

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.109/Nag./2019
(Assessment Year : 2014-15)

Dy. Commissioner of Income Tax
Central Circle-1(1), Nagpur

..... Appellant

v/s

Shri Sanjay Gaurishankar Agrawal
Agrawal Bichayat Kendra
Kanchan Giri Flats, Buti Road
Sitabuldi, Nagpur 440 001
PAN - AEDPA0105K

..... Respondent

Assessee by : Shri Kapil Hirani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing - 18/02/2025

Date of Order - 03/04/2025

ORDER

PER K.M. ROY, A.M.

The instant appeal by the Revenue is directed against the impugned order dated 30/03/2019, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2014-15.

2. Following grounds have been raised by the assessee:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,30,00,000/- made on account of unexplained cash credit u/s 68 holding that the assessee has proved the identity and creditworthiness of the lender company and genuineness of the transaction without appreciating the fact that the assessee had not been able to prove credit worthiness of lender companies when the main source of fund was share premium which itself was from questionable sources.

2. The Ld. CIT(A) had erred in deleting the addition of Rs. 95,60,989/- made by Ld. AO u/s 68 of the I. T. Act, 1961 on account of Long Term Capital Gain

claimed as exempt income u/s 10(38) without appreciating that it was a bogus accommodation entry."

3. The facts, as culled out from the statement of facts furnished by the Department are as under:—

"The issue under consideration pertains to unsecured loans taken by the assessee. During the course of the search, it was found that during the A.Y. 2014-15, the assessee had taken unsecured loan of Rs.3,30,00,000/- from Anubhav Vinimay P. Ltd The assessee was asked to submit the details of the unsecured loans especially taken from the above said company. The assessee was also asked to prove with documentary evidence the identity and creditworthiness of the above said company, advancing the loans and also prove the genuineness of the transactions. The assessee failed to establish the creditworthiness of the company advancing the loan and the genuineness of the transaction even after repeated opportunities given him. In its explanation, the assessee claimed that transactions were done through banking channels. It was mere submission without any evidence of positive nature. Thus, the assessee failed to discharge its onus of proving genuineness of unsecured loans, as discussed above. The AO had, accordingly, invoked the provisions of section 68 of Income Tax 1961 and added Rs.3,30,00,000/- to the income of assessee.

ii) Being aggrieved, the assessee preferred appeal before Ld CIT (A). The Ld. CIT (A)-3, Nagpur, vide order dated 30.03.2019. While deciding the appeal, Ld. CIT (A)-3, placed reliance on the decision of previous CIT (A)-III, Nagpur for the A. Yr. 2013-14 and directed to delete the addition of Rs. 3,30,00,000/- as unjustified and unwarranted.

The decision of the Ld CIT (A)-3, Nagpur is not accepted since the A.O. had correctly made the addition on account of unsecured loan u/s 68.

iv) During the search operation from the residential premises of assessee, certain incriminating documents were found (Annexure- B, Item No. 1, pages 1 to 191), wherein page no. 156 contains details of deposits of M/s Anubhav Vinimay Pvt. Ltd as per the companies Act 2013.

Page -166 contains - Bills of Jai Balaji Stone in the name of i.e. Bonanza Suppliers Pvt. Ltd at address of Nagpur

Page -186 contains- Investment details of Sanjay Agrawal, Sanjay Agrawal (HUF) & Kavita Sanjay Agrawal in Kolkata based 3 companies i.e. Bonanza Suppliers Pvt., Aditya Thermo Plastics Pvt. Ltd. & M/s Anubhav Vinimay Pvt. Ltd.

v) During the search operation, the statement was recorded on Oath on 02.12.2014 wherein the assessee was asked the details of business concern run by him & the activities carried out. In reply to question, the assessee

replied that he is Director of 3 Kolkata based companies, having business as Real Estate. The companies were namely:

Aditya Thermo Plastics Pvt. Ltd.-
Bonanza Suppliers Pvt.-
M/s Anubhav Vinimay Pvt. Ltd-

He also conveyed that his wife Kavita Agrawal is also Director in the company viz Aditya Thermo Plastics Pvt. Ltd & M/s Anubhav Vinimay Pvt. Ltd.

vi) While recording statement, questions no. 8 the assessee was asked to give various details of Kolkata based 3 companies such as share premium received & its application thereon, Unsecured loan & advance received, Investment made in un-quoted securities, Share holding pattern of all share holders, Nature of loan/advance given to all business concerns, address, phone no. etc. During the search and post search proceedings, the assessee was asked to produce Ledger extract of all shareholders, Ledger extract of all parties, who gave loans/advance. The assessee did not provide the details called for.

vii) In the assessment proceedings, again, the AO had provided an opportunity to the assessee to establish the genuineness of the amount received from the Kolkata base companies. The assessee had failed to avail the opportunity and not provided the desired information. It is clear that the assessee has not furnished any of the above said details, explaining the identity, creditworthiness and genuineness of the Kolkata based companies during the search, post search proceedings and assessment proceedings.

viii) Thus, it is seen that the assessment was made on basis of seized documents & the statement recorded during the search operation, which had incriminating value. During the assessment proceedings, more information was collected, which was marshaled to arrive at logical end.

2. Bogus LTCG Claim (Penny Stock)

During the assessment proceedings, it was noticed that assessee had declared long term capital gains of Rs.94,60,989/- and claimed the same as being exempt U/s 10(38) of IT Act 1961. The assessee was asked to submit the details of the long-term capital gain along with documentary evidence of the purchase of the shares and the payments made as also the sale of the shares and sale proceeds received. On the issue of long-term capital gains, it was submitted that the assessee had purchased 20000 shares of Essar (India) Ltd on 11.4.2011 in physical form from Uttam Commodities Pvt. Ltd. These 20000 shares were split later in the ratio ten shares to each one share thereby increasing the number of shares to 200000. Out of these, 100000 shares were sold on 10/03/2014 for a gross sales proceed of Rs 49,79,705/-and remaining 100000 shares were sold on 13/03/2014 for a gross receipt of Rs 45,81,283/ thus a total receipt of Rs.95,60,988/- against which total long term capital gain of Rs.94,60,988.70 has been claimed by assessee as exempt u/s 10(38) of IT Act 1961 in A.Y 2014-15.

ii) The claim of the assessee of exempt LTCG amounting to Rs. 94,60,988.70/- was not allowed by the assessing officer and the amount of Rs.

95,60,988.70/- received back as sale proceeds on sale of shares was added to assessee's total income u/s 68 of IT Act, 1961.

Being aggrieved, the assessee preferred an appeal before Ld. CIT (A). The Ld. CIT (A)-3, Nagpur, vide order dated 30.03.2019, placed reliance on the various judicial pronouncement and directed to delete the addition of Rs. 95,60,988/-.

In this regard it is submitted that the AO observed and analyzed all financial details of M/s Essar (India) Pvt. Ltd. i.e. P & L account and balance sheet of this company it is seen that there are very limited operations in this company and it is merely a paper company. In spite of the fact that the net worth of the company and its business activity was negligible, the share prices have raised abnormally, which clearly shows that the prices were artificially rigged. Thus, it was observed by the assessing officer that Esaar (India) Ltd. is a penny stock and used across to give accommodation entries to earn capital gain.

v) During the course of investigation conducted at Kolkata, in the case of the assessee, it was found that certain exit operators have admitted that they were involved in the activity of giving bogus LTCG through different paper companies and that they have used the scrip viz. Essar (India) Ltd. for the purpose of giving such bogus entries to the desired assesseees. The exit providers/Jamakharchi companies in the case of family members of the Agrawal and the operator of the same those companies are mainly under control of operators such as Mr. Devesh Upadhyay & Arun Kumar Khemka. Devesh Upadhyay admitted in his statement recorded u/s 131 of the I. T Act, 1961 the detailed modus operandi for providing bogus LTCG and also that he has indulged in providing accommodation entry for LTCG through the above companies controlled by him."

4. With the above factual backdrop, ground-wise adjudication is take up as under.

5. The issue arose out of ground no.1 is, whether or not the learned CIT(A) was justified in deleting the addition of ₹ 3.30 crore made by the Assessing Officer on account of unexplained cash credit under section 68 of the Income Tax Act, 1961 ("the Act").

6. During the course of hearing, the learned Counsel, Shri Kapil Hirani, appearing for the assessee invited our attention to Page-92 of the Paper Book which is a copy of loan confirmation given by M/s. Anubhav Vinimay Pvt. Ltd.

to the assessee. the transactions are summarised in the books of the assessee as follows:-

<i>Loan due as on 01/04/2013</i>	<i>₹ 11.75 crore</i>
<i>Loan received during the year</i>	<i>₹ 3.30 crore</i>
<i>Loan paid during the year</i>	<i>₹ 6.90 crore</i>

<i>Closing Balance</i>	<i>₹ 8.15 crore</i>
	=====

7. The figure at year end tallies with Schedule-7. Loans and advances of M/s. Anubhav Vinimay Pvt. Ltd. are reflected in the Financial Statements for the year ending 31/03/2014 a copy of which is placed on record at Page-77 of the Paper Book. There is net repayment of ₹ 3.60 crore during the year resulting in decrease of loan from ₹ 11.75 crore to ₹ 8.15 crore. If that be so, how only fresh credit can be considered as deemed income ignoring the stock evidence that repayment encapsulates fresh credit as well as part of opening balance. Further, it is beyond comprehension that no action has been taken to tax the opening balance of ₹ 11.75 crore as well by initiating appropriate action. So, provisions of section 68 of the Act are being pressed on a selective basis on the same set of transactions which is perhaps a step beyond the wildest dreams of investigation. The Department has raised a doubt that share premium of lending company was from questionable sources. Para-6.4 to 6.10 of the written submissions filed by the assessee are reproduced below:-

"6.4 It is further very important to mention here that the assessment of Anubhav for AY 2011-12 was completed on 27.12.2018 wherein the returned income has been accepted and thus it has conclusively been entity. accepted by the Department that Anubhav is a genuine entity. Copy of assessment order enclosed.

6.5. The Assessee during the course of assessment proceedings furnished The before the AO the following to prove the genuineness of the loan transaction:

6.5.1. confirmation of loan

6.5.2. bank statement of the Assessee showing receipt of money

6.5.3. the bank statement of Anubhav to establish source of loan transactions

6.5.4. copy of ITR and balance sheet of Anubhav to establish their identity and creditworthiness.

The Assessee submits that Anubhav has its own share capital (including reserves) of more than Rs. 23 crores, which has been accepted by the IT department in its assessments. Anubhav has given loans to the Assessee by cheque which are duly reflected in his bank statements and balance sheet for AY 2014-15. The source of loan given is out of balance available in its bank account and also out of loan returned by the Assessee to Anubhav during the year.

6.7. The Appellant has thus satisfactorily discharged the onus cast upon him U/s 68 of the I.T Act, 1961. The Appellant has satisfactorily proven the identity, creditworthiness and genuineness of the transaction. The addition U/s 68 thus deserves to be deleted on facts as well.

- *Moti Adhesives Pvt. Ltd. Vs. ITO (ITA No. 3133/Del/2018)*

6.8. Reliance further placed on *Umbrella Projects Pvt. Ltd. Vs. ITO (ITA No. 5955/Del/2014)* wherein it has been held that if the assessee has discharged the initial onus regarding the identity, creditworthiness and genuineness, the onus shifts to the AO to bring material or evidence to discredit the same. Further there must be material to implicate the assessee in a collusive arrangement with person who are accommodation entry providers.

9. Reliance further placed on *PCIT Vs. Paradise Inland Shipping Pvt. Ltd. (Bombay HC) (ITA No. 66 of 2016)* wherein it has been held that Companies which invest share capital cannot be treated as bogus if they are registered and have been assessed. Once the assessee has produced documentary evidence to establish the existence of such companies, the burden shifts to the Revenue to establish their case.

6.10. Reliance further placed on the judgement in the case of *ITO Vs. Habitat Infrastructure Ltd. (ITAT Delhi) (Copy Enclosed)* wherein it has been held that since the unaccounted money as alleged by the AO was the loan, which was repaid subsequently by assessee, addition made on account of unverifiable unsecured loans was unjustified."

8. We further find that similar issue came up before the Co-ordinate Bench of the Tribunal, Nagpur Bench, wherein the very same Coram had decided the identical issue against the Revenue and in favour of the assessee in an appeal filed by the Revenue viz. *ACIT v/s Sufalam Infra Project Ltd., ITA*

no.46/Nag./2021, for the assessment year 2014-15, vide order dated 29/07/2024, a copy of this order is placed on record.

9. Further, we note that similar issue has also been adjudicated by the Co-ordinate Bench of the Tribunal, Nagpur Bench, against the Revenue and in favour of the assessee in an appeal filed by the Revenue viz. ACIT v/s Radha Madhav Developers, ITA no.26/Nag./2020, for the assessment year 2014-15, vide order dated 29/07/2024, a copy of this order is placed on record.

10. There is no need to interfere with the findings of the learned CIT(A). Hence, ground no.1 is dismissed.

11. In ground no.2, the issue arose as to whether the learned CIT(A) was justified in deleting the addition of ₹ 95,60,989, made by the Assessing Officer under section 68 of the Act on account of long term capital gain claimed as exempt income under section 10(38) of the Act that it was a bogus accommodation entry.

12. During the year under consideration, the learned Counsel for the assessee submitted that the assessee had sold equity shares of M/s Esaar (India) Ltd. which were long term capital assets of the assessee and accordingly the assessee earned long term capital gains amounting to ₹ 94,60,989, on the sale of the said equity shares. On 11/04/2011, the assessee purchased 20,000 shares of Esaar (India) Ltd. @ ₹ 5 per share aggregating to ₹ 1,00,000, through a broker M/s Uttam Commodities Pvt. Ltd. Payment for purchase of these shares was made by cheque bearing

no.371452, drawn on Nagpur Nagrik Sahakari Bank Ltd. Investment in shares is duly shown in the Balance Sheet of the assessee for the relevant previous year. The shares of Esaar (India) Ltd. are duly listed on Bombay Stock Exchange. Delivery of shares was received in physical form along with share transfer form duly signed by previous owner of shares. The assessee sent the share certificate and share transfer form duly filled and stamped to share transfer agent of the company M/s Purva Registry (India) Pvt. Ltd., Mumbai, for transfer of shares in assessee's name. On 15/2/2012, the shares were transferred in assessee's name. Copy of share certificate along with covering letter of share transfer agent dated 09/03/2012, are placed on record which forms part of the paper book.

13. The shares were then subdivided by the company into face value of ₹ 1 per share and new share certificate bearing number 0050390 for 2,00,000 shares were issued to the assessee. Thereafter, the shares were deposited into De-mat account number 1201090003795322 of the assessee with M/s Motilal Oswal Securities Ltd. The shares were sold in March 2014 on Bombay Stock Exchange. Copy of contract cum bill of the broker for the sale of shares giving all the details enclosed which forms part of the paper book. The assessee received ₹ 95,59,988, on sale of shares by cheque from its broker which was deposited into the bank account of the Assessee.

14. The learned Counsel further submitted that the Assessing Officer on mere assumptions, surmises and conjectures treated the amount received from sale of shares as unexplained cash credit treating the long term capital

gains as bogus. He submitted that the the Assessing Officer has apparently relied upon the statements of one Shri Devesh Upadhyay, Shri Ashish Agrawal and Shri Anuj Agrawal, and came to the wrong conclusion that the shares of Esaar are penny stocks and consequently bogus.

15. The learned Counsel for the assessee further contended that Assessing Officer has not brought any evidence on record that the assessee was involved in any such transaction involving accommodation entries. The persons whose statements have been relied upon by the Assessing Officer in their entire statement have not said that the assessee has taken any accommodation entry from them. Moreover, various statements as relied upon by the Assessing Officer were neither taken in connection with assessee's case nor were any such statements supplied to the Assessee nor any opportunity of cross-examination was given to the assessee before placing reliance on the impugned statements. The statements having not been accorded for cross examination have no evidentiary value and cannot be used for making any addition under law, as has wrongly been done by the Assessing Officer. In support of his arguments, the learned Counsel relied on the following case laws:–

- *Andaman Timber Industries v/s Commissioner of Central Excise (SC).*
- *CIT Vs. Sunita Dhadda (SC) SLP 9432/2018*
- *H.R Mehta Vs. ACIT (2016) 387 ITR 561 (Bombay HC)*

16. The judicial pronouncements relied upon by the Assessing Officer in the assessment order have no bearing on the case as the same are an entirely different set of facts and circumstances.

17. The purchase of shares in physical form is no bar under SEBI Regulation Act which has also been confirmed by the Hon'ble Bombay High Court in CIT v/s Mukesh R. Marolia, ITA No. 456 of 2007. The purchase of shares is fully supported by Bill and the assessee has made the payment of the same through account payee cheque and has obtained physical delivery of shares. The shares were sent to the Registrar for transfer in assessee's name and they were duly transferred in assessee's name by Share Transfer Registrar.

18. The learned Counsel further submitted that in the assessment order, the Assessing Officer has made addition merely on suspicion that the phenomenal rise in price of shares is an arranged transaction to earn long term capital gain. It is a settled law that suspicion, however, strong enough be a substitute for evidence.

19. The learned Counsel relied upon the following judicial pronouncements which are also part of submission made before learned CIT(A) and which have been reproduced in the order of the learned CIT(A) along with the gist of the same which support the case of the assessee in full.

- *Ms. Farrah Marker Vs. ITO - ITA No. 3801/Mum/2011;*
- *DCIT Vs. Sunita Khemka (ITA No. 714 to 718/Kol/2011);*
- *ITO Vs. Indravadan Jain HUF (ITA No. 4861/Mum/2014);*
- *Dolarrai Hemani Vs. ITO 183 TTJ 433 (ITAT Kolkata);*
- *Sunita Jain Vs. ITO (ITA No. 501 and 502/Ahd/2016);*
- *Sunil Prakash Vs. ACIT (ITA No. 6494/Mum/2014); and*
- *Dharampal Agrawal Vs. ACIT (ITA No. 146/Nag/2008).*

20. Further, the learned Counsel submitted that in the present case there is no evidence on record that the transaction of purchase and sale of shares is

not genuine or bogus and on facts of the case the additions made by the Assessing Officer under section 68 of the Act is unjustified. On the contrary, following documents furnished by the assessee proves beyond doubt that the transaction of purchase and sale of shares of Esaar is genuine:–

- *Purchase of shares by cheque*
- *Purchase through stockbroker*
- *Transfer of shares duly recorded in Assessee's name*
- *Shares appearing in De-mat Account*
- *Period of holding - 35 months*
- *Sale on Bombay Stock Exchange through registered stockbroker*
- *Delivery of shares from De-mat account*
- *Sale proceeds received through cheque*
- *Cheque deposited in Assessee's own bank account*
- *STT paid on the sale transaction*

21. The Assessee further places reliance on the following judicial pronouncements wherein similar addition so made in respect of sale of shares of Esaar and wherein the addition so made has been deleted by the Tribunal.

- *Sanidhya Mittal Vs. ACIT (Gau - Trib);*
- *Yogesh Kumar Dalmiya Vs. ACIT (Kol - Trib)*
- *Sanjeev Jain Vs. ITO (Del - Trib)*
- *Jagmohan Agarwal Vs. ACIT (Kol - Trib)*

22. The learned Counsel for the assessee further placed reliance on the following judicial precedents which support the case of the assessee in total:–

- *PCIT Vs. Indravadan Jain HUF (Bombay HC)*
- *PCIT Vs. Krishna Devi (Delhi HC)*
- *CIT Vs. Alpine Investment (Kolkata HC)*
- *CIT Vs. Smt. Pooja Agrawal (Rajasthan HC)*
- *PCIT Vs. Ziauddin Siddique (Bombay HC)*

23. We find that the learned CIT(A) had deleted the addition by observing as follows:–

"4.4 In my view, just the modus operandi, generalisation, preponderance of human probabilities cannot be the only basis for rejecting the claim of the appellant. Unless specific evidence is brought on record to controvert

the validity and correctness of the documentary evidences produced, the same cannot be rejected by the AO. The order passed by AO are bad in law in as much as addition of Rs. 95,60,988/- is made on basis of statements of one, Ashish Kumar Agarwal, Devesh Upadhyay and Anil Kumar Khemka (assessment order pages 3 to 13,) which have no evidentiary value as:

i) firstly, these statements are not equivalent to "material" much less "incriminating material" in eyes of law and they are not corroborated by any iota of independent material;

ii) secondly, these statements cannot bind the appellant, who was not subject matter of that investigation;

iii) these statements were recorded by investigation wing, Kolkata and nowhere independently found to be connected with the appellant; further, these statements cross- examination; are not put to acid test of the most relevant reason being that the appellant never made the transaction through the persons whose statements are recorded by Investigation Wing, Kolkata and relied by AO;

v) lastly, it is no body's case that these general statements talk about the appellant's particular transaction.

4.5 The Hon'ble Supreme Court in the case of Omar Salav Mohamed Sait reported in (1959) 37 ITR 151 (S C) had held that no addition can be made on the basis of surmises, suspicion and conjectures. In the case of CIT(Central), Kolkata vs. Daulat Ram Rawatmull reported in 87 ITR 349, the Hon'ble Supreme Court held that, the onus to prove that the apparent is not the real is on the party who claims it to be so. The burden of proving a transaction to be bogus has to be strictly discharged by adducing legal evidences, which would directly prove the fact of bogusness or establish circumstance unerringly and reasonably raising an inference to that effect. The Hon'ble Supreme Court in the case of Umacharan Shah & Bros. Vs. CIT 37 ITR 271 held that suspicion however strong, cannot take the place of evidence. Further, the Hon'ble Bombay High Court in the case of CIT vs Lavanya Land Pvt. Ltd. (2017) 83 taxmann.com 161 (Bom) at para 21 has found that where there was no evidence whatsoever to allege that money changed hands between the assessee and the broker or any other person including the alleged exit provider whatsoever to convert unaccounted money for getting benefit of LTCG as alleged, in the absence of any material to show that huge cash was transferred from one side to another, the addition made u/s. 68 cannot be sustained.

4.6 It is also a matter of record that the appellant has furnished all evidences in the form of bills, contract notes, demat statements and the purchase and sale of shares resulting in LTCG. These evidences were neither found by the AO to be false or fabricated. The facts of the case and the evidences in support of the appellant's case clearly support the claim of the appellant that

the transactions of the assessee were bonafide and genuine and therefore the AO was not justified in rejecting the appellant's claim of exemption under section 10(38) of the Act.

4.7 In the assessment order, the AO has relied on judgement in Smt. Usha Chandresh Shah Vs Income Tax Officer (ITA No. 6858/Mum/2011 dated 26/09/2014) wherein the sale transaction of shares executed through Kolkata Stock Exchange has been held as bogus. The appellant submitted that the facts in the case of Usha Chandresh Shah are entirely different with the appellant's case. In that case, the assessee could not produce copies of share certificates and share transfer form. Purchase price was not paid by cheque but claimed to have been adjusted by speculation profit and the broker through whom shares were sold was indicted by SEBI for rigging of price of shares. In the appellant's case, no such facts are present. In the other case of Shri Ratnakar Pujari Vs. ITO 25(3) (3) Mumbai in ITA No.995/Mum/2012 relied by the AO, the facts therein is also distinguishable as in that case, the purchase of shares in AY 2005-06 made by cash payment was treated as bogus and non-genuine in the assessment order passed and this finding was accepted by the assessee and no appeal was preferred for that addition, hence the subsequent sale of same shares in AY 2006-07 was also treated as non-genuine. There are no such facts in the case of the appellant. The AR's arguments in this respect are acceptable.

4.8 To sum up, the evidences on record of the purchase of shares establishes the fact that transactions are genuine and these have not been found non-genuine by the AO, and are further corroborated with legal evidences which are part of record. The sale of such shares is through recognized stock exchange and all necessary evidences for the same is also part of the record, and these have not been refuted or controverted by the AO. Considering all these evidences, the receipt of sale proceeds of shares stands established and cannot be considered to remain unexplained credit at the hands of the appellant. The provisions of sec. 68 are inapplicable to sale proceeds of shares that are supported by legally accepted evidences on record. In fact, the requisite conditions for claim of exemption u/s 10(38) of I.T. Act 1961 are satisfied and the claim of appellant is found as correct and justified. The A.O. has made the addition merely on the basis of findings of the Investigation Wing, Kolkata, without bringing on record any adverse findings directly related to the appellant. For the detailed reasons enumerated in the paragraphs hereinabove, and the judicial precedents discussed therein, the addition made by the A.O. on the basis of inference and presumption is found unsustainable.

4.9 In view of the totality of facts and circumstances in the case of appellant, and relying on the various decisions as discussed above, I am of the considered opinion that the denial of claim of exemption u/s 10(38) is unjustified and unwarranted and thus addition made by AO of Rs. 95,60,988/ on account of unexplained cash credits u/s 68 is hereby directed to be deleted. Ground nos. 1 and 2 are accordingly allowed."

24. We further observe that the learned Departmental Representative failed to point out any infirmities in the findings of the learned CIT(A). Mere denial

of the transaction by the Department does not solve any purpose that too without adducing any corroborative and strong evidence on record to refuse. Following the aforesaid case laws, we hold that the learned CIT(A) was indeed justified in deciding the issue in favour of the assessee and against the Revenue. Accordingly, upholding the impugned order passed by the learned CIT(A), ground no.2, raised by the Revenue is dismissed.

25. Ground no.3, does not call for separate adjudication, hence dismissed.

26. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open Court on 03/04/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 03/04/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur