IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI

BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.5418/DEL/2018
(Assessment Year: 2015-16)

Rachna Gupta, C/o Ravi Gupta, Advocate, E-6A, Kailash Colony, New Delhi – 110 048. **(PAN : AAHPG2967K)**	vs.	ACIT, Central Circle 29, New Delhi.

ITA No.2531/DEL/2022
(Assessment Year: 2016-17)

Rachna Gupta, B-41, Kailash Colony, New Delhi – 110 054. **(PAN : AAHPG2967K)**	vs.	ACIT, Central Circle 29, New Delhi.
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Saubhagya Agarwal, Advocate
Shri Gaurav Shukla, Advocate
Shri Vineet Bhatnagar, Advocate
REVENUE BY : Ms. Harpreet Kaur Hansra, Sr. DR.

Date of Hearing : 03.12.2024
Date of Order : 20.12.2024

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 31.07.2018 & 21.09.2022 for Assessment Years 2015-16 & 2016-17 respectively.

2. Since the issues are common and appeals are inter-connected, the same are being disposed of by this common order. We are taking ITA No.5418/Del/2018 for Assessment Year 2015-16 as lead case.

3. Brief facts of the case are, assessee filed her return of income for AY 2015-16 on 28.08.2015 declaring taxable income of Rs.64,24,570/-. The return was subsequently revised on 23.09.2016 in which taxable income was declared at Rs.68,92,570/-. 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.38,63,362/- from sale of shares of M/s. CCL International Ltd. and Rs.28,12,941/- from sale of shares of M/s. Channel Nine Entertainment 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 March 2013 to

March 2017 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 21.11.2017. 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.29,71,941/-.

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 addition 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 confirming the order passed u/s 143(3) by the Ld. AO despite the fact that no notice u/s 143(2) was issued subsequent to the filing of valid revised return.

3. That on facts and in circumstances of the case and in law, Ld. CIT (A) erred in sustaining the addition of Rs.29,71,941/- under section 68 of the Act treating the gain accrued on the shares of Channel Nine as bogus.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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 :-

1. That the Appellant is an individual filed his Income Tax Return("ITR") for the AY 2015-16 on 28.08.2015, declaring therein a total income of Rs. 64,24,570/-

2. That the Appellant during the year under consideration, derives income chargeable to tax under the head Income from house property, Income from capital gain, Agricultural income and Income from other sources.

3. A revised return was filed on 23-09-2016, declaring taxable income of Rs. 68,92,570/in which she had offered the amount of short-term capital gain earned as "Income from other sources".

4. The case was selected for complete scrutiny under the CASS.

5. A notice under Section 143(2) of the Income Tax Act, 1961, was issued on 04-08-2016 but no notice of 143(2) was issued after filing of revised return.

6. That a notice under Section 142(1) of the Act were issued on 08-03-2017 and 03-05-2016 and were duly served by the Respondent.

7. That with respect to the shares of M/s CCL, the Appellant, in filing the revised return, had voluntarily offered the income derived therefrom under the head "Income from Other Sources," at the maximum applicable rate same was not disputed by the Assessing Officer ("AO").

8. That concerning the shares of M/s Sun-star Realty, the AO has not doubted the transactions and has accepted the Appellant's claim that the gains arising therefrom qualify as Long-Term Capital Gains (LTCG).

9. That regarding the transactions involving shares of M/s Channel Nine Entertainment, the AO has concluded that the LTCG claimed by the Appellant is non-genuine, deeming the said transactions as bogus and bringing the income to tax under the provisions of Section 68 of the Income-tax Act, 1961 ("the Act").

10.That a notice under Section 142(1) of the Act were issued on 08-03-2017 and 03-05-2016 and were duly served by the Respondent.

11.That in response to the notice, the Appellant submitted documentary evidence, including a copy of the bill issued by the broker, bank statements reflecting the purchase and sale of shares, the statement of account in the books of the broker, bills for shares sold through the broker, bank statements evidencing payment receipt on the sale of shares, and a copy of the Demat statement, and other relevant documents.

12.That the Ld. AO however, disregarded the submitted evidence and proceeded to rely upon the daily trade data of the company, the sudden increase in the price of shares, the report of the Kolkata Directorate Investigation, the statement of an unknown individual, and preliminary inquiries conducted by SEBI.

13.That the name of the Appellant neither surfaced during the investigation nor was mentioned in the statement made by the unidentified individual.

14.That the Appellant, in her submissions during the assessment proceedings, specifically requested access to the material relied upon by the Ld. AO and sought an opportunity to cross-examine the individuals whose statements formed the basis of the assessment.

15.The Ld. AO disregarded the Appellant's request and proceeded to pass the Assessment Order and confirm the transaction with Channel Nine Entertainment as bogus and taxable under Section 68 of the Income Tax Act, 1961, Consequently, an addition of ₹29,71,941/- was made to the income of the Appellant.

16.That the Appellant, being aggrieved by the assessment order dated 30.11.2017, preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] challenging the said order.

17.Further, that the Ld. CIT(A) has upheld the assessment order and sustained the addition of Rs. 29,71,941.

18.That the Appellant, being aggrieved by the order passed by the Commissioner of Income Tax (Appeals) [CIT(A)], has preferred the present appeal before this Hon'ble Income Tax Appellate Tribunal (ITAT).

A. In Re Ground no. 1 & 2:

That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in sustaining the action of the Ld. AO by confirming the order passed under section 143(3), despite the fact that no notice under section 143(2) was issued subsequent to the filing of a valid revised return.

19.That the Appellant has filed her revised return of income for A.Y 2015-16 dated 23.09.2016 declaring her income of Rs. 68,92,570/- wherein she had offered the amount of Long-term Capital Gain ("LTCG") earned as ***"Income from other sources"*** *and has paid full amount of taxes.*

20.That the Appellant has invested in stocks and purchased 6000 shares of Channel Nine Entertainment at Rs. 1,59,000/- and 9000 shares of M/s. CCL International Ltd. at Rs. 4,68,000/-, both the shares are purchased through banking channel.

21.That the Appellant's case is selected for complete scrutiny assessment without the lawful exercise of jurisdiction, as the concerned Assessing Officer ("AO") failed to issue a notice under Section 143(2) of the Income Tax Act, 1961 which is a mandatory jurisdictional requirement for initiating scrutiny assessment proceedings.

22.That the said mandatory requirement makes the Impugned order and addition made therein unlawful/legally unsustainable vide ***Carona Ltd. v. Parvathy Swaminathan & Sons*** *(2007) 8 SCC 559:*

> *"21. Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not posses."*

23.That failure on the part of Respondent to issue notice u/s 143(2) of the Act cannot be mere a procedural irregularity and the same is not curable. It is not a mere formality but it given the jurisdiction to the A.O. to complete the assessment u/s 143(3) of

the Act, therefore, non-issuance of notice U/s 143(2) of the Act vitiates the assessment proceedings vide the Hon'ble Supreme Court in ***Assistant Commissioner of Income-tax vs. Hotel Blue Moon [2010] 188 Taxman 113 (SC)[02-02-2010].***

Reliance is placed on ***YKM holdings Pvt Ltd vs ACIT Circle-4 (1) New DelhiITA no 1020/Del/2019***

> *".....7. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation to hold that the assessment framed under section 143(3) of the Act deserves to be quashed in the instant case as the initial scrutiny notice issued under section 143(3) of the Act dated 12.04.2016 by ITO was without jurisdiction as he did not possess jurisdiction over the assessee for the A.Y. 2015-16. Consequently, assessment framed under section 143(3) of the Act is hereby quashed as void ab initio. The additional ground no.2 is hereby allowed…"*

In the recent case of ***LSR Foods Ltd., New Delhi v. ITO, New Delhi*** *(decided on 25th September 2024), the Hon'ble Income Tax Appellate Tribunal (ITAT) placed reliance on the aforementioned decision.*

24.In light of the above submissions and judicial precedents, it is evident that the failure to issue a mandatory notice under Section 143(2) of the Act, 1961 by the Respondent, renders the assessment proceedings void ab initio and legally unsustainable.

B. Ground no. 3 & 6

That on facts and in circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition of Rs. 29,71,941/- under section 68 of the Act treating the gain accrued on the shares of Channel Nine as bogus.

25.*Without prejudice to the above submissions, it is pertinent to note that the Appellant had submitted cogent and unchallenged material documentary evidences before the Respondent to duly establish the bona fides and genuineness of the Share transactions and LTCG earned thereon by the Appellant in the subject Assessment Year i.e. 2015-16.*

26.*That following are the documents which duly satisfies the ingredients of section 68 of the Act thereby establishing genuineness, creditworthiness and identity of the creditors:*

(i) Copy of allotment advice and purchase bills (Pg. no. 1 of paper book)

(ii) Copy of Statement of account of the Appellant in the book of broker (Pg. no. 3 of Paper book)

(iii) Copy of Demat Account (Pg. no. 6-7 of Paper book)

(iv) Bank statement confirming the payment for purchasing of share and sale of shares; (Pg. no. 2 & 5 of Paper book)

(v) Copy of contract notes.

27.*A summary of the subject shares held and thereafter sold by the Appellant in the said companies via banking channels is as follows:*

(i) The Appellant respectfully submits that during the relevant assessment year, the Appellant had purchased 6,000 shares of M/s. Channel Nine Entertainment Ltd. (please refer Pg. no. 1 of paper book for Copy of Bill dt. 10.03.2013)

(ii) That Appellant respectfully submits that Appellant had purchased these shares and payment for the purchase made through banking channelvide Cheque no. 582373 (Please refer Page no. 2 of Paper book "copy of bank statement").

(iii) The shares were lying in the Appellant's DMAT account for more than 12 months.

(iv) After which shares were sold on 03.07.2014 through broker (K.K securities Ltd.) on recognized stock exchange. Pertinently both the payment for the purchase of the shares and their sale was made through banking channels only (please refer to page no. 2,3 & 5 of paper book).

(v) The above facts collectively establish the bona fide and genuine nature of the LTCG earned by the Appellant.

28.*That the blatant ignorance of the above provided information/evidence discharging the evidentiary burden (if any) on the Appellant and in the absence of any information/material to the contrary makes the impugned additions unsustainable vide* ***Lalchand Bhagat AmbicaRam v. Commissioner of Income Tax, [1959] 37 ITR 288 (SC) [14-05-1959]***

> ***"……. Where, however, the fact-finding authority has acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, the Court is entitled to interfere.*** *In our decision in Meenakshi Mills, Madurai v. Commissioner of Income-tax, - Madras (3) after discussing the various authorities on the subject we laid down that: - (3) A finding on a question of fact is open to attack under S. 66(1) as erroneous in law when there is no evidence to support it or if it is perverse."*
>
> *The latest pronouncement of this Court in Omar Salay Mohamed Sait v. The Commissioner of Income-tax, Madras (4) summarises the position thus: -*
>
> *" We are aware that the Income-tax Appellate Tribunal is a fact-finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this Court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so.* ***On no account whatever should the Tribunal base its findings on***

> ***suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures and surmises and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by this Court."***

The Hon'ble Supreme Court had previously so held in ***DhirajlalGirdharilal v. CIT*** *(1954) 26 ITR 736 as follows:*

> *"It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises."*

In the case of ***Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*** *1992 Supp.SCC (2) 312, it has also been so held:*

> *"7. ... if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."*

29.In view of the submissions and evidences produced by the Appellant, it is respectfully submitted that the Appellant has duly discharged the evidentiary burden under Section 68 of the Act, 1961, by establishing the genuineness, creditworthiness, and identity of the creditors. The documents furnished unequivocally substantiate the bona fide nature of the transactions, including the purchase and sale of shares through banking channels. The impugned additions, made without consideration of the law and evidences submitted, are legally unsustainable.

C. Ground No. 5 & 6

The Respondent has completed the Assessment on assumptions and surmises, without bringing any legally admissible evidence on record, rendering the assessment unsustainable in law and on facts.

30.That the Respondent concluded the assessment relying on investigation reports and statements from various Directorates, none of which disclosed adverse findings against the Appellant or established involvement in bogus accommodation entries. Additionally, the Respondent failed to rebut the Appellant's documentary evidence substantiating the genuineness of the transactions and arbitrarily deemed the LTCG entry as bogus, relying solely on a SEBI report based on preliminary inquiries, (Please refer to pages 28-76 of the assessment order)which lacked any direct nexus to the Appellant's case, rendering the findings unsustainable in law.

31.Further, that no documentary evidence(s) has been brought on record by the Respondent to substantiate the purported allegation qua the Appellant and moreover, even the Ld. CIT(A) has affirmed the impugned addition on applying mere the presumptions and concept of human probabilities which vide recent ruling of the Hon'ble Mumbai Tribunal in case of ***Vikram N. Chandan v. ITO****., [2024] 165 taxmann.com 340 on parimateria facts cannot be sustained legally:*

> *"6. We note that transactions for purchase was undertaken in an offline mode which is an acceptable mode and* ***that of the sale of the aforesaid shares were undertaken on the stock exchange platform through the SEBI registered broker on which STT was levied and the consideration was routed through normal banking channel. The entire flow of these transactions is corroborated by relevant documentary evidences placed on record.*** *While making the addition, there are no discrepancies pointed out by the Assessing Officer in the documents and the details furnished by the assessee. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the assessee. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. At any stage of the present case, Revenue has not brought on record any material about participation of the assessee with any such dubious transactions relating to accommodation entry, price rigging or exit providers. To our mind, Ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details*

furnished in his office. Once the assessee has produced documentary evidence to establish the veracity of his claim, the burden would shift on the Revenue to establish its case.

7. On the perusal of records, it is discernible that ld. Assessing Officer had proceeded on the basis of analysis of the financials of the company. ***According to him, sharp jump in the share prices of the aforesaid scrip is not justified****. He has relied upon the search and survey operations conducted by the investigation wing of the Department at various locations in respect of alleged penny stock which sets out the modus operandi adopted in the business of providing entries for bogus capital gains.* ***The conclusion drawn by the ld. Assessing Officer of implicating the assessee is un-supported by any cogent material on record. The finding arrived at by the ld. Assessing Officer is thus purely an assumption based on conjectures and surmises. In our thoughtful considerations to the facts and circumstances of the case, it is not in controversy that assessee has discharged his burden by submitting the relevant documents, details of which are already extracted above, forming part of the paper book.***

32.Furthermore, the Ld. CIT(A) has affirmed the impugned addition of Rs. 29,71,941/- based on mere sudden increase in share prices (evident vide para 7.4 of the Assessment order) which does not ipso facto determine that shares/transaction are bogus vide the jurisdictional High Court ruling in case of Pr. CIT v. Krishna Devi [2021] 126 taxmann.com 80 wherein the Court noticed that the reasoning given by the Assessing Officer to disbelieve the capital gain declared by the assessee, viz. astronomical increase in the price of shares, weak fundamentals of the relevant companies are based on mere conjectures.

33.That the Respondent for the initiation of impugned assessment proceedings placed reliance on purported statements recorded and sudden increase in share price (evident vide para 7.4 of Assessment order).

34.That further while framing the reassessment/consequent reassessment order also major reliance has been placed on the statements. Apropos, it is imperative to mention that no relied upon purported statements have been provided to the Appellant.

35.That the Appellant has provided comprehensive documentary evidence supporting the genuineness of the transactions, which the Respondent has neither rebutted nor discredited. Judicial precedents, including those from the Hon'ble Jurisdictional High Court, unequivocally affirm that mere suspicions, surmises, or presumptions cannot justify additions under such circumstances.

36.In light of the above submissions, it is evident that the assessment order is vitiated by reliance on assumptions, conjectures, and statements that were neither corroborated by direct evidence nor shared with the Appellant for rebuttal. The Respondent has failed to discharge the burden of proof to substantiate the allegations, rendering the assessment unsustainable in law.

D. Ground No. 4

That the Ld. CIT(A) mechanically addressed the concern of the Assessee that Ld. AO 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-examination.

37.That it is pertinent to mention that the Ld. AO during the course of Assessment proceedings, while examining the son (Sobhit Gupta) of the Appellant has shown the statement of some brokers, namely Sh. Anand Chokhani, Shri Abhishek Bubna and Sh. SoumanChudhary. However, the statements of these persons never been reproduced in the Assessmet order. Further (on page no. 31-47the assessment order) AO has relied and reproduced the statement of the following persons Namely Ritesh Jain, and Devesh Upadhyay and Sanjay Vora. This factual aspect proves that the present Assessment order has been passed with predetermined mind set in as much as the AO has shown the statement of some other persons and has relied and reproduced the statement of the other persons. It is not the case of the AO, that the persons mentioned later are the same persons and have changed their identities.

38.Furthermore, the Appellant was not afforded an opportunity for cross-examination, despite having specifically asked the same in their response dated 30.11.2017 to the Show Cause Notice dated 21.11.2017. The said request pertained to the cross-examination of

the of the person on whose statements were relied upon by the Ld. AO to conclude that the Appellant's Long-Term Capital Gain (LTCG) income for the relevant year was bogus. therefore, denial of such opportunity for cross-examination violating the principle of natural justice thereby rendering the impugned reassessment void and illegal vide this Hon'ble Tribunal ruling in the case of ***Vinesh Maheswari v. ITO., [2019] 103 taxmann.com 274.***

> ***"8.5….*** *Now adverting to second issue framed above on impact of cross examination, I strongly rely on the following string of decisions of various courts to hold that* ***when revenue strongly relies on statements of certain persons to implicate an assessee, principle of cross examination has to invariably followed if truth and justice needs to be found out****.*
>
> *Keeping in view of the facts and circumstances of the case and respectfully following and applying principles in aforesaid Hon'ble Supreme Court, Hon'ble High Court and this Tribunal rulings, on the issue of lack of cross examination and violation of principle of natural justice, I have no hesitation to accept the plea of Ld AR that lack of cross examination and violation of principle of natural justice results is total nullity of the entire addition, hence, the additions in dispute is hereby deleted."*

Further, reliance is placed on ***Andaman Timber Industries v. CCE.,*** *[2015] 62 taxmann.com 3 (Supreme Court of India)*

> *"6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority, though the statements of those witnesses were made the basis of the impugned order, is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. "*

39.It is evident that the assessment order was passed with a predetermined mindset, relying on statements of individuals without establishing their relevance or identity, and without granting the Appellant the opportunity for cross-examination, despite a specific request. This denial of cross-examination constitutes a violation of the principles of natural justice, rendering the reassessment void and unsustainable in law.

E. Ground No. 7

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 STT, appellant had discharged the burden cast upon it under the Act.

40.That the Appellant in her detailed submission dated 30.11.2017, provided evidence, including contract notes, DEMAT account statements, bank statements, and proof of payment of Securities Transaction Tax (STT), to substantiate the genuineness of the transactions and the income declared. These documents conclusively discharged the burden of proof cast upon her.

41.The genuineness of these transactions was further corroborated by the acknowledgment of the Ld.AO in the assessment order (refer to page no. 25 of the Assessment). This acknowledgment demonstrates the Appellant's compliance with statutory requirements, leaving no basis for any adverse conclusions against her.

42.It is a settled legal principle, as held in Lalchand Bhagat Ambica Ram v. Commissioner of Income Tax (Supra), that once the taxpayer provides cogent and credible evidence supporting their claim, the burden shifts to the revenue authorities to bring on record any contrary evidence. In the present case, no such rebuttal or evidence has been provided by the Ld. AO.

43.It is submitted that Ld. CIT(A) has erred in sustaining the action of the Ld. AO, disregarding the legally admissible evidence and the settled principle of law. The impugned order is, therefore, unsustainable in law and merits reversal

F. Ground No. 8

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

44.That the impugned Appellate order passed by the CIT(A) is arbitrary, illegal, and unsustainable in law, having been rendered in complete violation of the rudimentary principles of contemporary jurisprudence, as outlined below:

45. That the assessment order has been passed without fulfilling the mandatory jurisdictional requirement under Section 143(2) of the Income Tax Act, 1961. The Hon'ble Supreme Court in Assistant Commissioner of Income Tax v. Hotel Blue Moon(Supra) has categorically held that the issuance of notice under Section 143(2) is not a mere procedural formality but a jurisdictional prerequisite. The non-issuance of such notice invalidates the assessment proceedings, rendering the order void ab initio.

46. That the Appellant respectfully that the impugned assessment order is arbitrary in its approach, as it disregards the documentary evidence submitted by the Appellant, including contract notes, DEMAT account statements, bank statements, and proof of payment of Securities Transaction Tax (STT), which collectively substantiate the genuineness of the transactions and the Appellant's compliance with statutory obligations. The failure of the Respondent to address these crucial submissions demonstrates a lack of reasoned decision-making, rendering the order arbitrary and unsustainable in law.

47. That the Respondent has relied upon statements of third parties, including brokers and other individuals, without affording the Appellant the opportunity for cross-examination, despite a specific request made in the reply dated 30.11.2017 to the Show Cause Notice. The Hon'ble Supreme Court in Andaman Timber Industries v. CCE(Supra)has held that reliance on statements without allowing cross-examination constitutes a violation of the principles of natural justice. The denial of this opportunity adversely impacted the Appellant and vitiates the assessment proceedings.

48. That the Respondent has drawn adverse inferences based on conjectures and presumptions, such as a sudden increase in share prices and generic observations about alleged penny stock scams, without producing any cogent evidence directly implicating the Appellant. Judicial precedents, including Pr. CIT v. Krishna Devi(Supra) have consistently held that mere suspicion cannot substitute for substantive evidence.

49. That the assessment order heavily relies on unverified and extraneous materials, such as SEBI reports and investigation wing findings, which lack any direct nexus with the Appellant's case. Such reliance contravenes the principles of evidence and rational decision-making, making the order bad in law and unsustainable.

50.That the assessment order reflects a predetermined mindset, disregarding the judicial mandate that evidence must be assessed fairly, and the burden of proof shifts to the Respondent once the Appellant furnishes credible evidence. In this case, the Respondent failed to rebut the Appellant's evidence, violating the jurisprudential principle that mere allegations or suspicions cannot justify additions.

51.On the similar facts Hon,ble ITAT, Delhi Bench in the case of Archit Gupta vs. ACIT (ITA No. 2624/DEL/2022 and 2625/DEL/2022) has held that -

> *"…. 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 bringing 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."*

In view of the above judgment, it is aptly clear that addition on account considering sale of Penny stock as scrupulous transection, without having any conclusive evidence or facts is immaterial and bad in law.

52.Based on the above binding precedents it is humbly submitted that the initiation of impugned reassessment proceedings and consequent impugned assessment order is unjust, void and illegal."

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 make investment in these companies. She 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 beneficiaries in these 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 LTCG 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 except change in scrips bought and sold by the assessee i.e. Yamini Investment Pvt. Ltd. and Goenka Business & Finance Ltd. to AY 2015-16 our above findings in AY 2015-16 are applicable *mutatis mutandis* in AY 2016-17. Accordingly, the appeal being ITA No.2531/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 20th day of December, 2024.

Sd/-	**sd/-**
(ANUBHAV SHARMA)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 20.12.2024
TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI