

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM**

**श्री वीरवल्ली दुर्गा राव, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI VEERAVALLI DURGA RAO, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T (SS).A.No.10/VIZ/2025
(निर्धारण वर्ष/ Assessment Year: 2006-07)**

DCIT – Central Circle -1 5 th Floor, Direct Taxes Building MVP Colony, Visakhapatnam – 530017 Andhra Pradesh	v.	Ashok Kumar Agrawal Flat No. 301 & 302, Pine Wood Jasti Square, PR Puram Visakhapatnam – 530003 Andhra Pradesh [PAN: ADUPA4367R]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

**आयकर अपीलसं./I.T.A.No.136/VIZ/2025
(निर्धारणवर्ष/ Assessment Year: 2006-07)**

Ashok Kumar Agrawal C/o. M.V. Prasad, CA D.No. 60-7-13, Ground Floor Siddhartha Nagar, 4 th Lane Vijayawada – 520010 Andhra Pradesh [PAN: ADUPA4367R]	v.	DCIT – Central Circle -1 5 th Floor, Direct Taxes Building MVP Colony Visakhapatnam – 530017 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

आयकर अपीलसं./I.T.A.No.150/VIZ/2025
(निर्धारणवर्ष/ Assessment Year: 2006-07)

Santosh Agrawal L/R of Ram Charan Agrawal C/o. M.V. Prasad, CA D.No. 60-7-13, Ground Floor Siddhartha Nagar, 4 th Lane Vijayawada – 520010 Andhra Pradesh [PAN: ADUPA4365P]	v.	DCIT – Central Circle -1 5 th Floor, Direct Taxes Building MVP Colony Visakhapatnam – 530017 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri MV Prasad, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	04.06.2025
घोषणा की तारीख/Date of Pronouncement	:	13.06.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by the revenue and assessee against different orders of Learned Commissioner of Income Tax (Appeals), Visakhapatnam – 3 [hereinafter in short “Ld.CIT(A)”] vide respective DIN & Order No. as stated below: -

ITA No. & A.Y.	DIN & Order No.	Dated
IT(SS)A No. 10/VIZ/2025 (A.Y. 2006-07)	ITBA/APL/S/250/2024-25/1072796023(1)	31.01.2025
ITA No. 136/VIZ/2025 (A.Y. 2006-07)		
ITA No. 150/VIZ/2025 (A.Y. 2006-07)	ITBA/APL/S/250/2024-25/1073521878(1)	20.02.2025

2. Since the appeals are belonging to same family group, all these appeals are clubbed and heard together and a consolidated order being passed.

3. We now take up the appeals relating to Ashok Kumar Agrawal in IT(SS) A No. 10/VIZ/2025 & ITA No. 136/VIZ/2025 for the A.Y.2006-07. These Cross appeals are filed by the revenue and assessee respectively, against order of the Ld. CIT(A) vide DIN & Order No. ITBA/APL/S/250/2024-25/1072796023(1) dated 31.01.2025 for the A.Y. 2006-07.

IT(SS)A No. 10/VIZ/2025 (A.Y. 2006-07) – REVENUE APPEAL

4. Briefly stated the facts of the case are, assessee being an individual deriving income from salary, capital gains and other sources, filed return of income for the A.Y. 2006-07 admitting a total income of Rs. 3,68,980/-. The return was summarily processed under section 143(1) of the Income Tax Act, 1961 [hereinafter in short “the Act”]. Assessee is the Chairman-cum-Managing Director of M/s. Maa Mahamaya Industries Limited.

5. M/s. Maa Mahamaya Industries Limited is a company engaged in the business of manufacturing of Steel and TMT Bars, filed its return of income for the AY 2012-13 on 30/09/2012 declaring a total income of Rs.3,59,80,030/- under MAT provisions. The return of income was summarily processed U/s. 143(1) of the Act. A search and seizure operation

was conducted in the Maa Mahamaya Group on 19/08/2011 in the business premises of M/s. Maa Mahamaya Industries Limited (“MMIL”) located at Industrial Ward, Dhamtart, Chhattisgarh. Notice U/s. 153A of the Act was issued on 05.06.2012 by the Central Circle -1, Visakhapatnam as the case of the assessee was centralized vide order F.NO.CIT/RPR/Tech./127/2011-12 dated 02.04.2012 passed by the CIT, Raipur, u/s. 127 of the Act. Subsequently, notice U/s. 143(2) of the Act was served on the assessee on 27/09/2013. The assessee group filed Writ Petition in High Court of Chhattisgarh for stay of assessment proceedings which was not granted by the Hon’ble High Court. The assessee has also filed Special Leave Petition (“SLP”) before the Hon’ble Supreme Court which was dismissed. Thereafter, the assessee filed an application U/s. 245C(1) of the Act before the Income Tax Settlement Commission, Chennai which was rejected by the Income Tax Settlement Commission U/s. 245D(2C) of the Act vide order dated 21/07/2016. The assessee subsequently filed Writ Petition before the Hon’ble High Court of Andhra Pradesh and Telangana against the order of the Income Tax Settlement Commission. The Hon’ble High Court of Andhra Pradesh and Telangana dismissed the Writ Petitions. Subsequently, the assessee filed an SLP before the Hon’ble Supreme Court which was also dismissed.

6. During the search and seizure operations conducted in M/s. Maa Mahamaya Industries Limited Group on 19.08.2011 it was noticed that, assessee (Shri Ashok Kumar Agrawal) and other family members traded in stocks and claimed huge exemption under section 10(38) of the Act for the A.Y. 2006-07. On further verification of the stocks traded by the assessee the Ld. AO found and suspected that assessee traded in penny stock as detailed below: -

S.No.	Name of Share Scrip	Exchange in which traded
1.	Sudama Trading and Investment Ltd.	Calcutta Stock Exchange
2.	Subh Laxmi projects Ltd., / Concrete Credit Ltd	Calcutta Stock Exchange
3.	Blue Print Securities Ltd.,	Calcutta Stock Exchange
4.	Pincon Spirit Ltd. / Sarang Viniyog Ltd.,	Calcutta Stock Exchange
5.	Shivom Investment Consultancy Ltd.	Calcutta Stock Exchange
6.	G.K. Consultants	Calcutta Stock Exchange
7.	M.P. Investment and Consultancy Services Ltd.,	Calcutta Stock Exchange
8.	BhramanandHimghar Ltd.,	Calcutta Stock Exchange
9.	Emerald Commercial Ltd.,	Calcutta Stock Exchange

7. Ld. AO on verification from the website of Security Exchange of Board of India (in short “SEBI”) found that all the shares traded by the assessee were found to be suspicious and the brokers were penalized after due verification and investigation by SEBI. Ld. AO noticed the price of the stocks are artificially increased exponentially. Ld. AO after examining the SEBI reports which has levied penalty on the brokers involved in the trading observed that these were nothing but accommodation entries. He also

referred to the statements recorded on oath by various stock brokers and concluded that assessee has declared bogus long term capital gains and has claimed exemption for the same during the impugned assessment year. Further, Ld. AO also observed that the shares held in DP Account for less than a period of one year and hence exemption claimed under section 10(38) of the Act is not valid in law. Ld. AO also observed that the Contract Notes were manipulated by the assessee. Ld. AO thus concluded that the assessee traded in connivance with the brokers and therefore issued a common show-cause notice for all the family members on 06.01.2012. Ld. AO observed that assessee failed to discharge the onus of proving the creditworthiness, identity and genuineness of the transactions and therefore added a sum of Rs. 8,51,91,388/- as unexplained cash credit under section 68 of the Act.

8. Further, it was also observed by the Ld. AO that the assessee and its family members had invested in M/s. Maa Mahamaya Industries Limited and M/s. GVA Industries Pvt. Ltd. Ld. AO found that initially huge share capital was invested by several companies based at Kolkata and Delhi. The shares were allotted to these companies at a premium of Rs. 90 Per share. Ld. AO found that despite of heavy investments made by Kolkata and Delhi based companies, they have not appointed any Directors from their side on the

Board of Directors of either M/s. Maa Mahamaya Industries Limited and M/s.GVA Industries Pvt. Ltd. It was also noticed by the Ld. AO that these companies have transferred their entire equity shares in M/s. Maa Mahamaya Industries Limited and M/s. GVA Industries Pvt. Ltd., in a short span of time to the assessee and family members @Rs.10 per share without any premium. Considering the various evidences as detailed in the order of the Ld. AO, Ld.AO proceeded to add a sum of Rs. 17,50,00,000/- in the hands of the assessee.

9. Further, it was also noticed by Ld. AO that assessee has made investments in the name of Shri Anunay Agrawal S/o Shri Ashok Kumar Agrawal who is a minor. Considering the similarity of the transactions, Ld.AO also added back a sum of Rs. 4,70,00,000/- introduced by Shri Anunay Agrawal in the company, in the hands of the assessee.

10. On being aggrieved by the order of the Ld. AO, assessee challenged the additions made by the Ld. AO before Ld. CIT(A). Ld. CIT(A) considering the various submissions made during the First Appellate Proceedings, confirmed the addition of bogus long term capital gain amount to Rs.8,51,91,388/- claimed by the assessee under section 10(38) of the Act. Further, Ld. CIT(A) after considering the submissions made by the assessee observed that the addition under section 68 of the Act is not relevant for the

present set of facts. He therefore found that the assessee total investment is Rs. 1.75 Crores towards the purchase of shares and out of which Rs. 87.50 lakhs were invested in the A.Y. 2006-07 the balance Rs. 87.50 lakhs were invested in A.Y. 2010-11. Ld.CIT(A) found that the assessee has not furnished the source of funds for investment in the share purchase for Rs. 87.50 lakhs and confirmed addition of Rs. 87.50 lakhs under section 69 of the Act, thereby giving relief of Rs.16,62,50,000/-. Similar view was taken in the case of Shri Anunay Agrawal, Ld. CIT(A) observed that a sum of Rs. 47 lakhs was invested during the A.Y.2010-11 and not during the A.Y. 2006-07 and thereby deleted the addition of Rs.4,70,00,000/- made by the Ld. AO.

11. On being aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising 36 grounds. Most of the grounds are argumentative in nature and the following issues emanate from the grounds raised by the revenue: -

- i. Deletion of addition of Rs.16,62,50,000/- by Ld. CIT(A).
- ii. Deletion of addition of Rs.4,70,00,000/- by Ld. CIT(A).

12. On this issue, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that assessee has invested in M/s. Maa Mahamaya Industries Limited and M/s. GVA Industries Pvt. Ltd., through Kolkata and

Delhi based companies who initially invested at a huge premium of Rs. 90 Per share. He further submitted that later on these shares were transferred to the family members of the assessee at the face value of @Rs.10 per share. He vehemently argued that the assessee has indulged in getting accommodation entries from the Kolkata and Delhi based companies through purchase of shares by those companies. He also submitted that according to sworn statement recorded from Shri Amit Kumar Lahoti under section 132(4) of the Act who has categorically admitted the fact that the shares are acquired by shell companies of Kolkata were nothing but accommodation entries provided for a consideration given by the assessee. He also conceded that he has received a facilitation charge of Rs.5 lakhs. Ld. DR relied on the decision of the Hon'ble Supreme Court in the case of B. Kishore Kumar v. DCIT [(2015) 62 Taxmann.com 215] and argued that sworn statement shall also constitute incriminating material. Ld. DR also relied on the decision of the Hon'ble Supreme Court in the case of Bannalal Jat Constructions P. Ltd., v. ACIT [(2019) 106 Taxmann.com 128 (SC)]. Ld. DR also submitted that the Ld.CIT(A) erred in appreciating the procedural defects in issue of shares at shell companies based at Kolkata and Delhi wherein the original share certificates in the name of shell companies were found and seized at the time of search operations. Ld. DR vehemently submitted that these transactions are stage managed with the object to facilitate the assessee to plough back his

unaccounted income. It was also supported by the seized material in Annexure MMIL/A/46. Ld. DR also relied on the provisions of section 132(4A) of the Act which read as “if any document is found in the possession or control of any person in the course of search it may be presumed that such document belongs to searched person”. Ld. DR further submitted that as per Section 21 of the Indian Evidence Act, 1872, the statements recorded during the search proceedings has an evidentiary value. Ld. CIT(A) erred to appreciate the fact that the admissions are relevant considering the statements recorded at the time of search proceedings. He further reiterated that assessee has invested through shell companies based at Kolkata and Delhi by availing accommodation entries which is nothing but a money laundering activity punishable under the Prevention of Money Laundering Act. On this issue he relied on the decision of the Hon’ble Bombay High Court in the case of PCIT v. Buniyad Chemicals Ltd., in Income Tax Appeal No. 1796/2018 dated 17.03.2025.

13. Ld. DR also submitted that if the search action under section 132 of the Act not conducted the fact of availing accommodation entries would not have come to light. He also stated that the assessee has failed to fulfil the onus cast upon him to prove the genuineness of the transaction and creditworthiness and identity of the investors to the satisfaction of the Ld. AO as held by the Hon’ble

Supreme Court in the case of PCIT v. NRA Iron & Steel Pvt., Ltd., (Civil Appeal No. 29855 of 2018). Further he also relied on the following decisions: -

- i. NDR Promoters P. Ltd. v. PCIT [(2019) 103 taxmann.com 48 (SC)].
- ii. JJ Development P. Ltd. v. CIT [(2018) 100 taxmann.com 102 (SC)].
- iii. McDowell and Co. Ltd. v. Commercial Tax office [154 ITR 148 (SC)].

14. Ld. DR also relied on the decision of Hon'ble Supreme Court in the case of SEBI v. Kishore R. Ajmera [(2016) 66 taxmann.com 288]. Further, Ld. DR placed heavy reliance on the decision of the Hon'ble Supreme Court in the case of Sumati Dayal v. CIT [(1995)214 ITR 801 (SC)] and CIT v. Durga prasad More [(1971) 82 ITR 540 (SC)]. He therefore submitted that the Ld. CIT(A) without considering the nature of sham transactions entered into by the assessee has granted relief to the assessee and hence the deletion of addition cannot be justified.

15. On the other hand, Ld. Authorised Representative [hereinafter "Ld.AR"] submitted that Ld. AO has not brought any material on record to show that the assessee has given cash to the Kolkata and Delhi based companies facilitating them to make investment in the M/s. Maa Mahamaya Industries Limited and M/s.GVA Industries Pvt. Ltd. He further vehemently argued that even during the search and seizure operation no material was found or seized indicating the payment of cash by the assessee to the Kolkata and Delhi based companies. He further submitted that if the investment made by the Kolkata and Delhi based

companies are considered as sham, additions cannot be made in the hands of the assessee for the investment made by the Kolkata and Delhi based companies. He further submitted that the assessee has purchased the shares by transferring funds through bank account which was not disputed by the Ld. AO. He therefore submitted that assessee is not aware of the amount paid as premium by the Kolkata and Delhi based companies whereas the assessee is aware of the investments made by him by acquiring the shares held by Kolkata and Delhi based companies in M/s. Maa Mahamaya Industries Limited and M/s. GVA Industries Pvt. Ltd. He therefore pleaded that the additions made by the Ld.CIT(A) that the sources were not furnished by the assessee is not justifiable, since the payments have been made through bank accounts which are produced before the revenue authorities for verification.

16. Similarly, Ld.AR also submitted that no incriminating material was seized with respect to the investment made by Shri Anunay Agrawal during the A.Y. 2016-17. He further submitted that Shri Anunay Agrawal acquired the shares on payment of Rs. 47 lakhs during the A.Y.2010-11 and hence the additions made by the Ld. AO is not justifiable.

17. We have heard both the sides and perused the material available on record including the written submissions of the assessee. It is the case of the Ld. AO that the assessee has invested in M/s. Maa Mahamaya Industries

Limited and M/s. GVA Industries Pvt. Ltd., through shell companies by availing accommodation entries through Kolkata and Delhi based companies. The main grievance of the Ld. AO is that the assessee has paid an amount of Rs.17.50 Crores by way of cash to the shell companies situated in Kolkata and Delhi which were later on invested by these companies by acquiring shares in M/s. Maa Mahamaya Industries Limited and M/s. GVA Industries Pvt. Ltd., at a huge premium. Further, the contention of the Ld. AO is that the shares were allotted to the Kolkata and Delhi based shell companies at a premium of Rs. 90 Per share. However, the shares were immediately acquired by the assessee and his family members during the period of A.Y. 2006-07 and A.Y.2010-11 by paying the face value of Rs.10 per share. The contention of the Ld. AO is that the assessee has paid cash of Rs. 17.50 Crores and Rs. 4.70 Crores to these shell companies who has provided accommodation entries by taking the facilitation fees. However, from the detailed order of the Ld. AO, we find that the Ld. AO has relied on the sworn statement recorded during the search and seizure operations but has not corroborated with any evidences to prove that the assessee paid cash in order to avail accommodation entries for a facilitative fee. Further it also remains undisputed that the assessee has paid an amount of Rs. 87.50 lakhs to the Kolkata and Delhi based companies for acquiring the shares held by them in M/s. Maa Mahamaya Industries Limited and M/s. GVA Industries Pvt. Ltd. Ld. AO based on the

assumptions concluded that the assessee ought to have paid Rs.17.50 Crores and Rs.4.70 Crores to the shell companies and therefore proceeded to make addition in the hands of the assessee.

18. Further, we also find merit in the argument of the Ld.AR that if the investment is made by the shell companies wherein the sources have not been proved to the satisfaction of the Ld. AO, additions ought to have been made in the hands of the shell companies and not in the hands of the assessee who have subsequently purchased the investments held by the shell companies in M/s. Maa Mahamaya Industries Limited and M/s. GVA Industries Pvt. Ltd. The genuineness of the investment in share capital by the investor companies has not been disputed by the revenue. The only contention of the Ld. AO is that it is a sham transaction wherein the assessee has routed his unaccounted money through the shell companies in the form of share capital in M/s. Maa Mahamaya Industries Limited and M/s. GVA Industries Pvt. Ltd. However, the revenue has not seized any incriminating material nor placed any material on record indicating the involvement of the assessee in the cash payments made to the shell companies. Ld. AO has made additions based on assumptions and surmises. Various judicial pronouncements have held that in the case of search seizure no additions can be made based on assumptions and surmises without any incriminating documents seized during the search operations and

corroborating it with other evidences. In the instant case, the Ld. AO has not brought any material on record corroborating the investments made by the assessee. The various decisions relied on by the Ld.DR being distinguishable on facts cannot be applied to the instant case. In these circumstances, we find that the addition confirmed by the Ld. CIT(A) to the extent of Rs.87.50 lakhs shall be deleted as source for the payments were not disputed by the revenue authorities as evidenced by the orders of the Ld. AO and Ld. CIT(A).

19. Further, in the case of minor Shri Anunay Agrawal, it has been proven beyond doubt that the investments were made in the A.Y. 2010-11 whereas the addition made by the Ld. AO during the A.Y. 2006-07. Ld. CIT(A) thus considered the fact that Shri Anunay Agrawal has not made any investment during the A.Y. 2006-07 and the revenue has not proved beyond doubt the transfer of cash to the shell companies by Shri Anunay Agrawal during the A.Y.2006-07 has rightly deleted the addition made by the Ld. AO amounting to Rs.4,70,00,000/- which does not need any interference. Accordingly, grounds raised by the revenue is dismissed.

20. In the result, appeal filed by the revenue is dismissed.

ITA NO. 136/VIZ/2025 (A.Y. 2006-07) – ASSESSEE APPEAL

21. With respect to the cross appeal filed by the assessee in ITA No. 136/VIZ/2025 for the A.Y. 2006-07, assessee has raised following grounds of appeal: -

“1. On the facts and circumstance of the case, the Learned CIT(Appeals) erred in both law and facts while passing the order.

2. On the facts and circumstance of the case, the Learned CIT(Appeals) is not justified in dismissing the ground with regard to the claim that the Assessment Order dated 25.04.2019 for the Asst Year 2006-07 is barred by limitation as per the Provisions of Section 153B of the Act.

3. On the facts and circumstance of the case, Learned CIT(Appeals) is not justified in confirming the addition of Rs.8,51,91,388/- and Rs.87.50 lacs (out of Rs. 17.50 crores) even though there is no incriminating material seized in the premises of the appellant and also the current Asst year is unabated Assessment Year. Accordingly the Assessment is bad in law.

4. On the facts and circumstance of the case, the Learned CIT(Appeals) is not justified legally and factually in confirming the addition with respect to penny stock of Rs.8,51,91,388/- by relying on the material impounded in third party premises.

5. Any other ground or grounds that may be urged at the time of hearing of the appeal.”

22. Ground Nos. 1 & 5 are general in nature and needs no specific adjudication.

23. Ground No.2 was not argued and hence dismissed as not pressed.

24. Ground Nos. 3 & 4 are in relation to addition of Rs. 8,51,91,388/- and Rs.87.50 lakhs by the Ld. CIT(A).

25. With respect to addition of Rs.87.50 Lakhs confirmed by the Ld. CIT(A), our decision in the aforesaid paragraphs while adjudicating the grounds raised by the revenue in IT(SS)A. 10/VIZ/2025, shall be mutatis mutandis applies to this ground also. Accordingly, ground raised by the assessee is allowed.

26. With respect to addition of Rs. 8,51,91,388/-, Ld.AR submitted that Ld.AO on verification of the website of SEBI found that the assessee has traded in penny stock which are found to be suspicious and with the involvement of the brokers. He further submitted that the brokers are penalised after due verification and investigation by SEBI and therefore treated the same as sham and bogus entries and hence made the addition. Ld.AR further argued that Ld.AO has mainly relied upon the information available in the public domain and the addition was not made on the basis of any incriminating material seized from the residential and office premises of the assessee. Ld.AR submitted that assessment for the impugned assessment year being unabated, Ld. AO is not permitted to make additions without any incriminating material. Further he also submitted that nowhere in the investigation by the SEBI, assessee was implicated for acting in connivance with the brokers for rigging of the share prices. He pleaded that the assessee being an innocent investor has gained on the price rise manipulated by various brokers who are later on penalised by

SEBI. In these circumstances, Ld.AR submitted that assessee cannot be penalised without his act of involvement in the rigging of shares.

27. Per contra, Ld. DR submitted that assessee has made investments in various penny stocks and has realised huge gains within the short span of time which is unnatural. He further submitted that these shell companies are investigated by SEBI for manipulating the prices. SEBI in its conclusion has levied penalty on the brokers which proves that the share prices are manipulated benefiting the assessee. He therefore pleaded that the order of the Revenue Authorities be upheld.

28. We have heard both the sides and perused the material available on record including the written submissions of the assessee. It is an undisputed fact that the assessee has traded in shares which was considered as “Penny Stock”. However, the revenue has not brought any material on record to show that the assessee was involved in manipulating of the share prices of these companies. The assessee being an investor has gained in the process of price rigging by various brokers for which assessee has not acted in connivance with the other brokers. The Hon’ble supreme Court while dismissing the SLP in the case of PCIT v. Renu Aggarwal [2023] 153 taxmann.com 579 (SC)/[2023] 294 Taxman 521 (SC) held as follows: -

“Section 69A, read with section 10(38), of the Income-tax Act, 1961 - Unexplained moneys (Share dealings) - High Court by impugned order held that where Assessing Officer disallowed exemption claimed by assessee under section 10(38) and made additions, alleging involvement in penny stock which were being misused for providing bogus accomodation of LTCG, however, there was lack of adverse comments from stock exchange and officials of company involved in these transactions and no material relating to assessee was found in investigation wing report, additions made by Assessing Officer had rightly been deleted - Whether SLP filed by revenue against said impugned order was to be dismissed - Held, yes [Para 2] [In favour of assessee]”

29. In the present case, it is an admitted fact there is no involvement by the assessee in the manipulation of stock prices and also no incriminating material was referred to by the Ld. AO in the assessment order and hence the decision laid down by the Hon’ble Supreme Court in the case of PCIT v. Abhisar Buildwell Pvt. Ltd., (Civil Appeal No. 6580 of 2021 dated 24.04.2023 holds good.

30. Further, whether can sworn statement recorded from the brokers can form the basis for making the addition in the hands of the assessee? Since, no material has been brought to our notice either in the assessment order or in the order of the Ld. CIT(A) to show that the said brokers in their respective statements indicating the assessee involvement in manipulation of stock prices. The undisclosed income of an assessee has to be computed on the basis of the evidences and material found during the search. The statement recorded under section 132(4) of the Act may be used for making additions only to the extent it is relating to the incriminating evidencesmaterial found during the search. There must be nexus between statement recorded and the evidences found

during the search. In the instant case, no such nexus was observed in the order of the Ld. AO. Further there is also no dispute on the fact that the shares of the various companies were purchased by the assessee which were entered into the DMAT account of the assessee and the payments were made through the banking channels. Further while selling the shares the consideration was received through banking channels. The conclusions made by the Ld. AO is not based on any cogent material and was just purely assumptions based on conjecture by the Ld. AO. Ld. AO has placed reliance on the sworn statements of the various brokers without further corroborating with the cogent material and hence it does not justify his conclusion that the transaction is a sham. In these circumstances, we find that the Revenue Authorities is not justified in making the addition by disallowing the long-term capital gains claimed as exemption under section 10(38) of the Act and thereby we allow the ground raised by the assessee.

31. In the result, appeal of the assessee is allowed.

ITA No. 150/VIZ/2025 (A.Y. 2006-07) – (APPEAL RELATING TO SANTOSH AGRAWAL).

32. Assessee has raised following grounds of appeal: -

“1. On the facts and circumstance of the case, the Learned CIT(Appeals) erred in both law and facts while passing the order.

2. *On the facts and circumstance of the case, the Learned CIT(Appeals) is not justified in dismissing the ground with regard to the claim that the Assessment Order dated 25.04.2019 for the Asst Year 2006-07 is barred by limitation as per the Provisions of Section 153B of the Act.*

3. *On the facts and circumstance of the case, Learned CIT(Appeals) is not justified in confirming the addition of Rs. 1,72,75,522/- and Rs.12,33,500/-lacs (out of Rs.1.23 crores) even though there is no incriminating material seized in the premises of the appellant and also the current Asst year is unabated Assessment Year. Accordingly the Assessment is bad in law.*

4. *On the facts and circumstance of the case, the Learned CIT(Appeals) is not justified legally and factually in confirming the addition with respect to penny stock of Rs.1,72,75,522/- by relying on the material impounded in third party premises.*

5. *Any other ground or grounds that may be urged at the time of hearing of the appeal.”*

33. Ground Nos. 1 and 5 are general in nature and needs no adjudication.

34. Ground No. 2 is being withdrawn and hence considered as dismissed as withdrawn.

35. Ground No. 3 & 4 are identical to the Ground Nos. 3 & 4 raised in ITA No. 136/VIZ/2025 and our decision in the aforesaid paragraphs except for the figures, shall mutatis mutandis apply to these grounds also. Thus, grounds raised by the assessee are allowed.

36. In the result, appeal of the assessee is allowed.

37. To sum-up, the appeals are adjudicated as under: -

Sl.No.	ITA No.	Result
1.	I.T.(SS).A. No.10/VIZ/2025	Dismissed
2.	I.T.A.No.136/VIZ/2025	Allowed
3.	I.T.A.No.150/VIZ/2025	Allowed.

Order pronounced in the open court on 13th June,2025.

Sd/-
(वीरवल्लीदुर्गराव)
(VEERAVALLI DURGA RAO)
न्यायिकसदस्य/JUDICIAL MEMBER
Dated:13.06.2025
Giridhar, Sr.PS

Sd/-
(एसबालाकृष्णन)
(S. BALAKRISHNAN)
लेखासदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :-

- निर्धारिती/ The Assessee : (i)Ashok Kumar Agrawal
Flat No. 301 & 302, Pine Wood
Jasti Square, PR Puram Visakhapatnam – 530003
Andhra Pradesh
(ii) Santosh Agrawal
L/R of Ram Charan Agrawal
C/o. M.V. Prasad, CA
D.No. 60-7-13, Ground Floor
Siddhartha Nagar, 4th Lane
Vijayawada – 520010
Andhra Pradesh
- राजस्व/ The Revenue : DCIT – Central Circle -1
5th Floor, Direct Taxes Building
MVP Colony, Visakhapatnam – 530017
Andhra Pradesh
- The Principal Commissioner of Income Tax
- विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
- The Commissioner of Income Tax
- गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam