

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.5419/DEL/2018
(Assessment Year: 2014-15)**

**ITA No.2528/DEL/2022
(Assessment Year: 2016-17)**

Jyoti Gupta,
C/o Ravi Gupta, Advocate,
E – 61, Kailash Colony,
New Delhi.

vs.

ACIT, Central Circle 29,
New Delhi.

(PAN : AKCPG5459P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ruchesh Sinha, Advocate
REVENUE BY : Ms. Rishpal Bedi, CIT DR

Date of Hearing : 23.09.2024

Date of Order : 06.11.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. These appeals are filed by the assessee against the separate orders of ld. Commissioner of Income-tax Appeals-30, New Delhi (hereinafter referred to 'Ld. CIT (A)') dated 27.07.2018 & 22.09.2022 for AYs 2014-14 & 2016-17 respectively.

2. Since the issues are common and appeals are inter-connected, the same are being disposed off by this common order. We are taking ITA No.5419/Del/2018 for Assessment Year 2014-15 as lead case.
3. Brief facts of the case are, assessee filed her return of income for AY 2014-15 on 28.07.2014 declaring taxable income of Rs.16,47,870/-. The case was selected for limited scrutiny under CASS. Accordingly, notices u/s 143 (2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee. In response, ld.AR of the assessee attended the proceedings from time to time and submitted relevant information as called for.
4. During assessment proceedings, the AO observed that assessee has earned capital gain amounting to Rs.1,11,95,949/- from sale of shares of M/s. Trinity Tradelink Ltd. and M/s. CCL International Ltd.. Relevant chart of calculation of long term capital gain and short term capital gain are extracted in the assessment order. The AO observed that assessee has earned windfall gains in both the scrips within a period of short span of time. The AO analyzed both the scrip's trade and price movement from January 12 to December 14 and analyzed the financials of both the companies and observed that share prices of both the companies rose to astronomical height and the rise of shares is not commensurate with the movement of Sensex during the same period. The company has no

credentials to justify sharp price rise to the market prices and not backed up with the assets and net worth of the companies. In order to verify, the assessee was to make the personal attendance before the AO and the AO has recorded the statement u/s 131 of the Act. Not satisfied with the statement recorded u/s 131 of the Act, a show-cause notice was issued to the assessee dated 16.12.2016. After considering the submissions of the assessee, the AO found not acceptable to him. The AO proceeded to treat the transactions as penny stock and relying on the investigation report on penny stock from the Investigation Wing, he disallowed the same u/s 68 of the Act to the extent of Rs.1,28,58,450/-.

5. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT (A) and raised grounds of appeal as well as filed detailed submissions. After considering the detailed submissions, ld. CIT (A) sustained the additions made by the AO.
6. Aggrieved, assessee is in appeal before us raising following grounds of appeal :-

“1. That on facts and in circumstances of the case and in law, Ld CIT(A) erred in sustaining the action of the Ld AO.

2. That on facts and in circumstances of the case and in law, Ld CIT(A) erred in sustaining the addition of Rs. 120,58,450/- under section 68 of the Act treating the gain accrued on the sale of shares as bogus.

3. That the Ld. CIT(A) mechanically addressed the concern of the assessee that Ld Assessing Officer had passed the assessment order in violation of principles of natural justice and relied upon the material collected at the back of the assessee without offering an opportunity to cross examine.

4. That the Ld CIT(A) erred in not appreciating that the Ld. Assessing Officer has erred on facts and in law in completing the assessment on the basis of assumption and surmises and totally ignoring the facts of the case.

5. That the Ld CIT(A) erred in sustaining the action of the Ld AO ignoring that additions were made without bringing on record any legally admissible evidence.

6. That the Ld CIT(A) erred in sustaining the action of the Ld AO without appreciating that by filing legally admissible evidence as much as contract note, DEMAT A/ c, payment of SIT, appellant had discharged the burden cast upon it under the Act.

7. That the impugned assessment order is arbitrary, illegal, bad in law and the violation of rudimentary principle of contemporary jurisprudence.”

7. At the time of hearing, ld. AR for the assessee briefly submitted the facts of the case and submitted detailed written submissions, which is reproduced below for the sake of brevity :-

“Re: Passing of the assessment order:

The assessee, for substantiating the transaction, duly submitted (a) bank statement (b) Contract notes, (c) transaction account statement with the registered broker namely M/s K.K Securities Ltd. The assessee duly complied with the notices issue and during the course of assessment proceeding and her statement was also recorded. The Ld. AO however, merely reproducing the price movement of the said scrips and placing reliance and quoting the report of the Kolkatta Investigation wing (which was not confronted to the assessee even during sending the show cause

notice) and placing reliance on the statement of brokers (which were never confronted to the assessee) has chosen to make the aggregate addition of Rs.1,20,58,450/-. From the mode and manner in which the Ld. AO has concluded the reassessment proceedings, shall make it clear that the same is merely based on surmises and conjectures, without conducting any independent inquiry, without bringing on record any evidence against the assessee, against the principles of natural justice, in violation of the settled legal jurisprudence and merely and only following the alleged report.

RE: CIT (A): Against the aforesaid assessment order, the assessee filed an appeal to the CIT(A) contending the addition on merits. The Ld. CIT(A) without considering the submissions of the appellant, without pointing out any specific defects in the documents submitted, confirmed the assessment order in a mechanical manner. The CIT (A) is of the view that assessee has purchased the shares at very less price and has sold the same at very high price, however at the same time, not considering that the assessee is not directly or indirectly involved in any kind of price rigging. Against the same, the present appeal is filed before this Hon'ble Bench.

Re: For the A. Y. 2016-17

In this case, the assessment has been re-opened in case of the assessee U/s 147/148 of the Act. It was alleged that a search U/s 132 was conducted on M/s Dutta and Tyagi Group on 16.05.2018, wherein, as per the Assessing Officer, it was alleged that the shares of M/s Yamini Investment Company Limited was used to provide accommodation entries. It was further alleged that search action was conducted on some brokers, wherein it was alleged that the shares of M/s Goenka Business and Finance Limited was used to provide accommodation entries. Since the assessee has traded in these shares, the transaction was adversely viewed in this case.

Re: Passing of the reassessment order:

The assessee for substantiating the transaction, duly submitted the aforesaid documents. The Assessee therefore submitted that from the perusal of these documents the legitimacy of the transactions is

clearly proved. De hors these factual aspects the Ld. AO only on the basis of some investigation report has chosen to make the addition in this case. From the mode and manner in which the Ld. AO has concluded the reassessment proceedings, shall make it clear that the same is merely based on surmises and conjectures, without conducting any independent inquiry, without bringing on record any evidence against the assessee, against the principles of natural justice, in violation of the settled legal jurisprudence and merely and only following the alleged report. The Ld. AO has made the addition of Rs. 61,75,650/- and Rs. 48,19,6001- (total aggregating to Rs.1,07,25,569/-) which the assessee has claimed as exempt under section 10(38).

RE: CIT (A): Against the aforesaid assessment order, the assessee filed an appeal to the CIT(A) contending the addition on merits. Beside the same, the assessee challenged the reopening as bad in law and further on the ground has erred in the law in invoking the provision of section 147 instead of section 153C of the Act since in the case, it was reopened on the basis of the information received during search and seizure operation conducted upon M/s Dutta and Tyagi other broker.

The Ld. CIT(A) without considering the submissions of the appellant, without pointing out any defects in the documents submitted, confirmed the assessment or mechanical manner. From the perusal of the order of the CIT (A), it shall make it clear that in the same, the Ld. CIT (A) has passed the order on irrelevant and extraneous contentions mainly focusing on the modus operandi of the penny stock cases rather than linking the same to the facts of the present case. Against the same, the present appeal is filed before this Hon'ble Bench.

RE: COMMON SUBMISSIONS OF THE APPELLANT:

Now having stated the brief facts and the history of the case, in this regard, the legal submissions of the appellant are as under:

1. THE MATTER IS SQUARELY COVERED BY THE DECISIONS OF COORDINATE BENCHES OF THE ITAT IN REGARD TO THE SCRIPS TRADED IN THE A.Y. 2014-15:At the outset, it is stated that the coordinate benches of the Hon'ble ITAT

in case of the same scrips referred above, has decided the case in favour of the assessee and has deleted the addition. The details are as under:

Re: "M/s Trinity Tradelink Limited":

Favorable case laws- "Seema Tayal Vs. ITO" in ITA No. 1132/Del/2018 Date: 28/06/2019, Delhi Bench

Re: "M/s CCL International Limited":

Favorable case laws-

- a. "Sarika Bindal Vs. ITO [2024] 158 taxmann.com 506 (Delhi - Trib)*
- b. Income-tax Officer v. Smt. Bimala Devi Singhania [2023] 146 taxmann.com 449 (Cuttack - Trib.)*
- c. Ritu Udaipuria v. Income-tax Officer [2024] 161 taxmann.com 554 (Ranchi- Trib.)*
- d. Trivikram Singh Toor v. Principal Commissioner of Income-tax [2022] 142 taxmann.com 493 (Chandigarh - Trib.)*

2. SUBMISSIONS OF ALL THE RELEVANT DOCUMENTS FOR SUBSTANTIATING THE TRANSACTIONS:
It is a trite law that unless some defects are pointed by the AO in the documents submitted, the same needs to be accepted. In this case, from the perusal of the assessment order/ CIT(A) order it shall be clear that the same does not contain even a whisper that the document submitted by the Appellant was not genuine/ were defective. It is submitted that the payments were received through banking channels and transaction were done through recognized stock exchange. The inflow of shares is reflected by way of physical share certificate and demat account. The shares were transferred through demat account and the assessee does not know the buyer. There is no evidence that assessee has paid cash in return of the receipt through cheque. In other words, there is no evidence that the cash was recycled. It may be the case that the share price of the aforesaid scrips could be subject matter of artificial price rigging, but there is no evidence brought on record by the Ld. AO that either the assessee or his stock broker was involved in connived transactions in order to earn the exempt long term

capital gains. The entire exercise of reopening and the consequential re-assessment had been made by the Id. AO only out of pure surmise and conjecture. The assessee has got only incidental benefit of price rise. The assessee invested in shares, which gave rise to capital gains in a short period, does not mean that the transaction is bogus, as all the documents and evidences have been produced before assessing officer. The shares were sold on different dates through recognized stock exchange at quoted price. Reliance in this regard is placed on the decision of Pr. CIT vs. Sandipkumar Parsottambhai Patel [2023] 150 taxmann.com 192 (Gujarat).

3. RELIANCE PLACED ON THE ALLEGED INVESTIGATION REPORT IS BAD IN LAW/ CRYPTIC: *A perusal of the assessment order clearly shows that the Assessing officer was carried away by the report of the Investigation Wing. It can be seen that the entire assessment has been framed by the Assessing Officer without conducting any enquiry from the relevant parties or independent source or evidence but has merely relied upon the statements recorded by the Investigation Wing as well as information received from the Investigation Wing. It is apparent from the assessment order that the Assessing Officer has not conducted any independent and separate enquiry in the case of the Assessee. Even, the statement recorded by the Investigation Wing has not been got confirmed or corroborated by the person during the assessment proceedings. It is provided U/s 142 (2) of the Act that for the purpose of obtaining full information in respect of income or loss of any person, the Assessing Officer may make such enquiry as he considers necessary. The submission is therefore, the Assessing Officer ought to have conducted a separate and independent enquiry and any information received from the Investigation Wing is required to be corroborated and affirm during the assessment by the Assessing Officer by examining the concerned persons who can affirm the statements already recorded by any other authority of the department. In the given facts of the case, it shall be clear that the Assessing Officer has not made any enquiry and the entire assessment order and the order of the first Appellate Authority are devoid of any such enquiry. The reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation*

entries. Reliance in this regard is being placed on the decision of the jurisdictional High Court in the case of Pr. CIT v. Smt. Krishna Devi [2021]126 taxmann.com 80 (Delhi). As far as the case for the A.Y. 2014-15 is concerned, it is reiterated that in this case, the said report has only been referred in the assessment order followed by the statement of some alleged share brokers, which were never confronted to the assessee. The show cause notice sent to the assessee is absolutely silent in this regard.

4. THE ASSESSEE IS NOT INVOLVED IN ANY PRICE RIGGING/ HYPE IN THE PRICE OF SHARE: There is no whisper in the assessment order(s) or in the CIT(A) order that there is any kind of involvement of the assessee in case of any price rigging or price increase. The assessee is not at all connected with any kind of nexus if any run by some brokers. The assessee on being duly advised by his brother-in-law viz. Mr. Shobit Gupta, invested in the aforesaid scrips and when the price was on a higher side he sold the shares. The assessee is only an investor and is not at all connected with the management of the company. There is nothing unusual about it. It shall be appreciated that the startling spike in the share price and other factors may be enough to circumstances that might create suspicion; however, the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behaviour and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Revenue. Merely because a particular scrip is identified as a penny stock by the income tax department, it does not mean all the transactions carried out in that scrip would be bogus. So many investors enter the capital market just to make it a chance by investing their surplus monies. They also end up with making investment in certain scrips (read penny stocks) based on market information and try to exit at an appropriate time the moment they make their profits. In this process, they also burn their fingers by incurring huge losses without knowing the fact that the particular scrip invested is operated by certain interested parties with an ulterior motive and once their motives are achieved, the price falls like pack of cards and eventually make the gullible investors incur huge losses. In this background, the only logical recourse would be to place reliance on the orders passed by SEBI pointing out the malpractices by certain parties and taking action against them. In this case, no adverse inference in

regard to the aforesaid scrip(s) and thus the transaction carried out by the assessee cannot be termed as bogus.

5. NO DIRECT/INDIRECT INCRIMINATING MATERIAL/ DOCUMENTS AGAINST THE APPELLANT/ ASSESSEE: *In this case, there is no whisper either in the assessment order(s) or the CIT(A) order that the assessee has taken an accommodation entry or has routed his unaccounted money. The bank statement evidencing receipt of funds from the Share Broker has already been furnished in the course of assessment proceedings. The AO have not brought any material indicating that said amount proposed to be taxed has not been received from the Share Broker or the sum received is from the sources other than the sale consideration claimed against sale of shares. In view of these facts, the addition should not be made under section 68 of the Act. No evidence has been brought on record to establish any link between the assessee herein with the entry operators who were allegedly involved in price rigging of shares artificially or any other person named in the assessment order being involved in any price rigging and also the exit provider. In the present case, there is absolutely no adverse material to implicate the assessee to the entire gamut of unfounded/unwarranted allegations leveled by the AO against the assessee, which has no legs to stand and therefore, has to fall. It is to be kept in mind that suspicion how so ever strong, cannot partake the character of legal evidence. Reliance in this regard is placed on the decision of PCIT v. Sandipkumar Parsottam bhai Patel [2023]150 taxmann.com 192 (Gujarat).*

6. NO CROSS EXAMINATION GRANTED TO THE APPELLANT DESPITE BEING SPECIFICALLY ASKED FOR: *It is a trite law that any document or any statement which has been relied by the department is to be confronted to the assessee and the cross-examination of such person whose statement has been recorded of these persons is required to be given. In this case, the assessee has not been provided any cross-examination.*

7. THE ADDITION MADE IN THIS CASE IS AGAINST THE SETTLED JURISPRUDENCE AS ENUMERATED IN VARIOUS CASE LAWS RELIED AND ENCLOSED BY THE APPELLANT: *In this regard, kind attention of this Hon'ble Bench is invited to the copies of the case laws which has been enclosed by the appellant*

from S.no. 1 to 12 in the paper-book. In the said compilation, the appellant has placed copies of six judgements on the issue under consideration of various High Courts and six judgements of this Hon'ble Tribunal on the issue under consideration. The ratio of these case laws are as under:

7.1 When no direct link/nexus is established of the assessee and or its broker to say that the assessee is involved in some illegitimate operation no addition can be made;

7.2 When the Ld. AO is not able to point out any deficiency/defects in the document submitted no addition can be made in its case;

7.3 All the relevant documents/statements are required to be provided to the assessee for his perusal and counter comments and in the absence of which the assessment proceedings has been initiated;

7.4 No addition can be sustained without any cogent evidence on record that assessee was involved in converting his unaccounted income into exempt long term capital gains by conniving with the so called entry operators and brokers who were involved in artificial price rigging of shares;

7.5 Evidence is brought on record to prove that assessee was directly in price manipulation of the shares dealt by him in connivance with the brokers and entry operators;

7.6 Merely because a particular scrip is identified as a penny stock by the income tax department, it does not mean all the transactions carried out in that scrip would be bogus;

7.7 The seller and the buyer cannot know the names of each other as well as their respective brokers, who were involved in the trading transactions in the secondary platform. In such a situation, it cannot be presumed that there could be any transfer of cash between the buyers and sellers to convert the unaccounted money of the beneficiaries as alleged by the Ld AO, etc.

It is further submitted that the addition made in this case is also against the binding instruction of the CBDT dated 11.10.2019 pertaining to issuing the standard operating procedure, which is required to be followed by AO while handling the penny stock matter. It is submitted that in this case, the addition has made without following such express mandate of the CBOT and the addition is therefore bad on this count also.

Before closing it is stated that in this case the appellant has also challenged the re-assessment proceedings on various grounds which has been clearly mentioned before the written submission filed before the CIT(A), which is part of the paper-book filed by the appellant and the same is not repeated here for the sake of brevity.

It is humbly submitted and prayed accordingly.”

8. On the other hand, ld. DR for the Revenue vehemently argued that the issue involved in this case is penny stock and lower authorities have given elaborate findings and assessee could not explain why the assessee has made the investment on such companies which has no financial capacity and not justified enough material to investment in these companies. He prayed that addition may be sustained on the basis of detailed findings of lower authorities.
9. Considered the rival submissions and material placed on record. The Assessing Officer observed that assessee had made huge profit out of this investment because of this, it makes the script as suspicious and penny stock. We cannot agree to the above observation, merely because of huge profit, it does not make the script a penny stock. Further, it is fact on

record that the financials of the company are not commensurate with the purchase and sale price in the market. The assessee has purchased the shares directly from the company and through share transfer from other party, subsequently, sold the same in the stock exchange. However, there is no discrepancies in the documents filed by the assessee claiming the deductions u/s 10(38) of the Act. At the same time, even though all the characteristics of the penny stock exists in the present case, still the revenue has not brought on record any materials linking the assessee in any of the dubious transactions relating to entry, price rigging or exit providers. Even in the SEBI report, there is no mention or reference to the involvement of the assessee. We can only presume that the assessee is one of the beneficiary in this transactions merely as an investor who has entered in investment fray to make quick profit. Even the assessing officer has applied the presumptions and concept of human probabilities to make the additions without their being any material against the assessee. We observe that the Hon'ble Bombay High Court in the case of Pr. CIT v. Ziauddin A Siddique in Income Tax Appeal No. 2012 of 2017 dated 04/03/2022 held as under: -

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

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of Rs.1,03,33,925/- made by AO u/s

68 of the I.T. Act, 1961, ignoring the fact that the shares were bought/acquired from off market sources and thereafter the same was demated and registered in stock exchange and increase in share price of Ramkrishna Fincap Ltd. is not supported by the financials and, therefore, the amount of LTCG of Rs.1,03,33,925/- claimed by the assessee is nothing but unaccounted income which was rightly added u/s 68 of the I. T. Act, 1961?"

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

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

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

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

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

10. Further, the Hon'ble Delhi High Court in the case of Pr. CIT v. Smt Krishna Devi in ITA 125/2020 dated 15.01.2021 held as under: -

“8. Mr. Hossain argues that in cases relating to LTCEG in penny stocks, there may not be any direct evidence in the hands of the Revenue to establish that the investment made in such companies was an accommodation entry. Thus the Court should take the aspect of human probabilities into consideration that no prudent investor would invest in penny scrips. Considering the fact that the financials of these companies do not support the gains made by these companies in the stock exchange, as well as the fact that despite the notices issued by the AO, there was no evidence forthcoming to sustain the credibility of these companies, he argues that it can be safely concluded that the investments made by the present Respondents were not genuine. He submits that the AO made sufficient independent enquiry and analysis to test the veracity of the claims of the Respondent and after objective examination of the facts and documents, the conclusion arrived at by the AO in respect of the transaction in question, ought not to have been interfered with. In support of his submission, Mr. Hossain relies upon the judgment of this Court in *Suman Poddar v. ITO*, [2020] 423 ITR 480 (Delhi), and of the Supreme Court in *Sumati Dayal v. CIT*, (1995) Supp. (2) SCC 453.

9. Mr. Hossain further argues that the learned ITAT has erred in holding that the AO did not consider examining the brokers of the Respondent. He asserts that this holding is contrary to the findings of the AO. As a matter of fact, the demat account statement of the Respondent was called for from the broker M/s SMC Global Securities Ltd under Section 133(6) of the Act, on perusal whereof it was found that the Respondent was not a regular investor in penny scrips.

10. We have heard Mr. Hossain at length and given our thoughtful consideration to his contentions, but are not convinced with the same for the reasons stated hereinafter.

11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis

of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under Section 10(38), in a pre-planned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income Tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under Sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought

on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.

12. *Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on Suman Poddar v. ITO (supra) and Sumati Dayal v. CIT (supra) is of no assistance. Upon examining the judgment of Suman Poddar (supra) at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was*

not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of Sumati Dayal v. CIT (supra) too turns ITA 125/2020 and connected matters Page 10 of 10 on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.

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

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

15. Accordingly, the present appeals are dismissed.”

11. Therefore, we respectfully follow the ratio of the above decisions. In this case also, the Assessing Officer and Ld. CIT(A) has applied the concept of Human probabilities and held the above said scrips to be a penny stock without bring on record how the assessee is involved in any of the scrupulous activities or directly linked to one of the person who has involved in manipulation/rigging of share prices, entry operator or exit provider as observed by the Hon'ble Bombay High Court in the case of Ziauddin A Siddique (supra). Therefore, there is no material with the tax authorities to substantiate their findings that the impugned transaction is non-genuine. Therefore, we are inclined to allow the ground raised by the assessee. Accordingly the grounds raised by the assessee are allowed.
12. In the result, appeal filed by the assessee is allowed.

13. With regard to appeal for AY 2016-17, since the facts are exactly similar to AY 2014-15 our above findings in AY 2014-15 are applicable *mutatis mutandis* in AY 2016-17. Accordingly, the appeal being ITA No.2528/Del/2022 for AY 2016-17 filed by the assessee is allowed.

14. To sum up : both the appeals filed by the assessee are allowed.

Order pronounced in the open court on this 6th day of November, 2024.

**SD/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**SD/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 06.11.2024
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI