



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

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

**ITA No.  
1016/MUM/2024**

**Mrs. Bhavna Lalit Jain**  
Plot number 21,  
Maharashtra sector 1A  
Koper Khairane  
Maharashtra 400708

**Vs.**

**A.Y.2014-15**

**The Income Tax  
Officer**  
Ward – 15 (1) (1)  
Aayakar Bhavan  
Maharishi Karve Road  
New Marine Lines  
Mumbai 400020

(Appellant)

(Respondent)

PAN

ACIPJ0205E

Assessee by

Shri Prakash G.

Jhunjhunwala

Revenue by

Shri Ashok Kumar  
Ambastha, Sr. (DR),

Date of hearing  
Date of pronouncement

25<sup>th</sup> August, 2024  
15<sup>th</sup> October 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by Mrs. Bhavna Lalit Jain [Assessee/appellant] for assessment year 2014 – 15 against appellate order passed by



National Faceless Appeal Centre, Delhi (the learned CIT (A)) dated 16/2/2024 wherein the appeal filed by the assessee against the reassessment order passed under section 143 (3) read with section 147 of The Income Tax Act, 1961 (The Act) dated 29/12/2017 passed by The Income Tax Officer, Ward 15 (1) (1), Mumbai [ The Ld. AO ] ,was dismissed.

2. The only issue involved in this appeal is that long-term capital gain earned by the assessee of Rs. 22,404,695/- earned by the assessee claimed exempt under section 10 (38) of the income tax act on sale of 400,000 shares of Surabhi chemicals and investment Ltd (now known as super space infrastructure Ltd)was disbelieved by the learned assessing officer on reopening of the assessment and sale consideration of Rs. 23,404,695/- added under section 68 of the income tax act was confirmed by the learned CIT - A holding that reassessment and addition under section 68 is correctly made. Therefore, assessee has challenged, reopening of the assessment as well as the addition on merits on several counts.
3. At the beginning of the hearing, the learned authorized representative categorically submitted that ground number 1 against the reopening of the assessment is not pressed and therefore same is dismissed.
4. This leaves us with the only aspect in this appeal with respect to the addition made under section 68 of the income tax act and denial of claim of exemption under section 10 (38) of the act.
5. Brief facts of the case shows that assessee is an individual earning income from other sources, income from house property filed her return of income on 31/1/2015 at a total income of ₹



2,056,540. Subsequently the information has been received from The Principal Director of Income Tax (Investigation) Kolkata regarding investment made by various entities in penny stock and providing bogus entries for claiming long-term capital gain/long-term capital loss, resulting into evasion of taxes. It was learnt that the trading in penny stock was manipulated affair to generate entries of bogus long-term capital gain and short-term capital gain. The shares of Surabhi investment and chemicals Ltd were also found as one of the penny stocks mentioned in the investigation report which did not have adequate financial strength, but price of the share have increased in disproportionate manner. Such increase in price of the shares was considered to be manipulation by the accommodation entry provider by rigging the price of the shares on stock exchange, providing exit providers for generation of long-term capital gain in the hands of several beneficiaries, which is claimed as exempt under section 10 (38) of the act falsely. As assessee is also one of the beneficiaries who has earned long-term capital gain in the shares of the above company, the case of the assessee was reopened after recording of the reasons for reopening and obtaining necessary approval. as it was found that income chargeable to tax for the impugned assessment has escaped assessment, Therefore, notice under section 148 of the act was issued on 6/9/2016.

6. During the course of reassessment proceedings, assessee submitted that she has purchased 4000 shares on 26/3/2012 at a total consideration of Rs. 100,0000/- at the rate of Rs. 250 per share of Surabhi investment and chemicals Ltd. From Sarvottam advisory private limited by Bill dated 26/3/2012. The purchase



consideration was paid from Axis bank account of the assessee which was acknowledged by the seller by issue of money receipt dated 26/3/2012. The assessee came into contact with the seller on the basis of the advertisement on 2 March 2012 made by the seller in the English newspaper the financial express. The assessee got the physical said certificate having registered folio number 231 having the distinct we've number of the shares 720,651 – 724,650 which were issued to the original buyer on 21 May 2012 and same were transferred in the name of the assessee by the company on 28/6/2012. These shares were transferred to the Demat account of the assessee with axis bank on 5/7/2012. Subsequently on 23/8/2012 36,000 shares were issued and thereafter stock was split. Thus, in the end the assessee was having 4 lakhs as of the same company. All the shares were Dematerialized in the Demat account of the assessee. These shares were shown into the balance sheet of the earlier years of the assessee as an investment. Assessee also submitted the corporate announcement for bonus and subdivision of the shares. To support its contention assessee submitted:-

- i. Purchase bill dated 26/3/2012.
- ii. Bank statement disclosing the payment made on 27/3/2012.
- iii. Money receipt issued by the seller of the shares dated 26/3/2012.
- iv. Advertisement published in the financial express by the seller for sale of shares.
- v. Shares certificate in physical form dated 28/6/2012 transferred in the name of the assessee.



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- vi. The Matt statement of the assessee to show that the above purchase of the shares have been entered.
  - vii. The corporate announcement for bonus and subdivision of shares made by the company.
  - viii. Annual accounts of the assessee to show that the above investment is shown as an investment.
7. These shares were sold at an average rate of Rs. 58.51 per share resulting into a sale consideration of ₹ 23,404,695/- at platform of the Bombay stock exchange through the share broker LFC private limited by contract notes and bills dated 12 December 2013 – 26 December 2013 by 6 different contract notes showing date and time stamp of the transaction at the stock exchange. The Ledger account of the broker of the assessee through who sales are sold are also produced and it was demonstrated that assessee has received the sale consideration on account of payout made by the Bombay stock exchange to the broker of the assessee and subsequently broker has made payment to the assessee which is credited in the axis bank account of the assessee. The dematerialize statement of Axis bank was also shown wherein the above shares were transferred to the exchange. Assessee also submitted the price quotations of Bombay stock exchange on that date. to show this fact assessee submitted following evidence:-
- i. Sales bill come contract notes of the broker from 12/12/2013 to 26/12/2013.
  - ii. Ledger account of the stockbroker



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- iii. Bank statement disclosing the receipt of the sale consideration.
  - iv. Demat statement to show that the sold quantity has gone out of it.
8. This has resulted into a long-term capital gain of ₹ 22,404,695. The assessee also submitted that the company who shares assessee has purchased and sold resulting into the above gain is an existing company, listed at the stock exchange, and with the Ministry of corporate affairs having corporate identification number wherein details about the company is mentioned along with the names of the directors of the company.
9. The learned assessing officer noted that on the basis of investigation carried out by the investigation Wing, the above sale of shares is found to be suspicious. The learned assessing officer issued summons under section 131 of the act along with the show cause notice to the assessee to justify why the above sale consideration should not be added to the income of the assessee under section 68 of the act on account of sale of shares of the penny stock Surabhi chemicals and investments Ltd. The assessee appeared in response to notice under section 131 of the act and her statement was recorded wherein she stated that the purchase of the stock of the above company was a bona fide investment and is sold through the Demat account of axis bank having paid securities transaction tax on the same. It was also stated that the shares were purchased on the instruction of her friend .
10. The learned assessing officer thereafter referred to the findings of the investigation wing of Kolkata where from the report was



received based on which reopening was made. This was extracted at paragraph number 8 -14 of the assessment order. The learned assessing officer thereafter referred the statement of the assessee in paragraph number 14, he reached at the conclusion that assessee was not having a clear answer. He further referred that the above company was a very small company and does not have any substantial business. Therefore, the profit earned by the assessee from the above company is not genuine. The price of the shares have also moved significantly in absence of any financial backing. He referred to in paragraph number 17 the names of the various exit providers wherein it was held that the volume has been contributed by the beneficiaries of bogus long term gain. The learned assessing officer reached at the conclusion that: –

- i. The financial of the company were very poor during the period when the preferential shares were allotted.
- ii. The business profile shows that the company was not engaged into any substantial activity as well as any future plans which could attract investors from all over India to invest in the company.
- iii. The funds were raised through preferential allotment have not been used by any business expansion and have been further advanced as a loan and investment.
- iv. The whole process of preferential allotment was a prearranged and managed process so as to allot preferential shares to beneficiaries of bogus long-term capital gain which could be sold by them for booking accommodation entry of bogus long-term capital



gains/short-term capital gain in the garb of sale proceeds on sale of shares.

- v. The shares were rigged on the stock exchange through manipulation of the stock market through various brokers, who statements have been recorded and confirmed that the shares of this company have been used for providing long-term capital gain and short-term capital gain which is bogus. The various exit providers have also confirmed the same.

11. The learned assessing Ofc therefore she issued a final show cause notice on 19/12/2017 asking the assessee as to why the sale consideration amounting to Rs. 23,404,695/- should not be added to her total income under section 68 of the act on account of sale of shares of the above company. The assessee submitted reply on 22/12/2017 reiterating the above evidence and also submitting that there is no evidence against the assessee. The learned assessing officer rejected the same and passed reassessment order under section 143 (3) read with section 147 of the act on 29/12/2017 determining total income of the assessee at Rs. 25,461,230/-.

12. Assessee aggrieved with the same, preferred the appeal before the learned CIT (A) challenging the reopening of the assessment as well as the additions on the merits of the case, the learned CIT - A dismissed the appeal of the assessee . The learned CIT - A also rejected the contention of the assessee of granting of the cross examination of the persons who statements have been relied upon by the learned assessing officer for making an addition relying upon the decision of the honourable Calcutta High



Court in case of Swati Bajaj. Thus, the appeal of the assessee was dismissed.

13. Assessee aggrieved with the above appellate order is in appeal before us. Assessee has submitted factual paper book containing 76 pages wherein the details of purchase of the shares and sale of the shares along with submissions filed before the learned lower authorities were enclosed. Assessee also filed a case law compiler action containing 11 decisions wherein the additions made in the similar manner is deleted. He further referred to the several judicial precedents wherein shares of the same company were dealt with and addition on identical bases made by the learned that lower authorities was deleted. He specifically referred to the latest decision of the coordinate bench in ITA number 3256/M/2022 four assessment year 2014 - 15 in case of ChiragTej PrakashDangiversus ITO of C bench dated 20/2/2024 wherein the addition is deleted. The assessee also submitted a fact sheet of the whole transaction .
14. The learned authorized representative vehemently submitted that issue is squarely covered in favour of the assessee by the decision of the coordinate bench he specifically referred to paragraph number 9 - 15 of the above decision.
15. It was further submitted that arguments of the assessee are similar to the arguments advanced by the assessee in case of Mrs. Seema Bafna { ITA no 1102/M/2024 } which is also heard on the same date along with this appeal.
16. The learned departmental representative vehemently supported the order of the learned lower authorities. It was also submitted that the argument of the learned departmental representative is



also similar to the argument made by him in case of Mrs. Seema Bafna.

17. We have carefully considered the rival contention and perused the orders of the learned lower authorities. Facts of the case of the assessee has already been discussed hereinabove. It is also taken note of that identical issue has been decided by us in case of Mrs. Seema Bafna in ITA number 1102/M/2024 dated 10 October 2024 wherein we have held as under:-

"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.

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.



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- 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.
  - v. 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.
  - vi. 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.



vii. 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 authorized 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 authorized 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 565 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 dematerialized 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.

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 non genuine.



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 Surabhi 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.
  - 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 where in 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 31st of March 2013 at an investment of Rs. 10 lakhs.
- 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.
- 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 exit providers of the transaction of 6,25,000 shares was also mentioned. The AO issued notice under section 133 (6) of the act asking from the several exit providers several details, but some of 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 gone 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 PDIT Kolkata vide 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 Surabhi 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 dematerialized 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 recognized 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 PDIT, investigation, Kolkata. In the said report of PDIT, investigation Kolkata there were several penny stocks which were identified and one such penny stock was that of Surabhi 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 Surabhi 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 Surabhi 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 Surabhi 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 Surabhi chemicals and investments Ltd, in the investigation carried by Sebi. Merely because the price of the share of Surabhi 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 synchronized 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.



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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, 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."

18. Facts of the case of the assessee are identical to the facts of the case of Mrs. Seema bafna [ supra] which is decided by the same bench.

19. Further we find that in case of 2024 (2) TMI 1413 - ITAT MUMBAI CHIRAG TEJ PRAKASH DANGI VERSUS ITO, WARD-26 (1) (5) , MUMBAI identical issue was discussed and decided in favour of the assessee holding as under :-

"The assessee has filed this appeal challenging the order dated 14.12.2022 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15. The grievance of the assessee is that the learned CIT(A) was not justified in confirming the addition of Rs. 1.51 crores made by the Assessing Officer under section 68 of the I.T. Act, being sale process of shares alleged penny stock companies.

2. Though the assessee has raised a ground challenging the validity of notice issued under section 148 of the I.T. Act, the learned AR did not press the same at the time of hearing. Accordingly, the said ground is dismissed as not pressed.



3. Facts relating to the addition of Rs. 1.51 crores relating to sale value of shares of alleged penny stocks are stated in brief. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has disclosed long term capital gains of Rs. 1.45 crores arising out of sale of shares and claimed the same as exempt under section 10(38) of the Act. The relevant details thereof are tabulated below:-

Name of scrip	Sale value	Long term capital gain
Radford Global Ltd.  (Earlier known as PS Global Ltd)	39,19,667	38,19,670
Surbhi Chemicals & Investment Ltd.	92,19,378	87,19,378
Pyramid Trading & Finance Ltd.  (Now known as Mishka Finance & Trading Ltd)	20,14,740	19,89,740
	<b>151,53,785</b>	<b>145,28,788</b>

4. The Assessing Officer noticed that all the three companies mentioned above have been identified as 'penny stock' by the Investigation Wing, Kolkata, in which prices of the shares have been rigged in order to generate bogus capital gains/capital losses. The Assessing Officer also noticed from the report prepared by the Investigation wing of Kolkata that the prices of shares of certain penny stock companies have gone up unusually and the same was not commensurate with the financial results of these companies. Accordingly, the Assessing Officer asked the assessee to explain as to how he has invested in these shares. The assessee replied that he got information that there are reasonable chances of getting good returns in these scrips and accordingly made the investments. The assessee also submitted that the purchase and sale of the transactions are genuine and also furnished all the evidences in support of the same. The Assessing Officer recorded statement from the assessee u/s 131 of the Act, wherein he stated that he makes investments on long term basis. However, the AO concluded that the assessee failed to show that he was having any knowledge about the shares. Accordingly, the Assessing Officer took the view that the transactions in shares are not genuine and rejected the exemption claimed u/s 10(38) of the Act. However, the AO assessed the sale value of shares amounting to Rs. 1.51 crores u/s 68 of the Act. The AO also took the view that the assessee may have incurred commission expenses in getting bogus



long term capital gains and accordingly estimated the commission expenses incurred on procuring bogus long term capital gains as Rs. 7 lakhs and assessed the same u/s 69C of the Act. The learned CIT(A) confirmed the addition and hence the assessee has filed this appeal before the Tribunal.

5. The Learned AR submitted that the assessee is a regular investor in shares. He submitted that the assessee has purchased shares in physical mode by paying purchase consideration through banking channel. Subsequently, the shares were dematerialized. Later on, they were sold in the platform of the Bombay Stock Exchange. The sale consideration has been received by way of account payee cheque. He submitted that the assessee has furnished all the required documents to prove the factum of purchase and sale of shares. He submitted that the Assessing Officer did not find any deficiency/defect in the documents so furnished by the assessee. The learned AR submitted that all the companies are still active in the stock exchange and hence it cannot be considered as bogus companies. He submitted that the assessee is an ordinary investor in shares and it was not shown that the assessee was a part of the group, which was involved in the alleged prices rigging of the shares. Accordingly he submitted that the tax authorities are not justified in disbelieving the transactions of shares carried on by the assessee. In support of his submission, he placed reliance on the following decisions :

- i) PCIT Vs. Indravadan Jain HUF (ITA No. 454 of 2018)(Bom)
- ii) PCIT Vs. Ziauddin A. Siddiquie (ITA No. 2012 of 2017) (Bom)
- iii) CIT Vs. Shyam R. Pawar (54 taxmann.com 108)(Bom)
- iv) CIT Vs. Smt. Jamnadevi Agrawal (20 taxmann.com 529 (Bom)
- v) Pr. PCIT Vs. Smt. Krishna Devi (126 Taxmann.com 80 (Del)

6. The Learned AR further submitted that the companies M/s. Radford Global Ltd. and M/s. Mishka Finance Ltd. were subjected to scrutiny by the SEBI and Interim orders passed by the SEBI against both the above said companies, have been revoked subsequently. In respect of Surbhi Chemicals & Investment Ltd., SEBI has not passed any adverse order. The Learned AR also submitted that the assessee has not been subjected to any inquiry by the SEBI. Accordingly he contended that the Assessing Officer was not justified in disbelieving the transactions carried on by the assessee are not genuine by placing reliance on the general investigation report given by the Investigation Wing of Kolkata.



7. On the contrary, the learned DR heavily placed reliance on the order passed by the Assessing Officer. He submitted that the Assessing Officer has conducted inquiry with the assessee and has come to the conclusion that the assessee was ignorant about the fundamentals of the penny stock companies. He further submitted that the Assessing Officer has examined financial performance and fundamentals of these companies and it has been proved that the price rise was not commensurate with the financial performance of the companies, which would lead to the conclusion that there was rigging of the price of these shares. Accordingly, the learned AR submitted that all these transactions of purchase and sale of shares have been preconceived and artificially structured with the sole intention to evade tax. Accordingly he contended that the order passed by the learned CIT(A) should be confirmed.

8. In the rejoinder, the A.R further submitted that Hon'ble Supreme Court in the case of PCIT Vs. Smt. Renu Aggarwal (456 ITR 249) has affirmed the decision rendered by Hon'ble Allahabad High Court, wherein the Hon'ble High Court had held that the Assessing Officer could not have made the addition on the basis of the facts pertaining to completely unrelated person. In the instant case also, the Assessing Officer has drawn adverse inference on the basis of the general report given by the Investigation Wing.

9. We heard the parties and perused the record. We notice that the assessing officer has primarily placed reliance on the report given by the Investigation wing of the Income tax department, Kolkata to arrive at the conclusion that the long term capital gains reported by the assessee is bogus in nature. We notice that the investigation report prepared by Investigation wing, Kolkatta is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of prices. The Ld A.R submitted that the SEBI, who is regulator of stock market operations, have conducted enquiries and the interim order passed by it suspending the trading in two of the companies mentioned above, has since been revoked. In any case, it is stated by Ld A.R that the transactions carried on by the assessee were not subjected to scrutiny by SEBI at all.

10. We notice from the statement recorded by the AO from the assessee u/s 131 of the Act that the assessee herein is a Chartered Accountant. In the statement, the assessee has specifically stated that



he is a long term investor, meaning thereby, he would not be watching the share price movements on day to day basis. Hence, we are unable to understand as to how that AO could observe that the assessee herein was ignorant of stock market operations. We also notice that the assessee has

- (a) purchased these shares by paying consideration through banking channels
- (b) dematerialized the shares and kept the same in the Demat account.
- (c) sold the shares through stock exchange platform
- (d) received the sale consideration through banking channels.

Further, the shares have entered and exited the demant account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. As noticed earlier, the AO has not brought on record any material to show that the assessee was part of the group which involved in the manipulation of prices of shares. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

11. We may now refer to certain decisions rendered by Hon'ble Bombay High Court on identical issue. In the case of Shyam Pawar (supra), the Hon'ble Bombay High Court has observed as under:-

"3. Mr. Sureshkumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr. Sureshkumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr. Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the



Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr. Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny. It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt. Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr. Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton



Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs. 25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

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

12. We may now refer to the decision rendered by Hon'ble Jurisdictional High Court in the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4th March, 2022) and relevant discussions made by Hon'ble Bombay High Court are extracted below:-



“2. We have considered the impugned order with the assistance of 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 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 the 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 judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) 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.

In the case of CIT vs. Jamnadevi Agarwal (supra), the Hon’ble Bombay High Court held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of PCIT vs. Indravadan Jain (HUF) (supra), the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were not doubted. Under these set of facts, the Hon’ble Bombay High Court held as under:-

“...The CIT(A) came to the conclusion that respondent bought 3000 shares of RFL, on the floor of Kolkatta 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 Kolkatta 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 instruction slips and also received payment from Kolkatta 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.”

In the instant case also, we noticed that the evidences furnished by the assessee to prove the purchase and sale of shares, payment made/received, entry/exit of shares in the demat account of the assessee etc., were not doubted with.

13. In the case of PCIT vs. Smt Krishna Devi (supra), the Hon'ble Delhi High Court has noticed that the reasoning given by the AO to disbelieve the capital gains declared by the assessee, viz., astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures. Accordingly, the Hon'ble Delhi High Court affirmed the decision rendered by ITAT in deleting the addition of capital gains.

14. Accordingly, in the facts and circumstances of the case, we are of the view that the decisions rendered by the jurisdictional Hon'ble Bombay High Court in the cases cited above shall apply to the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee.

15. We noticed earlier that the AO has assessed the Sale consideration of shares as unexplained cash credit u/s 68 of the Act. It is pertinent to note that the purchase of shares made in an earlier year has been accepted by the revenue. The sale of shares has taken place in the online platform of the Stock exchange and the sale consideration has been received through the stock broker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms of sec. 68 of the Act.

16. Since we have held that the sale transactions of shares cannot be doubted with, the addition made by the AO with regard to estimated commission expenses is also liable to be deleted.



17. In view of the foregoing discussions, we hold that the sale consideration received on sale of shares cannot be assessed as unexplained cash credit u/s 68 of the Act and the long term capital gains declared by the assessee cannot be doubted with. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned additions made by him.”

20. The above decision has considered following judicial pronouncements :-

- Principal Commissioner of Income Tax (Central) - 1 Versus NRA Iron & Steel Pvt. Ltd. - 2019 (3) TMI 323 - Supreme Court
- PR. COMMISSIONER OF INCOME TAX-1 KANPUR Versus RENU AGGARWAL - 2023 (7) TMI 288 - SC Order
- Principal Commissioner of Income Tax – 31, Mumbai Versus Indravadan Jain, HUF - 2023 (7) TMI 1091 - BOMBAY HIGH COURT
- Principal Commissioner of Income Tax – 3 Mumbai Versus Ziauddin A Siddique - 2022 (3) TMI 1437 - BOMBAY HIGH COURT
- Principal Commissioner of Income Tax -12 Versus Smt. Krishna Devi, Hardev Sahai Gupta (Garg) , Smt. Bindu Garg - 2021 (1) TMI 1008 - DELHI HIGH COURT
- Commissioner of Income Tax-13 Versus Mr. Shyam R. Pawar - 2014 (12) TMI 977 - BOMBAY HIGH COURT
- Commissioner of Income-tax Versus. Smt. Jamnadevi Agrawal - 2010 (9) TMI 81 - Bombay High Court
  
- Smt. Karuna Garg, Smt. Karuna Garg, Bindu Garg, Krishna Devi, Hardev Sahai Gupta (Garg) Versus Income Tax Officer Ward - 39 (4) , Ward – 38 (3) , New Delhi - 2019 (8) TMI 450 - ITAT DELHI

21. Thus, respectfully following the above decisions which binds us judicially, we do not find any merits in the reason of the Id. AO as well as the Id. CIT (A) where the above addition is confirmed by them. Thus, orders of lower authorities are reversed. The Id. AO is directed to delete the addition u/s 68 of the act and allow assessee exemption u/s 10 (38) of the Act. Thus, ground no 2 & 3 of the appeals are allowed.

22. However before parting we completely agree with the finding of the Id. CIT (A) to the extent of the opportunity of cross



examination not given to the assessee does not violate principles of natural justice because those statements were not sued for making the addition and issue is squarely covered against the assessee by the decision of Honourable supreme court in case of Swati Bajaj(supra), this issue is not dealt with in Chirag Tej Prakash Dangi [ Supra] so separate finding is given by us.

23. Accordingly appeal of assessee is partly allowed.

Order pronounced in the open court on 15 /10/2024.

Sd/-

(RAJ KUMAR CHAUHAN)  
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 15.10.2024

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