

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री जॉर्ज माथान, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 724/KOL/2022
Assessment Year: 2012-13**

Navansh Vinimay Pvt. Ltd.	Vs.	I.T.O., Ward-8(2), Kolkata
(Appellant)		(Respondent)
PAN: AACCN9210E		

Appearances:

Assessee represented by : None.

Department represented by : Yogesh Mehare, Sr. DR.

Date of concluding the hearing : March 5th, 2025

Date of pronouncing the order : May 30th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2012-13 dated 25.10.2022, which has been passed against the assessment order u/s 143(3)/147 of the Act, dated 30.12.2019.



2. The assessee has raised the following grounds of appeal before the Tribunal:

- “1. For that the order of the Ld. CIT (A) is arbitrary, illegal and bad in law.*
- 2. For that the Ld. CIT (A) erred in ignoring the fact that the notice u/s 143(2) were issued NJAO and no notice u/s 143(2) is issued by JAO. As such the reassessment proceeding is ab initio void.*
- 3. For that the Ld. CIT (A) erred in confirming the action of Ld. AO whereas he himself admitted the facts that the assessee have received sale proceeds of Rs. 12,90,875/- instead of 63,76,485/- as alleged in reasons recorded. As such the very reason itself is bad in law.*
- 4. For that the Ld. CIT(A) erred in rejecting the contention of the assessee that reassessment proceedings initiated after 4 years from the end of the assessment year without there being any failure on the part of the assessee to disclose fully and truly any material facts necessary for the purposes of the assessment were without jurisdiction on incorrect assumption of facts that previously there was no regular assessment in the case of the assessee whereas the assessment of assessee was originally made u/s 143(3) on 19.03.2015.*
- 5. For that even the Ld. Pr. CIT granted approval u/s 151 of the Act mechanically to the reasons which were factually incorrect. Therefore the entire reassessment proceeding is bad in law and ab initio void.*
- 6. For that the Ld. CIT(A) erred in confirming the action of Assessing Officer in assessing sale proceeds from shares as bogus in spite of the fact that all the transactions were supported by credible evidences which were fully verifiable and no defects has been found in the same.*
- 7. For that the Ld. CIT(A) erred in confirming the action of Assessing Officer in considering Sale proceeds from shares as bogus relying adversely on materials the copies of which was never supplied to the appellant for rebuttal in spite of the fact that the appellant made specific request to provide the same.*
- 8. For that in view of the facts and in the circumstances of the case the Ld. CIT(A) erred in confirming the addition made by Ld. Assessing Officer by relying adversely on statements of various parties without providing the appellant opportunity for cross examination although specifically requested by the appellant.*
- 9. For that on the facts and in the circumstances addition of Rs. 12,90,875/- on account of sale proceeds of shares is liable to be deleted.*



10. For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal.”

3. Brief facts of the case are that the assessee had filed the return of income for the A.Y. 2012-13 showing total income of Rs. 20,400/- and the assessment was made under section 143 (3) on 19/03/2015 at the total income of Rs. 2,18,20,400/-, the appeal against which was pending before the Ld. CIT(A). Subsequently, on the basis of information received from the Directorate of Income Tax (Inv.) that the assessee had received a sum of Rs. 63,76,485/- from selling a penny stock named M/s. Rockon Enterprise Ltd. (formerly, Insutech India Ltd.), the assessment was reopened under section 147 of the Act after recording reasons and after obtaining the statutory approval, a notice under section 148 of the Act was issued. The assessee filed the return of income showing the same total income as was shown in the original return of income filed earlier. The objections filed against the reassessment proceedings were disposed of vide letter dated 06/12/2019 by the Ld. AO but in response to the notice under section 142(1) of the Act, the documents requisitioned were not filed by the assessee. The assessee e-filed a single page letter on 14/12/2019 but the contents of the same were not related to the information received nor related to the information given in the ITR filed. The assessee thus remained non-compliant throughout the assessment proceedings. The Ld. AO examined the financial details of M/s. Rockon Enterprise Ltd. which showed the poor financial conditions and a razor-thin profit earned/losses booked by the company in the past. The financial results of the company for the relevant period did not show any substantial increase so as to support a huge share price movement. The history of M/s. Rockon Enterprise Ltd. was also analysed which did not inspire

any confidence in the transactions in the scrip; specifically that the share price of the scrip which moved from Rs. 132 in April 2010 to Rs. 221 in October 2010 after which there was a share split in the ratio of 1:2. The Ld. AO also analysed the modus operandi, the transactions and the details of inquiries conducted under section 131 of the Act and concluded that the assessee had pre-arranged accommodation entries to the tune of Rs. 63,76,486/- through the entry operators who facilitate such accommodation entries on receipt of commission. As reported by the Directorate of Income Tax (Inv.), the entry operators charge a commission @1% of the amount of loss on the sale of shares arranged. Since the assessee had taken accommodation entries, the aspect of payment of commission could not be ruled out and the same was calculated @1% which comes to Rs.63,764/- and the same was added under section 69C of the Act along with the sum of Rs. 63,76,486/- added under section 68 of the Act as unexplained cash credit.

4. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 25.10.2022 dismissed the appeal. The relevant extracts from the order of Ld. CIT(A) containing the findings of the Ld. AO are as under:

“3. AO’s Findings:

During the course of assessment proceedings, the Ld.AO has observed that the assessee filed its return of income for the A.Y. 2012-13 on 28.09.2012, declaring a total income of Rs. 20,4001-, which was duly processed by CPC, Bangalore u/s 143(1) of the I.T. Act, 1961 (hereunder referred as Act). Later order u/s 143(3) passed on 19.03.2015 at a total assessed income of Rs. 2,18,20,4001- which is in force and pending before CIT(A)-3, Kolkata for adjudication. On the basis of information received from the Directorate of Income Tax (Inv.), Mumbai, the assessee had received Rs. 63,76,485/- from selling a penny stock named Rockon Enterprise Ltd. (formerly, Insutech India Ltd). Consequently, the case was reopened u/s 147 of the Act after recording reasons and notice U/S 148 of the Act was issued on 29.03.2019



after obtaining statutory approval of the Pr. Commissioner of Income-tax-3 Kolkata u/s 151(1) of the Act. The notice was served on the assessee through email and speed post. In response to the notice u/s 148, the assessee filed its return of income for the A.Y. 2012-13 on 31.03.2019, declaring a total income of Rs. 20,400/-. Subsequently, notice U/S 143(2) and notice u/s 142(1) of the Income Tax Act, 1961 along with the questionnaire were issued on 11.04.2019 and 24.06.2019 respectively and the same were duly served upon the assessee. Reasons recorded for reopening the case has been provided to the assessee on 09.07.2019 in compliance to its request letter dtd. 12.06.2019.

Assessee filed objection to reassessment proceedings for reopening the case U/S 147/148 of the Act which was disposed off vide letter dtd. 06.12.2019. Another notice U/S 142(1) of the Act issued on 06.12.2019 in terms of section 129 of the Act. But assessee, not filed any documents as requisitioned u/s 142(1) of the Act on 06.12.2019 on the date fixed for furnishing the same. Assessee e-filed a single page letter on 14.12.2019 claimed to be filed in compliance to notice U/S 142(1) dtd. 06.12.2019, but the contents are not related to the information received nor the information given in its ITR filed. Hence, assessee remained non-compliant throughout the assessment proceedings.

3. As per information assessee has received Rs. 63,76,485/- from selling a penny stock named Rockon Enterprise Ltd. (formerly, Insutech India Ltd) but no details furnish by the assessee nor the information is given clearly in the ITR filed.

In view of the facts available on records and non-submissions of any information by the assessee, the issue is discussed as under:

4.1 Pre-arranged Bogus LTCG/STCL/Business Profit/Loss:

The report deals with BSE Scrip no. 531447, which was earlier traded under the name M/s Insutech India Limited and subsequently changed to M/s Rockon Fintech Limited (BOLT ID ROCKONFIN). It is found that the said company M/s ROCKON ENTERPROSES LIMITED has been put under Periodic Call Auction Session (PCAS) framework and has been termed as illiquid scrip. Trading in the scrip was also suspended on two occasions by the exchange for certain duration of time. During the period of investigation, SEBI has also passed adjudication order against 7 individuals who were involved in rigging of prices of the scrip. Further the directors in Rockon Fintech were also associated with other penny stock companies. For instance Shri Tushar Rane was associated with Banas Finance Ltd. Further the company has itself also engaged in buying and selling

penny stock. The company has made huge trades in the scrip ESSAR INDIA, which has already been flagged as a penny stock.

{emphasis supplied}

5. AN ALAYSIS OF M/S ROCKON FINTECH LIMITED

M/s Rockon Fintech Limited is a company registered with Roc Mumbai. As per the annual report of the company it is engaged (in) wide range of activities such as "Business of Finance and Advance to clients and to receive money and deposits to carry on business as financiers factors and to carry on business of broker, underwriter, agent and to invest and deal in acquiring, selling, subscribing, transferring, holding, disposing, and otherwise dealing and investing in shares, stocks, debentures, bonds, land, building, properties, obligation and securities. The company also carries on Software business as manufacturer, buyer, seller, trader, importer, exporter, distributor, broker, stockiest, and omission agent. The company was incorporated as a private company in 1976, promoted by Giriraj Kishor Agarwal and Tunu Agarwal. Other key persons are Hemant Kumar Tibrewala, Shardadevi Tibrewala, Kamalkant Tibrewala

Financials of the company for the past seven years are as follows:

ROCK ON ENTERPRISES

A.Y	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Normal business income	0	-6,45,480	0	0	0	0	0
Other sources income	4,22,425/-	7,58,674/-	69,06,707/-	61,20,430/-	68,02,948/-	63,810/-	30,654/-
Gross Total Income	3,27,2661-	1,13,194/-	5,01,814/-	0	0	0	0
Total Income	3,27,2701-	1,13,1901	5,01,8101-	0	0	0	0
Income @ normal rates	98,181/-	33,958/-	1,50,543/-	0	0	0	0
Deemed total income u/s115JB	0	1,13,194/-	5,01,814/-	0	-9,82,475/-	0	-40,88,759/-

4. Similarly, the details of profit and loss account are also mentioned from page 6 to 9 of the appeal order. It is mentioned in para 5.3 of the assessment order that **“Perusal of the financials indicates the poor financial condition and razor thin profits earned/losses booked by the company in recent past. The financial of the company for the relevant period does not show any substantial increase so as to support such a huge share price movement”**. The Assessing



Officer (hereinafter referred to as Ld. 'AO') has carried out the analysis of the scrips, which has been noted by the Ld. CIT(A) in para 5.3 as under along with the details of modus operandi adopted for such transactions in para 6 of the assessment order:

“Scrip Analysis

The share price pattern of M/s Rockon Fintech Limited (BSE:531447) was analyzed. It was noticed that the share price of M/s Rockon Fintech Limited started escalating in the FY 2010-11 and faced a sharp fall in FY 2011-12. The chart showing the movement of Share price as available in public domain is as under:

(Please refer to page no. 4 of the assessment order for Graph)

5.4 Specifically the share price of the said scrip moved from Rs. 132 in April 2010 to Rs. 221 in October 2010. After which there was a share split in the ratio 1:2. The Price for FY 2010-11 ended on Rs. 225. The price rose to a peak of Rs. 383.501-. After which it made a nose dive to Rs. 48 per share in the month of August 2011. Again there was a share split in the ratio 1:5. The current price of this script is Rs.1.55/- per share as on 01st March 2018 and has not been trading on the stock Exchange. The company had observed two splits. The first split in share was in the ratio 1:2 (Old Face value: 10/-: New Face Value: 51-) on 06.1 0.20 10. The second split in share was in the ratio 1:5.

5.5 The above graphs show the phenomenal price rise that has occurred in the shares of M/s Rockon Fintech Limited mainly during the financial year 2010-11. There is also splitting of the share taking place. Normally, the SENSEX is a benchmark of the average price movement in any share. Most of the stocks which have good market capitalization and are majorly held by public tend to follow the price movement of the ENS EX. The deviation in price movement vis-a-vis SENSEX is usually guided by the fundamentals of the company and the behavior of individual investors. Where the price increase in the shares of the scrip was compared with the movement in the SENSEX it was seen that there was no correlation.

{emphasis supplied}

5.6 From the nature of the graph it is seen that a typical penny stock characteristic can be seen in M/s Rockon Fintech Limited movements vis-a-

vis time period. In fact, the details modus operandi behind these movements is discussed below:

6. Modus Operandi

6.1 M/s Rockon Fintech Limited is an old already listed company, the entire shareholding of which is brought by the syndicate to provide LTCG entries. These types of companies are generally dormant company with no business and with accumulated losses. The same can be seen in M/s Rockon Fintech Limited.

6.2 There are three categories of individuals who are involved in the transactions:

i) Syndicate Members.

They are the promoters of the Penny Stock companies who own the initial shareholding mostly in the name of paper companies either in a fresh IPO or purchased from the shareholders of a dormant company. They are usually a group of 4-5 individuals who also referred to as Syndicate Members and are sometimes also referred to as Operators. Their nominees are directors of the Penny Stock companies which are indirectly controlled by them through such dummy directors. The whole operation is managed by them. They get the net commission income from the transactions. Their name however, seldom appears in the actual transactions.

ii) The Brokers

They are registered brokers through whom shares are traded both online and off-line. They are fully aware of the nature of transactions and get paid a commission over and about their normal brokerage. Some of the big broking houses are also indulging in such transactions mostly through sub-brokers. Even Calcutta Stock Exchange has registered itself as a broker with BSE and has given a large number of terminals to sub-brokers who are dealing into this type of transactions.

iii) The Entry Operators.

They are individuals who control a large number of paper/shell companies which are used for routing cash for the transactions as well as buying and selling shares during the process of price rigging. They work for commission to be paid by the Syndicate Members. To cut cost sometimes in smaller operations, the same group performs more than one function.”

5. It is also noted that the transaction involves three legs viz. purchase of share by the beneficiary, price rigging and final sale by the

beneficiary and the same has been explained by pictorial depiction of the scheme (Bell shaped pattern). The Ld. CIT(A) further mentions that:

“i) Purchase of share by the beneficiary. In this the beneficiary is sold a fixed number of shares at a nominal rate. The price and the number of shares to be purchased are decided on the basis of the booking taken and the value up to which price would be rigged. The leg of the transaction mostly is off-line. This is done to save of STT using the loophole in Section 10(33) of the Act which places restriction of trading by payment of STT on sale of shares and not on purchase.

ii) Price rigging. After the said shares have been purchased by the beneficiaries, the syndicate members starts rigging the price gradually through the brokers. In these transactions the volume is almost negligible. Two fixed brokers who are in league with the Syndicate buy shares at a fixed time and at a fixed price. These low volume transactions are managed through paper companies of entry operators.

iii) Final sale by the beneficiary. This is done after the beneficiary has already held the share for one year. The period of holding may be a little more to match the amount of booking with the final rate. The beneficiary is contacted either by the Syndicate member or the Broker (Middle man) through whom the initial booking was done. The beneficiary provides the required amount of cash which is routed through some of the paper companies of the entry operator and is finally parked in one company which will buy the share from the beneficiary.

In face this modus operandi can be well understood through PICTORAL DEPICTION OF THE SEHEME (BELL SHAPED PATTERN)

(Please refer to page no. 5 of the assessment order for Graph)

7. The Ld. AO thereafter has concluded with the following points established:

“The financials of M/s Rockon Fintech Limited were very poor during the sudden upsurge in the script price.

The business profile shows that the company was not engaged in any substantial activity.

The business profile shows that the company was not having strong fundamentals which could attract investors from all over India to invest in the company.

The funds that were raised through share capital have not been used for any business expansion and have been further advanced as loans and investments. **{emphasis supplied}**

8. Further, enquiries were conducted by way of issuing summons u/s 131 of the Act and the sworn statements of Shri Himmat Vinod Chandra Bhatta and others being exit provider are discussed as under:

“In the sworn statement/submission made in response to 131, Shri Himmat Vinod Chandra Bhatta, an EP(Exit Provider), he submitted that he does not know anything about the scrip as well as the payment. (Copy of statement recorded is attached as annexure to the email.)

Statement of another exit provider Smt. Latha Ramesh was also recorded on oath. In the sworn statement/submission made in response to 131, she also stated that she does not know anything about the scrip as well as the receipt and payment.

Statement of another exit provider Smt. Sunanda Ramesh Shah also recorded on oath. In the sworn statement/submissions made in response to 131, she also stated that she does not know anything about the scrip as well as the receipt and payment.

*Summons have been issued to Smt. Seema Sindhu & Tushar Ramesh Rane, the directors of M/s Rockon Fintech Limited. **The Summons issued to Smt. Seema Sindhu has returned unserved and against the other summon, there is no compliance till date. The addresses was also physically verified by an Inspector and it was found that no such person existed there.** The statement of Shri Tushar Ramesh Shah recorded on oath u/s 1321 of the IT Act. In the sworn Statement /submissions made in response to 131, he stated that he does not know anything about the business and affairs about the company. When it was asked about his trade in said script, he submitted that he doesn't trade in this scrip by his own.* **{emphasis supplied}**

From the above analysis it is seen that there is no logical explanation for the rise in price of the scrip of Rockon Enterprises Ltd. There is no evidential change in performance of the company which would substantiate the price rise of the scrip. The creditworthiness of the persons purchasing the scrip at high price is doubtful. The persons selling the scrip when the price of scrip is high at its peak are all beneficiaries of bogus Long Term Capital Gains. The Exit Providers were not able to provide any logical explanation of the source of funds they have invested in the scrip when they purchased the

scrip when the price was at its peak. They also clearly mentioned that the trades were not done by them but by some broker.

From the above facts and analysis it appears that the scrip M/s Rockon Enterprises Ltd. has been used to provided bogus LTCG/ STCLI Trading loss etc. as per requirement to various beneficiaries.

It has been found from the trade ledger of the scrip that the assessee is one of such beneficiaries and transacted in the stated penny stock as stated above and received sale proceeds amounting to Rs, 63,76,485/-. The assessee has been asked to submit the purchase & sell details with respect to transactions made in penny stock named Reckon Enterprises Ltd.

However, the assessee has not submitted any details in respect of transactions made in the stock Rockon Enterprise Ltd. In view of the above, a show cause notice dated 18.12.2019 has been issued to the assessee alongwith a summon U/S 131 of the Act wherein it has been asked that in absence of transaction details why the total sale proceeds of Rs. 63,76,486/- should not be added to the total income of the assessee. However, the assessee has not any reply in respect of the show cause notice.

With so much of evidence against the assessee, the onus was on assessee to prove that his transactions were genuine and that he had not availed benefit of the aforementioned scheme to convert black money into white. However, the assessee has not responded at all in this matter. {emphasis supplied}

In *Sumati Dayal vs. Commissioner of Income tax*, the Supreme Court observed the following:

"It is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. [See :Parimisetti Seetharamamma (supra) at P. 5361. But, in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is, prima facie, evidence against the assessee, viz.. the receipt of money, and if he fails to rebut, the said evidence being un-rebutted, can be used against him by holding that it was a receipt of an income nature. While considering the explanation of the assessee the Department cannot, however, act unreasonably"

In view of the above discussion, the transaction value of Rs. 63,76,486/ has been proved to be as bogus and pre-arranged gain in trading in penny stock named Banas finance Ltd is added as unexplained credit u/s 68 of the Act, in the absence of any explanation to substantiate the receipt by the assessee and added to the total income of the assessee.

As the assessee has deliberately and wilfully furnished inaccurate particulars of income, a conclusion which is obvious from the discussion made in the order, penalty under section 271(1)(c) is also initiated.

As discussed in the foregoing paragraphs, the assessee had arranged pre-arranged accommodation entries to the tune of Rs. 63,76,486/- through the entry operators who facilitates such accommodation entry on receipt of commission only. As reported by the Investigation Directorate, the entry operators charge a commission @ 1% of the amount of Loss on sale of shares arranged. Since it has been proved beyond doubt that the assessee had taken accommodation entry, the aspect of payment of commission cannot be ruled out. In the case of the assessee, the amount, calculated @ 1%, comes to Rs. 63,764/-Such commission payment represents unexplained expenditure of the assessee which is disallowed u/s 69C of the Act and added to the total income of the assessee.”

9. In view of the discussions and in view of the finding of the Hon'ble Supreme Court in the case of **Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC)** and since the assessee is one of the beneficiaries, the Ld. AO concluded that the transaction value of Rs. 63,76,486/- have been proved to be bogus and pre-arranged for trading of illiquid and penny stock named Banas Finance Ltd. (though the name of the scrip is inadvertently mentioned as Banas Finance Ltd. but the scrip traded is of M/s. Rockon Enterprise Ltd. and the facts of Banas Finance Ltd. are identical to the facts of M/s. Rockon Enterprise Ltd. managed by the same group of entry providers) which was added u/s 68 of the Act as unexplained credit in the absence of any explanation to substantiate the receipt by the assessee and has been added to the total income. A sum of Rs. 63,764/- being 1% of the total transactions of Rs. 63,76,486/- has also been added as commission for taking the accommodation entries and the total income was assessed at Rs.



2,82,60,650/- as against the returned income of Rs. 2,18,20,400/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) and made submission. The findings of the Ld. CIT(A) is as under:

“5.2 Ground Nos.2 to 6:

5.2.1 These grounds relate to challenging the issue of notice u/s. 148 of I.T. Act. Before adjudicating the issues under disputes, it is pertinent to have a look at the statutory provision of income escaping assessment as envisaged under section 147 of IT Act, which stipulate.

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5.2.5 In impugned case, the issue pertains to AY 2012-13, wherein notice u/s.148 of I.T. Act can be issued till 31.03.2019, which is well within the statutory time limit as provided in the Act. Although, notice u/s. 148 was issued after 4 years from the end of the relevant A.Yr. however, proviso to section 147 of I.T. Act does not apply as no assessment u/s. 143(3) of I.T. Act was carried out in this case prior to impugned re-assessment. Further, the satisfaction of the AO for re-opening the assessment is based on the information received from Investigation Wing of the Department. Thereafter, the issue was examined by AO which was further approved by the Pr. CIT findings the impugned case a fit case for issue of notice u/s.148 of I.T. Act. Therefore, having considered the entire facts of the case and examining it from all angles, the AO has duly followed all due procedure of law. Accordingly, notice issued u/s.148 is held to be valid in law. As a result, ground nos. 2 to 6 are dismissed.

5.3 Ground Nos.7 to 9:

5.3.1 These grounds relate to challenging the addition of Rs.63,76,486/- made to total income in terms of section 68 of IT Act on the ground that the assessee has not fulfilled all the conditions as laid down u/s.68 of IT Act, I have considered the submissions of the assessee and gone through the AO's order. The basic thrust of the Assessing Officer, is that the assessee has failed to prove the bonafides of the money received by the assessee on account of the share transaction. In essence, his argument can be summed up as follows. His basic submission is that it is not a bonafide transaction, and the surrounding circumstances clearly demonstrate that. He submits that the reasons of reopening the assessment eloquently demonstrate that the assessee was beneficiary of a sophisticated money-laundering racket,



wherein, the monies was given in cash to dummy entities, in lieu of receipt of such consideration of penny stock shares etc. The assessment order, as also the reasons for reopening the assessment clearly points out that the assessee was clearly a beneficiary of this money laundering racket. He submits that given this factual backdrop, the assessee had an even greater responsibility for showing genuineness of the share transaction monies received. The fact that the share transaction related entities have a PAN number, that they have filed the income tax returns by itself, does not prove that transaction is bonafide. He submits that the financial statements of the companies subscribing to the shares, as also the bank statements of these entities, hardly inspire any confidence about genuineness. It is pointed out that there are hardly any overnight balances in the bank accounts of the companies, and all this indicates that these companies, subscribing in the shares transaction are merely conduit companies. There is hardly any substantive business activities pursued by the company the shares of which are transacted by the assessee. The onus is on the assessee to demonstrate that the transaction is bonafide, and the assessee has miserably failed to do so. Kind attention is invited to a SMC decision in the case of Pawankumar M Sanghavi Vs Income Tax Officer [(2017) 81 taxmann.com 308 (Ahd-Trib)], where the same line of reasoning is adopted in this case, it will be clear that the share application monies received by the assessee company, from certain companies- which are no more than typical shell companies, lack bonafides. It is not really possible for the Assessing Officer to prove the case of the revenue to the hilt, but given the facts brought to light by the Assessing Officer, it is the duty of the assessee to show reasonable bonafides of the entities subscribing to the shares in the assessee company. It is also submitted that on the facts and circumstances of the case, it is clear that the companies the shares of which are transacted by the assessee are companies of dubious means and that the evidence brought on record by the assessee does not substantiate the bonafides of these entities. It is submitted that the onus of proving the genuineness of the receipts is on the assessee, and the assessee has failed to discharge the same. The correct legal position is that the onus is on the assessee to demonstrate the genuineness of transactions. The bank accounts of the companies subscribing to the capital of the assessee company, and their financial statements, hardly inspire any confidence about their genuineness. These factors, by itself, would not clothe the transaction with genuineness. I am urged to look at the larger picture in entirety rather than being swayed by a narrow and hyper-technical view of the matter. It is pointed out by the assessee that there is no cash deposit in the bank account of the companies the shares of which are transacted by the assessee company. The companies have submitted their PAN details, their income tax returns, their annual financial statements and copies of their bank accounts. There is

nothing further that the assessee can be expected to do. By giving these details, the assessee has discharged the initial onus cast upon it, and it is now for the revenue authorities to prove otherwise. It is contended that the companies are active companies as on today, and there are no adverse findings in this respect. None of these companies, according to the assessee, is listed as a shell company by the Government of India, or any official body. It is then submitted that so far as examination of the source of the source is concerned, the proviso to Section 68 requires that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory. However, this proviso has been inserted with effect from 1st April 2013. It is submitted that this amendment cannot have the retrospective operation as has been held by Hon'ble High Court in the case of CIT Vs Gagandeep Infrastructure Pvt Ltd [(2017) 80 taxmann.com 172 (Bom)]. It is thus contended that even if entries in the books of accounts of the companies subscribing to the shares of the assessee company cannot be brought to tax in the hands of the assessee. It is thus contended that the impugned additions under section 68 are devoid of any legally sustainable basis, and I must delete the same.

The fundamental question that I have to deal with is whether or the addition of Rs.63,76,486/- as unexplained credit under section 68 in the hands of the assessee is to be treated as unexplained. The most critical thing to be examined in this regard is explanation of the assessee with respect to these credits. There is no, and there cannot be any, dispute on the fundamental legal position that the onus is on the assessee to prove 'bonafides' or 'genuineness' of the share transaction of these penny stocks credited in his books of accounts. This approach finds support from the scheme of Section 68, which provides that 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 that assessee for that previous year. The burden is thus on the assessee to prove the nature and source thereof, to the satisfaction of the Assessing Officer. Everything thus hinges on the explanation given by the assessee and on how acceptable is the explanation so given by the assessee. The next question is

as to what is the kind of explanation that the assessee is expected to give. As noted by Hon'ble Delhi High Court, in the context of issuance of share capital and in the case of PCIT Vs Youth Construction Pvt Ltd [(2013) 357 ITR 197 (Del)], "it involves three ingredients, namely, the proof regarding the identity of the share applicants, their creditworthiness to purchase the shares and the genuineness of the transaction as a whole". That is the approach adopted by Hon'ble Courts above all along. In the case of CIT v. United Commercial and Industrial Co (P.) Ltd [1991] 187 ITR 596 (Cal)], Hon'ble Calcutta High Court has held that under the scheme of Section 68 "it was necessary for the assessee to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions". Similarly, in the case of CIT v. Precision Finance (P.) Ltd [1994] 208 ITR 465 (Cal)], it was observed that "it is for the assessee to prove the identity of creditors, their creditworthiness and genuineness of transactions". It is thus also a settled legal position that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars. The genuineness of the transaction as a whole is thus a very important and critical factor in the examination of explanation of the assessee, as required under section 68, with respect to the share application monies received by an assessee.

5.3.2 As far as the issue is concerned, I must remain confined to the narrow issue of onus on the assessee to prove 'bonafides' or 'genuineness' of the alleged money received on account of penny stock transaction credited in his books of accounts, and that is the call I have to take in the light of facts before me and the ground realities of the commercial world. I proceed to deal with the genuineness aspect, it is also important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-À-vis the ground realities. The facts of the case cannot be considered in isolation from the ground realities. The allegation of the AO is that the assessee has received money through a complex web of shell entities. It will, therefore, be useful to understand as to how the shell entities, which the share applicants are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions- to give it colour of a normal business entity, used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal entity, but it is their act of abatement of, and being part of, financial manoeuvring to legitimise illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every

semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils.

5.3.3 It is also important that when the genuineness of the transactions entered into by the assessee is examined, we must also bear in mind Hon'ble Supreme Court's observation, in the case of CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)], to the effect that "Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". Similarly, in a later decision in the case of Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)], Hon'ble Supreme Court rejected the theory that it is for allegor to prove that the apparent and not real, and observed that, "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities..... Similarly the observation that if it is alleged that these tickets, were obtained through fraudulent means, it is upon the allegor to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. The test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably". It will be superficial approach in case, the claim of the assessee solely on the basis of documents filed by the assessee and overlook clear the unusual pattern in the documents filed by the assessee and pretend to be oblivious of the ground realities. As Hon'ble Supreme Court has observed, in the case of Durga Prasad More (supra), "it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present

case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents". As a final fact finding authority, this Tribunal cannot be superficial in its assessment of the genuineness of a transaction, and this call is to be taken not only in the light of the face value of the documents sighted before the Tribunal but also in the light of all the surrounding circumstances, the preponderance of human probabilities and ground realities. There may be a difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact-finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidence. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law.

5.3.4 I may also add that the phenomenon of shell entities being subjected to deep scrutiny by tax and enforcement officials is rather recent, and that, till recently, little was known, outside the underbelly of the financial world, about modus operandi of shell entities. There were, therefore, not many questions raised about the genuineness of transactions in respect of shell entities. That is not the case any longer. Just because these issues were not raised in the past does not mean that these issues cannot be raised now as well, and, to that extent, the earlier judicial precedents cannot have blanket application in the current situation. As Hon'ble Supreme Court has observed in the case in *Mumbai Kamgar Sabha v. Abdulbahi Faizullahai* AIR 1976 SC 1455 "It is trite, going by Anglophonic principles that a ruling of a superior court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark". Genuineness of transactions thus cannot be decided on the basis of inferences drawn from the judicial precedents in the cases in which genuineness did come up for examination in a very limited perspective and in the times when shell entities were virtually non-existent.

5.3.5 Having considered entire facts of the case and evidences brought on record I find no infirmity in the order of AO, hence, addition made of Rs.63,76,486/- is confirmed. As a result, ground nos.7 to 9 are dismissed.

5.4 Ground No. 10:

5.4.1 *This ground relates to challenging the quantum of sale receipt taken by the AO at Rs.63,76,486 in place taking it correctly at Rs. 12,90,875/-.*

5.4.2 *I have considered the submission of the assessee. Considering the submission of the assessee as enumerated on pre pages herein above, the AO is directed to verify the quantum of receipt. If such claim is found to be correct, necessary effect be given to modify it. As a result, ground no.10 is partly allowed.”*

10. Aggrieved with the order of the Ld. CIT(A) the assessee has filed the appeal before this Tribunal.

11. None appeared on behalf of the assessee and the appeal was heard with the assistance of the Ld. DR. During the course of the appeal the Ld. DR drew our attention to the assessment order as well as the order of the Ld. CIT(A) and stated that both at the stage of the Assessing Officer as well as before the Ld. CIT(A) in the absence of any compliance and after analysing the facts of the case in detail, the addition was made and the transaction was held to be bogus, which order has been confirmed by the Ld. CIT(A). The Ld. DR also requested that the order of the Ld. CIT(A) may also be sustained.

12. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). Before us, none appeared nor any written submissions were filed. The issues relating to reopening, and the addition made have been elaborately discussed by the Ld. CIT(A). We may further add that in the case of **PCIT vs. NRA Iron & Steel (P.) Ltd. reported in [2019] 412 ITR 161 (SC)** in which share application money was approved for action u/s 68 of the Act even where the share applicants had filed confirmations and attempted to show that the transactions have taken place through normal banking channels, etc., the Hon'ble Apex Court

has dealt with the issue from a legal perspective and some of the passages deserve to be extracted for reference:

“This Court in the land mark case of Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC) and, Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and creditworthiness, then the Assessing Officer must conduct an inquiry, and call for more details before invoking section 68. If the assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source. [Para 8.2]

With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge. Merely, proving the identity of the investors does not discharge the onus of the assessee, if the capacity or credit-worthiness has not been established. [Para 8.3]

The Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries. In the instant case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the shareholders were either non-existent, or lacked creditworthiness. [Para 9]

The principles which emerge where sums of money are credited as Share Capital/Premium are:

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the Assessing Officer, so as to discharge the primary onus.*
- ii. The Assessing Officer is duty bound to investigate the creditworthiness of the creditor/ subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of namelenders.*

iii. If the inquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by section 68. [Para 11]

In the instant case, the Assessing Officer had conducted detailed enquiry which revealed that:

i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies were non-existent, and had no office at the address mentioned by the assessee. The genuineness of the transaction was found to be completely doubtful.

ii. The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90 lakhs to Rs. 95 lakhs in the assessment year 2009-10, for purchase of shares at such a high premium. iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the assessee company at a high premium of Rs. 190 per share, even though the face value of the share was Rs. 10 per share. iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.

v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under section 68. [Para 12]

The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee since the information is within the personal knowledge of the assessee. The assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the Assessing Officer, failure of which, would justify addition of the said amount to the income of the assessee. [Para 14]

On the facts of the present case, clearly the assessee company - respondent failed to discharge the onus required under section 68, the Assessing Officer was justified in adding back the amounts to the assessee's income. [Para 15]"

13. We now proceed to decide the appeal.



14. Ground nos. 1 and 10 being general in nature do not require any separate adjudication.

15. Ground no. 2 is regarding the notice being issued by the NJAO and no notice u/s 143(2) of the Act issued by the JAO. The assessee has not made any submission in this regard as to how the notice was invalid. Further, this issue has been raised for the first time and the issue of reopening has been adjudicated by the Ld. CIT(A). Therefore, this ground of appeal is dismissed. It is judicially held that both the JAO as well as the NJAO hold jurisdiction over the assessee and either of them is not divested of the jurisdiction. Hence, both these grounds of appeal are dismissed and the order of the Ld. CIT(A) in this regard is confirmed.

16. Ground nos. 4 and 5 are also dismissed as no submission has been made as to how the proceedings were erroneous and the order of the Ld. CIT(A) in this regard is confirmed. Even though there is an inadvertent error in the order of the Ld. CIT(A) that no assessment was made while an order u/s 143(3) of the Act is mentioned to have been made in the body of the assessment order itself, however, on facts it is noticed that there was failure by the assessee to disclose fully and truly all facts necessary for the assessment as the pre-arranged transactions were noticed by the Revenue, therefore the proviso to section 147 of the Act was applicable and the reopening was justified. The approval was accorded by the concerned authority on the perusal of the entire facts of the case and therefore, the same cannot be said to be a mechanical approval. Hence, both these grounds of appeal are dismissed.

17. Ground nos. 3, 6, 7, 8 and 9 relate to the addition of Rs. 12,90,875/- as against Rs. 63,76,485/- alleged in the reasons recorded.

It is a settled principle of law that at the time of recording of reasons, the Ld. AO is not required to make an assessment of the income of the assessee and he is only to arrive at a prima facie satisfaction on the basis of evidence/information which may lead to the reason to believe that the income has escaped assessment. In this case, information was received from the Investigation wing and had a link with the reopening therefore, this ground of appeal is dismissed. As regards upholding the order of the Ld. CIT(A) by treating this transaction as bogus, the same have discussed in the order of the Ld. CIT(A) and do not require any inference hence, the order in respect of these issues is confirmed.

18. On similar issue, Hon'ble Jurisdictional High Court in the case of **Principal Commissioner of Income-tax v. Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta)** have held as under:

- *The report submitted by the Investigation department could not be thrown out on the grounds urged on behalf of the assessee. The assessee has not been shown to be prejudiced on account of non-furnishing of the investigation report or non-production of the persons for cross examination as the assessee has not specifically indicated as to how he was prejudiced, coupled with the fact as admitted by the revenue, the statements do not indict the assessee. That apart, the investigation has commenced targeting the individuals who dealt with the penny stocks and after examining the modus seeing the cash trail the report has been submitted recommending the same to be placed before the DGIT (Investigation) of all the States of the country. It is thereafter the concerned Assessing Officers have been informed to consider as to the bona fideness and genuineness of the claims of LTCG/LTCL of the respective assessee qua the findings which emanated during the investigation conducted on the individuals who dealt with the penny stocks. Therefore, the assessments have commenced by the Assessing Officers calling upon the assessee to explain the genuineness of the claim of LTCG/LTCL made by them. In all the assessment orders, substantial portion of the investigation report has been noted in full. A careful reading of the same would show that the assessee has not been named in the report. If such be the case, unless and until the assessee shows and proves that she/he was prejudiced on account of such report/statement mere mentioning that non-furnishing of the report or non-availability of the person for cross examination cannot vitiate the proceedings.*

The assessee have miserably failed to prove the test of prejudice or that the test of fair hearing has not been satisfied in their individual cases. In all the cases, the assessee have been issued notices under sections 143(2) and 142(1) they have been directed to furnish the documents, the assessee have complied with the directions, appeared before the Assessing Officer and in many cases represented by Advocates/Chartered Accountants, elaborate legal submissions have been made both oral and in writing and thereafter the assessments have been completed. Nothing prevented the assessee from mentioning that unless and until the report is furnished and the statements are provided, they would not in a position to take part in the inquiry which is being conducted by the Assessing Officer in scrutiny assessment under section 143(3). The assessee were conscious of the fact that they have not been named in the report, therefore made a vague and bold statement that the non-furnishing of report would vitiate the proceedings. Therefore, merely by mentioning that statements have not been furnished can in no manner advance the case of the assessee. If the report was available in the public domain as has been downloaded and produced by the revenue, nothing prevented the assessee who are ably defended by the Chartered Accountants and Advocates to download such reports and examine the same and thereafter put up their defence. Therefore, the based on such general statements of violation of principles of natural justice the assessee have not made out any case. [Para 65]

- To prove the allegations, against the assessee, can be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled and when direct evidence is not available, it is the duty of the Court to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded so as to reach a reasonable conclusion and the test would be what inferential process that a reasonable/prudent man would apply to arrive at a conclusion. Further proximity and time and prior meeting of minds is also a very important factor especially when the income tax department has been able to point out that there has been a unnatural rise in the price of the scrips of very little known companies. Furthermore, in all the cases, there were minimum of two brokers who have been involved in the transaction. It would be very difficult to gather direct proof of the meeting of minds of those brokers or sub-brokers or middlemen or entry operators and therefore, the test to be applied is the test of preponderance of probabilities to ascertain as to whether there has been violation of the provisions of the Income-tax Act. In such a circumstance, the conclusion has to be gathered from various circumstances like the volume from trade, period of persistence in trading in the particular scrips, particulars of buy and sell orders and the volume thereof and proximity of time between the two*

which are relevant factors. Therefore, the methodology adopted by the revenue cannot be faulted. [Para 69]

- A holistic approach is required to be made and the test of preponderance of probabilities have to be applied and while doing so, the court cannot lose sight of the fact that the shares of very little known companies with insignificant business had a steep rise in the share prices within the period of little over a year. The revenue was not privy to such peculiar trading activities as they appear to have been done through the various stock exchanges and it is only when the assessee made claim for a LTCG/STCL, the investigation commenced. As pointed out the investigation did not commence from the assessee but had commenced from the companies and the persons who were involved in the trading of the shares of these companies which are all classified as penny stocks companies. Therefore, the argument of the assessee that the copy of the investigation report has not been furnished, the persons from whom statements have been recorded have not been produced for cross examination are all contention which has to necessarily fail. To reiterate, the assessee was not named in the report and when the assessee makes the claim for exemption the onus of proof is on the assessee to prove the genuinity. Unfortunately, the assessee has been harping upon the transactions done by them and by relying upon the documents in their hands to contend that the transactions done were genuine. Unfortunately, the test of genuinity needs to be established otherwise, the assessee is lawfully bound to prove the huge LTCG claims to be genuine. In other words if there is information and data available of unreasonable rise in the price of the shares of these penny stock companies over a short period of time of little more than one year, the genuinity of such steep rise in the prices of shares needs to be established and the onus is on the assessee to do so as mandated in section 68. Thus, the assessee cannot be permitted to contend that the assessments were based on surmises and conjectures or presumptions or assumptions. The assessee does not and cannot dispute the fact that the shares of the companies which they have dealt with were insignificant in value prior to their trading. If such is the situation, it is the assessee who has to establish that the price rise was genuine and consequently they are entitled to claim LTCG on their transaction. Until and unless the initial burden cast upon the assessee is discharged, the onus does not shift to the revenue to prove otherwise. It is incorrect to argue that the assessee has been called upon to prove the negative in fact, it is the assessee's duty to establish that the rise of the price of shares within a short period of time was a genuine move that those penny stocks companies had credit worthiness and coupled with genuinity and identity. The assessee cannot be heard to say that their claim has to be examined only based upon the documents produced by them namely bank details, the purchase/sell documents, the details of the D-Mat Account etc. The assessee has lost sight of an important fact that when a

claim is made for LTCG or STCL, the onus is on the assessee to prove that credit worthiness of the companies whose shares the assessee has dealt with, the genuineness of the price rise which is undoubtedly alarming that to within a short span of time. [Para 73]

- While it may be true that assesseees could have been regular investors, investors could or could not have been privy to the information or modus adopted. What is important is that it is the assessee who has to prove the claim to be genuine in terms of section 68. Therefore, the assessee cannot escape from the burden cast upon him and unfortunately in these cases the burden is heavy as the facts establish that the shares which were traded by the assesseees had phenomenal and fanciful rise in price in a short span of time and more importantly after a period of 17 to 22 months, thereafter has been a steep fall which has led to huge claims of STCL. Therefore, unless and until the assessee discharges such burden of proof, the addition made by the Assessing Officer cannot be faulted. [Para 75]*

18.1 It may be relevant to refer to the order of the coordinate Bench of Kolkata ITAT in the case of Sujata Agarwal vs. ITO in ITA No. 1682/Kol/2019 dated 17.10.2022 dealing with the similar type of issue regarding long term capital gain from dealing in the penny stock company namely M/s. Kailash Auto Finance Ltd., dismissed the assessee's appeal following the judgment of Hon'ble Calcutta High Court in the case of **Swati Bajaj & Others (2022) 139 taxmann.com 352 (Cal.)**. The relevant finding of this decision is reproduced below:

“6. We find that there are large number of assesseees, who have transacted with equity shares of Kailash Auto Finance Limited and claimed exemption under section 10(38) of the Income Tax Act. Apart from this scrip, there are other scrips also in Kolkata, who were found to be penny stock and transactions on papers only. The Hon'ble Calcutta High Court has recently considered this aspect in its judgment in the case of Swati Bajaj & Others (2022) 139 taxmann.com 352(Cal.). One of the scrips dealt with by the Hon'ble High Court relates to Kailash Auto Finance Limited. In a number of appeals, we have also rejected the claim of the assesseees, namely ITA Nos. 2552/KOL/2018, 1122/KOL/2018, 2093/KOL/2019, 2104/KOL/2018, 868/KOL/2019, 341/KOL/2018, 1673/KOL/2019. In ITA No. 2093/KOL/2019, the assessee transacted the shares of M/s. Kailash Auto

Finance Limited. All these transactions have been held as bogus. Therefore, relying upon the decision of the Hon'ble Calcutta High Court coupled with various orders of the ITAT, we are of the view that Revenue Authorities have rightly rejected the claim of the assessee and made the additions. We do not find any merit in this appeal. It is dismissed.”

18.2 Another order which merits attention is of **Principal Commissioner of Income-tax v. Nand Kishore Agarwala [2022] 143 taxmann.com 402 (Calcutta)** which is reproduced as under:

“1. This appeal filed by the revenue under section 260A of the Income-tax Act, 1961 (the Act, for brevity) is directed against the order dated 28th June, 2019 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata in ITA No. 1983/Kol/2018 for the assessment year 2014-15.

2. The revenue has raised the following substantial questions of law for consideration:

Whether the Learned Tribunal has committed substantial error in law by not admitting that unexplained Long Term Capital Gains (LTCG) comes under the purview of unexplained cash - credits under section 68 of the Income-tax Act, 1961 involving proceeding under section 143(3) of the Income-tax Act, 1961 and suspicious transaction in shares cannot be exempted under section 10(38) of the Act?

Whether the Learned Tribunal has committed substantial error in law in deleting the addition of undisclosed income ignoring the larger scam of organized tax evasion by way of bogus capital gain generated in penny stock?

Whether the Learned Tribunal has committed substantial error in law in taken only one lead case and decided to quash the addition of other cases without going into any specific details of the facts report of the Investigating Wing, SEBI of the remaining cases which amounts to severe perversity?

Whether the Learned Tribunal has committed substantial error in law by not holding that the Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the Assessing Officer, failure of which would justify addition of the said amount to the income of the Assessee?

Whether the Learned Tribunal has committed substantial error in law in deleting the disallowances of Long Term Capital Gain of Rs. 12,47,758/- overlooking that the entire transactions were stage managed with the

object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gain of Rs. 12,47,758/- and claim bogus exemption?"

3. *We have heard Mr. Soumen Bhattacharya, learned standing counsel appearing for the appellant/revenue. Though the respondent has been served and affidavit of service has been filed, none appears on behalf of the respondent.*

4. *The questions of law raised by the revenue in this appeal were considered in the case of Pr. CIT v. Swati Bajaj [2022] 139 taxmann.com 352/446 ITR 56 (Cal)/2022 SCC Online Cal 1572 wherein the appeals filed by the revenue were allowed. The present appeal filed by the assessee is for the assessment year 2014-15 and there was no other connected appeal of the very same assessee in ITA/1983/Kol/2018 which was subject matter of the batch of cases in Swati Bajaj (supra), and the appeal filed by the revenue as against ITA/1983/Kol/2018 has been allowed. Therefore, the decision in the case of Principal Commissioner of Income Tax-5, Kolkata (supra) is squarely applied to the facts of the instant case as well.*

Accordingly, the appeal is allowed and the substantial questions of law are answered in favour of the revenue."

18.3 Further, in the case of **Sanjay Kaul v. Principal Commissioner of Income Tax, Delhi-8, New Delhi [2020] 119 taxmann.com 470 (Delhi)** and **Sanjay Bimalchand Jain v. Principal Commissioner of Income-tax-1, Nagpur [2018] 89 taxmann.com 196 (Bombay)** also, additions on such pre-arranged and fictitious transactions of penny stocks have been confirmed. In **Suman Poddar v. Income Tax Officer [2019] 112 taxmann.com 330 (SC)**, the SLP filed by the assessee against the order of the Hon'ble High Court confirming such additions has also been dismissed.

19. Since the Ld. AO has elaborately discussed all the facts of the case and the Ld. CIT(A) has also passed a speaking order, there does not appear to be any reason to interfere with the findings of the Ld. CIT(A) in the absence of any submissions or further evidence filed by the assessee to rebut such findings, the judicial pronouncements in this



regard and the facts of the case that such pre-arranged transactions in penny stock were not substantiated either before the Ld. AO or before the Ld. CIT(A). Hence, there does not appear to be any merit in the appeal of the assessee and the order of the Ld. CIT(A) is hereby confirmed and the appeal of the assessee is dismissed.

20. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 30th May, 2025.

Sd/-

[George Mathan]

Judicial Member

Dated: 30.05.2025

Bidhan (P.S.)

Sd/-

[Rakesh Mishra]

Accountant Member



Copy of the order forwarded to:

1. **Navansh Vinimay Pvt. Ltd., 45/D, 3rd Floor, S.N. Roy Road, Behala, Kolkata, West Bengal, 700038.**
2. **I.T.O., Ward-8(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata