

**INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "SMC": AGRA
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.128/AGR/2025
(Assessment Year: 2015-16)**

Ruby Jain, 1/78A, Kale Ka Tall, Delhi Gate, Agra	Vs.	Income Tax Officer, Ward-1(1)(3), Agra
(Appellant)		(Respondent)
PAN: AEVPJ4936P		

Assessee by :	Shri K. K. Jain, Adv
Revenue by:	Shri Anil Kumar, Sr. DR
Date of Hearing	19/01/2026
Date of pronouncement	21/01/2026

ORDER

1. The appeal in ITA No. 128/AGR/2025 for AY 2015-16, arises out of the order of the ADD/JCIT(A), Gurugram [hereinafter referred to as 'Id. JCIT(A)', in short] dated 28.01.2025 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.12.2017 by the Assessing Officer, ITO, Ward-1(1)(3), Agra (hereinafter referred to as 'Id. AO').

2. The only effective issue to be decided in this appeal is as to whether Id JCIT(A) was justified in confirming the addition of ₹16,88,061/- being the sale proceeds received on sale of shares as unexplained cash credit u/s 68 of the Act in the fact and circumstances of the instant case. The interconnected issue involved therein is as to whether the Id JCIT(A) was justified in confirming the addition of ₹50,645/- u/s 69C of the Act on

account of unexplained expenditure towards estimated commission @3% paid for seeking accommodation entries.

3. I have heard the rival contentions and perused the materials available on record. The return of income for AY 2015-16 was filed by the assessee on 18/08/2015, declaring total income of ₹2,18,060/-. In the said return, the assessee had claimed an exemption u/s 10(38) of the Act on account of long-term capital gains from sale of shares of HPC Biosciences Ltd. The following facts are undisputed and indisputable:-

- a. The assessee purchased 4000 shares of HPC Biosciences Ltd @ 35 per share for ₹1,40,000/- through Cameo Corporate Services Ltd for allotment made for Initial Public Offer (IPO) on 15.03.2013.
- b. Payments for the same were made through regular banking channels.
- c. The shares were duly Dematted and was credited to the Demat account maintained by the assessee.
- d. The assessee through her broker Seema Securities Pvt. Ltd sold 2800 shares at different prevailing market rates during the year under consideration as follows: –

Date of sale	No of shares	Rate share per	Sale amount	Net amount
15.04.2014	1200	588	705600	701626.83
28.04.2014	1200	635.50	762600	758734.30
05.05.2014	300	586.20	175860	174968.53
30.07.2014	100	530	53000	52731.34
Total	2800		1697060	1688061

- e. The assessee earned long-term capital gains on sale of 2800 shares amounting to ₹15,90,061/- and claimed the same as exempt u/s 10(38) of the Act.
- f. HPC Biosciences Ltd is a scrip listed on Bombay stock Exchange (BSE).
- g. The shares were sold by the assessee in secondary market, through a stock broker duly registered with SEBI in the recognised stock exchange.
- h. The sale transaction carried out in secondary market had been duly subjected to Securities Transaction Tax (STT).
- i. The assessee furnished the complete contract notes statement for both purchase and sale together with the bank statement evidencing the payment for purchase and sale of shares before the Id AO.

4. The Id AO merely placed reliance on the Kolkata Investigation Wing Report, which investigated 84 scrips by categorizing the same as penny stock where the price of shares were artificially rigged abnormally in connivance with certain entry providers/promoters, etc with a view to give undue benefit of exemption of long-term capital gains or short-term capital loss to various persons by converting their unaccounted income into accounted income. Admittedly, HPC Biosciences Ltd was one of the scrip investigated by Kolkata Investigation Wing. Based on this investigation report, the Id Assessing Officer concluded that the sale proceeds received by the assessee on sale of 2800 shares of HPC Biosciences Ltd from the registered stock broker is nothing but accommodation entry received by the assessee and sought to tax the same as unexplained cash credit u/s 68 of

the Act. The Id AO further added the sum of ₹50,645/- as unexplained expenditure u/s 69C of the Act on the ground that assessee could have incurred commission expenditure @ 3% for seeking accommodation entries. This action of the Id Assessing Officer was upheld by the Id CIT(A).

5. It is not in dispute that assessee has not maintained any books of account and is not obligated to maintain the books as per the Act. The assessee does not have any income from business. Sale proceeds of shares of ₹16,88,061/- were credited in the bank account of the assessee. These credits are sought to be added as unexplained cash credit u/s 68 of the Act by the lower authorities. I am in agreement with the argument advanced by the Id AR that assessee is not bound to maintain books of account and hence the provisions of Section 68 of the Act per se could not be made applicable herein and that the bank statement cannot be construed as books of account. The Id AR rightly placed reliance on the decision of the Bombay High Court in the case of CIT vs. Bhaichand N. Gandhi reported in 141 ITR 67 (Bom). For the sake of convenience, the entire order is reproduced below : –

“Judgment

Kania J.—The questions referred to us for determination in this reference under section 256(1) of the Income-tax Act, 1961 (referred to hereinafter as ‘the said Act’), are as follows :

“(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that a cash credit for the previous year shown in the assessee’s bank pass book issued to him by the bank but not shown in the cash book maintained by him for that year does not fall within the ambit of section 68 of the Income-tax Act, 1961, and as such the sum so credited is not chargeable to income-tax as the income of the assessee of that previous year ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal erred in holding that the deposit of Rs. 10,000 made by the assessee on January 20, 1961, in the bank was not includible under section 68 of the Income-tax Act, 1961, in computing the income of the assessee for the assessment year 1962-63 ?”

In the course of the assessment proceedings for the assessment year 1962-63, for which the relevant previous year in the case of the assessee was Samvat year 2017, the ITO included Rs. 30,000 in the assessment on account of cash credits found in certain books

which, according to the ITO, were the books of the assessee. The explanation offered by the assessee regarding the genuineness of these credits was not accepted by the ITO and he treated the amount as income from undisclosed sources. On an appeal by the assessee, the AAC confirmed the view of the ITO. On a further appeal to the Tribunal by the assessee, an argument was put forward on behalf of the assessee that in respect of one of the deposits included in the said sum of Rs. 30,000, namely, a deposit of Rs. 10,000, this deposit was shown on January 21, 1961, in the bank account of the assessee. It was contended on behalf of the assessee that this amount was not an amount credited in the books of the assessee maintained by the assessee for the previous year ending on November 8, 1961 (Samvat year 2017) and that the bank pass book was not a book maintained by the assessee. It was contended on behalf of the assessee that the amount, even if treated as undisclosed income of the assessee, could only be assessed in the financial year. The Tribunal accepted the contention of the assessee holding that the said bank pass book could not be treated as a book of the assessee, as contended by the Department, and held that it was not a book maintained by the assessee for any previous year as referred to in section 68 of the said Act. It is from this decision that the aforesaid questions have been referred to us.

Section 68 of the said Act say as follows :

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

In Baladin Ram v. CIT [1969] 7 ITR 427, it has been held by the Supreme Court that it is now well settled that the only possible way in which income from an undisclosed source can be assessed or reassessed is to make the assessment on the basis that the previous year for such an income would be the ordinary financial year. Even under the provisions embodied in section 68 of the said Act, it is only when any amount is found credited in the books of the assessee for any previous year that the section will apply and the amount so credited may be charged to tax as the income of that previous year, if the assessee offers no explanation or the explanation offered by him is not satisfactory.

As the Tribunal has pointed out, it is fairly well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. Applying this principle, the pass book supplied by the bank to its constituent is only a copy of the constituent's account in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified in the conclusions at which it arrived.

In the result, the questions referred to us are answered as follows :

Question No. 1: In the affirmative.

Question No. 2 : In the negative.

It is clarified that both the questions are answered in favour of the assessee.

The Commissioner to pay the costs of the reference to the assessee."

6. Respectfully following the same, we hold that the addition made in the sum of ₹16,88,061/- u/s 68 of the Act is hereby directed to be deleted. Consequentially, the addition made on account of unexplained expenditure u/s 69C of the Act is also hereby deleted. Since, the relief is granted on this technical ground, the various other arguments advanced by the Id AR on merits by reference to various SEBI orders and various decisions of the Hon'ble High Courts and Tribunals, need not be gone into and they are left open.

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

Order pronounced in the open court on 21/01/2026.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 21/01/2026
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi