

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRIPRADIP KUMAR CHOUBEY, JM**

**ITA No. 1966/KOL/2025
(Assessment Year: 2016-17)**

**DCIT, Central Circle 4(3)
Aaykar Bhawan, Kolkata-700069,
West Bengal**

(Appellant)

Vs.

**BRGD Sponge & Iron Pvt. Ltd.
6, Hungerford Street, 3rd Floor,
Kolkata-700017, West Bengal**

(Respondent)

**ITA No.1403/KOL/2025
(Assessment Year: 2016-17)**

**BRGD Sponge & Iron Pvt. Ltd.
6, Hungerford Street, 3rd Floor,
Kolkata-700017, West Bengal**

(Appellant)

Vs.

**DCIT, Central Circle 4(3)
Aaykar Bhawan, Kolkata-700069,
West Bengal**

(Respondent)

PAN No. AACCB5572D

Assessee by

: Shri Manish Rastogi, AR

Revenue by

: Shri Manoj Kumar Pati, DR

Date of hearing:

03.02.2026

Date of pronouncement:

26.02.2026

ORDER

Per Rajesh Kumar, AM:

These are cross appeals against the order of the Commissioner of Income-tax (Appeals), Kolkata-27 (hereinafter referred to as the "Ld. CIT(A)") dated 15.04.2025 for the AY 2016-17.

2. At the outset, we observe from the appeal folder in ITA No. 1966/KOL/2025 that there is a delay of 26 days in filing the appeal by the department in support of which condonation petition was filed. It was stated in the condonation petition that the delay has

occurred due to obtaining the administrative approvals from the various authorities in the hierarchy, which took quite a long time and accordingly, the delay has occurred. The DR submitted that the same is attributable to genuine and bonafide reasons and may be condoned. The Id. AR, on the other hand, did not oppose the condonation of delay. Considering the reasons cited before us, we are inclined to condone the delay and admit the appeal for hearing.

3. The common issue raised in all the grounds raised by the Revenue is against the order of Id. CIT (A) partly deleting the addition to the extent of ₹2,18,15,000/- as made by the Id. AO of ₹2,30,00,000/- u/s 68 of the Act in respect of transactions of sale of unlisted equity shares. The assessee in its appeal has also challenged the part sustaining of addition vide ground no.4 in its appeal to the tune of ₹11,50,000/- being 5% of the total sale value of investments without any basis and prayed the same may be deleted.

3.1. The facts in brief are that the assessee filed the return of income on 05.10.2016, showing total income of ₹12,39,240/-, and book profit u/s 115JB of the Act amounting to ₹14,22,063/-. The return was processed u/s 143(1) of the Act accepting the returned income. Thereafter, the case of the assessee was reopened after the Id. AO received information from DGIT(Inv), Mumbai, that the assessee is engaged in the reversal trades in illiquid stock options resulting in non-genuine business profit/loss and was beneficiary of the said entries. According to the said information, the assessee has purchased stock option for an aggregate premium value amounting to ₹65,12,000/- and sold the same for an aggregate premium value of ₹96,12,000/-, thereby making a profit of ₹31 lacs. It was also informed that both buy and sale of trades were executed through the

same brokers M/s Kayan Securities Private Limited on Bombay Stock Exchange. Accordingly, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 28.07.2022, after passing order u/s 148A(d) of the Act on 28.07.2022, which was proceeded by issuing a show cause notice u/s 148A(b) of the Act. The assessee filed the return of income in compliance to notice u/s 148 of the Act on 28.04.2023, declaring the same income as was declared in the return filed u/s 139(1) of the Act. Thereafter, again a credible information was received by the Id. AO that assessee has received ₹2,30,00,000/- in the form of sale of investments of unlisted equity shares which were not genuine. Accordingly, the notice u/s 143(2) and 142(1) of the Act along with questionnaire were issued which were replied by the assessee by furnishing various details and evidences as called for. The assessee is incorporated on 10.12.2004 and has regularly assessed to tax and is *interalia* engaged in the business of trading of TMT Bars etc. M/s Balgopal Tie up Pvt Ltd, a private limited company was amalgamated with the assessee company vide order of National Company Law Tribunal, Kolkata Bench dated 20.09.2022, copy of which is available at page no.38 to 52 of the Paper Book. A search action was conducted on the assessee u/s 132(1) of the Act on 30.11.2022, and thereafter the assessment was framed u/s 147/143(3) of the Act vide order dated 29.03.2024, assessing the income at ₹2,43,91,949/-, after making an addition of ₹2,61,00,000/- u/s 68 of the Act comprising ₹31,00,000/- in respect of commodity profits already offered to tax in the return of income by the assessee and again adding u/s 68 of the Act on the ground of being bogus and Rs. 2,30,00,000/- was added on account of sale of investments by the assessee of unlisted equity shares by the amalgamating company M/S Balgopal Tie-up

Pvt Ltd. The said amalgamation was effected vide order of the National Company Law Tribunal, Kolkata Bench vide order dated 20.09.2022.

3.2. The Id counsel of the assessee submitted that the unlisted shares were purchased by the amalgamating company in financial year 2008-09 and the investments in shares were accepted by the revenue even in the assessment proceedings in A.Y. 2008-09 which has been noted by the Id CIT(A) in the appellate order also. The case of the assessee is squarely covered by the decision of the co-ordinate Bench of group company in case of Shree Ramchandra Ingot India Pvt Ltd. Vs DCIT in ITA No. 1363/Kol/2025 for A.Y. 2017-18 & others, which was also covered in the same search. The Id. AR submitted the issue of sale of shares (unlisted equities) has been decided by the co-ordinate bench in favour of the group concern vide order dated 19.11.2025. The Id. AR therefore prayed that since the issue is similar, the present addition sustained by the Id. CIT(A) may kindly be deleted by following the said order of the co-ordinate bench.

3.3. The Id. DR on the other hand submitted that each case has different facts nonetheless the issue of sale of shares was decided by the bench in the case referred by the Id. AR . The Id. DR relied heavily on the order of AO and prayed that the order of AO may be restored.

3.4. We have heard the rival submissions and perused the materials available on record we find that the issue of sale of shares is squarely covered by the decision of the co-ordinate Bench in the case of Shree Ramchandra Ingot India Pvt Ltd. Vs. DCIT (supra), under similar

facts which is a related concern covered in the same search. The operative part of the decision is extracted as under:-

"17. After considering the rival submissions and perusing the materials available on record, we find that the assessee is carrying on the business of trading of sundry iron and steel items and is being assessed to tax regularly right from the inception when it was incorporated on 30.12.2004. We note that vide order dated 26.12.2022 of NCLT Kolkata benches, two companies namely M/s. Jyani Agencies Pvt Ltd., and M/s. Jyani Dealer Pvt Ltd., were amalgamated with the assessee company. We note that undisputedly these investments in the private equity shares were held by these amalgamating companies in their respective balance sheets. We also note that these private equity investments were also sold by these amalgamating companies and the sales considerations were also received by them. Thereafter, vide the above NCLT order, these companies came to be merged with the assessee company upon amalgamation. We note that these investments were accepted by the revenue in the hands of amalgamating companies in the earlier assessment years even in the assessments framed u/s.143(3) of the Act as mentioned hereinabove. We note that the assessments were framed for the assessment year 2017-18 in case of amalgamating companies namely Jyani Dealers Pvt Ltd and Jyani Agencies Pvt Ltd vide orders dated 02.5.2019 and 22.05.2019 passed u/s.143(3) of the Act by the AO and these investments were accepted. We note that the notices u/s.143(2) and u/s.142(1) of the Act along with questionnaire were issued wherein the Assessing Officer specifically raised the issue of investment in private equity shares. In fact, the scrutiny has been selected primarily to verify the investments in private equity shares and the assessments were framed u/s.143(3) of the act dated 02.05.2019 & 22.05.2019 as stated above accepting these investments in private equity shares. Whereas in the impugned assessment order, the AO has raised suspicion on share capital raised by the amalgamating companies by overlooking the fact that the share capital of the amalgamating companies were accepted in their respective assessments by the AO. In our opinion the AO has no basis of such suspicion and therefore, we do not find any merit in the contention of the revenue that these were shell companies and has been rightly treated so by the AO while framing the assessment and the addition has been rightly made u/s.68 of the Act at Rs.7,33,50,000/-. In our opinion, once these investments have been accepted in the earlier assessment years in the hands of the amalgamating companies, then how the same can be treated as unexplained investments when these investments were sold by the same amalgamating companies. The decision of Hon'ble Supreme Court in the case of PCIT vs NRA Iron and Steel Pvt Ltd.(supra) is distinguishable on facts and therefore not applicable to the present case before us as in the present the buyers of shares were issued summons u/s 131 of the Act and they responded to the summons by filing their confirmations along with the supporting evidences as mentioned by the AO in second part of para 8 in the assessment order whereas in the above case PCIT vs NRA Iron and Steel Pvt Ltd.(supra) the investors were not traceable even. The case of the assessee finds support from the decision of the co-ordinate Bench in the case of Tulsyan and Sons Pvt Ltd(supra). We also find that the Co-ordinate Bench of this Tribunal in the case of ACIT vs Pawanputra Advertising Private Limited, in IT(SS)A No. 144 & 145/KOL/2024 (AYs: 2019-20 & 2020-21) and others order dated 26.8.2025, wherein, the Co-ordinate Bench has held that where the investments made by the

assessee were accepted by the department in earlier assessment years which culminated u/s.143(3) of the Act in one of the assessment years, then same cannot be doubted when sold in the subsequent assessment year and added as unexplained cash credit u/s.68 of the Act. The case of the assessee is even on better footing for the reasons that the sale of investments were also made by the amalgamating companies and sale considerations were also received by them. The operating part of the decision in the case of ACIT vs Pawanputra Advertising Private Limited(supra) are reproduced hereunder:

7. We have heard the rival contentions and perused the materials available on record including the written submissions dated 21.04.2025 and paper books No. 1 (page No. 1 to 357), paper book no. 2 (page No. 1 to 354 and paper book 3 (Case Laws). We find that the only dispute is sale of part unlisted equity shares to various parties thereby realizing total sales consideration of ₹11,56,20,000/-. We note that the assessee raised money by issue of equity shares in A.Y. 2008-09 of Rs. 64,85,49,000/- . We also note that entire funds raised were invested in unlisted equity shares in AY 2011-12. We note that the case of the assessee was selected for scrutiny only for this reason and the money raised by the assessee was accepted by the department and no adverse interference was drawn. We note that in A.Y. 2010-11 also, the case of the assessee was selected for scrutiny and all the money share capital /share premium was accepted. Thereafter the investments were made in private equity shares which were unlisted in A.Y. 2011-12. Similarly 2017-18 the case of the assessee was selected for scrutiny and investments were not doubted at all. Thus it is clear that over all these years the investments were not doubted by the department. These investments made in the A.Y. 2011-12 were partly sold at cost by the assessee during the instant assessment year which realized ₹11,56,20,000/- which were accepted by the Revenue right from A.Y. 2011-12 till the instant assessment year. We have also noted that the assessee has filed before the Id. AO as well as before the Id. CIT (A) all the evidences qua the purchases and sale of shares. The assessee has filed all the evidences qua the purchasers such as ITRs, names, addresses, audited balance sheets, bank statements, confirmations, etc. proving the identity, creditworthiness of the purchasers and genuineness of the transactions. We note that even the purchasing companies have filed their evidences as called for by the Id. AO comprising all the evidences as stated above. The Id. CIT (A) has recorded a finding of fact that apart from the assessee , purchasing companies had also filed all the evidences before the Id. AO however the Id. AO had not brought on record any independent and substantive evidences pointing out any defect or deficiency in the said evidences. The Id. CIT (A) finally noted that the assessee has proved the identity and creditworthiness of the parties and also the genuineness of the transactions by filing all these documents and thus, discharged its initial burden. Besides, we note that nothing incriminating was found and seized during the course of search.

8. We observe that the Id. CIT (A) also noted that the department has accepted all these investments in the earlier assessment years, even in the scrutiny assessments and had not drawn any adverse interference. Therefore, we do not find any infirmity/anomaly in the appellate order of the Id. CIT (A), who has passed a very reasoned and speaking order after following the decision of Hon'ble Jurisdictional High Court in case of CIT VS. Dataware Private Ltd. (supra) as well as the decision of the co-ordinate benches on the same issue namely; M/s Swarna Kalash Commercial Pvt. Ltd. vs ACIT (supra) & M/s Ashtvinayak Sales Pvt. Ltd. vs ACIT (supra). We have perused the decisions in the above referred two decisions of the coordinate benches followed by the Id. CIT (A) and find that

the issue is exactly similar as before us in the present case. The operative part of M/s Ashtvinayak Sales Pvt. Ltd. vs ACIT (supra) extracted below: -

9. We have heard the rival contentions and perused the materials as placed before us. The issue for adjudication before us is in respect of confirmation of addition by Id CIT(A) as made by the AO on the ground that the identity and credentials of the purchasers are suspicious. We observe that the assessee has been in the regular business of purchase and sales of investments over the years as corroborated by the materials placed before us. Even the sales proceeds received during the current financial year were in respect of sale of shares /investments partly out of opening balance and partly out of current purchases as is apparent from the following chart placed before us:-

<i>Opening Investment</i>	<i>Purchases made during the year</i>	<i>Investments sold during the year</i>	<i>Closing Balance of Investments</i>
<i>24,81,12,740</i>	<i>106,69,21,561</i>	<i>99,72,36,896</i>	<i>31,77,97,405</i>

9.1. The assessee has also filed movement of investments over the years which showed that the phenomenon of purchase and sale of shares/investments was regular feature of the assessee's business. This is also undisputed that the assessee company had raised share capital (including premium) amounting to Rs.119,84,67,000/- in financial year 2010-11, relevant to AY 2011-12 and the capital so raised in AY 2011-12 was invested in shares/securities and accounted for in the books of accounts which were audited and audited accounts are placed at page no. 102 to 111 of PB Vol.-1. We also note that the assessment for AY 2011-12 was framed u/s 143(3) of the Act vide order dated 17.03.2014 a copy of which is placed at page no. 276 and 277 of PB Vol.-1 and the neither the share capital/share premium nor the investments out of that source were doubted by the AO.

9.2. We also note that similar issue was involved in the case of M/S Swarna Kalash Commercial Pvt Ltd. Vs ACIT ,Central Circle -2(2), Kolkata, a group concern of the Rashmi Group of Companies ,which was also subjected to search u/s 132(1) of the Act in the same search proceedings. We note that the coordinate bench has decided the issue in favour of the assessee in ITA No. I.T.(S.S.)A.No.53/Kol/2022 A.Y.2019-20 vide order dated 01.09.2023 involving the same issue of addition of sale of shares/investments by the AO on the ground that identity and credentials of the purchasers of shares/investments were suspicious. The operative part of the order is extracted as under:

"6.We have considered the rival contentions and gone through the record. First we deal with the issue relating to the undated detailed order passed by the Assessing Officer even after the prescribed date of limitation for passing the assessment order for the assessment year

under consideration which is other than the short cryptic order as reproduced above and which did not even bear any Document Identification Number, (in short "DIN") as mandated vide CBDT Circular No.19 of 2019.

6.1. As mentioned in the said CBDT circular no. 19 of 2019 and as also further held by the Hon'ble Delhi High Court in the case of CIT vs. Brandix Mauritius Holdings Ltd. [2023] 149 taxmann.com 238 (Del), any communication without mentioning of the DIN in its body is to be treated as non-est. Therefore, the subsequent undated assessment order and without any DIN mentioned in the order, and passed after the limitation period prescribed for passing of the assessment order cannot be taken cognisance of.

7. So far as the original order (extracted above) passed by the Assessing Officer is concerned, we are in agreement with the contentions of the Ld. Counsel for the assessee that the same is a small and cryptic order and the additions have been made by the Assessing Officer in the said order in a mechanical manner without any discussion on merits and without pointing out any justifying material warranting such additions. Therefore, the additions made by the Assessing Officer by way of such an cryptic order are not sustainable as per law.

11. We have considered the rival contentions and gone through the record. We find force in the submissions made by the learned Counsel of the assessee which have been discussed above in detail. We note that it is an admitted fact on record that assessee raised share capital at a premium in FY 2005-06 which was accepted by the AO in scrutiny assessment under section 143(3). The capital so raised was invested in shares of Pvt. Ltd. of various companies. These shares were sold during the year under consideration to different parties, corporate/non-corporate. The sale proceeds have come in assessee's bank account through banking channel.

11.1. In its normal course of business, the assessee had made purchases and sale of investments as under which is tabulated as under:

<i>Opening Investment</i>	<i>Purchases made during the year</i>	<i>Investments sold during the year</i>	<i>Closing Balance of Investments</i>
20,40,10,245	66,47,63,507	17,05,60,000	69,82,13,635

11.2. The shares were held by the assessee as investments and were sold at the cost of acquisition by the assessee. Hence, there is no profit/loss on such sale of investment. We also look at the movement of investment held by the assessee, which is tabulated below:

FY	AY	Opening	Purchase	Sales Amount	Closing Balance	byA.O.
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2014-15	2015-16	63,42,00,000			63,42,00,000	
2015-16	2016-17	63,42,00,000	42,44,960	18,344,960	62,01,00,000	1,83,44,960
2016-17	2017-18	62,01,00,000	56,27,44,459	468,499,459	71,43,45,000	46,84,99,459
2017-18	2018-19	71.43.45,000	1,55,17,29,538	2,062,064,910	20,40,09,628	2,06,20,64,910
2018-19	2019-20	20,40,09,628	66, 47, 64, 007	170,560,000	69,82,13,635	17,05,60,000
					Total	2,71,94,69,239

11.3. We also refer to the details of opening stock, purchases, sales and closing stock during the year, placed on record by the assessee:

Sl No	Name of the Script	Opening Balance	Purchases	Sales	Closing Balance
		Amount	Amount	Amount	Amount
1	Bellona Supply Pvt. Ltd.	1,24,57,344	0	1,24,57,344	0
2	P N Jewelers Pvt Ltd	38,45,323	0	38,45,323	0
3	Rozela Tie Up Pvt. Ltd.	3,64,33,053	0	3,64,33,053	0
4	Rashmi Cement Ltd.	0	1,57,32,000	0	1,57,32,000
5	Cimmco Vinimay Pvt. Ltd.	13,32,04,353	53,71,44,701	0	67,03,49,05
6	Festive Vincom Pvt Ltd	28,01,625	0	0	28,01,625
7	GreenHillDealmark Pvt Ltd	26,14,850	0	0	26,14,850
8	SwabhimanCommosales Pvt	26,15,900	0	0	26,15,900
9	Topline Business Pvt Ltd	41,00,205	0	0	41,00,205
10	VidyaBuildcon Pvt Ltd	0	2,50,00,000	2,50,00,000	0
11	BadrinathMining Pvt Ltd	59,36,974	75,250	60,12,224	0
12	Sankul Retailers Private Ltd	0	74,49,572	74,49,572	0
13	Alok Financial Services Pvt	0	8,10,000	8,10,000	0
14	Asankul Cosmetics Pvt Ltd	0	6,55,26,090	6,55,26,090	0
15	Daffodil Plaza Pvt Ltd	0	88,198	88,198	0
16	NAT Communication &	0	1,26,37,632	1,26,37,632	0
17	Alok Pattanayak	0	3,00,000	3,00,000	0
	Total	20,40,10,245	66,47,63,507	17,05,60,000	69,82,13,63

11.4. Based on the analysis of the above details, it is evident that entire sales is made from purchases & opening stock as under:

Breakup of Sale of Shares	Amount(Rs.)
Sold out of Opening Investment	5,86,73,194
Sold out of Investment Purchased During the Year	11,18,86,806
Total	17,05,60,000

11.5. It is also important to note that the AO has made enquiries from the buyers of the shares sold by the assessee by issuing summons u/s 131 of the Act who have responded and furnished the required details. Summary Statement of the replies made in response to notice u/s 131 by various buyers (Sale of Shares) is tabulated below:

SL No.	CORPORATE ASSESSE	Page No.	FY 2018-19
1	Bhootnath Commodities Pvt Ltd	1-262	₹ 1,71,59,300
2	Bluestar Mercantile Pvt Ltd	263-265	₹ 5,00,000
3	CharviDealmark Pvt Ltd	267-356	₹ 10,00,000
4	Daania Trading Pvt Ltd	357-359	₹ 30,00,000
5	Elvof Trading Pvt Ltd	361-369	₹ 1,00,000
6	Express Image Pvt Ltd	370-542	₹ 1,11,00,000
7	Laxhmidhan Business Pvt Ltd	544-546	₹ 6,00,000
8	MuditVanijya Pvt Ltd	547-597	₹ 5,50,000
9	Outright Commodities Pvt Ltd	599-846	₹ 2,44,90,700
10	Over Arching Impex Pvt Ltd	847-1053	₹ 81,00,000
11	RadhacharanTradevin Pvt Ltd	1055-1158	₹ 10,00,000
12	S P Udyog Pvt Ltd	1159-1161	₹ 25,00,000
13	SamundarTradelink Pvt Ltd	1162-1164	₹ 34,00,000
14	Shatabdi Entertainment Pvt Ltd	1165-1193	₹ 14,00,000
15	Spur Trading Pvt Ltd	1195-1204	₹ 7,50,000
16	SwarnmahalVyapaar Pvt Ltd	1205-1252	₹ 15,00,000
17	Swetang Retails Pvt Ltd	1253-1356	₹ 50,00,000
18	Viewpoint Advisory Pvt Ltd	1357-1490	₹ 85,00,000
19	Yuthika Merchandise Pvt Ltd	1492-1603	₹ 25,00,000
	Total	(A)	9,31,50,000

SL No.	NON- CORPORATE ASSESSE	Page No.	FY 2018-19
20	Bengal Trade Agency	1604-1613	₹ 1,64,00,000
21	Bhagwati Trading	1614-1616	₹ 57,90,000
22	Om Sai Enterprise	1617-1619	₹ 24,90,000
23	Simplex Xallolloy	1620-1622	₹ 78,05,000
24	Others-Non- Corporate		₹ 4,17,35,000
	Total		₹ 7,42,20,000

12. Further, according to the Id. Counsel, the only piece of evidence that is there in this case is the statement of Sri Sanjib Patwari who is one of the owners of the Rashmi group and Sri K K Verma is the accountant, recorded u/s 132(4) of the Act which have been relied upon by the Assessing Officer. These statements have been retracted the very next day by furnishing affidavits. Subsequent to retraction, no further cross-examination was conducted of these persons. The Id. Counsel has further submitted that even otherwise the addition made by the Assessing Officer was far more than the alleged disclosure made by these persons in their retracted statements and hence, no cognizance in fact can be taken for the purpose of the addition.

12.1. We find force in the above contentions of the Id. Counsel in the facts and circumstances of the case. As laid down by the various Higher Courts of the country, the retracted statement can not be made sole basis for

making the additions. The Jurisdictional Calcutta High Court in the case of Principal Commissioner of Income Tax Vs. Golden Goenka Fincorp Ltd. [2023]148 taxmann.com 313(Calcutta) has held that where assessing officer solely based on statement of assessee's director recorded during search operation treated share application money received by assessee company as undisclosed income and made additions u/s 68 of the Act, since said statement was retracted and there was no cash trail or any other corroborative evidence or investigation brought on record by AO, impugned additions were liable to be deleted. Even the Hon'ble A.P. High Court in the case of "Naresh Kumar Agarwal" (2015) 53 taxmann.com 306 (Andhra Pradesh) has observed that where, in the absence of any incriminating material etc. found from the premises of the assessee during the course of search, statement of assessee recorded under section 132(4) would not have any evidentiary value. Similar view has been adopted by the Jaipur bench of the Tribunal in the case of "Shree Chand Soni vs. DCIT" (2006) 101 TTJ 1028 (Jodhpur). The Hon'ble Delhi High Court in the case of "CIT vs. Harjeev Agarwal" in ITA No.8/2004 vide order dated 10.03.16 has observed that a statement made under section 132(4) of the Act on a stand-alone basis, without reference to any other material discovered during search and seizure operation, would not empower the AO to make a block assessment merely because any admission was made by the assessee during search operation. In the case of "Commissioner of Income Tax vs. Sunil Agarwal" (2015) 64 taxman.com 107 (Delhi-HC), the assessee therein, during the course of search, made a categorical admission under section 132(4) that the cash amount seized belonged to him and it represented undisclosed income not recorded in the books of accounts. The assessee did not immediately retract from the above admission but only during the assessment proceedings at a belated stage. In his retraction, the assessee stated that the surrender was made under a mistaken belief and without looking into books of account and without understanding law and that he had been compelled and perturbed by events of search and that the pressure of search was built so much that he had to make the surrender without having actual possession of the assets or unexplained investments or expenses incurred and that there was no such income as undisclosed. The Hon'ble Delhi High Court, after considering the fact and circumstances of the case, while dismissing the appeal of the revenue, observed that though the fact that the assessee may have retracted his statement belatedly, yet, it did not relieve the AO from examining the explanation offered by the assessee with reference to the books of account produced before him. Although, a statement under section 132(4) of the Act carries much greater weight than the statement made under section 133A of the Act, but a retracted statement even under section 132(4) of the Act would require some corroborative material for the AO to proceed to make additions on the basis of such statement.

12.2 In the case of "BasantBansal vs. ACIT" reported in (2015)63 taxmann.com 199 (Jaipur Trib.), the assessee therein, during the search and seizure action u/s 132 of the Act, offered a summary discloser of

income as undisclosed and the department accepted the summary surrender of income and thereafter advance tax for the said surrendered of income was also deposited, but thereafter it was contended by the assessee that the surrender was made under threat or coercion and that no incriminating material was found during the search action. The stand of the department was that the admission was voluntary and was not under a mistaken belief of fact or law and that the assistance had enough time to go through the facts of their case, law applicable in their case and take advice from their counsels and advisors before filing the letter of surrender of undisclosed/unaccounted income and that the admission by them was final and binding on them; The co-ordinate Jaipur Bench of the Tribunal, after overall appreciation of the fact and evidences before it, observed that the assessee's surrender was not based on any incriminating material and that the discloser being not voluntary and extracted by the department in creating a coercive situation cannot be relied solely to be basis of addition as undisclosed income. The co-ordinate bench of the Tribunal while relying upon various case laws of the higher authorities observed that it is well settled legal position that merely on the basis of a statement which is not supported by the department with cogent corroborative material cannot be a valid basis for sustaining such ad-hoc addition. The co-ordinate Jaipur Bench of the Tribunal (supra) further observed that the issue of existence of pressure, threat, coercion during search proceedings is to be judged by reference to the existing facts and circumstances, human conduct and preponderance of possibilities. During the search proceedings, record relating thereto being in exclusive custody of the searching officers, it is their wish and will which prevails during the fateful period. That it is almost impossible for the assessee to adduce demonstrative evidence of exerting such pressure. The co-ordinate bench of the Tribunal (supra) while holding so, apart from relying upon various decisions of the higher courts has also relied upon the decision of the Tribunal in the case of "Dy CIT vs. Pramukh Builders" (2008) 112 ITD 179 (Ahd.) wherein it has been held that even in the absence of proof of coercion or pressure, the statement by itself cannot be taken as conclusive. Therefore, merely in the absence of proof of pressure, threat, coercion or inducement the statement cannot be held as conclusive and additions cannot be made by solely relying on a statement or a letter.

12.3. The case of the assessee, before us, is on better footing as in this case, there is no delay in retraction of the statement which was done on the very next day by filing affidavits before the Metropolitan Magistrate

12.4. Even the CBDT Letter No.286/2/2003-IT(Inv) dated Oct 3, 2003 in this respect read as under:

"To

The Chief Commissioners of Income Tax, (Cadre Contra) &

All Directors General of Income Tax Inv.

Sir,

Subject: Confession of additional Income during the course of search & seizure and survey operation – regarding

Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders.

Yours faithfully,

12.5. A perusal of the above circular also shows that it is in the notice of the statutory controlling body of the Income Tax Authorities that the revenue officials are used to take confessional statements from the person searched under force, pressure or threat and that is why they have made it mandatory that additions solely on the basis on such statements should not be made and that corroborative evidences should be collected or obtained before making such additions. The circular of the CBDT is binding on the revenue officials. In the facts and circumstances of this case, when seen in the light of above case laws and CBDT circular, additions in this case cannot be said to be justifiably made.

13. All the above details when kept in juxtaposition, there remains nothing to cast an iota of doubt on the sale transaction of shares held by the assessee as investments which it undertook in the ordinary course of its business, more importantly, purchases having made in the current year also. Further, as rightly pointed out by the learned Counsel, both opening balance of investment in shares and the purchases made during the year have not been disputed or doubted by the authorities below so as to bring the entire sale consideration to tax.

14. At this stage, the Id. DR has submitted that the assessee has claimed that it has undertaken this sale transaction by selling the shares at the cost at which it had acquired them in AY 2006-07. At the same time, assessee submits that it has undertaken this transaction in the ordinary course of its business. The Id. DR has submitted that the conduct of

business is always with a profit motive, more particularly when the assessee had held these shares for past several years and had also made purchases during the year, deploying its funds. There ought to be certain element of profit embedded in the sale transaction executed which must be brought to tax.

15. Considering the above submission of the Id. DR and taking a holistic view of the facts and circumstances of the case, we find it proper to consider net profit element @ 5% of the sale consideration i.e. 5% of Rs.17,05,60,000/- which comes to Rs.85,28,000/- be subjected to tax. We, accordingly delete the addition to the extent of Rs.16,20,32,000/- made u/s 68 of the Act and sustain the balance of Rs.85,28,000/- towards profit element on the impugned sale transaction of shares undertaken by the assessee.

16. In the result, appeal of the assessee is partly allowed.

9.4. It is clear from the above that the facts in the instant case before us are materially same vis a vis the facts in the case decided by the coordinate bench supra in group concern. We, therefore, respectfully following the same set aside the order of Id CIT(A) and direct the AO to apply profit of 5% on the sales proceeds of Rs. 99,72,36,896/- which comes to Rs. 4,98,61,845/- and delete the remaining addition of Rs. 94,73,75,051/-.

10. In the result the appeal of the assessee is partly allowed."

9. We have also perused decision by the Hon'ble High Court in ITAT/239/2024 in IA No. GA/2/2024 vide order dated 16th April, 2025, in the case of PCIT Vs. Tulsyan and Sons Private Limited(supra) affirmed the order of the tribunal. In the said case the addition made by the Id. AO on account of sale of investment was deleted by the Id. CIT (A) and the Tribunal confirmed the order of the Id. Assessing Officer. The Hon'ble High Court while deciding the issue held as under: -

We have heard Mr. Aryak Dutta, learned standing counsel assisted by Mr. Soumen Bhattacharjee, learned standing counsel for the appellant and Mr. J. P. Khaitan, learned senior advocate assisted by Mr. Pratyush Jhunhunwalla, learned advocate for the respondent.

The short issue which falls for consideration is whether the learned tribunal was right in affirming the order passed by the Commissioner of Income Tax (Appeals)- 21, Kolkata [CIT(A)] dated 10.5.2023 by which the assessee's appeal was allowed and the addition made under section 68 of the Act was deleted. The Assessing Officer made the addition by invoking section 68 of the Act on the ground that the assessee failed to discharge its onus to establish identity, creditworthiness and genuineness of the transaction in respect of the money received through cash trail. The CIT(A) in course of hearing the appeal called for a remand report from the Assessing Officer and in the said remand report the Assessing Officer has in no uncertain terms accepted the receipt of the impugned sum on account of sale proceeds of investment. The Assessing Officer verified the investment sold which are shown in the balance-sheet for the financial year 2010-11 in Schedule-4 of the balance-sheet and after considering these facts it was stated that the assessee had sold shares held by way of the investment during the year to M/s. Shivshakti Communications and Investment Pvt. Ltd. and Carnation Tradelink Pvt. Ltd. and it is not a receipt of unsecured loan. This fact, apart from other factual details, were considered by the CIT(A) and by an

elaborate order dated 10.5.2023 the appeal filed by the assessee was allowed. The tribunal on its part re-examined the factual position and took note of the findings rendered by the CIT(A) and concurred with the same. We also find that the tribunal has also examined the factual position and took note of the remand report as called for by the CIT(A) which confirmed the alleged sum is on account of sale of investment and not otherwise.

Thus, we find no question of law much less substantial question of law arises for consideration in this appeal. Accordingly, the appeal fails and the same is dismissed. Consequently, the connected application stands closed.

10. Since, the facts of the case before us vis-à-vis, facts of the decisions cited above are substantially similar and therefore, we respectfully following the ratio laid down in the above decisions upheld the order of Id. CIT (A) on this issue by dismissing the appeal of the Revenue.

11. So far as the Cross Objection is concerned, we note that the assessee has challenged the direction of the Id. CIT (A) to the Id. AO to make an addition at the rate of 5% of the total sales consideration towards the net profit embedded in the sales consideration.

12. After hearing the rival contentions and perusing the materials available on record, we find that the Id. CIT (A) has not given any basis for such direction to the Id. Assessing Officer. In other words, the Id. CIT (A) has just acted on the presumptions and surmises and thus, presumed that the assessee might have made some profits from sale by investments. In our opinion, the said direction by the Id. CIT (A) is without any substantive basis and therefore cannot be sustained. Accordingly, we set aside the order of Id. CIT(A) to the extent of this direction of making addition @ 5%. Accordingly, the cross objection of the assessee is allowed.

18. We note that the Co-ordinate Bench has considered and followed the decision of the Hon'ble Jurisdictional High Court in the case of *Tulsiyan and Sons Pvt Ltd (supra)*.

19. Moreover, we find that the Id. CIT (A) has not given any basis for such direction to the Id. Assessing Officer to add 5% of the total sales towards estimated profit. In other words, the Id. CIT (A) has just acted on the presumptions and surmises and thus, presumed some profits from sale of investments. In our opinion, the said direction by the Id. CIT (A) is without any substantive basis and therefore cannot be sustained. Since, the facts of the case before us vis-à-vis, facts of the decisions cited above are substantially similar and therefore, We, therefore, respectfully following the decision of the Co-ordinate Bench and also the decision of the Hon'ble Jurisdictional High court in the case of *Tulsiyan and Sons Pvt Ltd (supra)*, we set set aside the order of Id. CIT (A) so far as it relates to part sustaining the addition to the extent of 5%. Accordingly, the appeal of the revenue is dismissed and cross objection of the assessee is allowed.

20. The issue involved in the assessee's appeals in ITA No.1363 to 1367/Kol/2025 and Revenue's appeal in ITA No.1551 to 1556/Kol/2025 Assessment Year: 2016-17 to Assessment Year: 2021-22 are similar to ones as decided by us in the assessee's appeal ITA No. 1368/Kol/2025 & Revenue Appeal ITA No. 1551/Kol/2025 Assessment Year 2016-17. Therefore, our decision in assessee's as well as revenue appeal in Assessment Year 2016-17 would, *mutatis mutandis*, apply to the above appeals of the assessee and revenue from Assessment Year 2017-18 to 2021-22. Consequently, the appeals of the assessee are allowed and appeals of the revenue are dismissed."

3.5. Consequently, we set aside the order of Id. CIT (A) on this issue and direct the Id. AO to delete the addition. The appeal of the

Revenue is dismissed and the ground no 4. Of assessee's appeal is allowed.

4. The issue raised by the assessee in Ground nos.1 and 2 is general in nature and needs no specific adjudication.
5. The issue raised in ground no.3 in the assessee's appeal is against the confirmation of addition of ₹31,00,000/- by the Id. CIT (A) as made by the Id. AO u/s 68 of the Act in respect of non-genuine profit made by the assessee by indulging in bogus buy and sale of trades. The fact qua this ground is discussed hereinabove.

5.1. In the appellate proceedings, the Id. CIT (A) affirmed the order of the Id. AO on the ground that the assessee has indulged in granting artificial trade volumes by trading with few counter parties in illiquid stock options/ contracts options, where wider market was not involved in the trades and the trades were such that one of the counter parties books a profit while the other counter party books a loss and thus, the profit made/ credited amounting to ₹31 lacs in the books of account of the assessee were not genuine profit from any genuine trading from illiquid options and were rightly added u/s 68 of the Act.

5.2. After hearing the rival contentions and perusing the materials available on record, we find that during the year the assessee has made/ derived commodity profit of ₹31 lacs which was credited to the profit and loss account and was accordingly offered for tax as apparent from the documents furnished by the assessee in respect of transactions transacted on the Bombay Stock Exchange. We note that the Id. AO has disbelieved these transactions on the ground that the assessee has derived profit in these transactions which were held

to be non-genuine by SEBI. We also note that the Id. AO has not pointed out any defects in the documents furnished by the assessee nor has brought on record any evidences to controvert the submissions made by the assessee. In our opinion, when the Id. AO has not pointed out any defect or deficiency in the documents furnished by the assessee and has merely acted on the report of the SEBI and therefore, the addition cannot be sustained as the Id. AO has to conduct an enquiry himself and cannot rely solely on the report of the investigation wing/ SEBI. The case of the assessee was squarely covered by the decision of Sanjay Kumar Damjibhai Gangani Vs ACIT (OSD)(2024) 161 taxmann.com 6606 (Surat Tri) wherein it was held that where the assessee has earned long term capital gain on sale of shares which was claimed as exempt u/s 10(38) of the Act and had furnished complete evidences including contract notes of shares, details of bonus shares, then no adverse inference can be drawn by the Id. AO from the said evidences and the Id. AO is not justified in making the addition in respect of LTCG of sale of shares as unexplained cash credit. Consequently, we set aside the order of Id. CIT (A) on this issue and direct the Id. AO to delete the addition. The ground no.3 of the assessee's appeal is allowed.

6. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on 26.02.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 26.02.2026

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata