

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

**BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2215/DEL/2023  
(Assessment Year: 2011-12)**

Sunita Sarada,  
5/5761, Dev Nagar, Karol Bagh,  
New Delhi – 110 005.

vs.

ACIT, Circle 71 (1),  
New Delhi.

**(PAN : AANPS7143M)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Vidhi Mangla, Advocate  
REVENUE BY : Shri Sanjay Kumar, Sr. DR

Date of Hearing : 12.03.2025  
Date of Order : 14.05.2025

**ORDER**

1. This appeal is filed by the assessee against the order of ld. Commissioner of Income-tax Appeals/National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to 'ld. CIT (A)') dated 06.06.2023 for Assessment Year 2011-12.
2. Brief facts of the case are, assessee has filed her return of income for the year under consideration on 29.09.2011 declaring total income of Rs.4,42,000/-. The Department has received information from office of DDIT (Inv.), Unit 6 (3), New Delhi on 06.03.2018 that the assessee has taken bogus accommodation entry amounting to Rs.17,25,000/- during FY 2010-11 by trading in the penny scrip i.e. M/s. Global Capital

Markets Ltd. by the accommodation entry providers to provide exempt Long Term Capital Gain/Short Term Capital Loss/Business Loss for the purpose of bringing unaccounted cash in the books of accounts and to avoid paying due taxes on the income. Assessing Officer observed that during the year under consideration, the assessee has sold shares of Global Capital Markets Ltd. and declared the income from sale of shares under the head "Long Term Capital Gain from transactions on which STT is paid" i.e. exempt income u/s 10 (38) of the Income-tax Act, 1961 (for short (the Act')). He observed that as per information, the company i.e. global Capital Markets Ltd. fits into the pattern of a penny stock company. Assessing Officer after recording the reason and taking the prior approval issued notice u/s 148. In response, the assessee e-filed its return of income for AY 2011-12 on 05.05.2018 declaring total income at Rs.4,52,000/-. Further, Assessing Officer issued notices u/s 143(2) of the Act and provided the copy of reasons recorded to the assessee. In response, assessee raised various objections against the reasons recorded vide letter dated 02.11.2018 and the Assessing Officer disposed off the objections raised by the assessee vide order dated 01.11.2018.

3. Assessing Officer further asked for details and documentary evidences regarding LTCG vide notice u/s 142(1) dated 26.10.2018. In response, the assessee has submitted various details of sale and purchase of the

shares of the aforesaid company and from these submissions, the Assessing Officer observed that the assessee has purchased 25000 shares of Global Capital Markets Ltd. on 23.03.2009 and the offline purchases were made through broker, M/s. Consortium Securities (P) Ltd. Assessing Officer observed that subsequently, assessee sold 5000 shares out of 25000 shares through M/s. Consortium Securities (P) Ltd. @ Rs.68.86 per share and balance shares i.e. 20000 shares were sold @ Rs.68.83 per share through Nirmal Bang Securities Ltd.. Assessing Officer noticed that on the basis of information available, Global Capital Markets Ltd. is a penny stock company and the Balance Sheet and P&L account of the said company does not have financial credentials to support the issue of bonus, the logic reason of splitting the shares or the movement of the price of its share. He further observed that the assessee made a gain of almost 411% in a span of around 15 months.

4. During assessment proceedings, the AO observed that assessee has earned capital gain amounting to Rs.17,25,000/- from sale of shares of M/s. Global Capital Markets Ltd. and observed that the same is found to be bogus in nature and actually it was done to claim bogus STCL/LTCG. The AO explained the modus operandi behind the same in assessment order at paras 6 to 9. Accordingly, in the conclusion, the Assessing Officer observed that assessee had a windfall LTCG of Rs.17,25,000/- by

way of sale of share of the company, Global Capital Markets Ltd. which has no financial credentials to justify such increase in price of shares in a short period of time.

5. In the conclusion, the Assessing Officer observed that the assessee has taken accommodation entries for claiming exempt income in guise of exempt LTCG, hence the LTCG on the sale of shares of Global Capital Markets Ltd. which was declared exempt u/s 10(38) by the assessee assessed as income from undisclosed sources u/s 68 of the Act and taxed u/s 115BBE as per the provisions of the Act. Accordingly, Assessing Officer treated the amount of Rs.17,25,000/- as income from undisclosed sources u/s 68 of the Act.
6. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and raised grounds of appeal as well as filed detailed submissions. After considering the detailed submissions, Id. CIT (A) sustained the addition made by the AO.
7. Aggrieved, assessee is in appeal before us raising following grounds of appeal :-

*“1. That on the facts and circumstances of the case and in law, the impugned order passed by the Assessing Officer ("AO") u/ s 143(3) r.w.s 147 of the Income Tax Act, 1961 ("the Act") and upheld by the Ld. National Faceless Appeal Centre Delhi ("NFAC") determining the assessed income at Rs.21,77,000/- is arbitrary, bad in law and liable to be quashed.*

2. *That on the facts and circumstances of the case and in law, the AO has solely relied upon the information received from the DDIT(Inv.), Unit-6(3), New Delhi without any independent application of mind resulting in borrowed satisfaction contrary to settled law and therefore rendering the impugned proceedings u/ s 147 r.w.s 143(3) of the Act null and void on account of patent jurisdictional error.*
3. *That on the facts and circumstances of the case and in law, the Principal Commissioner of Income Tax/ specified authority failed to adhere to the provisions of Section 151 of the Act and proceeded in a mechanical manner thereby rendering the impugned proceedings u/ s 143 r.w.s 147 of the Act void-ab-initio.*
4. *That on the facts and circumstances of the case and in law, the AO/NFAC failed to provide the investigation report that formed the basis for initiating the impugned proceedings, rendering the impugned proceedings void-ab-initio.*
5. *That on the facts and circumstances of the case and in law, the AO /NF AC erred in failing to consider that the necessary conditions under Section 68 of the Act are not satisfied in the present matter, rendering the impugned addition of Rs.17,25,000/- bad in law and liable to be quashed.*
6. *That on the facts and circumstances of the case and in law, the AO/NFAC erred by failing to consider the necessary documentary evidences qua purchase and sale of the impugned shares, which duly establish bona-fide nature of the said transaction rendering the impugned addition arbitrary in nature and liable to be quashed.*
7. *That on the facts and circumstances of the case and in law, the AO/ NF AC erred in failing to appreciate that the necessary conditions for claiming Long Term Capital gain exemption on sale of listed share u/ s 10(38) of the Act stand duly satisfied in the present matter.*
8. *That on the facts and circumstances of the case and in law, the AO failed to establish any "Live Link" /I/Nexus" to support its contention that the Appellant was a part of a scheme hatched by various players to obtain/provide accommodation entries of bogus LTCG/STCL aimed at tax evasion which makes the impugned addition legally unwarranted.*
9. *That on the facts and circumstances of the case and in law, the Assessing Officer/NFAC failed to consider that the Appellant as an investor is not mandated to justify the increase/ decrease in prices*

*of GCML, consequently the impugned addition made is legally unwarranted.*

10. *That on the facts and circumstances of the case and in law, the Assessing Officer/NFAC has failed to consider that in case there was any fraudulent activities then in that case Securities and Exchange Board of India ("SEBI") as the watchdog for securities market would have carried out an independent enquiry, however that is not the case and the Revenue Department cannot usurp the jurisdiction of SEBI.*
11. *That on the facts and circumstances of the case and in law, the AO has failed to establish any involvement of unaccounted money qua the Appellant and has erred in merely proceeding on the basis of mere conjectures and surmises contrary to settled law that suspicion cannot take place of proof making the impugned additions unwarranted and liable to be quashed.*
12. *That on the facts and circumstances of the case and in law, the AO has erred in initiating penalty proceedings u/s 271(1)(c) r.w.s 274 of the Act despite non-satisfaction of mandatory statutory ingredients and the legal unsustainability of the impugned addition."*

8 At the time of hearing, ld. AR for the assessee submitted detailed written submissions, which is reproduced below for the sake of brevity :-

"A. Statutory ingredients of Section 68 not satisfied- Absence of jurisdictional facts;

10. It is submitted to lawfully impose the impugned addition u/s. 68 of the Act, the statutory ingredients thereunder must be satisfied, provided as follows:

"Cash credits. 68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year: ... "

(emphasis supplied)

11. That the Nature and Source of all the share transactions stand explained as the Appellant has conducted all transactions through banking channels as the documents: the details as regard the sale and purchase of shares are placed hereunder :

- a) Purchase of Shares: 25,000 shares of Global on 12.03.2009 through M/s Consortium Securities (P) Ltd at the rate of Rs. 16.73 per shares through Bombay Stock Exchange (BSE), at an aggregate value of Rs.4,18,250/- per share. Payment was made through banking channels (PIs See: Pg 66/Paper book: The amount of Rs.4,20,000 to Consortium Securities dated 14.03.2009 is made (Ref No. 27201) but the cheque bounced due to insufficient funds; thereafter payment is again made to the branch of the payee i.e. Consortium Securities on 20.03.2009 vide Ref No. 27202)
- b) Sale of Shares: Appellant sold 5000 shares through M/s Consortium Securities(P) Ltd on 21.6.2010 @ Rs. 68.86 per shares amounting to Rs. 3,43,7491- through BSE. Further, the Appellant sold 20,000 shares through Nirmal Bang Securities Pvt. Ltd. on 21.6.2010 @ Rs. 68.83 per shares amounting to Rs. 13,86,5501- via banking channels (PIs See: Pg 71/Paperbook, both tranches of the sale transaction duly recorded in the bank statement).

12. That the Ld. AO could not have held the purchase and sale of shares to be an exercise in generating bogus L TCG by way of accommodation entries as none of the required ingredients for such allegation are present vide Pro CIT-12 v. Karuna Garg, ITA 477/2022, (Delhi High Court) dated 23.11.2022 [while relying on Principal Commissioner of Income Tax v. Smt. Krishna Devi (Infra)], as there is no material placed on record apart from uncorroborated excerpts of Report by the Investigation wing, blanket reliance on which is non-est and perverse vide Signature Hotels (P.) v. ITO [2012] 20 taxmann.com 797 (Delhi) .

13. That it is an undisputed fact that since the Appellant used banking channels to conduct the share transactions, there is no question of doubt as to the nature and source as required to be explained U/S 68 of the Act vide Principal Commissioner of Income Tax v. Smt. Krishna Devi in ITA NQ.130/2020 decided on 15 January, 2021 whereby in near identical facts and circumstances, the Hon'ble High Court has held in favour of the concerned Assessee in the following manner:

“11. On a perusal of the record, it is easily discernible that in the instant case, the AD had proceeded predominantly on the basis of the analysis of the financials of .L\IIs 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 sensx; 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 AD 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 AD 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 N.1/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 AD 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."

(Emphasis Supplied)

14. That it is also an undisputed fact that no such books were (required to be) maintained by the Appellant and that in absence of such jurisdictional requirement, this Hon'ble Tribunal in the case of Babbal Bhatia v. ITO, ITA Nos. 5430 & 5432/DEI/2011, decided on 08.06.2018 has held in the Assessee's favor while relying on the judgment of the Hon'ble Delhi High Court in the case of CIT v. Ms. Mayawati 338 ITR 563 [DEL], that where books of accounts are not maintained by the Assessee, the Revenue cannot make an addition u/s 68 of the Act.

15. Additionally, there is also no material placed on record by the Ld. AO vide the impugned Assessment order dated 13.12.2018 that the Appellant had given cash for conversion via accommodation entries into bogus LTCG as alleged in Para 6.1 of the said order.

16. The as demonstrated supra, the mandatory jurisdictional facts being absent, makes the impugned order and additions made vide the impugned orders 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 possess."

(Emphasis Supplied)

17. Hence, since the statutory ingredients for making the impugned addition u/s. 68 of the Act stands unsatisfied as the source of the funds duly stands explained as also the quantum of sale of shares having been done through banking channels makes the addition non-est and untenable vide clear jurisdictional facts as demonstrated above, and the same deserves to be quashed and set aside.

B. No Vicarious Liability against Appellant qua allegations against third parties unless statutorily provided for in law :

18. It is submitted that the impugned order and the subject addition is based on unproven and unsubstantiated allegations against third parties. That the impugned order makes no reference, nor cites any cogent material to show to establish any link of the Appellant with the aforesaid allegations.

19. That the impugned order/addition imposes vicarious liability against the Appellant despite the above undisputed facts and no provision under the Act allowing the same. That in such circumstances, no adverse inference can be drawn against the Appellant as it is settled law that there can be no attribution of vicarious liability against a party for the allegations against some other third party unless expressly provided in law vide *Religare Finvest Ltd. v. State (NCT of Delhi)*, (2024) 1 Hon'ble Supreme Court 797 (Para 16 & Para 37) and *Sunil Bharti Mittal v Central Bureau of Investigation* (2015) 4 see 609 (Para 45).

C. Impugned additions non-est and perverse as Appellant is a bonafide investor, entire transactions done via banking channel, de-mat account and through recognized stock exchange

20. That the Appellant had duly produced all documentary evidence before the Ld. AO regarding the source of investment, the evidence of purchase and sale of shares that establish the bona fide nature of the transactions. It is submitted that the Ld. AO mechanically and without any basis, rejected the documentary evidence furnished by the Appellant.

21. In this regard, reliance is placed on the case of *PCIT v. Parasben Kasturchand Kochar* (2021) 130 taxmann.com 176 (Guj.)(HC) wherein it has been held by the Hon'ble Gujarat High Court that the Assessee has duly discharged its onus to prove the genuineness of the transaction by furnishing all the relevant documentary evidences sought by the Department. The relevant portion of the judgement has been extracted herein below:

“3. Thus, the Tribunal has recorded the finding of fact that the assessee discharged his onus of establishing that the transactions were fair and transparent and further, all the relevant details with regard to such transactions were furnished before the Income Tax authorities and the Tribunal also took notice of the fact that some of the shares also remained in the account of the appellant.

4. We take notice of the fact that the assessee has a Demat Account maintained with the ICICI Securities Ltd. and has also furnished the details of such bank transactions with regard to the purchase of the shares. In the last, the Tribunal took notice of the fact that the statements recorded by the investigation wing of the Revenue

with regard to the Tax entry provided were informed to the assessee despite giving him opportunity to meet such an allegation."

(Emphasis Supplied)

The findings in the abovesaid judgment have attained finality as an SLP against PCIT v. Parasben Kasturchand Kochar (supra) has been dismissed vide order dated 02.08.2021 and the Hon'ble Supreme Court has duly upheld the order passed by the Hon'ble Gujarat High Court.

D. Appellant clearly qualifies for exemption u/s. 10(38)- the allegation that of accommodation entries fails as none of the statutory ingredients u/s. 68 are present, material evidences establishing genuineness cannot be ignored by the Ld. AO

22. It is submitted that impugned addition made after disallowance of LTCG u/s 10(38) of the Act could not have been made due to the following statutory requirements being duly satisfied:

- a) Appellant had conducted the entire transaction of sale/purchase of shares via banking channels;
- b) Securities Transactions Tax (STT) had been duly paid on the sale of shares of GCML and;
- c) The sale and purchase was done through a recognized stock exchange.

Reliance is placed on the case of Commissioner of Income Tax - 3 Mumbai v. Ziauddin A Siddique INCOME TAX APPEAL NO. 2012 OF 2017, whereby it has been held as under:

"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 ("SIT") 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."

(Emphasis Supplied)

Similarly, decision has also been held by the Hon'ble Delhi ITAT in favour of the Assessee in the case of Meenu Gael v. ITO [ITA No. 6235/Del/2017] as under:

"All the transaction were made through account payee cheque / banking channel and assessee had purchased share in financial year 2009-10 and sold the same in the financial year 2013-14 resulting in Long Term Capital Gain. The assessee has submitted various documentary evidences to prove the genuineness of the transaction of sale and purchase of shares which includes a copy of purchase bill dated 22.02.2010; a copy of share transfer form in the favour of the assessee; Copy of bank statement highlighting the payment made against the share purchased; Transaction statement of. the stock broker i.e. Pace Stock Braking Services (P) Ltd., account; copy of bank statement in which sale proceed from the sale of shares received; copy of calculation of long term capital gain, which was not faulted by the AO. However, the lower authorities have not considered the aforesaid documents and rejected all the claims made by the assessee by relying on the report of the Investigation Wing and thereby made the addition, which is not sustainable in the eyes of law."

(Emphasis Supplied)

23. The Hon'ble Delhi High Court has taken a similar view in the case of PCIT v. Laxman Industrial Resources Ltd [2017] 397 ITR 106 (DEL) whereby it has been held that all documentary evidences submitted by the Assessee establishing genuineness of transactions cannot be ignored by the Ld. AO:

"This Court notices that the assessee had provided several documents that could have showed light into whether truly the transactions were genuine. It was not a case where the share applicants are merely provided confirmation letters. They had provided their particulars, PAN details, assessment particulars, mode of payment for share application money, i.e. through banks, bank statements, cheque numbers in question, copies of minutes of resolutions authorizing the applications, copies of balance sheets, profit and loss accounts for the year under consideration and even bank statements showing the source of payments made by the companies to the assessee as well as their master debt with ROC particulars. The AO strangely failed to conduct any scrutiny of documents and rested content by placing reliance merely on a report of the Investigation Wing. This reveals spectacular disregard to an AO's duties in the remand proceedings which the Revenue seeks to inflict upon the assessee in this case. No substantial question of law arises. The appeal is dismissed."

(Emphasis Supplied)

E. Addition cannot be made on mere suspicion, impugned order passed on mere conjecture and guesswork.

24. That the present impugned order passed by the Ld. CIT(A), erroneously upholds the additions made by the Ld. AO vide Para 26.1, 26.2, 26.4, 28 & 31 of the Assessment order (PIs See: Pg. 38, 39 & 41/Appeal paperbook), strictly on the basis of suspicions and guesswork. It is submitted that not an iota of material/ evidence against the Appellant is cited in the impugned order.

25. That the impugned order is ex-facie erroneous and untenable insofar as there is no information available with the Respondent-Assessing Officer, apart from unsubstantiated suspicion and conjectures in direct contravention to settled law vide *Transworld International Inc. v. Joint: Commissioner of Income tax, 2004 SCC OnLine Del 729*.

26. It is further submitted that "reason to suspect" does not satisfy the jurisdictional threshold of "reason to believe" (to lawfully initiate proceedings under Section 147/148 of the Act) vide *Synfonia Tradelinks Pvt. Ltd. v. Income Tax Officer, Ward-22 (4) in W.P.(C) No. 12544/2018 (Delhi)*.

27. That hence, it is ex-facie established from the established jurisdictional facts on record, since the statutory ingredients of Section 68 are not made out as also the allegation that the Appellant has somehow indulged in taking accommodation entries by booking bogus L TCG as all transactions are made through banking channels and the exemption u/s 10(38) could not have been disallowed despite the fact that the Appellant duly qualifies for the same. That there is also no material placed on record to substantiate the allegations of obtaining of accommodation entries by booking bogus LTCG as all the sources and nature of share transactions stands duly disclosed vide evidences produced before the Ld. AO.

28. That the impugned orders have failed to consider these grounds and are hence liable to be quashed and set aside."

9 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, however, assessee could not explain why the assessee has made the investment in this company which has no financial capacity and not justified with enough material to make investment in this company. Ld. DR prayed that addition may be sustained on the basis of detailed findings of

lower authorities. In this regard, ld. DR also filed written submissions which are placed on record.

- 10 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 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. 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 there being any material against the assessee.

11 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: -

*“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 LTCCG, 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 LTCCG. 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 LTCCG 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."*

12 Similar view was expressed by 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.

13 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 scrip 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 grounds raised by the assessee. Accordingly the grounds raised by the assessee are allowed.

14 In the result, appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 14<sup>th</sup> day of May, 2025.**

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

**Dated: 14.05.2025  
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**