

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER  
आयकर अपील सं./ITA Nos.778 & 779/SRT/2023**

**Assessment Years: (2013-14 & 2014-15)**

**(Physical hearing)**

DCIT, Circle - 1(3), Surat	<b>Vs.</b>	Chunibhai Haribhai Gajera, 67, Adarsh Nagar Society, Athwalines, Surat - 395 001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAWPG3525A</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

<b>Appellant by</b>	Shri Mukesh Jain, CIT-DR
<b>Respondent by</b>	Shri Rasesh Shah, CA
<b>Date of Hearing</b>	03/09/2025
<b>Date of Pronouncement</b>	17/11/2025

**आदेश / O R D E R**

**PER BENCH:**

These two appeals by the Revenue emanate from the separate orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), both dated 12.09.2023 by the National Faceless Appeal Centre, Delhi/ Commissioner of Income-tax (Appeals) [in short, 'CIT(A)'] for the assessment years (AY) 2013-14 and 2014-15, which in turn arose out of separate assessment orders passed by Assessing Officer (in short, 'AO') u/s 143(3) r./w.s. 147 of the Act on 28.12.2018 and 30.12.2016. Since facts are similar and the grounds of appeals raised by the revenue are identical, with the consent of both parties, both appeals were heard together and a common order is passed for the sake of convenience and brevity. ITA No.778/SRT/2023 is take as the "lead" case.

2. Grounds of appeal raised by the revenue in ITA No.778/Srt/2023 for AY 2013-14 are as under:

*“i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of bogus Long Term Capital Gain amounting to Rs.9,44,74,391/- made by the Assessing Officer arising out of sale of shares of M/s Kyra Landscapes Ltd., a penny stock without appreciating the findings of the Assessing Office that the price movement of the company were not supported by financial fundamentals of the company.*

*ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of bogus Long Term Capital Gain ignoring the fact that merely submission of documentary evidences of the sale and purchase of shares was not sufficient to fulfil the burden of proof and onus lies with assessee especially when unsubstantiated rise in share price noticed without any supporting financial statements of company.*

*iii) Whether on the facts and circumstances of the case and in law the Ld. Tribunal erred in deleting the disallowance of commission of Rs.64,78,080/- purportedly incurred by the assessee towards payment to brokers who allegedly entered into the share transactions at the request of the assessee to covert his unaccounted income in the form of fictitious Long Term Capital Gains of Rs.9,44,74,391/- and claim bogus exemption?*

*iv) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred deleted the addition ignoring the facts that the transactions in the guise of Long Term Capital Gain, as claimed by the assessee was arranged through brokers, operators and exit providers for generation of bogus Long term Capital Gain.”*

3. Grounds of appeal raised by the revenue in ITA No.779/Srt/2023 for AY 2014-15 are as under:

*“i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of bogus Long Term Capital Gain amounting to Rs.4,58,83,371/- made by the Assessing Officer arising out of sale of shares of M/s Kyra Landscapes Ltd., a penny stock without appreciating the findings of the Assessing Office that the price movement of the company were not supported by financial fundamentals of the company.*

*ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of bogus Long Term Capital Gain ignoring the fact that merely submission of documentary evidences of the sale and purchase of shares was not sufficient to fulfil the burden of proof and onus*

*lies with assessee especially when unsubstantiated rise in share price noticed without any supporting financial statements of company.*

*iii) Whether on the facts and circumstances of the case and in law the Ld. Tribunal erred in deleting the disallowance of commission of Rs.9,17,667/- purportedly incurred by the assessee towards payment to brokers who allegedly entered into the share transactions at the request of the assessee to covert his unaccounted income in the form of fictitious Long Term Capital Gains of Rs.4,58,83,371/- and claim bogus exemption?*

*iv) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred deleted the addition ignoring the facts that the transactions in the guise of Long-Term Capital Gain, as claimed by the assessee was arranged through brokers, operators and exit providers for generation of bogus Long term Capital Gain.”*

**ITA No.778/SRT/2023 (AY 2013-14)**

4. Facts of the case in brief are that assessee filed his return of income for AY 2013-14 declaring total income of Rs.1.41,56,070/- on 27.12.2013. The case was taken up for scrutiny and order u/s 143(3) was passed on 14.03.2016 determining total income at Rs.1,43,91,600/-. Subsequently, the AO received information from ITO Ward-3(4), Saharanpur, UP that assessee had made wrong claim of exempt long-term capital gain u/s 10(38) of the Act on sale of shares of penny script M/s Kyra Landscapes Ltd during the year under consideration. After verification of the information and the data available on record, AO reopened the case u/s 147 of the Act by obtaining prior approval from competent authority and issued notice u/s 148 of the Act on 29.03.2018. In response, assessee filed return of income declaring total income at Rs.1,43,91,600/-. Thereafter, notice u/s.143(2) of the Act was issued on 24.10.2018. As per the investigation report, M/s Kyra Landscapes Ltd (earlier named as M/s TCL Technologies Ltd) was indulged in providing bogus long-term capital gain to different persons. The

assessee had purchased the physical shares of the aforesaid scrip @ Rs.10/- per share whereas the market price of the scrip was only 50 paise each. Thus, he bought the shares at 20 times higher price than its open market price. The price touched Rs.125/- per share from Rs.10/- per share over a very short period of just 14 to 15 months. The nature of the business of the company was also not clear and it kept on changing from time to time. The AO has described the *modus operandi* at page 6 of the assessment order. It is mentioned that a person with unaccounted money brings the said money into his books without paying any tax by buying shares at face value or below the face value and the price is rigged to a very high level at which time the person sells the shares and claims huge long-term capital gains, which is exempt from tax u/s 10(38) of the Act.

4.1 In view of the above information, AO issued notice wherein assessee was requested to show cause why share sale transactions in penny scrip may not be treated as sham transaction and total amount of Rs.9,44,74,3941/- should not be added as income on account of unexplained cash credit u/s.68 of the Act. Assessee was also asked to show cause why an amount of Rs.64,78,080/-, being 7.5% of commission on this LTCG, should not be added to the total income of the assessee. In response to the show cause, assessee replied that his transactions were genuine. He contended that he was not provided with the report of the investigation undertaken and its finding. All that he knows was that TCL Technologies Ltd. (later on known as Kyra Landscapes Ltd) was an open scrip floated on the stock exchange and anyone could have traded in that scrip. He had

purchased shares of the company through account payee cheque and sold over through stock exchange and realized the sale value by account payee cheque after payment of STT. Assessee further argued that, to claim capital gain on sale of shares exempt u/s 10(38) , he is not required to comply with any other conditions other than what are specified in the Act. However, AO did not accept the contentions of the assessee and added Rs.9,44,74,391/- as unaccounted credits u/s.68 of the Act and Rs.64,78,080/- on account of unexplained commission expenditure u/s.69C of the Act. Thus, the AO assessed the total income at Rs.11,53,44,070/- against the total income of Rs.1,43,91,600/- u/s 143(3) r.w.s. 147 of the Act.

5. Aggrieved by the order of the AO, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the ground challenging validity of re-opening assessment by stating that the AO received information from the Investigation Wing, based on which the case was re-opened. He relied on the decisions of Hon'ble Supreme Court in case of Priya Blue Industries Pvt. Ltd. vs. ACIT, 287 Taxman 187 (SC) where the Hon'ble Supreme Court upheld the reopening because assessee was beneficiary of accommodation entry and the basis for formation of belief was enquiries and investigation by the Investigation Wing. He also relied on the decision of Hon'ble jurisdictional High Court in case of Geetaben Dineshchandra Gupta vs. ITO, 441 ITR 698 (Guj.). The CIT(A), however, deleted the entire addition made by the AO by observing that the assessee provided complete evidence of purchase and sale in terms of purchase through account

payee cheques, sales realization through account payee cheques, demat statement, broker's note for purchase, receipt of purchase, ledger of the broker's bank book showing payment for purchases, balance sheet showing the investment, broker's contract note for sale over the Bombay Stock Exchange, bank books showing the realization of cheques on sale of shares etc. The CIT(A) held that the appellant satisfied all the conditions necessary to claim long-term capital gains exempt u/s 10(38) of the Act. Hence, the addition made by the AO on account of sale of share of Rs.9,44,74,391 u/s 68 of the Act was deleted. He also deleted the addition u/s 69C of the Act Rs.64,78,080/- in respect of unexplained commission paid on account of above LTCG. The CIT(A) has placed reliance on more than 50 decisions including the decisions as follows: (i) Shri Jitendra Dalpatbhai Shah (ITA No.3105/Ahd/2009 ); (ii) CIT vs. Jitendra Dalpatbhai Shah, Tax Appeal No. 1414 of 2011; (iii) Acchyalal Shaw, 30 SOT-44 (Kolkata); (iv) Sunita Oberoi, 126 TTJ 745 (Agra); (v) Baijnath Agarwal, 43 TTJ 149 (Agra); (vi) Ajay Nawandar, 3 DTR 452 (Mum); (vii) J.R Solvent Industries, 24 DTR 387 (Chandigarh); (viii) Chandresh Kumar Maheshwari, 29 SOT 58 (Jodhpur Bench); (ix) Smt. Bibi Rani Bansal, 43 DTR 279 (TM); (x) H.B. Stock Holdings Ltd., 325 ITR 316 (Del); (xi) Nisraj Real Estate & Export (P.) Ltd., 31 DTR 456 (Jaipur); (xii) Pravin Electronics Ltd., 16 DTR 321 (Del); (xiii) Mukesh R. Maroliya, 6 SOT 247 (Mumbai Tribunal); (xiv) Ritaben Panwala and Mitaben Panwala, ITA No.4082 and 4083/Ahd/2008; (xv) Smita P. Patil, 96 DTR 313 (Pune Tribunal). The CIT(A) has mainly relied on the decisions of Hon'ble Supreme Court in the case of Tejua

Rohitkumar Kapadia, 94 taxmann.com 325 (SC) where it was held that where purchases made by assessee trader were duly supported by bills and payments were made by account payee cheque, seller also confirmed transaction and there was no evidence to show that amount was recycled back to assessee, AO was not justified in treating the said purchases as bogus under section 69C of the Act; hence, SLP was dismissed. The Hon'ble Supreme Court followed the decision of Hon'ble jurisdictional High Court, which has dismissed the appeal of Department against the order of the Tribunal in ITA Nos.1994-1990 and 2095/Ahd/2010. The CIT(A) also observed that no evidence has been brought on record regarding unaccounted payment. He held that the assessee satisfied all conditions necessary to claim LTCG exempt u/s 10(38) of the Act. He also deleted addition made u/s 69C of the Act by stating that addition is based on conjecture and no satisfactory explanation.

6. Aggrieved by the order of CIT(A), revenue has filed present appeal before the Tribunal. The Ld. CIT-DR submitted that the Investigation Wing, Kolkata has identified list of 84 penny stocks used for this scam and M/s Kyra Landscapes Ltd (earlier named as M/s TCL Technologies Ltd) was one of them. It is also established that large scale of manipulation has been done in market price of shares of certain companies listed on the BSE by a group of persons acting as syndicate in order to provide entries of tax exempt bogus LTCG to large number of beneficiaries in lieu of unaccounted cash. In this case, assessee has made normal reply such as that the shares were got dematerialized, investment was

reflected in the balance sheet, shares were traded through BSE etc., The basic objective of such transaction is to convert black money into white without paying any tax. The rise and fall in price of share traded by the assessee was sharp and the same was not at all related and commensurate with the fundamentals of the company. The most important thing is that these companies do not justify such phenomenal rise in their market price. The actual source of credit in the form of sale consideration was unaccounted cash of the assessee. The facts and circumstances leading to the transactions done by the assessee seen, in a larger frame, reveals accommodation entry scam as reported by the Directorate of Investigation, more particularly when the investment by the assessee was in a company having no financial worth and such investment does not conform to normal behaviour of an investor. He relied upon the decision of Hon'ble Supreme Court in cases of CIT vs. Durga Prasad More, 82 ITR 542 (SC) and Sumati Dayal vs. CIT, 214 ITR 801 (SC) and submitted that the assessee had been a party to a pre-designed mode of transaction and invested in the shares of M/s Kyra Landscapes Ltd to convert unaccounted cash under the guise of LTCG amounting to Rs.9,44,74,3917/- and therefore, the said amount has to be considered as income from undisclosed sources and the claim of exemption as LTCG has been rightly denied by the AO. Moreover, the unexplained expenditure u/s 69C of the Act towards the trade commission charged by the operators, which was worked out at Rs.64,78,080/- was also, justified. He requested to set aside the order of CIT(A) and restore the order of AO.

7. On the other hand, Ld. AR relied on the order of CIT(A). He has filed paper book containing copies of various documents and replies submitted before the lower authority such as; (i) relevant extract of bank statement of Andhra Bank A/c No 040210100019388 reflecting purchase of shares, (ii) share certificate issued by Kyra Landscape Ltd. (formerly known as TCL Technologies Ltd.); (iii) contra-confirmation from Sharex Dynamic India Pvt. Ld. for preferential allotment of shares of TCL Technologies Ltd.; (iv) Form of dematerialisation of physical shares; (v) share sales register; and (vi) ledger account of Kyra Landscape Ltd for FY 2010-11; (vii) balance sheet as on 31.03.2011; (viii) ledger account of the selling broker, Jainam Share Consultant Pvt. Ltd.; (ix) contra account from the books of Jainam Share Consultants Pvt. Ltd.; (x) ledger account of LTCG; (xi) sample contract notes for sale of shares; and (xii) holding statement as on 31.03.2013. He has also filed a compilation of the decisions relied upon by the assessee. He submitted that during the assessment and appellate proceedings, the assessee had furnished the above explanation and details in support of genuineness of the LTCG. He submitted that assessee had purchased 8,10,000 shares of Kyra Landscapes Ltd. through proper banking channel through the registered broker, Sharex Dynamic India Private Ltd. The shares are duly reflected in the balance sheet as investment as on 31.03.2011. Out of these shares, 5,80,581 shares were sold for consideration of Rs.9,44,74,391/- in AY 2013-14 and balance 2,29,419 shares were sold for consideration of Rs. 4,58,83,371/- in AY 2014-15 through register broker Jainam Share Consultant Pvt. Ltd. The Ld. AR

also submitted that in the scrutiny assessment u/s 143(3) of the Act for AY 2013-14, the AO has accepted claim u/s 10(38) of the Act by way of a speaking order. However, after receiving information from ITO, Ward- 3(4), Saharanpur that script of Kyra Landscape Ltd. was used by various beneficiaries to convert their undisclosed income into exempt LTCG, he issued notice u/s 148 for AY 2013-14. The assessee objected to the reopening which was rejected by AO vide order dated 25.09.2018. The AO made the impugned additions without considering reply of the assessee and the precedents on the issue including various decisions of Hon'ble Gujarat High Court and Co-ordinate Bench of the Tribunal. The Ld. AR also submitted that the appellant had made elaborate submission and supporting details which were not been accepted by AO but duly considered by the CIT(A). The AO made addition only on the basis of information received from ITO, Saharanpur but the AO did not indicate the name in whose case the ITO made enquiry and addition was made. The Id. AR submitted that the addition made by the ITO, Saharanpur in case of Sanjeev Jain was deleted by the ITAT, Delhi in ITA No.3381/Del/2017, dated 15.01.2019. Hence, there is no basis for setting aside the order of CIT(A). He also submitted that even otherwise, the Hon'ble Gujarat High Court in case of PCIT vs. Nilu Mahansaria, 175 taxmann.com 235 (Guj.) confirmed the order of the Tribunal where addition was made on the basis of information from the Investigation Wing relating to BSE penny stock, which was used for generation of bogus LTCG/STCG. He also submitted that where name of the person whose statements admitting to providing accommodation entries was

not given to the assessee and the assessee was not granted opportunity of cross-examination, the addition cannot be made. The Id. AR relied on the decisions of the Hon'ble Gujarat High Court in cases of PCIT vs. Mamta Rajivkumar Agrawal, 155 taxmann.com 549 (Guj.), PCIT vs. Champalal Gopiram Agrawal, 155 taxmann.com 66 (Guj.) and PCIT vs. Divyaben Prafulchandra Parmar, R/Tax Appeal No.812 of 2023, dated 02.01.2024. In case of Divyaben Prafulchandra Parmar (supra), the Hon'ble Gujarat High Court dismissed appeal of revenue against the ITAT order, which had deleted the addition made by the AO of LTCG of Rs.45,01,840/- u/s 10(38) of the Act. In the said decision, the Department had relied on the decision of Hon'ble Calcutta High Court in case of PCIT vs. Swati Bajaj, 139 taxmann.com 352 (Cal.), which was not accepted by the Tribunal because it was not a decision of the jurisdictional High Court. On the other hand, the decisions of the jurisdictional High Court of Gujarat in case of Jagat Pravinbhai Sarabhai, 142 taxmann.com 247 (Guj.) and Nishant Kantilal Patel, R/Tax Appeal No.296 of 2021, would be applicable. In these decisions, the issue was decided in favour of assessee. The Id. AR submitted that the SLP filed by Department against the order of Divyaben Prafulchandra Parmar (supra) was dismissed by the Hon'ble Supreme Court, 172 taxmann.com 572 (SC). The Id. AR further relied on the decision in case of PCIT vs. Sadeepkumar Parshottambhai Patel, 150 taxmann.com 192 (Guj.), where since payments were received through account payee cheques and the transactions were done through recognized stock exchange and there was no evidence that assessee had paid cash in return of

receipt through cheque, the Hon'ble High Court held that the Tribunal rightly deleted addition holding that the transactions were genuine. The Id. AR also relied on the following decisions: (i) PCIT vs. Mamta Rajivkumar Agrawal, 155 taxmann.com 549, (ii) PCIT vs. Champalal Gopiram Agarwal, 155 taxmann.com 66, (iii) PCIT vs. Divyabenn Prafulchandra Parmar, 172 taxmann.com 572 (SC), (iv) PCIT vs. Divyaben Prafulchandra Parmar (supra) and (v) PCIT vs. Muktaben Nishantbhai Patel, Tax Appeal No.294 of 2021 (Guj.). The Id. AR also submitted that the impugned scrip of Kyra Landscape Ltd. is not in the list of 84 shares investigated by the Investigation Wing of Kolkata. Hence, the investigation report relied upon by the AO for reopening and making the addition is not justified.

8. We have heard both the parties and perused the materials available on record. We have also deliberated upon the case laws relied upon by the Id. AR. The appellant had purchased 8,10,000 shares of TCL Technologies Limited (Later known as Aricent Infra Ltd and then known as Kyra Landscapes Ltd.). The payments were made through banking channel to the registered broker, Sharex Dynamic India Private Ltd. The shares were reflected in the balance sheet as investment as on 31.03.2011. Out of 8,10,000 shares, 5,80,581 shares were sold for consideration of Rs.9,44,74,391/- in AY 2013-14 and balance 2,29,419 shares were sold for consideration of Rs.4,58,83,371/- in AY 2014-15 through registered share broker, Jainam Share Consultant Pvt. Ltd. The appellant claimed exemption u/s 10(38) of the Act of Rs.8,63,74,391/- and Rs.4,35,89,181/- for AY 2013-14 and 2014-15 respectively. It is seen that the case of the assessee was originally

selected for scrutiny u/s 143(3) of the Act for AY 2013-14 and after calling for various details and receiving the reply of the assessee, the AO has accepted the claim u/s 10(38) of the Act by passing order u/s 143(3) of the Act dated 14.03.2016 (Page Nos.25 & 26 of PB). However, after receiving information from ITO, Ward-3(4), Saharanpur, UP that the script of Kyra Landscape Ltd. was used by various beneficiaries to convert their undisclosed income into exempt LTCG, he re-opened the case and issued notice u/s 148 of the Act on 29.3.2018 for AY 2013-14. The assessee objected to the reopening which was rejected by AO vide order dated 25.09.2018. Thereafter, he issued statutory notices and show cause notice to the assessee which were duly replied by the assessee by way of written submission and supporting details. The AO was not satisfied with reply of the assessee and made addition of Rs.9,44,74,391/- u/s 68 of the Act and related commission payment of Rs.64,78,080/- u/s 69C of the Act. On appeal by the assessee, the CIT(A) dismissed ground on validity of assessment u/s 147 but deleted the additions made u/s 68 and 69C of the Act. The Ld. AR submitted that the transactions of purchase and sale of shares were through proper banking channel and were carried out through recognized share brokers. Copies of bank statements reflecting purchase and sale of impugned shares were given to lower authorities and are filed in the paper book before the Tribunal. The purchases were reflected in the balance sheet of the assessee as on 31.03.2011. The Id. AR submitted that the AO made addition merely on the basis of information received from ITO, Ward-3(4), Saharanpur. He has not made any independent inquiry at

the time of re-opening the case as well as during the re-assessment proceedings. He has re-opened the case and passed the order u/s 143(3) r.w.s. 147 of the Act in a mechanical manner based on the information from ITO, Saharanpur. The Id. AR submitted that the addition made by the AO was deleted by the CIT(A) by passing a speaking order in which he has relied on more than 50 decisions of Hon'ble High Courts and Tribunals. He submitted that the Hon'ble jurisdictional High Court has decided similar issue in favour of different assessees in a large number of cases. Even the addition made by ITO, Ward-3(4), Saharanpur himself has been deleted by the ITAT, Delhi in case of Sanjiv Jain and hence, there is no reason to set aside the order of CIT(A), as requested by the Ld. CIT-DR.

8.1 We have again gone through the orders of lower authorities as well as the orders relied upon by both sides. There are conflicting decisions of Hon'ble High Courts and Tribunals on the issue of exempt LTCG u/s 10(38) of the Act on sale of penny stock of different companies. It is well settled that legal precedent is applicable only if the material facts of the current case is similar to the facts of the previous case. A court is obligated to follow a precedent when the facts are alike. A slight difference in facts can change the precedential value making the previous decision inapplicable. We find that the share of Kyra Landscape Ltd. was not in the list of 84 shares in respect of which investigation report was prepared for bogus LTCG/STCL through BSE listed penny stocks. We also find that the Hon'ble jurisdictional High Court has decided similar matter in favour of the assessees in the following cases: (i) Mamta Rajivkumar Agrawal (supra), (ii)

Champalal Gopiram Agarwal (supra), (iii) Divyabenn Prafulchandra Parmar (supra), (iv) Muktaben Nishantbhai Patel (supra) and (v) PCIT vs. Parasben Kasturchand Kochar, R/Tax Appeal No.204 of 2020, dated 17.09.2020. The SLP filed against the decision in cases of Parasben Kasturchand Kochar (supra) and Divyaben Prafulchand Parmar (supra) were dismissed by the Hon'ble Supreme Court. We further find that the order of ITO, Ward-3(4), Saharanpur, whose information regarding shares of Kyra Landscapes Ltd., was the basis for re-opening the impugned assessment, was deleted by the ITAT, Delhi in case of Shri Sanjeev Jain (ITA No.3381/Del/2017, dated 15.01.2019). The relevant part of the order of the Tribunal in case of Sanjeev Jain (supra) is reproduced below for ready reference:

*“19. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the assessee in the instant case has claimed exemption of Rs.2,21,23,710/- u/s 10(38) of the IT Act in respect of long-term capital gain on sale of shares of M/s. Kyra Landscapes Limited which was earlier known as M/s. TCL Technology Limited. We find the Assessing Officer on the basis of elaborate enquiries made from the bankers of the assessee company, company allotting the shares and other shareholders, SEBI and the report of the investigation wing etc came to the conclusion that the amount of Rs.2,36,97,101/- represents unexplained cash credit to be taxed u/s 68 of the IT Act 1961. We find the Ld. CIT(A) upheld the action of the Assessing Officer, the reasons of which 20 are already reproduced in the preceding paragraph. It is the submission of Ld. Counsel for the assessee that the assessee has invested an amount of Rs. 20 lacs through RTGS on 21st December, 2010 from his savings bank account maintained with Shivalik Mercantile Cooperative Bank Ltd. in M/s. TCL Technology Limited against which two lac equity shares of Rs.10/- each under preferential allotment scheme were allotted on 29.12.2010. The shares so allotted were credited in the De-mat account of the assessee in due course and out of shares so held in the De-mat account, the assessee sold 1,58,033 shares from May, 2012 to October, 2012 for a price ranging from Rs. 98/- to Rs. 160/- through online trading through registered stock broker namely M/s. Globe Market Limited. It is also his submission that the payment of the sale price after deduction towards STT, brokerage and other incidental charges were credited to his bank account and no discrepancies whatsoever were found by the Assessing Officer in respect of various documents produced before him. Therefore, according to him merely on the basis of suspicion and surmise, no addition can be made u/s 68 of the IT Act.*

*20. We find some force in the arguments advanced by the Ld. Counsel for the assessee. It is an admitted fact that 2,00,000 equity shares of Rs. 10/- each of M/s. TCL Technology*

Limited were purchased by the assessee for Rs.20 lac which were paid through RTGS on 21.12.2010 from his savings bank account maintained with Shivalik Mercantile Co-operative Bank Limited. The shares were duly credited to the D-mat account of the assessee and on being enquired by the Assessing Officer it was duly confirmed by the depository that the sales are out of the shares so held in the D-mat account. We find the assessee has sold 1,58,033 shares from Rs.98 to Rs.160/- during the period from May 2012 to October, 2012 through on-line trading through a registered stock broker namely Globe Capital Market Limited. There is also no dispute to the fact that the sale proceeds of the shares were credited in the bank account of the assessee after deducting STT, brokerage 21 and other incidental charges. Under these circumstances the question that arises is as to whether the purchase and sale transaction entered into by the assessee is genuine or not in view of the astronomical high prices of the shares of a non descript company.

**21.** We find merit in the arguments advanced by the Ld. Counsel for the assessee that the shares have been sold at the rate as prevailing on the stock exchange at the time of sale and the share prices of all the scrip are closely monitored by the stock exchange and SEBI. Even if the prices have gone up artificially as alleged by the revenue authorities, however, there is no material to hold that the assessee was involved therein. It is also an admitted fact that although the Assessing Officer had made enquiries from various entities i.e. assessee's banker, depository, broker and the banker of M/s. TCL Technologies Limited, however, nothing adverse have been found. There is no adverse finding by SEBI in relation to the scrip in question has been given to the Assessing Officer. Further in response to notice u/s 131 Sh. Sachin Jain, Frenchise of M/s. Globe Capital Market Ltd, appeared before the Assessing Officer and his statement was recorded wherein he has confirmed to have executed the order for sale of shares. Therefore, merely on the basis of preponderance of human probabilities the addition cannot be made in the hands of the assessee without disproving the various documents filed by the assessee.

**22.** We find the Hon'ble Bombay High Court in the case of CIT Vs. Mukesh Ratilal Marolia, in ITA No.456/Del/2007 Order dated 07.09.2011 has observed as under:-

3. The Assessee was carrying on business of manufacturing handkerchiefs as the proprietor of Rumal Manufacturing Company. In the Assessment Year in question the Assessee claimed that he had sold the shares of four companies, namely, M/s Alang Industrial Gases Ltd., Mobile Telecommunication Ltd., M/s 22 Rashel Agrotech Ltd. and M/s. Sentil Agrotech Ltd, which were purchased during the year 1999-2000 and 2000-2001. The entire sale consideration amounting to Rs. 1,41,08,484/- was utilized for the purchase of a flat at Colaba, Mumbai and accordingly benefit of section 54E of the Income Tax Act, 1961 was claimed.

4. The Assessing Officer has held that neither the purchase nor sale of shares were genuine and that the amount of Rs.1,41,08,484/- stated to have been received by Assessee on sale of shares was undisclosed income and accordingly made addition under section 69 of the Income Tax Act, 1961. The Appeal filed by the Assessee was dismissed by CIT (A).

5. On further Appeal, the ITAT by the impugned order allowed the claim of the assessee by recording that the purchase of shares during the year 1999-2000 and 2000-2001 were duly recorded in the books maintained by the Assessee. The ITAT has recorded a finding that the source of funds for acquisition of the shares

was the agricultural income which was duly offered and assessed to tax in those Assessment Years. The Assessee has produced certificates from the aforesaid four companies to the effect that the shares were in-fact transferred to the name of the Assessee. In these circumstances, the decision of the ITAT in holding that the Assessee had purchased shares out of the funds duly disclosed by the Assessee cannot be faulted.

6. Similarly, the sale of the said shares for Rs. 1,41,08,484/- through two Brokers namely, M/s Richmond Securities Pvt. Ltd and M/s. Scorpio Management Consultants Pvt. Ltd. cannot be disputed because the fact that the Assessee has received the said amount is not in dispute. It is neither the case of the Revenue that the shares in question are still lying with the Assessee nor it is the case of the Revenue that the amounts received by the Assessee on sale of the shares is more than what is declared by the assessee. Though there is some discrepancy in the statement of the Director of M/s. Richmand Securities Pvt Ltd. regarding the sale transaction, the Tribunal relying on the statement of the employee of M/s. Rimchand Securities Pvt. Ltd. that the sale transaction was genuine.

7. In these circumstances, the decision of the ITAT in holding that the purchase and sale of shares are genuine and therefore, the Assessing Officer was not justified in holding that the amount of Rs. 1,41,08,484/- represented unexplained investment under Section 69 of the Income Tax Act, 1961 cannot be faulted. 23

7. In the result, we see no merit in this Appeal and the same is dismissed with no order as to costs.”

**23.** We find the Hon’ble Jharkand High Court at Ranchi in the case of CIT Vs. Arun Kumar Agarwal (HUF) & Ors, Tax Appeal No. 13 of 2011, since report in [2013] DTR (Jharkhand) 219 order dated 13.07.2012 observed as under:-

“10. We have considered the submissions of the learned counsel for the parties and we are of the considered opinion that the learned Assessing Officer was much influenced by the enquiry report which may has been brought on record by the efforts of the Assessing Officer and that enquiry report was prepared by the SEBI and from the observations made by the Assessing Officer himself, it is clear that after getting that enquiry report, the SEBI prima fade found involvement of some of the share brokers in unfair trade practices. Even in a case where the share broker was found involved in unfair trade practice and was involved in lowering and rising of the share price, and any person, who himself is not involved in that type of transaction, if purchased the share from that broker innocently and bonafidely and if he show his bonafide in transaction by showing relevant material, facts and circumstances and documents, then merely on the basis of the reason that share broker was involved in dealing in the share of a particular company in collusion with others or in the manner of unfair trade practices against the norms of S.E.B.I and Stock Exchange, then merely because of that fact a person who bonafidely entered into share transaction of that company through such broker then only by mere assumption such transactions cannot be held to be a shame transaction. Fact of tinted broker may be relevant for suspicion but it alone necessarily does lead to conclusion of all transaction of that broker as tinted. In such circumstances, further enquiry is needed and that is for individual case. Such further enquiry was not conducted in that case.

11. At this juncture, it would be relevant to mention here that it is not disputed by the Revenue before us that the shares of these assesseees were already shown in the earlier Balance Sheet submitted by the assesseees, and therefore, in that situation, how the revenue condemned the transaction even on the ground of steep rise in the shares. If within a period of one year, the share price has risen from Rs.5 to 55 and from 9 to 160 and one person was holding the shares much prior to that start of rise of the share, then how it can be inferred that such person entered into sham transaction few years ago and prepared for getting the benefit after few years when the share will start rising 24 steeply. In present case even there was no reason for such suspicion when the shares were purchased years before the unusual fluctuation in the share price. Here in this case, we have given example of one of the Tax Appeal wherein the shares were purchased in the year 2004 and were sold in the year 2006, which is said to be one of the case wherein the gap in the purchase and sale of the shares was narrowest. In other cases as we have noticed from the various orders of the C.I.T.(Appeals) that, the shares of some of the companies were purchased by the assesseees even five years ago from the time of sale and those purchasers were already disclosed in the Balance Sheet of the assessee, then from any angle, it is proved that the assessee had held the shares much prior to 12 months of the sale of the shares.”

**24.** We find the Hon’ble Gujarat High Court in the case of CIT-I Vs. Maheshchandra G. Vakil [2013] 40 taxman.com 326 (Gujarat) has observed as under :-

“5. In the light of the above findings of fact recorded by the Tribunal, it is not possible to state that the view adopted by the Tribunal is, in any manner, unreasonable or perverse. Besides, the learned counsel for the appellant is not in a position to show that the Tribunal has placed reliance upon any irrelevant material or that any relevant material has been ignored, nor is he able to point out any material to the contrary so as to dislodge the concurrent findings of fact recorded by the Tribunal. Under the circumstances, the impugned order being based upon concurrent findings of fact recorded by the Tribunal upon appreciation of the evidence of record, does not give rise to any question of law, much less, a substantial question of law so as to warrant interference. The appeal is, accordingly, dismissed.”

**25.** We find the Hon’ble Gujarat High Court in the case of CIT-I Vs. Himan M. Vakil [2014] 41 taxman.com 425 (Gujarat) has observed as under:-

4. As can be seen from the impugned order, the Tribunal, after appreciating the evidence on / record, has found that before the Assessing Officer the assessee had explained that the purchase transactions were made on the "Online Trading System" and these transactions were genuine. Earlier, that is prior to 1-4-2005, it was not compulsory for the client to have his own transaction record under SEBI guidelines. Therefore, the purchases earlier were made using the broker’s code, and it was for this reason that the broker had used the "self code". Since the shares were sold after 1-4-2005, the transactions were not under the broker's code. As regards service-tax and stamp charges the contract note of the broker clearly mentioned that the brokerage was inclusive of service tax etc. In the case of the selling broker the Service tax Securities Transaction tax and Education Cess were separately 25 mentioned. As regards the point raised by the Assessing

*Officer that there was absence of broker-client agreement, the Tribunal accepted the submission of the assessee that the genuineness of the transactions was already proved by the contract notes for sale and purchase, the bank statement of the broker, the Demat Account showing transfer in and out of shares, as also abstract of transactions furnished by the CSE. The Tribunal, after appreciating the evidence on record, concurred with the findings recorded by the Commissioner (Appeals) that the assessee had furnished complete details which were not found false or bogus by the Assessing Officer and that it was only on suspicion that the Assessing Officer had treated the capital gain declared by the assessee as unexplained cash credit under section 68 of the Act. In the light of the aforesaid findings of fact recorded by it, the Tribunal dismissed the appeal of the revenue.*

*5. In the light of the above findings of fact recorded by the Tribunal, it is not possible to state that the view adopted by the Tribunal is, in any manner, unreasonable or perverse. Besides, the learned counsel for the appellant is not in a position to show that the Tribunal has placed reliance upon any irrelevant material or that any relevant material has been ignored, nor is he able to point out any material to the contrary so as to dislodge the concurrent findings of fact recorded by the Tribunal. Under the circumstances, the impugned order being based upon concurrent findings of fact recorded by the Tribunal upon appreciation of the evidence of record, does not give rise to any question of law, much less, a substantial question of law so as to warrant interference. The appeal is, accordingly, dismissed.”*

**26.** *We find the Hon’ble Punjab & Haryana High Court in the case of Prem Pal Gandhi (supra) has observed as under :-*

*2. The following questions of law have been raised:-*

*(i) Whether on the facts and in the circumstances of the case, Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs.4,11,77,474/- made by the AO on account of sham share transactions ignoring an important aspect that the transaction of shares showing their purchase price at Rs.11,00,000/- and sale consideration at Rs. 4,23,45,295/- within a period of less than two years/purchases of shares made in cash not cheque that too before shares got dematerialized / worth of the company at the time of purchase./ sale of shares not proved – All suggest non-genuineness of the said transaction?*

*(ii) Whether on the facts and circumstances of the case, the Hon’ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs.4,11,77,474/- made by the Assessing Officer on account of sham share transactions, whereas the CIT(A) himself had held that the assessee had not been able to substantiate the source of investment of Rs.11,00,000/- in the said shares purchased during the financial year 2005-06 and the Assessing Officer was directed to reopen the 26 case of the assessee for the assessment year 2006-07 on this issue ?*

*(iii) Whether the Hon’ble ITAT has erred in ignoring an important aspect that in such cases of sham transaction of shares showing abnormal hike in their value,*

*where the facts themselves speak loud and clear, the Assessing Officer is justified to even draw an inference from the attendant circumstances?*

*(iv) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 12,59,000 made by the AO on the basis of seized document on the grounds that the Assessing Officer has not pointed out as to how the figure of Rs. 12.59 lacs has worked out ignoring the fact that the assessee himself in his reply to the Assessing Officer had tried to explain the source of the receipts of Rs.12,59,000/- instead of challenging the working out of the said figure by the Assessing Officer?*

*3. The first three questions of law raised in this ... speed are covered against the appellant by an order and judgment of a Division Bench of this Court dated 16.02.2017 in ITA-18-2017 titled as The Pr. Commissioner of Income Tax (Central), Ludhiana Sh. Hitesh Gandhi, Bhatti Colony, Chandigarh Road, Nawanshahar.*

*4. The issue in short is this: The assessee purchased shares of a company during the assessment year 2006-2007 at ' 11/- and sold that same in the assessment year 2008-2009 at 400/- per share. In the above case, namely, ITA-18-2017 also the assessee had purchased and sold the shares in the same assessment years. The Assessing Officer in both the cases added the appreciation to the assessee's income on the suspicion that these were fictitious transactions and that the appreciation actually represented the assessee's income from undisclosed sources. In ITA 18-2017 also the CIT (Appeals) and the Tribunal held that the Assessing Officer had not produced any evidence whatsoever in support of the suspicion. On the other hand, although the appreciation is very high, the shares were traded on the National Stock Exchange and the payments and receipts were routed through the bank. There was no evidence to indicate for instance that this was a closely held company and that the trading on the National Stock Exchange was manipulated in any manner.*

*5. Question (iv) has been dealt with in detail by the CIT (Appeals) and the Tribunal. Firstly, the documents on which the Assessing Officer relied upon in the appeal were not put to the assessee during the assessee proceedings. The CIT (Appeals) nevertheless considered them in detail and found that there was no co-relation between the amounts sought to be added and the entries in those documents. This was on an appreciation of facts. There is nothing to indicate that the same was perverse or irrational. Accordingly, no question of law arises.*

*6. In the result circumstances, the appeal is dismissed.*

**27. We find the Co-ordinate Bench of the Tribunal in the case of Smt. Shikha Dhawan (supra) has deleted similar addition by observing as under:-**

*"8. I have heard the rival submissions and perused the material available on record. The assessee placed sufficient documentary evidence before the AO which are copy of the shares certificates with transfer form, copy of debit note issued by Shreeji Broking (P) Ltd., copy of cash receipt of Shreeji Broking (P) Ltd., copy of the account statement of the assessee in the books of the broker, copy of ledger account of Indus Portfolio (P) Ltd., copy of evidence for payment of*

securities transaction tax and copy of the bank statement of the assessee to show that the assessee had entered into genuine transaction of purchase of share which were later on sold through the broker on recognized stock exchange after 27 payment of STT. The claim of the assessee for sale of shares has been supported by the documentary evidences which have not been rebutted by the authorities below. Whatever inquiry was conducted in the cases of other parties and statement recorded of several persons namely Sh. Anil Khemka, Sh. Sanjay Vohra and Sh. Bidyoot Sarkar as referred in the assessment order and the report of the Investigation Wing were not confronted to the assessee and above statements were also not subject to cross-examination on behalf of the assessee. Therefore, such evidences cannot be read in evidence against the assessee. The order of the SEBI was also not confronted to the assessee. AO did not mention any such fact in assessment order. More so in those reports and statements, the name of the assessee has not been referred to. Ld. Counsel for the assessee, therefore, rightly contended that the twin conditions of section 10(38) of the Act have been satisfied in the Page I 24 IT A No.3035/Del/2018 case of the assessee. The assessee has been able to prove that she has entered into the genuine transaction of purchase and sale of shares and the sale consideration is received from broker through banking channel. The brokers have not denied the transaction with the assessee. The assessee rooted the transaction of sale of shares through recognized stock exchange after making payment of STT. In similar circumstances, ITAT SMC Bench, Delhi in the case of Meenu Goel vs ITO (supra) following the decision of Jurisdictional Hon'ble P&H High Court in the case of Pr.CIT w Prem Pal Gandhi(supra) deleted the similar addition. Therefore, the issue is covered in favour of the assessee by the order of ITAT, Delhi Bench in the case of Meenu Gael vs ITO (supra) followed by judgment of Jurisdictional P&H High Court which is binding. There is no other material available on record to rebut the claim of the assessee of exemption claimed u/s 10(38) of the Act.

9. Keeping in view of the above discussion and the material on record, in the light of the order of the Tribunal in the case of Meenu Goel vs. ITO (supra), I set aside the orders of the authorities below and delete the addition of Rs.19,51,357/-. The appeal of the assessee is, accordingly, allowed. 10. In the result, the appeal of the assessee is allowed."

**28.** We find the Kolkata Bench of the Tribunal in the case of Prakash Chand Bhutoria (supra) has dealt with identical issue where the long-term capital gain on account of sale of shares of M/s Unno Industries Ltd. was denied by the Assessing Officer on the basis of report of the Investigation Wing of Kolkata and the Id. CIT(A) upheld the action of the Assessing Officer. On further appeal by the assessee, the Tribunal deleted the addition made by the Assessing Officer u/s 68 by observing as under:-

"8. A perusal of the order of the AO demonstrate: that this addition was made merely on "suspicion" and in a routine and mechanical manner. This is clear from the fact that the AO refers to some 'Sharp Trading company' as one of the main, manipulated company and whereas the assessee sola scrips in Unno Industries Ltd. The AO refers to various enquiries made by "The Directors of Income Tax", Kolkata on project basis and that this resulted into unearthing of a huge syndicate of entry operators and share brokers and money lenders involved in providing of bogus accommodation entries. The report as the so-called project and the evidence collected by the DIT (Inv.), Kolkata etc have not been brought on record. It is well settled that any document relied upon by the AO for making

an addition has to be supplied to the assessee and an opportunity should be provided to the assessee to rebut 28 the same. In this case, general statements have been made by the AO and the addition is made based on such generalizations. The assessee has not been confronted with any of the evidence collected in the investigation done by the DIT(Inv.), Kolkata. Evidence collected from third parties cannot be used against the assessee without giving a copy of the same to the assessee and thereafter giving him an opportunity to rebut the same.

9. The AO further relies on the shop increase of 31000% of the value of shares over the period of 2 years. Though this is highly suspicious, it cannot take the place of evidence. The Hon'ble Supreme Court has stated that suspicion however strong cannot be the basis for making an addition. The evidence produced by the assessee listed above proves his case and the AO could not controvert the same by bringing on record any evidence. The evidence said to have been collected by the DIT (TNV.), Kolkata and the report is not produced before this Bench.

10. I now discuss the case law on the subject. The Hon'ble Calcutta High Court in the case of CIT, Kolkata-IIT vs. Smt. Shreyashi Gar.:.-spurred in [2012] (9) TMI 1113 held as follows:

"1. Whether on the facts and circumstances of the case, the order of the Ld. Tribunal is perverse in law as well as on facts in deleting the addition made by the Assessing Officer as unexplained cash under section 68 of the Income Tax Act, 1961, by ignoring the facts on record."

The Id. Tribunal after considering the mate rip and hearing came to a fact finding which is as follows:

The Assessing Officer has doubted the transaction since the selling broker was subjected to SEBI's action. However, the demat account given the statement of transactions from 01.04.2004 to 31.03.2005 i.e. relevant for the assessment year under appeal (2005-06) are before us. There cannot be any doubt about the transaction as has been observed by the Assessing Officer. The transactions were as per norms under controlled by the Securities Transaction Tax, brokerage service tax and cess, which were already paid. They were complied with. All the transactions were through bank. There is no iota of evidence over the above transactions as it were through demat format. Hence, we agree with the given findings of the Ld. Commissioner of Income Tax (Appeals ) in accepting the transactions as genuine too.

In view of the fact findings we cannot reappraise, recording is such, cannot be said to be perverse as it is not fact finding of the Ld. Tribunal alone. The commissioner of Income Tax came to the same fact finding. Concurrent fact finding itself makes the story of perversity, unbelievable.

The "D" Bench of the Kolkata Tribunal in the case of Gautam Kumar Pincha vs. ITO, in I.T.A. No. 569/Kol/2017 dated 15.11.2017 at para 19 onwards held as follows:

(i) M/s Classic Growers Ltd. vs. CIT [ITA No. 129 of 2012] (Cat HC) - In this case the Id AO found that the formal evidences produced by the assessee to support huge losses claimed in the transactions of purchase and sale of shares were stage managed. The Hon'ble High Court held that the opinion of the AO that the

assessee generated a sizeable amount of loss out of prearranged transactions so as to reduce the quantum of income liable for tax might have been the view expressed by the Id AO but he miserably failed to substantiate that. The High Court held that the transactions were at the prevailing price and therefore the suspicion of the AO was misplaced and not substantiated.

(ii) CIT V. Lakshmanar Estate & Trading Co. Limited [2013] 40 taxmann.com 439 (Cal) - In this case the Hon'ble Calcutta High Court held that on the basis of a suspicion howsoever strong it is not possible to record any finding of fact. As a matter of fact suspicion can never take the place of proof. It was further held that in absence of any evidence on record, it is difficult if not impossible, to hold that the transactions of buying or selling of shares were colourable tram., -or were resorted to with ulterior motive.

(iii) CIT V. Shreyashi Ganguli [ITA No. 196 of 2012 ] (Cal HC) - In this case the Hon'ble Calcutta High Court held that the Assessing Officer doubted the transactions since the selling broker was subjected to SEBI's action. However the transactions were as per norms and suffered STT, brokerage, service tax and cess. There is no iota of evidence over the transactions as it were reflected in demat account. The appeal filed by the revenue was dismissed.

(v) CIT V. Andaman Timbers Industries Limited [ITA No. 721 of 2008] (Cal HC) - In this case the Hon'ble Calcutta High Court affirmed the decision of this Tribunal wherein the loss suffered by the Assessee was allowed since the AO failed to bring on record any evidence to suggest that the sale of shares by the Assessee were not genuine.

(vi) CIT V. Bhagwati Prasad Agarwal [2009- TMI-3473S (Cal HC) in ITA No. 22 of 2009 dated 29.4.2009] - In this case the Assessee claimed exemption of income from Long Term Capital Gains. However, the AO, based on the information received by him from Calcutta Stock Exchange found that the transactions were not recorded thereat. He therefore held that the transactions were bogus. The Hon'ble Jurisdictional High Court, affirmed the decision of the Tribunal wherein it was found that the chain of transactions entered into by the assessee have been proved, accounted for, documented and supported by evidence. It was also found that the assessee produced the contract notes, details of demat accounts and produced documents showing all payments were received by the assessee through banks. On these facts, the appeal of the revenue was summarily dismissed by High Court.

8.4. In the light of the documents stated i.e. (I to xiv) in Para 6(supra) we find that there is absolutely no adverse material to implicate the assessee to have entered gamut of unfounded/unwarranted allegations leveled by the AO against the assessee, which in our considered opinion has no legs to stand and therefore has to fall. We take note that the Id. DR could not controvert the facts supported with material evidences which are on record and could only rely on the orders of the AO/CIT(A). We note that in the absence of material/evidence the allegations that the assessee/brokers got involved in price rigging/manipulation of shares must therefore also fail. At the cost of repetition, we note that the assessee had furnished all relevant evidence in the form of bills, contract notes, demat statement and bank account to prove the genuineness of the transactions relevant to purchase and sale of shares resulting in long term capital gain. These evidences were neither found by the AO nor by the Id. CIT(A) to be false or

*fictitious or bogus. The facts of the case and the evidence in support of the evidence clearly support the A.aim of the assessee that the transactions of the assessee were genuine and the ante: rities below was not justified in rejecting the claim of the assessee that income from LTCG is exempted u/s 10(38) of the Act. For coming to such a conclusion we rely on the decision of the Hon'ble Calcutta High Court in the case of M/s. Alipine Investments in ITA No.620 of 2008 dated 26th August, 2008 wehre in the High Court held as follows: -*

*"It appears that there was loss and the whole transactions were supported by the 30 contract notes, bills and were carried out through recognized stock broker of the Calcutta Stock Exchange and all the bills were received from the share broker through account payee which are also filed in accordance with the assessment.*

*It appears from the facts and materials placed before the Tribunal and after examining the same, the tribunal allowed the appeal by the assessee.*

*In doing so the tribunal held that the transactions cannot be brushed aside on suspicion and surmise. However, it was held that the transactions of the shares are genuine. Therefore, we do not find there is any reason of the shares are genuine. Therefore, we do not find that there is any reason to hold appeal being ITA No. 620 of 2008 is dismissed."*

*8.5. We note that the Id. AR cited plethora of the case laws to bolster his claim which are not being repeated again since it has already been incorporated in the submissions of the Id. AR (supra) and have been duly considered by us to arrive at our conclusion. The Id. DR could not bring to our notice any case laws to support the impugned decision of the Id. CIT(A)/AO. In the aforesaid facts and circumstances of the case, we hold that the Id. CIT(A) was not justified in upholding the addition of sale proceeds of the shares as undisclosed income of the assessee u/s 68 of the Act. We, therefore, direct the AO to delete the addition.*

*9. In the result the appeal of the assessee is allowed.*

*" The "A" bench of the Kolkata Tribunal in the case of ITO vs. Shaleen Khemani in I.T.A. No. 1945/Kol/2014 dated 18.10.2017 at para 9.1. to 9.4 held as follows:*

*9.1 We further find that the transaction of sale of shares by the assessee was duly backed by all evidences including Contract Notes, Demat Statement, Bank Account reflecting the transactions, the Stock Brokers have confirmed the transactions, the Stock Exchange has confirmed the transactions, the Shares have been sold on the online platform of the Stock Exchange and each trade of sale of shares were having unique trade no. and trade time. It is not the case that the shares which were sold on the date mentioned in the contract note were not traded price on that particular date. The Id AO doubted the transactions due to the high rise in the stock price but for that, the assessee could not be blamed and there was no evidence to prove that the assessee or any one on his behalf was manipulating the stock prices. The stock exchange and SEBI are the authorities appointed by the Government of India to ensure that there is no stock rigging or manipulation. The Id AO has not brought any evidence on record to show that these agencies have alleged any stock any stock manipulation*

against the assessee and or the brokers and or the Company. In absence of any evidence it cannot be said that merely because the stock price moved sharply, the assessee was to be blamed for bogus transactions. It is also to be seen that in this case, the shares were held by the Donors from 2003 and sold in 2010 thus there was a holding period of 7 years as per Section 49 of the Act and it cannot be said that the assessee and the Donors were making such plans for the last 7 years to rig the stock price to generate bogus capital gains that too without any evidences whatsoever.

9.2 It is also pertinent to note that the assessee and / or the stock broker M/s P Didwania & Co and Toshith Securities P Ltd., both registered share and stock brokers with Calcutta Stock Exchange had confirmed the transaction and have issued legally valid contract notes under the Law and such contract notes are available in pages 41-52 of the Paper Book. We find that the Hon'ble Calcutta High Court in the case of Pr CIT Vs Rungta Properties Private Limited ITAT No 105 of 2016 dated 8th May 2017 in a similar issue dismissed the appeal of the Department by 31 making the following observations:

(11) On the last point, the Tribunal held that the Assessing Officer had not brought on records any material to show that the transactions in shares of the company involved were false or fictitious. It is finding of the assessing officer that the scrips of this company was executed by a broker through cross deals and the broker was suspended for some time. It is assessee's contention on the other that even though there are allegations against the broker, but for that reason alone the assessee cannot be held liable. On this point the Tribunal held –

"As a matter of fact the AO doubted the integrity of the broker or the manner in which the broker operation as per the statement of one of the directors of the broker firm and also AO observed that assessee had not furnished any explanation in respect of the intention of showing trading of shares only in three penny stocks. AO relied the loss of Rs.25,30,396/- only on the basis of information submitted by the Stock fictitious. AO has also not doubted the genuineness of the documents placed on record by the assessee. AO's observation and conclusion are merely based on the information representative. Therefore on such basis no disallowance can be made and accordingly we find no infirmity in the order of Id. CIT(A), who has rightly allowed the claim of assessee. Thus ground No. 1 of the revenue is dismissed.

" We agree with the reasoning of the Tribunal on this point also. We do not find any reason to interfere with the impugned order. The suggested questions, in our opinion do not raise any substantial question of law.

9.3. We therefore hold that there is absolutely no adverse material to implicate the assessee to the entire gamut of unwarranted allegations leveled by the Id AO against the assessee, which in our considered opinion, has no legs to stand in the eyes of law. We find that the Id. DR could not controvert the arguments of the Id. AR with contrary material evidences on record and merely relied on the orders of the Id. Assessing Officer. We find that the allegation that the assessee and / or brokers getting involved in price rigging of SOICL shares fails. It is also a matter of record that the assessee furnished all evidences in the form of bills, contract notes, demat statements and the bank accounts to prove the genuineness of the transactions relating to purchase and sale of shares resulting in LTCG. These

*evidences were neither found by the Ld. Assessing Officer to be false or fabricated. The facts of the case and the evidences in support of the assessee's case clearly support the claim of the assessee that the transactions of the assessee were bonafide and genuine and therefore the Ld. Assessing Officer was not justified in rejecting the assessee's claim of exemption under section 10 (38) of the Act. We also find that the Ld. CIT (A) rightly relied on the decision of Hon'ble High Court at Calcutta in the case of ALPINE INVESTMENTS in ITA No. 620 of 2008 dated 26th August 2008 wherein the Hon'ble Court held as follows:*

*It appears from the facts and materials placed before the Tribunal and after examining the same the Tribunal came to the conclusion and allowed the appeal filed by the assessee. In doing so, the Tribunal held that the transaction fully supported by the documentary evidences could not be brushed aside on suspicion and surmises. However, it was held that the transactions of share are genuine. Therefore, we do not find that there is any reason to hold that there is any substantial question of law involved in this matter. Hence, the appeal being ITA No. 620 of 2008 is dismissed."*

*9.4. We also find that the various other case laws of Hon'ble Jurisdictional High Court and other case laws also relied upon by the Id AR and findings given thereon would apply to the facts of the instant case. The Id DR was not able to furnish any contrary cases to this effect. Hence we hold that the Id AO was not justified in assessing the sale proceeds of shares of SOICL as undisclosed income of the assessee u/s 68 of the Act and therefore we uphold the order of the Id CITA and dismiss the appeal of the revenue. Accordingly the grounds reused by the revenue are dismissed."*

*Applying the proposition of law laid down in all the above referred cases, the facts of this case, I find force in the submission of the assessee and there are backed by evidence. I also find that the revenue has not based its finding on in any evidence. In view of the above discussion the addition made u/s 68 of the Act is hereby deleted."*

**29.** *The various other decisions relied on the Ld. Counsel for the assessee also support his case. Under these circumstances and in view of our above discussion we are of the considered opinion that the addition made by the Assessing Officer u/s 68 of the Act which has been sustained by the CIT(A) is not justified under the facts and circumstances of the present case. We, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition. The grounds raised by the assessee are accordingly allowed.*

**30.** *In the result, the appeal filed by the assessee is allowed."*

9. It is clear from the above order that the Delhi Tribunal has allowed exemption of Rs.2,21,23,710/- claimed u/s 10(38) of the Act on sale of shares of M/s Kyra Landscapes Ltd. The appellant has also traded in the same shares and has claimed exempted LTCG u/s 10(38) of the Act. The facts in case of Sanjeev

Jain (supra) are identical to the facts of the instant appeal. Shri Sanjeev Jain had purchased the shares of Kyra Landscapes Ltd. @ Rs.10/- per share through preferential allotment. The respondent-appellant had also acquired the same shares through preferential allotment by paying @ Rs.10/- per share. In case of Sanjiv (supra), the CIT(A) had confirmed the addition by the AO. However, the Delhi Tribunal reversed the order of CIT(A) and decided in favour of the assessee. We have also found that the share of Kyra Landscapes Ltd. (formerly known as TCL Technologies Ltd.) was not in the list of 84 shares in the investigation report in the case of Project Bogus LTCG/STCL through BSE Listed penny stocks. The Delhi Tribunal in case of Sanjeev Jain (supra) has relied on several decisions of Hon'ble High Courts including the jurisdictional High Court in case of Maheshchanda G. Vakil, 40 taxmann.com 326 (Guj.) and CIT vs. Himan M. Vakil, 41 taxmann.com 425 (Guj.). Hence, following the decision of Sanjeev Jain (supra), we confirm the order of CIT(A) and dismiss the ground raised by the revenue.

9.1 We make it clear that the finding in this order is given based on the specific facts of the case and the decision of ITAT, Delhi in case of Sanjeev Jain (supra), where identical issue pertaining to LTCG of the same share was before the Tribunal. It will not be a precedent in respect of other penny stocks, which the authority concerned may independently decide based on facts of such case.

10. The next ground pertains to the deletion of unexplained commission of Rs.64,78,080/-, being 7.5% of the LTCG, u/s 69C of the Act. We have already deleted the addition towards LTCG made by the AO u/s 68 of the Act. The CIT(A)

deleted the addition by observing that LTCG was proved by the appellant by submitting documentary evidence and the addition made by the AO towards commission is without any satisfactory explanation. Since the order of the CIT(A) has been upheld, there remains no basis for sustaining the addition u/s 69C of the Act. Accordingly, this ground is also dismissed.

11. The assessee has not filed any cross-objection challenging validity of assessment u/s 147 of the Act. The Id. AR, however, raised the ground by invoking Rule 27 of the ITAT, Rules 1963. We have already allowed the appeal of the assessee on merit. Therefore, the new ground raised by the appellant under Rule 27 is academic in nature and do not require adjudication.

12. In the result, the appeal of the revenue is dismissed.

**ITA No.779/SRT/2023 (AY 2014-15)**

13. The facts in this appeal of the revenue are similar to the facts of ITA No.778/SRT/2023 decided above. The revenue has also raised similar grounds of appeal in this year. Hence, following the reasons given in ITA No.778/SRT/2023 (supra), the orders of CIT(A) is confirmed and the appeal of revenue is dismissed.

14. In the result, appeal of revenue is dismissed.

15. In combine result, both appeals of revenue are dismissed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 17/11/2025 in the open court.

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 17/11/2025

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**न्यायिक सदस्य/ JUDICIAL MEMBER**

**Dkp Outsourcing Sr.P.S\***

आदेश की प्रतिलिपि अग्रोषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

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सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत