordinate benches wherein the similar addition made under section 68 with respect to the same company is one of the chemicals and investments Ltd for same assessment year has been deleted: -

- a. Chirag Tej Prakash Dangi V ITO ITA number 3 to  
56/M/2022 dated 20/2/2024.
- b. Anu smriti sarkar versus ITO ITA number  
390/M/2020 dated 7/6/2021.
- c. Usha Devi Modi versus ITO ITA number  
874/KOL/2017 dated 26/12/2018.



- d. Sashi Bala Bajaj versus ITO ITA number 1457/Kol/2018 dated 16/11/2018.
22. In rejoinder, the learned departmental representative vehemently reiterated the submission already made.
23. We have carefully considered the rival contention and perused the orders of the learned lower authorities. We have also carefully considered the several decisions cited before us by both the parties and mentioned in the assessment and appellate orders.
24. Brief facts of the case show that
- i. assessee has purchased 4000 shares of Surabhi chemical and investments Ltd at the rate of Rs. 250 per share amounting to Rs. 10 lakhs on 26/3/2012 from sarvottam advisory private limited, shop number 1, Lalwani Bhavan, Opp. Kasturba Hospital, Sane Guruji Road, Satrasta Mahalaxmi, Mumbai 11 having permanent account number of AAMCS7291N through its director Vasudha Agarwal.
  - ii. The assessee made payment to the above company by cheque number 7556 from her Axis bank account.
  - iii. Sarvottam advisory services private limited has issued the receipt of the above sum by cheque number 7556 of Rs. 10 lakhs.
  - iv. Assessee came to know that Sarvottam, advisory services private limited is a seller in the share from the advertisement published by the seller in the financial express dated March 2, 2012.



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- v. The share certificate that has registered Folio number of 23 having distinctive number of 716651-720650 4000 shares were issued and transferred in the name of the assessee on 28/06/2012.
  - vi. The physical share certificate produced at page number 18 wherein the transfer details are available at page number 19 of the paper book.
  - vii. These shares were received in the Demat account of the assessee with Axis bank Ltd in the PID number IN 300484 with client ID 15183850 on 5/7/2012. This Demat account is placed at page number 20 of the paper book.
  - viii. Subsequently on 23/8/2012 36,000 bonus shares were also credited in the Demat account and further on subdivision of the shares on 13/4/2013 the total 400000 shares were available with the assessee.
  - ix. For the deposit of bonus shares and stock split, the respective corporate action was taken. On 30 July 2012 nine shares for one share held by the assessee was issued at bonus and on 10 April 2013 there was a stock split from the face value of Rs. 10 per share to Rs. 1 per share. Therefore the 40,000 shares after the bonus became 4 lakhs shares available with the assessee.
  - x. These shares were disclosed by the assessee in her balance sheet as at 31<sup>st</sup> of March 2013 at an investment of Rs. 10 lakhs.



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- xi. The return for assessment year 2013 – 14 was also filed by the assessee.
- xii. Subsequently through LFC securities private limited the assessee sold.
- a) 1,61,500 shares at the rate of Rs. 58.65 per share is on 31 December 2013 resulting into a sale consideration of Rs. 9,464,871 by contract note number 20,512 as per settlement number 1314190.
  - b) Subsequently on 1 January 2014 assessee sold 73,000 shares of the above company at a rate of Rs. 58.60 per share resulting into total sale consideration of Rs. 4,274,604 vide contracts note number 20633 and settlement number 1314191.
  - c) On 6 January 2014 assessee further sold 75,500 shares at the rate of Rs. 58.70 resulting into a sale consideration of Rs. 4,428,971 by settlement number 1314194 and as per contract note number 21073.
  - d) Further on 7 January 2014 the assessee sold 90,000 shares vide contract note number 21228 and settlement number 1314195 at the rate of Rs. 51.29 per share resulting into a sale consideration of Rs. 5,512,637.



- xiii. This amount has resulted into total sale consideration of Rs. 23,652,350 through the above share broker.
- xiv. The above share broker has made payment to the assessee on 3/1/2014 of Rs. 9,453,386/-, on 6/1/2024 of Rs. 4,269,417/-, on 9/1/2014 of Rs. 4,423,597 and on 10/1/2014 of Rs. 5,505,948/-.
- xv. This payment has been received by the assessee through the broker in the Axis bank account of the assessee.
- xvi. Based on the above information, the assessee offered the sale consideration of Rs. 23,652,350 as consideration received on sale of shares whose cost of acquisition was Rs. 10 lakhs and claimed that she has on a long-term capital gain of Rs. 22,652,350/- which is exempt under section 10 (38) of the act.
- xvii. The return of income was filed by the assessee on 31/1/2015 declaring total income of Rs. 956,480/- the income comprising in the above computation is income from house property, income from short-term capital gain and income from other sources.
25. The learned assessing officer on receipt of information that assessee has made a transaction in a penny stock during financial year 2013 - 14 relevant to assessment year 2014 - 15 of Surabhi chemicals and investment Ltd selling 6,25,000 shares having the total sale consideration of Rs. 36,893,925. Based on this notice under section 148 of the act was issued to the assessee. During the assessment



proceedings the learned assessing officer issued show cause notice to the assessee to explain the above transaction and issued summons under section 131 of the act to the assessee and to the brother-in-law of the assessee. When assessee was questioned in question number 6 about the said transaction, she submitted that the said transactions are made by his brother-in-law Mr. Lalit Jain who is looking after these affairs Even in response to question number seven & in question number eight she said that she doesn't know about Surabhi chemical and investment Ltd. In the statement of Mr Lalit Jain in answer to question number eight he submitted that he is doing the share market operation on behalf of the family. He explained that he is doing this activity for the last six - seven years as an investor. In answer to question number 12 also he gave the name of various companies which are held by the family and himself as an investment. With respect to the transaction of Surabhi chemicals and investment Ltd, he submitted that the shares were purchased from Sarvottam Advisory services private limited, transferred in the Demat account of the assessee and thereafter sold and has earned profits. Regarding the decision of purchase of the shares, he submitted that the issue is very old and therefore he is not able to give the name of the person who advised for purchase of the above share. He categorically stated that except Sarvottam advisory services private limited he has not purchased the shares from anybody else. Thereafter



the learned assessing officer issued notice under section 133 (6) of the act to sarvottam advisory private limited however no reply was received. During statement recorded of Mr Lalit Jain, he/she was shown copy of the statement of Mr Rahul dated 19/6/2015 wherein it was confessed he has obtained the bogus long-term capital gain as an accommodation entry. The AO further noted that Mr Rahul sold the shares through various exit providers. As per data obtained from the Bombay stock exchange list of exitproviders ofthe transaction of 6,25,000 shares was also mentioned. The AO issued notice under section 133 (6) of the act asking from the severalexit providers several details, but someof notices returned by post or some of them did not respond. Some of them also confirmed of purchasing the above shares. The learned AO further referred to the various statement of accommodation entry providers who provided accommodation entry of long-term capital gain in case of various assesses. Based on this show cause notices were issued to the assessee which was replied by the assessee substantiating the transaction of earning of the long-term capital gain, but the learned assessing officer further held that due to paucity of time further enquiries could not be completed. Based on this, he reached at a conclusion that the long-term capital gain on by the assessee is bogus.

26. When the matter reached before the learned CIT – A, he dealt with the issue as under: –



"7. I have one through the assessment order and submission made by the AR of the appellant. The facts of the case are that the appellant had claimed long-term capital gain as exempt amount in to Rs. 22,652,350/-. The AO had information from PD ITA Calcutta wide letter dated 27/4/2015 regarding accommodation entry providers for long-term capital gain which involved entry operators, share brokers and money-launderers. Accordingly, the assessment of the assessee was reopened under section 147 of the act after recording reasons and after obtaining approval of the competent authority. The AO has given the details of transaction entered by the appellant, finding of investigation wing and concluded that the script dealt with by the appellant of sewer of the chemicals and investment Ltd was a penny stock which was used in providing accommodation entries to the beneficiaries. The appellant submitted before the AO that the purchase of the shares was made through private placement but was dematerialised and was held in the Demat account for more than 12 months and sale of the share was done through stock exchange and payments were also exchanged by banking mode both for the purchase as well as sales. It was also submitted that each of the purchase and sale of shares was supported by contract notes and hence,



*the long-term capital gain on was genuine and not bogus. However, the AO did not accept the contention of the appellant and rejected the claim of exemption of long-term capital gain made by the appellant under section 10 (38) of the act and made the addition of the said amount of Rs. 22,652,350/- as unexplained cash credit under section 68 of the act. The AO also made the addition of Rs. 1,182,617/- as commission expense incurred for taking accommodation entry as unexplained expenditure under section 69C of the act. Aggrieved by the said addition, the appellant is in appeal and has raised 04 grounds which are adjudicated as under.*

*8 Ground number 1 and 2 are relating to rejection of the claim of exemption of long-term capital gain made by the appellant under section 10 (38) of the act and about the addition of the said amount of Rs. 22,652,350/- as unexplained cash credit under section 68 of the act. As both these grounds are relating to the same issue of the addition, there being adjudicated together. In raising these grounds, the appellant has submitted that the long-term capital gain was on unlisted securities on which STT was paid, the transactions were carried on recognised stock exchange, the period of holding was more than 12 months in Demat account, the transactions are supported by*



*contract notes, Demat statement, transaction statements, bank statements, transfer of shares certificates, confirmation from brokers et cetera. It was also claim that the addition has been made by the AO based on assumptions and suspicions and not on the basis of documentary evidence and material on record. It was also submitted that the statement of third-party is not recorded in presence of the appellant and without providing the opportunity of cross-examination of the said third parties cannot be relied as credible evidence for making the addition.*

*8.1 the AO has made the addition of rejecting the claim of exemption of long-term capital gain under section 10 (38) of the act based on the report of PD ITO, investigation, Kolkata. In the said report of PD 80, investigation Calcutta there were several penny stocks which were identified and one such penny stock was that of sewer be chemicals and investments Ltd in which the appellant had invested. The findings of the AO with reference to the investment in the said share was that the appellant was ignorant about the share transaction and stated in a statement that her brother-in-law Mr Lalit Jain was aware about her investment. But the AO further held that Mr Lalit general involved in steel trading business and not actively engaged in the share trading. Thereafter, the AO has given*



*the details as to how the price of share of sewer be chemical and investment Ltd increased from Rs. 25.52 to Rs. 81.10 without there being any worthwhile profit earning ability of the said company. The AO is also reproduced the statement of the appellant and brother-in-law Mr Lalit Jain in the assessment order. The AO is also given details about the companies who had sold the shares to the appellant and the companies to move the appellant subsequently sold the shares. The said companies either were not present at the given address or did not respond to the notices sent by the AO under section 133 (6) of the act. The AO has also given rebuttal of the submissions of the appellant and concluded that the appellant without having any knowledge in shares and securities on such huge appreciation of shares which was to the tune of 2365% of the investment in the company in which the investment was made was not earning any profit but still the stock prices increased which was the result of rigging.*

*8.2 the AR of the appellant in his written submission dated 28/11/2023 submitted that there are direct judicial decisions of honourable jurisdictional High Court of Bombay and ITA T regarding allowability of long-term capital gain on sale of shares of sewer be chemicals and investment Ltd and similar stocks which were*



considered as penny stock by the AO. It was submitted that in case of a new spirit Sarkar versus ITO (ITA number 390/M/2020 dated 7/6/21) the long-term capital gain earned on investment made in the scrip of sewer be chemicals and investment Ltd was allowed and the order of the AO and the CIT - A, set-aside. Similar there were two other decisions of ITAT Kolkata in case of Udit Agarwal versus DCIT (ITA number 1839/Kol/2017 dated 26/12/2018 and assessee Bala Bajaj versus ITO (ITA number 1457/Kol/2018 dated 16/11/2018) in which the appellant had earned capital gain from sale of shares of soon-to-be chemical and investments Ltd.

8.3 the basic finding of the jurisdictional ITAT in case of a new spirit the circa versus ITO (supra) was that when the appellant files all the evidences comprising sales, purchases, contracts/broker notes, Demat statement, purchase bills, evidences payment through banking channels along with bank statement, it goes to prove that the appellant has filed all the evidences and the authorities below could not bring out any material to prove that capital gain earned by the appellant is bogus except the attribution by the investigation Wing and Sebi. Accordingly, the ITAT held that the exemption claimed by the assessee under section 10 (38) of the act needs to be allowed.



8.4 with reference to the script of soon-to-be chemicals and investments Ltd, even ITAT Kolkata in case of the other was versus DCIT (supra) and assessee Bella Bajaj versus ITO (supra) have opined that there would not be any merit in the arguments of the revenue if no entry provider has named the assessee in any of his statements or revenue fails to file any such evidence.

8.5 from the facts of the appellant's case as dated by the AO, the appellant has given all the details short by the AO and there is no evidence that the appellant was named by any of the entry providers. Even there are no evidence of rigging of share prices with reference to the script of soon-to-be chemicals and investments Ltd, in the investigation carried by Sebi. Merely because the price of the share of soon-to-be chemicals and investments Ltd went up substantially cannot be the ground for disallowance of exemption under section 10 (38) of the act in absence of any wooden says of naming the appellant by entry providers, evidence of cash payments for getting the entries all the evidence of rigging of prices of shares in question.

8.6 the AR also has relied upon the following decision of the jurisdictional High Court's and Supreme Court's



1. *PCIT versus Renu Agarwal 456 ITR 249 (SC)*
2. *PCIT versus Indravadan Jain HUF*
3. *DCIT versus Parasben K Kochar 130 taxmann.com 177 (SC)*
4. *ITO versus Jamnadev Aggarwal 328 ITR 656 (Bom)*
5. *CIT versus Shyam R Pawar 229 taxman 256 (Bom)*

*8.7 in the case of PCIT versus Rima. No other was (supra) honourable Supreme Court held that when there is no adverse comment from the stock exchange of SEBI with reference to the company who shares were involved in the transactions, such as cannot be called as penny shares and the exemption on capital gains cannot be denied especially quoting the statement of unrelated persons and on the basis of unfounded presumptions.*

*8.8 in the case of PCIT versus Parasben Kasturchand Kochar, the Gujarat High Court in 130 taxmann.com 176 (Gujarat) held as under: -*

*Xxxxxxx*

*8.9 I have gone through all these judicial pronouncements which are in favour of the appellant. In all the decisions the judicial view is that if shares are purchased by the appellant for which the appellant provides necessary evidence*



*and the rates at which the sales are purchased and sold are in conformity with the prevailing market rates on the date of purchase/sale, the transaction in question cannot be treated as transactions. If the assessee is able to submit the records of purchase bills, sale beans, Demat statement and discharges the onus of establishing the transaction is to be fair and transparent, the long-term capital gain earned on such transaction of shares are eligible for exemption under section 10 (38) of the act.*

*8.10 thus, respectfully following the decisions of honourable Supreme Court, jurisdictional High Court on the issue and especially the decision of ITAT are referred supra which are with reference to the shares of soon-to-be chemical and investments Ltd, the AO is directed to allow the exemption of long-term capital gain of Rs. 23,652,350/- to the appellant. Ground number 1 and 2 are treated to have been allowed.”*

27. Consequently, he also deleted the addition under section 69C of the act.
28. It is an admitted fact that assessee has produced the relevant details of purchase related documents of the shares, the respective announcement of the company of issue of bonus shares and stock split, the details of payment made by the cheque to the persons from whom assessee purchased, subsequently the shares were



transferred in the Demat account of the assessee, the purchase consideration is also confirmed by the seller. On the issue of the purchase, the assessing officer made an enquiry at paragraph number 6.7 of the order wherein a notice under section 133 (6) of the act was issued to sarvottam advisory private limited, however no reply was received. The assessee was also asked to produce the same or to provide its current address. The assessee has given the purchase bill dated 26 March 2012 which is placed at page number 13 of the paper book. In this purchase bill, the permanent account number of the party from whom assessee purchased the shares are also mentioned. The payment is made by an account payee cheque which is also credited in the account of sarvottam advisory private limited. Other than that, the learned assessing officer did not make any enquiry with respect to the purchase of the shares. Maybe, the assessee did not produce that party, but purchase of shares was further confirmed when the identical shares were credited in the Demat account of the assessee. Therefore, purchase of shares could not have been doubted. It is also a fact that Id. AO has made the call details of sarvottam advisory services private Limited, thus, party was in existence at that time. With respect to those shares' sale certificate dated 28/6/2012 was also placed before the learned assessing officer wherein the shares were transferred in the name of the assessee and subsequently Demat. How assessee came to know about the seller who wanted to



sell the shares, the assessee submitted the advertisement given by the seller in financial express. Based on the same, the learned assessing officer inquired by looking at the call record of the assessee and his family member and found that no such calls were made to Sarvottam advisory services private limited. When the assessing officer is having the details about the call record of the person who sold the shares to the assessee, wherein the question now remains of failure on the part of the assessee to produce the seller before the assessing officer. In view of such overwhelming evidence of purchase of the shares, we find that existence of the shares in the Demat account of the company cannot be denied or rejected.

29. Now the issue comes with the sales made by the assessee. Undoubtedly the assessee has sold the shares on the electronic exchange platform of Bombay stock exchange through the registered broker. The sale of the shares is time and dated stamp transaction as per the contract notes. The transaction of sale was entered through registered broker. The pay-out has happened on account of settlement of the transaction by the Bombay stock exchange. When the shares are sold on a platform of stock exchange, through the broker of the assessee, and another broker would buy such shares on behalf of his clients. Though the learned assessing officer has found that the clients who purchased the shares but, did not make any enquiry whether those are accommodation entry provider or not. It is not for the assessee to show



about the genuineness of those persons, those persons have also registered with their broker in turn to deal with purchase of those shares by proving their KYC data. The assessing officer himself stated that due to paucity of time he did not make further enquiry. The assessee has submitted complete details of sale of the shares. Naturally, when the shares are sold on an electronic platform of stock exchange, the assessee could not be expected to provide more details than what is provided by the assessee and available with him. Details of buyer of the shares is assessee is not privy to. The learned assessing officer has also not enquired with LFC securities private limited who sold shares on behalf of the assessee and issued contract notes and sale bills to enquire whether it is a synchronised trade with the broker of the buying party.

30. As per the company who shares are traded on the stock exchange, the assessee has submitted that the name of the above company has changed to super space infrastructure Ltd, it is also listed, and active. The name of the directors of the above company are also mentioned. Regarding the increase in the prices of the share of that company, the decision of the coordinate bench in case of Uday Agarwal and Shashi Bala Bajaj have dealt with this issue. The learned CIT – A relied upon those decisions, which could not be found fault with.
31. The learned CIT – A has also relied on the decisions of the honourable Bombay High Court and other high courts



- wherein on the identical facts and circumstances such additions are deleted.
32. Securities and Exchange board of India has passed an order against Sarvottam advisory private limited from whom the assessee has purchased shares, however the period of investigation was different then the period in which the assessee has purchased the shares from that party. Even in the subsequent order of the SEBI no penalty was imposed on Sarvottam advisory private limited. Therefore, that party was exonerated.
  33. Regarding the price of the shares at which assessee purchased those shares are wrongly mentioned at Rs 2.52 per share, the assessee has purchased those shares at the prevailing market price.
  34. Several judicial precedents of the honourable High Courts and coordinate benches are relied upon before us, which were not controverted by the learned departmental representative, which were also relied upon before the learned CIT appeal by the assessee, binds us judicially, unless divergent and distinguishing features are pointed out. No such efforts were made before us.
  35. Hon. Delhi High Court in the case of Pr. CIT v. Smt Krishna Devi [[2021] 126 taxmann.com 80/279 Taxman 148 (Delhi)] has commented on the scope and applicability of Doctrine of Preponderance of probabilities held that evidence produced by the assessee overpowers the principle of preponderance and observed as follows:-



"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".

36. Even the grounds of appeal raised by the learned AO before us is reliance on circumstantial evidence mentioned in the assessment order wherein abnormal price rise in the share of Surabhi chemical and investment Ltd without having strong financial status is challenged. The ground did not challenge that the impugned capital gain earned by the assessee has been proved as a sham transaction by the AO. Merely based on circumstantial evidence, the addition under section 68 could not have been made when assessee has discharged her initial onus by producing all the evidence. The learned AO should have penetrated those evidence and thrown back onus on the assessee, which is lacking.
37. Regarding the ignorance of the assessee with respect to the financial statements of the company who shares assessee purchased, it is clear from the statement that assessee stated that Mr Lalit Jain has carried out these transactions being part of the family. It is not unusual that brother-in-law of the assessee carried on these transactions. Mr Jain in statement has replied to most of the queries. However admittedly, he failed to answer who are the directors and what is the business of the company, but those questions are not so important, when



overwhelming evidence are produced, that the capital gain exemption to the assessee can be denied.

38. In view of the above facts, we do not find any infirmity in the order of the learned CIT – A in deleting the addition of Rs. 23,652,350/- made by the learned assessing officer and further deletion of the addition of Rs. 1,182,617 under section 69C of the act. In the result both the grounds of appeal are dismissed.

39. In the result, appeal filed by the learned AO is dismissed.

Order pronounced in the open court on 10/10/2024.

Sd/-

(RAJ KUMAR CHAUHAN)  
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 10.10.2024

Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai



Sr. No.	Particulars	Date	Initials	Person concerned
1	Draft dictated	14.08.2024		Sr.PS
2	Draft placed before author	16.08.2024		Sr.PS
3	Draft proposed & placed before the second Member			AM
4	Draft discussed/approved by Second Member			AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS
6	Kept for pronouncement on			Sr.PS
7	File sent to the Bench Clerk			Sr.PS
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			
10	Dictation Sheet is attached herewith			