

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
(HYBRID COURT)**

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. Nos. 346 & 347/Asr/2024
Assessment Years: 2014-15 & 2015-16

Smt. Satyawati Marwaha
(Deceased), Through Legal Heir Sh.
Chander Sheikhar Marwaha, 670,
Model Town, Jalandhar, Punjab
144001

Vs. Asstt. Commissioner of Income Tax,
Jalandhar

[PAN: ADWPM 8131H]

(Appellant)

(Respondent)

Appellant by	:	Sh. Ashray Sarna, C. A.
Respondent by	:	Sh. Charan Dass, Sr. D. R.
Date of Hearing	:	04.08.2025
Date of Pronouncement	:	30.10.2025

ORDER

Per Udayan Dasgupta, J.M.:

Both the appeals are filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana even dated 31.05.2024 passed u/s 250(6) of the Income Tax Act, 1961 which has emanated from the order of the

DCIT, Central Circle, Jalandhar passed u/s 147 r.w.s. 144 of the Act, 1961 dated 29.03.2022.

2. Grounds of appeal taken by the assessee in ITA No. 346/Asr/2024 for A.Y. 2014-15 in Form No. 36 are as under:

- “1. *That the order passed by the Hon'ble CIT(A) dated 31.05.2024 is against the law and facts of the case.*
2. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 144 r.w.s. 147 by recording incorrect facts/reasons and without complying with the mandatory conditions u/s 147 as envisaged under the Income Tax Act, 1961.*
3. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 144 r.w.s 147 of the Income tax Act and without complying with the mandatory conditions u/s 151 as envisaged under the Income Tax Act, 1961 and also the approval granted is without DIN.*
4. (a) *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO, in making an addition of Rs.2,11,81,016/-, on account of long term capital gain treated as income from undisclosed sources, without considering the facts of the case and without observing the principles of natural justice and without following the decision of jurisdictional high court.*

(b) *That having regard to the facts and circumstances of the case. Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO, in making an addition*

on account of alleged bogus long term capital gain without considering the fact that assessee was a regular investor and has not invested in only one share.

5. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making an addition of Rs.15,40,998/- u/s 68 of the Act on account of credits in bank account considering as alleged unexplained money, without considering the facts of the case and without observing the principles of natural justice.*
6. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making an addition of Rs.15,40,998/- u/s 68 of the Act without considering the facets of Section 68 of the Act and without considering the facts that no books of accounts have been maintained by the assessee.*
7. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

3. The facts of the case as emerging from records are that the assessee filed her return for the year 2014-15 on 31.03.2015 , declaring a total *income of Rs.80,270/-*, (which included income from house property at Rs.75,600/-, short term capital loss at (Rs.30,618/-), income from bank interest at Rs.17,667/- and LTCG (*long term capital gains*) amounting to *Rs.2,02, 30,196/-* which has been claimed as exempt u/s 10(38) of the Act) .

4. After a search operation u/s 132 of the Act 1961 carried out on 29th Oct., 2020 at the residential premises of *Marwaha family (IJM Group)*, proceedings in the instant

case, has been initiated (*on the basis of information uploaded by the Investigation Wing, Jalandhar , on insight portal*), vide issue of notice u/s 148 dated 30/03/2021 , on the *legal heir Mr C.S Marwaha (son of the deceased assessee , because the assessee has unfortunately expired by then)* , and in response to which the return of income has been filed by the legal heir on 23.04.2021 (*which however was treated as invalid in absence of proper verification*).

5. As per information supplied by the investigation wing it has been alleged that the stock sold by the assessee during the FY 2013-14 and FY 2014-15, relating to a script *M/s. Dhanleela Investment & Trading Co. Ltd*, was alleged to be a penny stock, being used for giving accommodation entries in the form of long-term capital gains. During the year under appeal, the assessee has *sold 103400 shares* of the said company for a total consideration of *Rs.2,11,81,016/- (@ Rs.204.80 per share)*, on which long term capital gains was disclosed in the original return filed on *31st March, 2015* amounting to *Rs.2,02,30,196/-* which was claimed exempted *u/s 10(38) of the Act*.

6. It is revealed from the record that the shares of the said company were purchased by the assessee during the financial year 2012-13 @ *Rs.7.30 per share* , payments of which has been made through bank channel from *Capital Small Finance Bank Ltd, (A/c No xxxxx03904) on 26th October, 2012* amounting to *Rs.18,00,000/-*, as evident from the bank statement (*total 246516 shares @ Rs. 7.30*). The said stock has been

sold partly (*103400 shares*) in the financial year 2013-14 (*December 2013* , *relevant to assessment year 2014-15*) and balance (*143116 shares*) in financial year 2014-15 (*relevant to the assessment year 2015-16*) through her broker *Max Growth Capital Pvt. Ltd.* at an average rate of *Rs.204.85%* and as observed from the said statement supplied by the broker, STT has been paid along with stamp duty and demat charges at appropriate rates and sale proceeds has been received through bank channel duly credited in bank statement.

7. As recorded by the AO in the assessment order , it has been alleged that the LTCG claimed exempted *u/s 10(38) of the Act 61*, on the sale of shares of *M/s Dhanleela Investment and trading company Ltd* are bogus which has allegedly arisen out of *a racket of accommodation entries in a controlled atmosphere* and the assessee is one of the beneficiary who has traded in operator guided penny stock in order to accumulate her unaccounted money as exempt income and the assessment has been completed by making an addition of *Rs.2.11 crores* being the sale proceeds of the shares, received in bank during the year, as unexplained money *u/s 69A of the Act 61*, apart from other additions of *Rs. 15.40 lakhs* on account of unexplained credit entries in bank.

8. The matter carried in appeal has been dismissed by the Id. first appellate authority by observing as follows:

(relevant portion reproduced)

“5.3.3 I have considered the reasoning given by the AO in assessment order, submissions & documents submitted by the appellant, facts of the case and legal position.

Modus operandi of bogus LTCG

It shall be important to analyze the LTCG claimed by the assessee as exempt in his return of income. The LTCG has been claimed on sale of shares of **M/s. Dhanleela Investment & Trading Co. Ltd.** The Assessing Officer in the assessment order has given in detail the modus operandi used for generation of Long-term capital gains. The Assessing Officer has discussed in detail the operator of penny stock, the functioning of exit providers and the nature of penny stock companies. The AO has held that initially when the prices of the share are low, the beneficiaries of bogus -LTCG purchase the shares. Thereafter, circular trading is done and the prices of the shares are increased. Once the prices increase unrealistically, the shares held by the beneficiaries of bogus LTCG are sold to either paper entities or beneficiaries of bogus Short-Term Capital Loss. Thereafter, circular trading is done and the prices of the shares are decreased and afterwards, the shares bought by the beneficiaries of Short-Term Capital Loss are sold at low price. In the case of the assessee, it is further revealed from the assessment order that:

- a. The prices of the shares of M/s. Dhanleela Investment & Trading Co. Ltd. increased unrealistically without any corresponding movement in the normal share market.
- b. The shares were purchased by the assessee at very low price.
- c. The statement of entry operators confirms the use of the scrip M/s Dhanleela Investment & Trading Co. Ltd. for purposes of providing entries of LTCG
- d. The exit provider in the case of the assessee also had poor credentials.
- e. The financials of M/s. Dhanleela Investment & Trading Co. Ltd are poor to support the astronomical rise in the value of shares.

Order of SEBI

It is also pertinent to mention here that pursuant to the irregularities detected in the share of M/s Dhanleela Investment & Trading Co. Ltd, Securities and Exchange Board of India (SEBI) had suspended the sale/purchase of shares from the stock exchange due to violation of SEBI & Exchange Regulations and non-payment of annual listing fee. Therefore, even as per SEBI action, the scrip M/s Dhanleela Investment & Trading Co. Ltd is a penny stock and non-genuine stock in nature

Analysis

The submissions of the appellant have to be seen critically in the light of the test of human probability. It is duly brought on record by above discussion that M/s Dhanleela Investment & Trading Co. Ltd. is also a penny stock and has weak financial position, suspicious pattern of rigging of share prices and stands debarred/suspended from share market as per the order of the SEBI. Further, there is no evidential change in performance of the company which would substantiate the price rise of the scrip. 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 purchasers of these scrips do not have creditworthiness. No prudent investor and particularly trader or investor in stock will invest in such company.

*The gains made by the appellant are altogether beyond human probabilities. The meticulous paper work of routing the transactions through banking channel is futile because the profits shown are beyond human probabilities. It is just a sham transaction to convert undisclosed income into disclosed income by evading tax under garb of LTCG in connivance with Entry providers. Reliance is placed on the judgment of **Ld. ITAT Delhi in Sanat Kumar vs. ITO dated 14.08.2019 for AY 2014-15 in ITA No. 1881/Del/2018.***

The jump in the share price of the companies of unknown credentials cannot be an accident or wind fall but is possible because of manipulations in pre-planned manner by interested broker and entry operators. As per section 101 of the Evidence Act 1872, the onus is on the appellant to prove that the LTCG is genuine. However, the appellant has not been able to discharge the onus cast on it. The findings of the AO are based on strong surrounding circumstances, preponderance of probability and human conduct in light of analysis of modus

operandi of broker and operators beneficiaries which has come to surface as a providing LTCG entries to interested result of investigations done by Investigation Wing of Department. A genuine transaction must be proved as genuine in all respects which the appellant failed to prove.

The appellant has submitted that she is regularly doing share transaction and have invested/traded in other scrips as well. This submission is not acceptable as a person can enter into certain genuine as well as certain non-genuine transactions. Considering the facts and circumstances of the case, I find that the appellant has indulged in dubious share transactions meant to account for the undisclosed income in the garb of Long-Term Capital Gain. The action of AO in making additions u/s 69A of the Act and disallowing the claim of LTCG being exempt u/s 10(38) is fully justified. In view thereof, addition of Rs. 2,11,81,016/- made by the AO is upheld

Accordingly, these grounds of appeal are dismissed.”

9. Now the assessee is in appeal before the tribunal and in course of hearing the Ld. AR of the assessee has argued on the legal aspect of the matter on the grounds contained in the memorandum of appeal and also on the merits of the case and has filed a written submission on both counts (*relevant part of which is reproduced*):

Written submission on the legal aspect by Ld. AR of assessee:

“It is submitted that the reasons recorded by the Ld. AO are prima facie only on the basis of investigation wing for purpose to enquiry regarding a transaction. So, the reasons recorded are 'reasons to suspect' which only required further enquiry and cannot be regarded as 'reasons to believe' and also based on borrowed satisfaction from investigation wing that assessee has escaped assessment.

Sir, it is further submitted that on perusal of these reasons would reveal that there is no nexus between the material in the possession and the belief of escapement of income

formed about escapement of income. In other words no cause and effect relationship has been established with regard to material in his possession and belief based upon such material. In fact, there was no material on record that could lead your good self to a belief that income has escaped assessment. This alleged fact as stated in reasons, cannot, in any case, lead to a belief that income has escaped assessment.

Sir, it is stated that Ld. AO in reasons recorded states that there are credits of Rs.2,83,67,948/-. Further merely the fact that there were credits in bank accounts of assessee could not be the reasons to initiate proceedings u/s 148 of the Act. Sir, credits in bank accounts, was out of declared bank accounts, which is stated in the return of income and considering all the credits and other income assessee filed return of income. Further reasons recorded are wrong as last para of reasons recorded states that no return was filed, but assessee duly filed return.

*Thus, proceedings cannot be initiated on the basis of wrong reasons, as the entire basis is vitiated and this is supported with the decision of **Hon'ble High Court of Punjab & Haryana in the case of CIT v/s Atlas Cycle Industries, 180 ITR 319, P & H High Court** in which it was held as under:*

"Reassessment Validity Grounds alleged in notice under s. 148 incorrect or non-existent-ITO's jurisdictions is ousted the moment this situation comes to his knowledge."

Sir, it is stated that reasons recorded nowhere reflected as what information and corroborative materials/records regarding this have been independently examined and verified by the AO. There is nothing to suggest that the AO has applied his own mind to the said material before reopening the assessment and satisfied himself before issuing notice under s. 148.

Sir, it is settled law that "reason to believe" forms the foundation for assuming jurisdiction u/s 147. It is also settled law that "reason to believe" is not just an idle formality and it has not to be mere pretense. If there is no material or even if there is material which does not have live nexus with the formation of belief, reopening of the assessment on the basis of such material is not sustainable.

The expression "reason to believe" predicated that the assessing officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded. and not merely a belief in the existence of reasons

inducing the belief. Such a belief has not to be based on mere suspicion but it must be based on information as was held by Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. Vs. ITO 41 ITR 191.

Thus, initiation of proceedings u/s 147 cannot be done for the purpose of making any enquiry or to verify any information available with the department. Further AO has merely relied on the information passed on to him by the Investigation Department. There is nothing to reveal application of mind by the AO to the information in his possession, as to whether he had verified that any such amount was actually received/earned during the year and if so in what mode or manner.

Reliance is placed on the following decisions:

a. Universal Power Systems Pvt. Ltd. v/s ACIT, (2016) 48 ITR 0191 where it was held as under:

Reassessment-Escapement of Income-Validity of Reassessment Assessee engaged in business of trading in electrical, electronic and mechanical items-Assessee filed its e-return-AO noticed that there was escapement of income as Assessee had billed royalty under head other income-AO completed assessment u/s. 143(3) restricting TDS-Assessment was reopened to consider relevant TDS relating to income offered by assessee and income included in TDS certificate, which included share of other assessee also -CIT(A) confirmed action of AO-Held, only for purpose of requirement of verification to find out any excess TDS benefit had been given to Assessee, assessment was reopened There was nothing in reasons to indicate that there was escapement of income-To consider variation in TDS benefit to be given to Assessee, assessment was reopened Variation in TDS benefit to be given did not lead to escapement of income Mere fact that matters need to be verified and examined further could never be reason good enough to believe that income had escaped assessment and re-open assessment proceedings was bad in law-Assessee's Appeals allowed.

b. Commissioner of Income Tax v/s Batra Bhatta Company, High Court of Delhi, 220 CTR 531 it was held as under:

"Reassessment-Reason to believe-Fishing enquiry-Reasons recorded for reopening the assessment does not disclose that the AO, in fact, had reason to believe that any income had escaped assessment-There is no indication as to on what information or on what material the AO harbored the belief that the claim of the assessee required deeper scrutiny-There must be some basis upon which the belief can be built-It does not matter whether the belief is ultimately proved right or wrong-CIT(A) as well as the Tribunal found as a fact that there was no material upon which the AO could have based his belief that income had escaped assessment-Expression 'requires much deeper scrutiny indicates that the AO was embarking on mere exploration without any belief, much less a belief based on reason and materials-Therefore, there is no error in the order of the Tribunal holding that the issuance of notice under s. 148 and initiation of proceedings under s. 147 were illegal-No substantial question of law arises for consideration"

Further reliance is placed on the decision of ITO v/s Lakhmani Mewal Das, Supreme Court, 103 ITR 0437 in which it was held as under:

"Reassessment under sec 147(a)-Reason to believe-Must have a material bearing on the question of escapement of income of assessee. Whether the grounds are adequate or not is not a matter for the Court to investigate-Only the existence of belief can be challenged by assessee-Expression "reason to believe" does not mean a purely subjective satisfaction on the part of ITO-I must be held in good faith-Powers of ITO to reopen assessment, though wide, are not plenary-Interest allowed as deduction in original assessment subsequently ITO found that creditors were name-lenders-Confession from creditors There was nothing to show that the confession related to a loan advanced to assessee-The live link or close nexus between material before ITO and belief he was to form regarding escapement of income was missing-Said material could not have led to formation of the belief that income escaped assessment because of assessee's failure or omission to disclose fully and truly all material facts-Pre-conditions for exercise of jurisdiction under s. 147 were not fulfilled."

Further reliance is placed on the decision of CIT v/s Smt. Paramjit Kaur, (2009) 311 ITR 38, where it was held as under:

"Sec. 147 empowers the AO to assess or reassess income chargeable to tax if he has reasons to believe that the income for any assessment year has escaped assessment. The power conferred under this section is very wide, but at the same time it cannot be stated to be a plenary power. The AO can assume jurisdiction under the said provision provided there is sufficient material before him. He cannot act on the basis of his whim and fancy, and the existence of material must be real. Further, there must be nexus between the material and escapement of income. The AO must record reasons showing due application of mind before taking recourse to reassessment proceedings. Still further the AO can assume jurisdiction for reassessment proceedings provided he has reasons to believe but the same cannot be taken recourse to on the basis of reasons to suspect-ITO & Ors, vs. Lakhmani Mewal Das 1976 CTR (SC) 220 (1976) 103 ITR 437 (SC) relied on".

Therefore, the very assumption of jurisdiction u/s 147 on the basis of the "reason" recorded is vitiated. Thus, the reasons recorded are incorrect and vague and not based on any tangible material and merely based on borrowed satisfaction from investigation wing, it does not have live nexus with the formation of belief. It was at best a suspicion and therefore, the assumption of jurisdiction u/s 147 is bad in law. Further no incriminating material/documents used against the assessee was confronted or provided to assessee and no opportunity to cross examination was given to assessee. Thus, assessment framed against the assessee may kindly be quashed on this ground only.

Written Submission of the assessee on merits:

Sir, as regard addition of Rs. 2,02,30,196/-, it is stated that the Ld. Assessing Officer framed assessment by treating the Long-Term Capital Gain as bogus LTCG. While framing assessment the Ld. Assessing Officer made addition of Rs. 2,02,30,196/- in para 7 of the impugned order but at time of calculating the assessed income in para 9 of the impugned order it has calculated an amount of Rs. 2,11,81,016/-instead of Rs. 2,02,30,196/-, which is wrong and it may kindly be treated as Rs. 2,02,30,196/-.

Sir, further it is submitted that during the course of assessment proceeding assessee furnished his submission but the Id. Assessing Officer ignoring the same framed assessment

by making addition in the hand of assessee by treating the LTCG as bogus LTCG on account of information received from Investigation Wing, Calcutta that M/s Dhanleela Investment & Trading Co. is operator scrip and it is used by assessee to make his unaccounted money as exempt by declaring the same as LTCG.

Sir, it is submitted that reply filed by the assessee during the course of assessment proceeding is reproduced herein below:

1. That assessee sold shares of M/s Dhanleela Investments & Trading Co. (qty 103400) during the year under consideration for the consideration of Rs.2,11,81,016/-
2. That assessee purchased shares of M/s Dhanleela Investments & Trading Co., these shares in earlier years.
3. That during the year assessee had short term capital loss. That assessee incurred transaction and declared the same in his return of income which is also reproduced below:

Income From Short Term Capital Gain

Particulars: - shares

Sale Proceeds	619737626
Less: Cost of Acquisition u/s 48	(-) 619768244)
Short Term Capital Loss	(-) 30618

Apart from these assessee had **long term capital gain of Rs. 2,02,30,196/-** and the same was disclosed in return of income.

4. That all the transactions were carried through proper banking channel and no cash transaction was involved.
5. Sir, it is brought to your knowledge that assessee regularly incurred sale/purchase transactions relating to shares listed on stock exchange and this share was only one of them.

The other shares includes MRF Ltd., Voltas Ltd., Asian Paints. Apollo Tyres, Amtec Autos, etc, over the period of three years.

6. That all the transactions have been **conducted through recognised stock exchange and STT has been paid** by the assessee.

7. That assessee incurred transaction on stock exchange of more than Rs.62 crores in this year and more than Rs.90 crores during three years and out of which the profit on shares was declared.

8. It is a Share Trading Principle that one should not put all the fruits in one baskets, and following this principal assessee invested in different shares which were large cap, mid cap and small cap., the details of which is already stated above. Assessee earned long term profits in one of his investments being M/s Dhanleela Investments & Trading Co. out of all the other investments and declared the same in return of income.

9. That the income earned by assessee is just 3% (approx.) of the total Investments of the assessee.

Thus, on the basis of above facts it is stated that assessee was engaged in genuine share trading transactions, all the transactions were carried through recognized stock exchange and STT was duly paid, no cash transaction was involved, and assessee has regularly carried share transactions during the last three years of more than Rs.90 Crores and it is not an isolated Single transaction.

Sir, assessee is from Punjab and Jurisdictional High Court has decided the similar issue in favour of assessee in the case of PCIT w/s Prem Pal Gandhi dated 18.01.2018, 401 ITR 253(P&H) in which it was held as under:

Income-Addition-Abnormal appreciation in value of shares-Assessee having purchased shares in asst. yr. 2006-07 @ Rs. 11 per share and sold than in asst. yr. 2008-09 @ Rs. 400 per share AO was not justified in making addition on account of appreciation in value of shares treating the transaction as sham when the shares were traded on the National Stock Exchange and transition were carried through banking channels-Principal CIT vs. Hitesh Gandhi (IT Appeal No. 18 of 2017, dt. 16th Feb., 2017) followed.

Thus, considering the jurisdictional prudence no adverse inference may kindly be drawn against the assessee.

Sir, it is submitted that since assessee was engaged in the trading of share since long in the preceding year also assessee was indulged in the share trading and during the previous year assessee also suffered short term loss of Rs. 21,557/- and carried transaction of Rs. 26,45,47,189/- and in the year under consideration assessee suffered STCG loss of Rs. 30,618/- and carried transaction of Rs. 61,97,37,626/-, which also proves beyond any doubt that assessee had not traded only in one scrip as alleged by the Ld. Assessing Officer. During the period under consideration assessee invested /traded in multiple scrips, which was entirely ignored by the Ld. Assessing Officer.

Sir, assessee invested in Large Cap, Small Cap and Mid Cap companies which also includes MRF, VOLTAS, AXIS Bank and other big companies. Assessee made his portfolio diversified and made investment/trading of more than Rs. 90 Crores in the three-year span, which also ignored by the Ld. Assessing Officer and made huge addition without any basis.

Sir, the Ld. Assessing Officer in para 2 of the impugned order it is stated that assessee made investment in M/s Dhanleela Investment & Trading Co. @ Rs. 7.30/- in F.Y 2012-13 and sold @ Rs. 204.80/- per share and stated that it was operator scrip and assessee induce his unaccounted money in the scrip and thereafter claim exemption. Assessee made investment in multiple scrip and out of them one scrip becomes multi bagger, so, it is not fault of assessee. Assessee made investment through proper channel and through the recognized exchange of the country, so, it cannot be said that assessee induce unaccounted money make it exempted.

Sir, this scrip made high of Rs. 1075/- and this scrip was last traded on BSE on April -2019, assessee made investment in the scrip in the F.Y 2012-13 and sold it in the F.Y 2013-14, if assessee made investment on the basis of tips of operator then it will not come out or sold at lower levels as compare to the highest made by the share in the same year. That assessee purchased in 2012-13 and partly sold in FY 2013-14 and partly in 2014-15, so when the share reached the level of Rs1,075/- assessee was holding those shares, thus if assessee made investment on the basis of tips of operator, then it will not come out for sale at lower levels as compare to the highest made by the share in the same year.”

10. The Ld. AR retreated the above arguments and prayed for deletion of the additions on merits as well as on law.

11. Per contra the Ld. DR has also filed a written submission which is reproduced as follows:

Submission by Ld DR (relevant portion reproduced)

*The unexplained amount on account of Bogus sale/purchases of shares from Shell companies (in the case of Assessee from M/s Dhanjeela investment and trading company as per investigation report), purchased @ 7.30 per share and sold @ 204.8 per share (abnormal increase during the short period of 18 months) the purchasers did not have creditworthiness and no prudent investor will invest in such companies and bar on sale /purchase by SEBI (due to violation of Sebi and exchange regulations etc.) and finacials of **Dhanleela investment and trading** co were very poor and statement of entry providers confirming the Company providing entries, and other facts as per orders of CIT(A) and A.O, are supported with following case laws.*

1. Various case laws as per CIT (A) page 31 to 39 of his orders supporting the above facts including case law of ITAT Pune Raj Kumar B Agarwal vs DCIT 2-2-2019 (page 32 of the order) the paper trial producing contracts notes and mere furnishing of contract notes does not Inspire any confidence in light of facts (also discarded in PCIT vs Sumati Bajaj Kolkata high court as below.

2. Hemal Subashbhai Shah vs DCIT ITAT Ahmedabad 12-6-2023- (discussing various case laws including CIT vs Swati Bajaj, Calcutta high court (filed during the hearing Discussing the various case laws before ITAT Amritsar Bench Amritsar) the ITAT held as under.

We have gone through the judgment of the Hon'ble Calcutta High Court in the case of Swati Bajaj (supra) and find that the issue before us is clearly covered by the said decision. The facts stated in the said case are identical to that in the case before us, as also, pleading of the assessee before the Hon'ble High Court being identical. Parity of facts is discerned from the Hon'ble High Court's order where it notes that the AO relied on the investigation report to

find long term capital gain returned by the assessee on sale of shares of M/s Surabhi Chemicals as relating to penny stock and to be in the nature of mere accommodation entries. The facts are noted at para 3 of the judgment. The pleadings of the assessee before the Hon'ble Court were also Identical as that made before us i.e.

- i) Investigation report relied upon by the AO was a general report;*
- ii) Adverse report was not confronted to the assessee;*
- iii) No opportunity of cross-examination provided to the assessee, and*
- iv) Assessee's onus of proving genuineness of the transaction stood discharged.*

The Hon'ble High Court dealt with each and every contention raised by the Id. counsel for the assessee before it.

Regarding the contention of the assessee that investigation report was a general report and could not form the basis for holding the impugned transaction as bogus, it was discarded by the Hon'ble court holding that the report was prepared by an authority of the Department, le DDIT on the basis of Investigation conducted when matter of large scale scam of providing accommodation entries in the guise of long term capital gains came to their notice (Para 8 to 10).

The aspect of discharge of onus of the assessee by filing documentary evidences, is dealt with at pars 25 to 88 of the order, holding that the burden in the said cases where the facts fanciful rise in shares in a short span of time and thereafter steep fall, all unsupported by the facts showed phenomenal and financials of the companies, was heavy and could not be said to be discharged by filing mere documentary evidences of sale and purchase of shares. The relevant portion of the order is as under:

While it may be true that M/s. Swati Bajaj, Mr. Girish Tigwani or other assesseees who are before us could have been regular investors, Investors could or could not have been privy to the information or modus adopted. In our considered view, what is important is that it is the assessee who has to prove the claim to be genuine in terms of section 68 of the Act. 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

It was argued that unless there are foundational facts, circumstantial evidence cannot be relied on. This argument does not merit acceptance as wealth of information and facts were on record which is the outcome of the investigation on the companies, stock brokers, entry operators etc. Based on those foundational facts the department has adopted the concept of "working backward" leading to the assesseees. While at that relevant stage the sounding circumstances, the normal human conduct of a prudent investor, the probabilities that may spill over, were all taken into consideration to negate the claim for exemption made by the assessee. Therefore, the department was fully justified in taking note of the prevailing circumstances to decide against the assesseees (para 12).

3. PCIT vs Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta)/(2022) 288 Taxman 403 (Calcutta)/12022] 446 ITR 56 (Calcutta) (also discussed in above ITAT order) - Rejecting Tribunal holding that there is no merit in the argument of the revenue as the assessee has placed on record the relevant contract notes proper documentary evidence undertaking purchase/ sale of the shares through registered brokers by banking channels, D-Mat statement etc. and there is nothing to pinpoint anything against the assesseees., High court held that where assessee earned LTCG on sale of shares and AO denied said claim and made additions under section 68 on ground that assessee invested in shares of penny stock companies which provided bogus LTCG, since assessee failed to establish genuineness of rise of price of shares within a short period of time that too when general market trend was recessive, additions made under section 68 were justified-

4. Suman Poddar Vs ITO Special Leave to Appeal (C) No. 26864 OF 2019, [2019] 112 taxmann.com 330 (SC)- Where High Court upheld Tribunal's order holding that assessee's claim for exemption under section 10(38) could not be allowed because share transactions

were bogus as company 'C' whose shares were allegedly purchased was a penny stock, SLP filed against said order was to be dismissed."

12. Before concluding, the Ld DR has relied on the Hon'ble Calcutta High court decision in the case of *Swati Bajaj [2022] 288 Taxman 403 (Calcutta) / 466 ITR* , to put forth his argument that in *absence of foundational facts , circumstantial evidences* cannot be relied upon and in the instant case the assessee has failed to establish the genuineness of rise of price of shares within such short period of time.

13. He further submitted that the report has been prepared by the DDIT and the same is forwarded to the DGIT(Inv) in all states in the country and is prepared on behalf of the Director of investigation , Kolkata, and the assessment cannot be held to be illegal simply because the copy of such report was not furnished to the assessee, as agitated by the assessee in this case. He further stated that investigation commenced not from the assessee end , but those persons who dealt with penny stocks were targeted , which includes the stock brokers, the entry operators , directors of penny stock companies and amongst all these enquiries , the only allegation against the assessee is that the claim for LTCG are bogus, and the burden of proof lies upon the assessee to establish the genuineness of the claim of LTCG . He prayed for upholding the order of the Ld CIT(A) on merits as well as on law.

14. We have considered the rival submissions and the materials on record including the written arguments and submissions filed by both the counsels, which are all taken on record.

15. It is seen that the assessee has dealt with various scripts through her registered broker *Max Growth Capital Private Limited*, during the financial years 2012-13 to 2015-16 (*after which she unfortunately expired*) , and some of the scripts she invested in as emerging from records, are that of *Asian Paints, Bank Bees, Gold Bees, Infosys Technologies, MRF, etc, and also in “ Dhanleela Investment and trading co ltd ” (in short dhanleela)* which just happens to be one of the scripts , and the subject matter of dispute in this case. The investment made for purchase of the said stock was paid directly to the company through bank channel on 26th October, 2012, through “*Capital Small Finance Bank Ltd* ” by *cheque no 659071* amounting to Rs. 18,00,000/- (*as reflected in bank statement a/c xxxxx3904*), and the break up as given by the assessee are as follows (*total 246516 shares @ Rs. 7.30 each*) . Subsequently, 1,03,400 shares were sold through the said broker @ 204.85 during the FY 2013-14 (*after a holding period of 14 months*) and the sale proceeds has been received by the assessee in the same bank account (*by cheques and RTGS*) starting 13th December, 2013 till 27th March, 2014, totaling Rs. 2.11 crores, and the transactions in DEMAT are STT paid.

16. We find that the three basic conditions to claim exemption u/s 10(38) of the Act , namely ,(i) the shares are purchased through bank channel (A/c payee cheque) , (ii)

shares are held for more than 12 months (*purchase date being October, 2012 and date of sale being 13th December, 2013*) (iii) shares were sold through recognized stock exchange after payment of securities transaction tax (*as evident from brokers ledger statement*) are available on record and the claim of exemption u/s 10(38) was duly reflected in her return of income originally filed on 31st March, 2015 u/s 139 of the ‘Act , (*in schedule – EI*) as well as in her computation of income .

17. The Ld. AR has filed before us, a copy of assessment order of the assessee for the Asst year 2013-14, passed u/s 147 rws 144, by the AO central circle – 1, Jalandhar, dated 29/03/2022, where the abovementioned bank account of the assessee held with “ *Capital Small Finance Bank*” has been examined and some additions has been made on account of unexplained credit entries in such bank , but there is no adverse findings in respect of the *investment of Rs. 18 lakhs* made by the assessee from the said A/c in *Dhanleela , during FY 2012-13.*

18. Our notice was also drawn by the Ld AR to the copy of the annual report of the company *dhanleela* for the year ending 31st March 2014 , (*placed in page 16 of the pb*) where the revenue from operations increased *from 17.19 crores in March 2013 to 24.37 crores in March 2014*, and the company returned a net profit of Rs.42.09 lakhs (*after provisions for taxes*), which proves that financials of the company are in the positive and rising and is contradictory to the claim of the AO that no activities are carried out by the company.

19. The AR also brought to our notice a screen shot (*placed in page 17 of pb*) from the BSE (*stock exchange*) , giving the reasons of suspension in the year 2019 which is recorded as “Company has not paid Annual Listing Fees in violation of SEBI and Exchange Regulations”

20. It is further noticed that even though investigation and enquiry has been conducted against the company *M/s Dhanleela* ,by the DIT(Inv) , no investigation or enquiry has been conducted against the assessee , neither by the AO nor the Ld CIT(A) , and the copy of the investigation report relied upon has never been forwarded to the assessee (*and we have been informed that the said report is not in public domain*) and there is no evidence to show that the assessee has been named in the report, and the AO has proceeded on basis of presumption and assumption and on preponderance of probabilities .

21. We further note that the assessee has indulged in regular trading activity of various scripts during the same period , through the same broker (*dhanleela being one such script*) and AO has not conducted any enquiry against the stock broker “*Max Growth Capital Private Limited*” and has brought nothing on record to dispute the evidences submitted by the assessee in respect of the transactions carried out through recognized stock exchange as evident from the brokers (*max growth capital private limited*) ledger accounts *vis a vis* the receipts of sale proceeds through bank channel. In other words the *initial burden of proof* has been discharged by the assessee with

supporting documents on record and she has claimed to have complied with all the conditions of section 10(38) of the Act 61, and now the onus of proof has shifted on the revenue.

22. We find that in the instant case the addition made by the AO is based on the ground that the trading pattern of the shares of “*dhanleela*” is highly abnormal and there is likelihood of such trading activity on the floor of Stock exchange is being manipulated by certain players. (*However, the AO has not been able to point out any evidence that the assessee herself is involved in such manipulation or the assessee name appears in the investigation report*).

23. The AO has also referred to violation of rules and regulations of *SEBI* by the company and resultantly SEBI has suspended the sales and purchase of shares of this company in stock exchange for non payment of annual listing fees as per information available in official website of BSE , against which the Ld AR of the assessee submitted that such delisting has been done in the year 2019 for *non payment of listing fees* and in the instant case the transactions of purchase and sales of the shares of the company held by the assessee relates to the FY 2013-14 and 2014-15 , by which all shares held has been disposed off (*and thereafter the assessee has also expired*). (*However, in support of this delisting date, stated to be in the year 2019, no evidence is brought before us by the AR other than the above mentioned screen shot and a google report stating last trading date on 11.04.2019 at Rs.77.50*).

24. The Ld. AR distinguished the facts of the instant case, vis-à-vis Swati Bajaj, by submitting that (i) the scripts in case of Swati Bajaj, was that of Surabhi Chemicals and Investments limited and in the present case the script is that of Dhanleela, (ii) in case of Swati Bajaj, investigation report was available in public domain and a portion has been reproduced in the order itself but no such investigation report are made available in this case of assessee, (iii) in case of Swati Bajaj survey was conducted on the broking entities and the brokers admitted that accommodation entries were provided but in the present case the assessee has purchased shares directly from the company and has sold shares through “ *Max Growth Capital Private Limited*”, (registered broker), who has never been enquired at any stage nor any enquiry conducted and there is no adverse statement against the assessee, (iv) in case of Surabhi Chemical script, price rigging was established that the company was involved in artificial rigging of price to provide bogus LTCG, but in the instant case there is no such finding of price rigging against the company and only action taken by SEBI, against the company was suspension of trading due to non-payment of ALF dues (with the remarks : *Company has not paid Annual Listing Fees and is in violation of SEBI and Exchange Regulations*), which according to the AR of the assessee is effective in the year 2019 and is of no consequence for the year under appeal.

25. At this stage it would not be improper to refer to a decision of this bench in the case of *Rama Mittal v ITO*, dated 03.06.2024 , ITA No . 26/ASR/2024 , Asst year : 2013-14, where in an almost identical situation the Hon'ble Tribunal, referred to various *Apex Court and High Court judgments* to arrive at a logical conclusion. The relevant portion is reproduced for ready reference:

“12.The Hon’ble SUPREME COURT OF INDIA in the case of Principal Commissioner of Income-tax vs. Renu Aggarwal [2023] 153 Taxmann.com 579 (SC) dismissed the SLP filed by revenue filed against the Hon’ble high 9 ITA No. 26/Asr/2024 Rama Mittal v. ITO court where adjudicating the matter on 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 accommodation 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].

13. In the case of Principal Commissioner of Income-tax vs. Mamta Rajiv Kumar Agarwal [2023] 155 taxmann.com 549 (Gujarat), the Hon’ble HIGH COURT OF GUJARAT has observed on exemption of capital gains under Section 10(38) of the Income-tax Act, 1961 as under- “Section 10(38) of the Income-tax Act, 1961 - Capital gains - Income arising from transfer of long term securities (Share dealings) - Assessment year 2013-14 - Assessee had sold shares of SNCFL and earned long-term capital gains - Assessing Officer issued a show cause notice alleging that transaction was a pennystock deal aimed at illegitimately claiming long-term capital gain exemption under section 10(38) - Assessing Officer treated purchase as bogus and added it to total income - Commissioner (Appeals) examined all relevant documents provided by assessee, including bills of purchases, broker account copies, bills for

sales, and bank statements and held that 10 ITA No. 26/Asr/2024 Rama Mittal v. ITO purchases were made through a recognized broker via cheque, establishing their genuineness and, thus, he directed Assessing Officer to delete addition of LTCG claimed as exempt under section 10(38) - Tribunal upheld Commissioner (Appeals) decision stating that there was no evidence implicating assessee or broker in any wrongdoing related to SNCFL scrip - Whether in view of concurrent findings of fact that there was no evidence available on record suggesting that assessee or his broker was involved in rigging up of price of scrip of SNCFL, addition on account of LTCG claimed as exempt under section 10(38) had rightly been deleted - Held, yes [Paras 4 and 5] [In favour of assessee]”

14. In another case of Principal Commissioner of Income-tax vs. Indravan Jain, HUF [2023] 156 taxmann.com 605 (Bombay) the Hon'ble HIGH COURT OF BOMBAY held as under- “section 68, read with section 10(38), of the Income-tax Act, 1961 - Cash credit (Share transactions) - Assessment year 2005-06 - Assessee had claimed sale proceeds of shares as long-term capital gain (LTCG) exemption - However, Assessing Officer held that scrip was a penny Sock and thus, he made an addition of same under section 68 - Commissioner (Appeals) observed that shares were purchased on floor of stock exchange and not from broker, payment was made through banking channel, deliveries were taken in DEMAT account where shares remained for more than one year, contract notes were issued and shares were also sold on stock exchange and, accordingly, held that there was no reason to add capital gains as unexplained cash credit under section 68 - Whether Tribunal had rightly concluded that there was no merit in appeal against Commissioner (Appeals) order - Held, yes [Para 4] [In favour of assessee]”

15. Recently, the Hon'ble Apex Court in the case of PCIT v. Dipansu Mohapatra [2024] 160 taxmann.com 289 (SC) dismissed against order of High Court that where assessee provided all details of purchase and sales of shares to AO along with contract notes for purchase and sale, demat account and bank statement and, furthermore no incriminating materials were found during survey conducted in premises of assessee, AO could not deny claim under section 10(38) merely by relying on statements of accommodation entry providers which were recorded much before date of survey.”

26. Relying on the above decisions of various courts the tribunal decided the issue in favour of the assessee in the case of Rama Mittal in ITA 26/ASR/2024).

27. We further refer to a decision of the jurisdictional high court in the case of *PCIT v Hitesh Gandhi* dated 16th February, 2017, (P & H) HC, ITA No. 18 of 2017(O&M), where it has been observed as follows:

"We have heard the rival parties and have gone through the material placed on record. We find that the assessee had purchased shares in the month of April/May, 2006 as noted by the learned CIT(A) in his order at page-4. The shares were purchased in Assessment year 2006-07. Further the shares were got dematerialized and the same were created in the account of assessee maintained with HDFC bank. The assessee also received dividend on such shares on 23.10.2007 and such dividend was claimed as exempt and Assessing Officer did not raise any objection against the claim of such dividend. The learned CIT(A) has noted in his order that in the remand report Assessing Officer was not able to contradict any of the facts regarding purchase of shares and regarding sale of shares. It is further observed that assessee had paid STT on the sale of such shares and this fact has been noted by learned CIT(A) in his order. Further, we find that while making out the addition on account of capital gain the Assessing Officer himself gave credit to assessee for indexed cost of acquisition to the extent of ` 11,67,821/- taking the purchase price at ` 11,00,000/-. Further, we find that assessee had sold shares through MTL shares and Stock Brokers Limited as is noted by Assessing Officer in reply to question No.24 which is a SEBI registered Stock Broker. Furthermore the payment for sale of shares was received through Banking channels. All these documentary evidences in favour of the assessee were rejected by Assessing Officer merely on the basis of some casual replies given by assessee to the Assessing Officer. However, the fact remains that all the documentary evidences are in favour of assessee and learned CIT(A) has passed a very reasoned and speaking order and we do not find any infirmity in the same."

The findings recorded by the CIT (A) and the Tribunal are pure findings of fact which have not been shown to be illegal, erroneous or perverse by the learned counsel for the appellant. He has also not been able to produce any material on record to controvert the said findings. Thus, no substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed. (Ajay Kumar Mittal) J.”

28. As such considering the entire factual aspect of the matter and considering the fact that the name of the assessee were never quoted by any of the persons nor any material relating to the assessee was found at any place where investigation was done by the investigation wing the transactions entered into by the assessee through her registered broker cannot be termed as bogus without discarding the evidence produced by the assessee. Following the judicial precedent laid down by the Hon'ble jurisdictional high court and also the coordinate bench of the tribunal (cited above), we are of the opinion that there is no reason to disallow the claim of LTCEG as exempted u/s 10(38) of the Act 61, and as such we delete the said addition on merits.

29. Since we have allowed this ground of appeal (no 4) on merits, we do not adjudicate on the legal issue contained in grounds no 1 to 3 which will only be academic in nature.

30. Grounds no 5 and 6 relates to the addition of Rs. 15.40 lakhs on account of unexplained credits in bank account. No submission or explanation has been made by

the assessee on these additions in course of hearing and as such these grounds are dismissed and ground no 7 is general in nature and needs no adjudication.

31. As a result, the appeal of the assessee is **partly allowed**.

ITA No. 347/Asr/2024 for A.Y. 2015-16:

Grounds of Appeal:

- “1. *That the order passed by the Hon'ble CIT(A) dated 31.05.2024 is against the law and facts of the case.*
2. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 144 r.w.s 147 by recording incorrect facts/reasons and without complying with the mandatory conditions u/s 147 as envisaged under the Income Tax Act, 1961.*
3. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of L.d. AO in framing the impugned assessment order u/s 144r.w.s 147of the Income tax Act and without complying with the mandatory conditions u/s 151 as envisaged under the Income Tax Act, 1961 and also the approval granted is without DIN.*
4. *(a) That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of ld. A.O., in making an addition of Rs.2,74,76,433/-, on account of long term capital gain treated as income from undisclosed sources, without considering the facts of the case and without observing the principles of natural justice and without following the decision of jurisdictional high court.*

(b) That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO, in making an addition on account of alleged bogus long term capital gain without considering the fact that assessee was a regular investor and has not invested in only one share.

5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

32. The facts of this appeal are identical to the facts contained in ITA No 346/ ASR / 2024, discussed above and are also arising out of the same script of *dhanleela* , and our observation in the above appeal, applies *mutatis mutandis*, to this appeal also.

33. As such the addition on account of LTCG is hereby deleted and the appeal of the assessee is allowed.

34. In the result, the appeal for Asstt. Year 2014-15 is partly allowed and the appeal for Asstt. Year 2015-16 is allowed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 30.10.2025

Sd/-
(Manoj Kumar Aggarwal)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:

- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy

By Order