

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI  
BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.2607 /Del./2019, A.Y. 2015-16**

Vaneet Aggarwal, D-95, Pushpanjali Enclave, Pitampura, Delhi PAN: AGXPA8770A	Vs.	ACIT, Circle 14(2), New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri K. Sampath, Adv, Shri V Rajkumar, Adv.
Revenue by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	21/01/2026
Date of Pronouncement	13/03/2026

**ORDER**

**PER S. RIFAUH RAHMAN, AM**

The Assessee has filed appeal against the order of the Learned Commissioner of Income-Tax(Appeals)-36, New Delhi [“Ld. CIT(A)”, for short] dated 13.02.2019 for the Assessment Year 2015-16.

2. Brief facts of the case are, the assessee filed his return of income declaring an amount at Rs. 6,15,950/- on 08.09.2015 and the same was processed u/s 143(1)

of the Income Tax Act, 1961 (in short 'the Act'). The case was selected for complete scrutiny through CASS. Notice u/s 143(2) and 142(1) of the Act were issued and served upon the assessee.

3. The assessee is a Director in M/s. KTV Projects Pvt. Ltd. and received salary from the same. Further, the assessee declared income from capital gain and income from other sources during the year under consideration. In response to the above notices, Ld. AR of the assessee attended the proceedings and submitted the relevant information as called for.

4. During the assessment proceedings, the Ld. AO observed that the assessee has claimed exempt income on Long Term Capital Gain on sale of shares of M/s. HPC Biosciences Ltd. and claimed the exemption of Rs. 41,80,283/-. By relying the Investigation report of the Directorate of Investigation, Kolkata and the relevant modus operandi adopted by various beneficiaries by opting exemption u/s 10(38) of the Act, the Ld. AO observed that his M/s. HPC Biosciences Ltd. is also one such company which was identified as a listed penny stock on BSE which was used for generating bogus LTCG. By relying on the detailed findings in the investigation report of Kolkata, he observed that the investigation made by the assessee through Mr. Ankur Jain, was claimed to be an employee in the brokerage company M/s. Narayan Securities Ltd., however, the compliance officer of the Narayan Securities Ltd. had denied the same and stated that no such

employee existed. The Ld. AO further observed that Mr. Ankur Jain may be the one of the shareholder in the HPC Biosciences Ltd. immediately before the issue of IPO. He also observed that SEBI, the official regulator of the stock exchange market, had undertaken investigations into the fraudulent IPO issued by HPC Biosciences Ltd. The Ld. AO has a major chart of fund flowing in the IPO of HPC Biosciences with funding group wherein M/s. Narayan Securities Ltd. if one of the key player in mobilizing the funds. The Ld. AO highlighted the investigation carried out by the SEBI relating to fund trials through various entities. Further, the Ld. AO collected the trade log of the assessee from SEBI by issuing of notice 133(6) of the Act. Based on the above report, it was found that the parties which have purchased the shares sold by the assessee are all listed in the SEBI orders as the companies which were used to routing money. By relying on the various reports, the Ld. AO established that M/s. Narayan Securities Ltd. was found to the involved in money trial.

4.1 Based on the above findings, a show cause notice was issued to the assessee seeking an explanation by the LTCG claimed by the assessee should not be disallowed. In response, the assessee submitted that the public issue launched by HPC Biosciences Ltd. could not be termed fraudulent as all the formalities for launching the public issue were approved by all the Government Departments through ROC, SEBI and BSE. Further, the assessee submitted that she was

unaware of the investigations being undertaken by SEBI and further submitted that Section 69A does not apply to the assessee. After considering the submissions of the assessee and relying on various case law, the Ld. AO observed that the assessee earned massive gains from the company which is last laws making, the trading was suspended in stock market. The return on investment are not comparable to returns from other forms of investments and the IPO issued by the company was found to be fraudulent.

4.2 By applying the test of human probabilities and various case laws, the Ld. AO proceeded to making an addition u/s 69A of the Act to the extent of Rs. 44,60,283/-. Further, the Ld. AO added 3% of the above long term capital gain as commission paid to acquire the same u/s 69C of the Act.

5. Aggrieved the above order, the assessee preferred an appeal before the ld. CIT(A)-36, New Delhi and filed a detailed submission. After considering the detail submission of the assessee, ld. CIT(A) sustained the addition made by the Ld. AO.

6. Aggrieved with the above order, the assessee is in appeal raising following grounds:

*“On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) erred in confirming the following additions made by the Assessing Officer:*

*i. Rs.44,60,283/- being the amount of long term capital gains claimed exempt under section 10(38) of the Income Tax Act, 1961 ('the Act') invoking section 69A of the Act;*

*ii . Rs. 1,42,208/- on account of alleged commission paid invoking section 69C of the Act.*

*All the above actions being erroneous unlawful and untenable it is prayed that the same must be quashed with directions for appropriate relief.”*

7. At the time of hearing, Ld. AR of the assessee brought to our notice page 2 of the assessment order and submitted that the Ld. AO proceeded with preconceived notion that it is a penny stock. Further, he submitted that the assessee has purchased the shares online and sold the same online and submitted that the assessee has not involved any way in any off line transactions. He submitted that there is no evidence with the Ld. AO for such negative view except relying on the findings of the investigation wing of Kolkata. In the rejoinder Ld. AR submitted that:

*“In addition to the note containing the facts and arguments filed before the Hon’ble Bench on 23.06.2025, the following decisions of various Courts are cited to support the contentions of the Appellant that the impugned transactions in shares culminating in the long term capital gain (LTCG) are truthful, genuine and beyond reproach. On similar facts various Courts have held that the genuineness of the LTCG cannot be impeached and/or the exemption sought by the Assessee u/s. 10(38) of the Income-tax Act, 1961 (the Act) could not be denied if the transactions were transparent and were through bank, Demat accounts and screen-trading etc.*

*The apex Court has so held in the following cases:-*

*1) SLP dismissed against order of High Court that where shares were purchased via Account Payee Cheques, held in a Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax assessee was eligible to claim exemption under section 10(38) for long-term capital gains.*

***Pr. CIT v. Kuntala Mohapatra (2024) 466 ITR 50 (SC)***

*2) Where shares were purchased via Account Payee Cheques, held in a Demat Account for over 12 months, and sold through a recognized stock exchange after payment of security transaction tax, assessee was eligible to claim.*

***Pr. CIT v. Kuntala Mohapatra (2024) 466 ITR 47 (Orissa)***

*3) Where assessee provided all details of purchase and sales of shares to AO along with contract notes for purchase and sale, demat account and bank statement and, furthermore no incriminating materials were found during survey conducted in premises of assessee, AO could not deny claim under section 10(38) merely by relying on statements of accommodation entry providers which were recorded much before date of survey.*

***Pr. CIT v. Anupama Mohapatra (2024) 161 taxmann.com 702 (Orissa)***

*4) SLP dismissed against order of High Court that where assessee provided all details of purchase and sales of shares to AO along with contract notes for purchase and sale, demat account and bank statement and, furthermore no incriminating materials were found during survey conducted in premises of assessee, AO could not deny claim under section 10(38) merely by relying on statements of accommodation entry providers which were recorded much before date of survey.*

***Pr. CIT v. Anupama Mohapatra (2024) 299 Taxman 177 (SC)***

*5) SLP dismissed against order of High Court that where Assessing Officer denied exemption claimed by assessee under section 10(38) on long-term capital gain on sale of shares on basis of statement of entry operators recorded on various dates in some other proceedings not connect with assessee and no opportunity to cross-examine so-called entry providers was given to assessee thereby violating principles of natural*

*justice, Tribunal was justified in deleting addition made by Assessing Officer.*

***Pr. CIT v. Kishore Kumar Mohapatra (2025) 475 ITR 198 (SC)***

*6) Where Assessing Officer denied exemption claimed by assessee under section 10(38) on long-term capital gain on sale of shares on basis of statement of entry operators recorded on various dates in some other proceedings not connected with assessee and no opportunity to cross-examine so-called entry providers was given to assessee thereby violating principles of natural justice, Tribunal was justified in deleting addition made by Assessing Officer.*

***Pr. CIT v. Kishore Kumar Mohapatra (2025) 475 ITR 195 (Orissa)***

*7) SLP dismissed against impugned order of High Court holding that where assessee-individual engaged in trading of shares had discharged his onus of establishing long term capital gains arising out of sale of different shares as fair and transparent by submitting records of purchase bills, sale bills, demat statement etc., same not being earned from bogus companies was eligible for exemption under section 10(38).*

***Pr. CIT 1 v. Parasben Kasturchand Kochar (2021) 282 Taxman 301 (SC)***

*8) 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, Assessing Officer was not justified in treating said purchases as bogus under section 69C: SLP dismissed.*

***Pr. CIT, Surat-1 v. Tejua Rohitkumar Kapadia (2018) 256 Taxman 213 (SC)***

*9) 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, Assessing Officer was not justified in treating said purchases as bogus under section 69C.*

***Pr. CIT, Surat-1 v. Tejua Rohitkumar Kapadia (2018) 94 taxmann.com 324 (Guj.)***

*Several other decisions of different High Courts on the same point are as under:-*

1) Where shares were purchased by assessee on floor of stock exchange and not from broker, payment was made through banking channel, deliveries were taken in DEMAT account where shares remained for more than one year, contract notes were issued and shares were also sold on stock exchange, there was no reason to add capital gains as unexplained cash credit under section 68.

**Pr. CIT v. Indravadan Jain, HUF (2024) 463 ITR 711 (Bom).**

2) Where assessee purchased shares of a company when trading of said company was suspended and sold same and claimed exemption under section 10(38), in absence of any material brought on record to suggest that purchase and sale of said shares was bogus, Assessing Officer was not justified in making addition of sale proceeds of shares under section 68.

**Pr. CIT v. Shri Ambalal Chimanlal Patel (2024) 162 taxmann.com 892 (Guj.)**

3) Where assessee purchased shares of a company listed on Bombay Stock Exchange through a D-mat account, with payments made via banking channels and Security Transaction Tax paid, fulfilling all conditions for exemption under section 10(38), Assessing Officer could not question genuineness of those shares or treat them as bogus to make an addition under section 68.

**Chief Commissioner of Income-tax (OSD) v. Nilesh Jain (HUF) (2024) 163 taxmann.com 229 (MP)**

4) Where assessee had produced all relevant documentary evidence to establish genuineness of purchase and sale transaction in shares and no contrary evidence doubting correctness of such evidences was produced treating said transaction as sham was not justified.

**Pr. CIT v. Gaurav Bagaria (2023) 453 ITR 513 (Raj.)**

5) Where Assessing Officer treated transactions in purchase and sale of share as sham transactions and sale proceeds of shares were treated as undisclosed income under section 68, since payments were received through account payee cheques and transactions were done through recognized stock exchange, and there was no evidence that assessee had paid cash in return of receipt through cheque Tribunal rightly deleted addition holding that transactions were genuine.

**Pr. CIT v. Sandipkumar Parsottambhai Patel (2023) 457 ITR 368 (Guj.)**

6) Where AO disallowed loss claimed by assessee on sale of shares on ground that assessee traded in shares of penny stock and claimed bogus loss, since shares were purchased online and payments were made through banking channel and AO had no evidence to show that there was an agreement between assessee and any other party to convert unaccounted money by taking fictitious loss, impugned addition made on account of bogus loss was to be deleted.

**Pr. CIT v. Champalal Gopiram Agarwal (2024) 460 ITR 277 (Guj.)**

7) Where Assessing Officer disallowed exemption under section 10(38) on long-term capital gains earned by assessee on sale of shares and treated same as bogus, since Assessing Officer did not show any material to back its conclusion of treating LTCG as bogus and, further, shares were traded on stock exchange after paying securities transaction tax and money was received through proper banking channels which demonstrated that transaction was not bogus, impugned order passed by Assessing Officer was unjustified.

**Pr. CIT v. Rajat Finvest (2023) 149 taxmann.com 161 (Delhi)**

*Placed for the most favourable consideration.”*

8. On the other hand, Ld. DR brought to our notice SEBI report which is reproduced page 9 of the assessment order and submitted that the broker through whom the assessee has purchased the shares are involved in money trail activities. Therefore, the substantial evidences clearly show that the assessee is a beneficiary. Ld. DR relied on case laws

*“In the above case, It Is humbly submitted that the following decisions may kindly be considered with regard to addition made u/s 68 of I.T. Act and more specifically relating to the Issue of arranging Capital gains out of transactions made in penny stocks:-*

**1. Suman Poddar Vs. ITO[2020] 268 taxmann 320(SC) (22.11.2019) (2019). 112 taxmann.com 329 (Delhi) Hlah Court of Delhi.**

*In this case the Hon'ble Delhi High Court took a view that finding arrived by Tribunal was based on material on record and, thus same did not require any Interference. The Hon'ble Supreme Court dismissed the SLP filed by the assessee against the orders of Hon'ble Delhi High Court.*

*The appellant had booked LTCG of Rs. 73,77,806/- and short exemption u/s 10(38) of the IT Act. The AO added the amount of Rs. 73,77,806/- by denying the exemption claimed u/s 10(38) on account of LTCG. The AO found the transaction pertaining to purchase of shares by assessee of M/s Cressanda Solutions Ltd. to be a bogus transaction by holding that it was a penny stock. The addition was confirmed by CIT(A) and the ITAT. After examining the Issue at hand, Hon'ble Delhi ITAT passed an order upholding the order of Hon'ble ITAT. The High Court held:*

*"7. Thus, the Tribunal has In depth analysed the balance sheets and the profit and loss accounts of Cressanda Solutions Ltd. which shows that the astronomical Increase in the share price of the said company which led to returns of 491% for the Appellant, was completely unjustified. Pertinently, the EPS of the said company was Rs. 0.01/- as in March 2016, It was Rs. 0.01/- as in March 2015 and -0.48/- as in March 2014. Similarly, the other financial parameters of the said company cannot Justify the price in excess of Rs. 600/- at which the Appellant claims to have sold the said shares to obtain the Long Terms Capital Gains. It is not explained as to why anyone would purchase the said shares at such high price. The Tribunal goes on to observe in the Impugned order as follows:*

*"10. With such financials and affairs of business, the purchase of share of face value Rs. 10/- at the rate of Rs.401/- by any person and the assessee's contention that such transaction is genuine and credible and arguing to accept such contention would only make the decision of the Judicial authorities a fallacy.*

*11. The evidences put forth by the Revenue regarding the entry operation fairly leads to a conclusion that the assessee is one of the beneficiaries of the accommodation entry receipts. In the form of long-term capital gains. The assessee has failed to prove that the share transactions are genuine and*

*could not furnish evidences regarding the sale of shares except the couples of the contract notes, cheques received against the overwhelming evidences collected by the Revenue regarding the operation of the entire affairs of the assessee. This cannot be a case of intelligent Investment or a simple and straight case of tax planning to gain benefit of long-term capital gains. The earnings @ 491% over a period of 5 months is beyond human probability and defies business logic of any business enterprise dealing with share transactions. The net worth of the company is not known to the assessee. Even the brokers who coordinated the transactions were also unknown to the assessee. All these facts give credence to the unreliability of the entire transaction of shares giving rise to such capital gains. The ratio laid down by the Hon'ble Supreme Court in the case of Sumati Dayal v. CIT, 214 ITR 801 is squarely applicable to the case. Though the assessee has received the amounts by way of account payee cheques, the transactions cannot be treated as genuine in the presence of the overwhelming evidences put forward by the Revenue. The fact that in spite of earning such steep profits, the assessee never ventured to involve himself in any other transaction with the broker cannot be a mere coincidence of lack of Interest. Reliance is placed on the Judgment in the case of Nipun Builders and Developers Pvt. Ltd. (supra), where it was held that it is the duty of the Tribunal to scratch the surface and probe the documentary evidence in depth, In the light of the conduct of assessee and other surrounding circumstances in order to see whether the assessee is liable to the provisions of section 68 or not. In the case of NR Portfolio, it was held that the genuineness and credibility are deeper and obtrusive. Similarly, the bank statements provided by the assessee to prove the genuineness of the transactions cannot be considered In view of the Judgment of Hon'ble court In the case of Pratham Telecom India Pvt. Ltd., wherein, it was stated that bank statement is not sufficient enough to discharge the burden. Regarding the failure to accord the opportunity of cross examination, we rely on the Judgment of Prem Castings Pvt. Ltd. Similarly, the Tribunal in the case of Udit Kalra, ITA No. 6717/Del/2017 for the assessment year 2014-15 has categorically held that when there was specific confirmation with the Revenue that the assessee has indulged in non-genuine and bogus capital gains obtained from the transactions of purchase and sale of shares, It can be a good reason to treat the transactions as bogus. The*

*differences of the case of Udit kalra attempted by the Ld. AR does not add any credence to justify the transactions. The Investigation Wing has also conducted enquiries which proved that the assessee is also one of the beneficiaries of the transactions entered by the Companies through multiple layering of transactions and entries provided. Even the BSE listed this company as being used for generating bogus LTCG On the facts of the case and Judicial pronouncements will give rise to only conclusion that the entire activities of the assessee is a colourable device to obtain bogus capital gains. The Hon'ble High Court of Delhi in the case of Udit Kaira, ITA No. 220/2009 held that the company had meager resources and astronomical growth of the value of the company's shares only excited the suspicion of the Revenue and hence, treated the receipts of the sale of shares to be bogus. Hon'ble High Court has also dealt with the arguments of the assessee that he was denied the right of cross examination of the Individuals whose statements led to the enquiry. The Id. AR argument that no question of law has been framed in the case of Udit Kalra also does not make any tangible difference to the decision of this case. Since the additions have been confirmed based on the enquiries by the Revenue, taking into consideration ratio laid down by the various High Courts and Hon'ble Supreme Court, our decision is equally applicable to the receipts obtained from all the three entitles. Further, reliance is also placed on the orders of various Courts and Tribunals listed below.*

- *MK. Rajeshwart v. ITO In ITA No. 17231Bengl2018, order dated 12.10.2018.*
- *Abhimanyu Soln v. ACIT In ITA No. 9511Chdl2016, order dated 18.04.2018.*
- *Sanjay Bimalchend Jain v. ITO 89 taxmann.com 196.*
- *Dinesh Kumar Khandelwal, HUF v. ITO In ITA No. 58 & 591 Nagl 2015, order dated 24.08.2016.*
- *Ratnakar M Pujari v. ITO In ITA No. 9951 Mumi2012, order dated 03.08.2016,*
- *Disha N Lalwan! v. ITO In ITA No. 6398 | Mum 12012, order dated 22.03.2017.*
- *ITO v. Shamim. M Bharwonl [2016]-69 taxmarin.com 65.*

- *Usha Chandresh Shah v. ITO In ITA No. 6858 | Mum 1. 2011, order dated 26.09.2014.*
- *CIT v. Smt. Jasvinder Kaur 357 ITR 638.*

*12. The facts as well as rationale given by the Hon'ble High Court are squarely applicable to the case before us. Hence, keeping in view the overall facts and circumstances of the case that the profits earned by the assessee are a part of major scheme of the accommodation entries and keeping in view the ratio of the judgments quoted above, we, hereby decline to Interfere in the order of the Ld. CIT(A)."*

*(emphasis supplied)*

*8. From the above extract, It would be seen that the Cressanda Solutions Ltd. was in fact Identified by the Bombay Stock Exchange as a penny stock being used for obtaining bogus Long Term Capital Gain. NO evidence of actual sale except the contract notes Issued by the share broker were produced by the assessee. No question of law, therefore arises in the present case and the consistent finding of fact returned against the Appellant are based on evidence on record.*

*9. In the aforesaid facts and circumstances, we do not find any merit in the present appeal and the same is dismissed.*

***2. Pr. Commissioner of Income Tax Vs Swati Bajaj on 14.06.2022 (Calcutta High Court)***

*While dealing with a batch of 90 appeals filed by the reveriue on a common Issue, the Hon'ble Calcutta High Court dealt with the substantial question of law as to whether on the facts and circumstances of the case and In law Ld ITAT erred in ignoring the direct and circumstantial evidence brought on record by the AO to establish that the assessee had Indulged in manipulation of share prices of different entitles (Penny Stock companies) with a view to record fictitious LTCG and claiming these as exempt from taxation. The Hon'ble High Court after examining the facts of these cases and after referring to the decisions of different Courts in the matter gave a finding as under:*

*"Selection of shares to be purchased is a very complex Issue, It requires personal knowledge and expertise as the Investment is not in a mutual fund. None of the assesseees before us have shown to have made any risk analysis before making their Investment in a "penny stock". If according to them they have blindly taken a decision to Invest in insignificant companies they having done so at their own peril have to face the consequences. Thus, the conduct of the assesseees before us probabilities the stand taken by the revenue, rightly the mind of the assessee es an Investor was taken note to deny the claim for exemption. It Is In this background that the human probabilities would assume significance. As observed earlier the doctrine of preponderance of probabilities could very well be applied in cases like the present one. We say human probabilities to be the relevant factor as on account of the fact that the assesseees are of Individuals or Hindu Undivided Families and the trading has been done in the name of the individual assessee or by the Karta of the HUF. None of the assessee before us have been shown to big time Investor. This is evident from the Income details of the assesseees which has been culled out by the respective assessing officers. Assuming that the assessee is a regular Investor as was submitted to us by the learned advocates for the assesseees that in any manner cannot Improve the situation as the claim for LTCG has been only restricted to the shares which were purchased and sold by the assesseees In penny stocks companies. Therefore, merely because the assessee had Invested in other blue chip companies had earned profit or Incurred loss cannot validate the tainted transactions. It has been established by the department that the rise of the prices of the shares was artificially done by the adopting manipulative practices. Consequently, whatever resultant benefits which accrue from out of such manipulative practices are also to be treated as tainted. However, the assessee had opportunity to prove that there was no manipulation at the other end and whatever gains the assessee has reaped was not tainted. This has not been proved or established by any of the assessee before us. Therefore, the assessing officers were well Justified In coming to a conclusion that the so called explanation offered by the assessee was not to their satisfaction. Thus, the assessee having not proved the genuineness of the claim, the creditworthiness of the companies in which they had Invested and the Identity of the persons to whom the transactions were done, have to necessarily fall. In such factual scenario, the Assessing Officers*

*as well as the CIT(A) have adopted an Inferential process which we find to be a process which would be followed by a reasonable and prudent person. The Assessing Officers and the CIT(A) have culled out proximate facts In each of the cases, took Into consideration the surrounding circumstances which came to light after the Investigation, assessed the conduct of the assessee, took note of the proximity of the time between the buy and sale operations and also the sudden and steep rise of the price of the shares of the companies when the general market trend was admittedly recessive and thereafter arrived at a conclusion which In our opinion is a proper conclusion In the absence of any satisfactory explanation by the assessee, the AOs were bound to make addition u/s 88 of the Act."*

*The Hon'ble High Court after examining the report of Kolkata Investigation Wing has made further following observations: -*

*"The report states as to why the Department has taken an Investigation as project, largely due to huge syndicate of the entry operators, share brokers and money launderers. The report states that Kolkata is a very distinctive place among the cities of India, so far as the accommodation entry is concerned and action has been Initiated against more than thirty share broking entitles and more than twenty entry operators working in Kolkata. The report states that almost everyone has accepted its activity, participation in providing accommodation entry of LTCG. The Investigation has also Indicated as to how the scheme of merger le being misused. Though the scheme of merger le approved by the Company Court, In the event it le found that such merger was done/ obtained by playing fraud, the Company Court le empowered to revoke the order and it appears that the Income Tax Department has not taken any steps in this regard to approach the Company Court or the Tribunal with such a prayer. Thus, we have no hesitation to hold that the order passed by the CIT(A) affirming the orders passed by the Assessing Officers as well as the orders passed by CIT under Section 283 of the Act were proper and legal and the Tribunal committed a serious error in reversing such decisions."*

*The above Judgment of the Hon'ble Calcutta High Court has been relied upon as a precedent alongwith other cases by Hon'ble ITAT Delhi in Sangeeta Devi*

*Jhunjhunwala vs ITO 70(1) In 162 taxmann.com 348 (Delhi ITAT) (18.05.2023) and In the case of Hemll Subhashbhal Shah vs DCIT, ITA No 1121/AHD/2018 and ITA No 961/AHD/2019 ITAT Ahmedabad. These cases are discussed herelunder at Sr.No 3 and 4.*

***3. Hon'ble ITAT Delhi in Sangeeta Devi Jhunjhunwala va ITO 70(1) In 152 taxmann.com 348 (Delhi ITAT) (18.05.2023) (HPC (Biosciences)***

*In this case the Hon'ble ITAT was dealing with Issue relating to disallowance, on claim of exemption u/s 10(38) of the Act on LTCG arising out of the sale of scrips of M/s Blosciences Ltd. based on Investigation carried out by Directorate of Investigation, Kolkatta on accommodation entry of LTCG and Identified beneficiaries who have taken bogus entry of LTCG. The findings given by Hon'ble ITAT Delhi, based upon the Judgment of PCIT vs Swat! Bajaj (2022) 446 ITR 56 (Cal), are as under: -*

*"16. Let us now peep into the precedents.*

*16.1 In Pr. CIT vs. Swati Bajaj (2022) 446 ITR 56(Cal), the AO received Information from Investigation Wing that the prices of some shares of penny stock companies which included the company X in which the assessee made Investment, were artificially rigged to benefit shareholders through bogus claim of long term capital gain. The assessee had purchased shares of the company for Rs. 1 lakh and when the Investments in shares became eligible for long term capital gain it was sold for Rs. 29 lakhs during the period when the general market trend was recessive. The AO opined that the shares of the company. X matched all the features of the companies which were provided bogus long term capital gain and made addition under section 68 of the Act by treating long term capital gain as unaccounted Income on the ground that the assessee Invested in shares of company X to convert unaccounted cash under the guise of long term capital gain.*

*16.1.1 When the matter was taken by the Revenue before the Hon'ble Calcutta High Court it held that it has been established by the Revenue that the rise of prices of the shares was artificially done by adopting manipulative practices. Consequently, whatever resultant profit accrued from out of such manipulative practices, same were also to be treated as tainted. However, the*

*assessee had opportunity to prove that there was no manipulation at the other end and whatever gains the assessee had reaped was not tainted. This has not been proved or established by the assesses. Therefore, the AO was well justified in coming to a conclusion that the so called explanation offered by the assessee was not to his satisfaction. Thus, the assessee having not proved the genuineness of the claim, the creditworthiness of the company in which the assessee had Invested and the Identity of the person from whom the transactions were done, the assesses had to necessarily fall.*

*16.1.2 The court went on to observe further that in such a factual scenario, the AO had adopted an inferential process which was found to be a process which would be followed by a reasonable and prudent person. The AO had culled out proximate fact of the case, took Into consideration the surrounding circumstances which came to light after Investigation, assessed the conduct of the assessee, took note of the proximity of the time between the buy and sale operations and also the sudden and steep rise of the price of the shares of the company when the general market trend was admittedly recessive and thereafter arrived at a conclusion which was a proper conclusion and in the absence of any satisfactory explanation by the assessee, the AO was bound to make addition under section 68 of the Act.*

*16.2 The decision (supra) applies squarely to the facts of the case under consideration before US.*

*It Is further discussed by Hon'ble ITAT Delhi In same order that*

*“26.1 in Swat! Bajaj's case (supra) the Hon'ble Calcutta High Court observed in the context of the report of the Pr. DGIT (Inv.) Calcutta that large number of NRIs and well known Fils are buying and selling penny stocks and this appears to be a case where the black money stashed abroad is coming back to India (purchase) or money being sent out of the country (sale). The report points out that while only Rs. 27.57 crores have gone out of the country, an amount of above Rs. 114.97 crores has come In. The report has been communicated to the DGIT (inv.) of all the states. In the opinion of the Hon'ble Calcutta High Court the methodology of the Investigation by the department is quite different from the normal method of Investigation which*

*commences from the Investor or the assessee as the case may be. On account of huge sums of money being claimed as long term capital gain/long term capital loss, a different approach/methodology was adopted by the department by commencing the Investigation not from the individuals who traded with penny stocks but Investigation has started targeting the Individuals who dealt with those penny stocks This concept can be mentioned to be one of "working backward". This is one of the modes of causing an Investigation, considering its magnitude. The approach of the department cannot therefore be faulted.*

*26.2 The Hon'ble Calcutta High Court observed further that the court sit In judgment over the methodology adopted by the department as no taxpayer is entitled to any benefit which shall not accrue to him under the provisions of the Act. If any dubious methodology has been adopted for the purpose of availing certain benefit not admissible under law, the same will not come within the ambit of tax planning, but shall be a case of tax avoidance by adopting Illegal methods. Therefore, the department was justified in proceeding to take up the cases, not only within the Jurisdiction of the state of West Bengal but other state as well.*

*26.3 The Hon'ble Calcutta High Court observed that the assessee is lawfully bound to prove the huge long term capital gain claims to be, genuine. If there is Information and date available of unreasonable rise in the price of shares of penny stock companies over a short period of time, the genuinely of such steep rise in the prices of shares needs to be established and the onus is on the assesses to do so. The assessee cannot escape from the burden cast upon him and unfortunately the burden is heavy as the facts establish that the shares which were traded by the assessee had phenomenal and fanciful rise in a short span of time and more Importantly after a period of 17 to 22 months, thereafter has been a steep fall which has led to huge claims of short term capital loss. Therefore, unless and until the assessee discharges such burden of proof, the addition made by the AO cannot be faulted.*

*27. On the facts and in the circumstances of the assessee's case in hand and in the light of the Judicial precedents set out above, we have no hesitation at all in holding that the Ld. AQ/CIT(A) were perfectly Justified in treating the*

*Impugned transactions as sham and discarding the assessee's explanation as not satisfactory. We concur with their findings that the assessee failed to discharge the onus cast upon her under section 68 of the Act. Accordingly, the Impugned addition is sustained and the assessee's ground No. 1(a) of disallowance of exemption under section 10(38) of the Act on long term capital gain of Rs. 1,17,34,753/- is hereby rejected."*

**4. Hemil Subhashbhal Shah Vs DCIT (ITAT) ITA No 1121/Ahd/2018 & ITA No 961/Ahd/2019**

*In Para 8 of Its order Hon'ble ITAT Ahmedabad has discussed as under:-*

*"We have gone through the judgement of the Hon'ble Calcutta High Court in the case of Swati Bajaj (supra) and find that the issue before us is clearly covered by the said decision. The facts stated in the said case are identical to that of the case before us, as also, pleading of the assessee before Hon'ble High Court being identical. Parity of facts is discerned from the Hon'ble High Court order from where it notes that the AO relied on the investigation report to find long term capital gain returned by the assessee on sale of shares of M/s Surbhi Chemicals are relating to penny stock and to be in the nature of mere accommodation entries. The facts are noted at para 3 of the judgement. Pleadings of the assessee before the Hon'ble Court were also identical as that made before us i.e.,*

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

*9. The Hon'ble High Court dealt with each and every contention raised by the Ld. Counsel for the assessee before it."*

*The Hon'ble ITAT proceeded to discuss each of above contention in the light of the findings given by Hon'ble Calcutta High Court in the case of Swati Bajaj.*

*In Para 10 of its order, Hon'ble ITAT discusses the significance of the Investigation report and the findings of Hon'ble Calcutta High Court in the case of Swati Bajaj that Investigation report needed to be given due weightage to commence proceedings under the Act against assesses who fall within the ring of suspicion.*

*In Para 11 of its order, Hon'ble ITAT discusses the significance of the Investigation report and the findings of Hon'ble Calcutta High Court In the case of Swati Bajaj.*

### **5. Udit Kalra Vs ITO 2019-TIOL-761-HC-DEL-IT**

*Coordinate Bench of the ITAT Delhi in case cited as Udit Kalra vs. ITO dismissed the appeal filed by the assessee who had claimed deduction u/s 10(38) of the Act for Rs.27,20,457/- In Identical facts which has been confirmed by the Hon'ble Delhi High Court in ITA 220/2019 order dated 08.03.2010 by returning following finding: -*

*"This court has considered the submissions of the parties. Aside from the fact that the findings in this case are entirely concurrent - A.O., CIT(A) and the ITAT have all consistently rendered adverse findings - what is intriguing is that the company (M/s Kappac Pharma Ltd.) had meagre resources and in fact reported consistent losses. In these circumstances, the astronomical growth of the value of company's shares naturally excited the suspicions of the Revenue. The company was even directed to be delisted from the stock exchange. Having regard to these circumstances and principally on the ground that the findings are entirely of fact, this court is of the opinion that no substantial question of law arises in the present appeal."*

*Hon'ble High Court held as follows*

*"What is Intriguing is that the company (M/s Kappao Pharma Ltd.) had meagre resources and in fact reported consistent losses. In these circumstances, the astronomical growth of the value of company's shares naturally excited the suspicions of the Revenue. The company was even directed to be delisted from the stock exchange. Addition on account of Penny Stock confirmed.*

**6. Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain Vs PCIT (ITA No.18/2017 Bombay High Court (Nagpur Bench)**

*The assessee had purchased shares of two penny stocks of Kolkata based companies i.e., 8000 shares at the rate of Rs.5.50 per share on 08.08.2003 and 4000 shares at the rate of Rs.4/per share on 05.08.2003. The assessee sold 2200 shares at an exorbitant rate of Rs.486.55 per share on 07.06.2005 and 800 shares on 20.06.2005 at the rate of Rs.485.65. the authorities held that the assessee had not tendered cogent evidence to explain as to how the shares in an unknown company worth Rs.5/- had Jumped to Rs.485/- In no time. Addition confirmed.*

**7. Sanat Kumar Vs ACIT (2019-TIOL-1296-ITAT-DEL, ITA No.1881/Del./2018)**

*Where Hon'ble ITAT Delhi held that when entire transaction apparently appears to be bogus as It provides unimaginable appreciation in value of shares, then it would amount to evasion and Initial transaction made through banking channel will not exonerate the purchaser.*

**8. Poola Aimani Vs ITO [2018] 106 taxmann.com 66 (Delhi - Trib.) where Hon'ble ITAT Delhi held as follows:**

*"I find that in the case of Charan Singh v. Chandra Bhan Singh AIR 1988 SC 6370, the Hon'ble Supreme Court have clarified that the burden of proof lies on the party who substantially asserts the affirmative of the Issue and not upon the party who denies It. It has been further held that the party cannot, on failure to establish a prima facie case, take advantage of the weakness of his adversary's case. The party must succeed by the strength of his own right and the clearness of his own proof. He cannot be heard to say that It was too difficult or virtually Impossible to prove the matter in question. In the case under consideration, since it is the appellant who had made the claim that she had earned genuine long term capital gain, all the facts were especially within her knowledge. Section 102 of Indian Evidence Act makes it clear that Initial onus is on person who substantially asserts a claim. If the onus is discharged by him and a case is made out, the onus shifts on to deponent. It is pertinent to mention here that the phrase "burden of proof" is used in two*

*distinct meanings in the law of evidence viz, 'the burden of establishing a case', and 'the burden of Introducing evidence'. The burden of establishing a case remains throughout trial where it was originally placed, It never shifts. The burden of evidence may shift constantly as evidence Is Introduced by one side or the others. In this case, once the evidence that assessee has claimed bogus long term capital gain was Introduced by the Assessing Officer, the burden of evidence shifted to the assessee. During the assessment proceeding and ever during the assessee proceeding, the assessee has failed to produce any evidence to prove that the long term capital gain claimed by her was genuine. In the present case, it is seen that the assessee has failed to discharge her burden of proof and the Assessing Officer, on the other hand, has proved that the claim of the appellant was Incorrect. The enquiry conducted by SEBI was further corroborated by the Investigation carried out by the Directorate of Investigation, has been thoroughly analysed by the Assessing Officer to prove that the assessee has Introduced bogus long term capital gains in her books of account by routing her unaccounted Income through a tax evasion scheme. The statement of brokers engaged In providing bogus long term capital gains clearly proves that Kappac Pharma Ltd. is one of such companies whose scrips have been manipulated to provide bogus long term capital gains. It is noted that on similar facts and circumstances, Hon'ble ITAT A-Bench, Chandigarh in the case of Abhimanyu Soln v. ACIT [IT Appeal No. 951 (CHD.) of 2016, dated 18-4-2016), have expressed the view that the undisclosed Income In. the garb of long term capital gain has to be assessed as unexplained. The Hon'ble ITAT have held as under: -*

*"14. The ratio laid down by the Hon'ble Supreme Court In the case of Sumati Dayal v. CIT [1995] 214 ITR 8012002-TIOL-885-SC-IT-LB Is squarely applicable in this case. Though the assessee has received the amounts by the way of account payee cheques, the assessee could nowhere prove the purchase of shares as claimed to have been made on 02/72/2008 in cash and It urns also not proved about the availability of the funds with the assessee as on the date of purchase of shares. The assessee was not in India as per the passport details available as per the record. This, coupled with the fact that the transfer of money in cash from Ludhiana to Delhi and a person representing the broker operating*

*at Kolkata has collected the money at Delhi cannot be accepted. The tax authorities are entitled to look into the surrounding circumstances to find out the realities and the matter has to be considered by applying test of human probabilities as enunciated by the Hon'ble Supreme Court. The fact that inspire of earning 3072% of profits, the assessee never ventured to Involve himself in any other transactions with the broker which gave him even much lower profits during the period which cannot be a mere coincidence or lack of Interest or absence of advice from the financial Institutions as done earlier.*

*15. In view of the detailed discussion above, and keeping in view the entirety of the facts and circumstances and specific peculiarity of the Instant case and the judgments quoted above, we decline to Interfere in the order of the Ld. CIT (A).*

*16. In the result, appeal of the Assessee is dismissed."*

*5.1 On the Issue of circumstantial evidence and in the matters related to the discharge of 'onus of proof' and the relevance of surrounding circumstances of the case, the Hon'ble Supreme Court In the case of CIT v. Purga Prasad More [1972] 82 [TR 540, have observed as under:*

*"...that though an appellant's statement must be considered real until it was shown that there were reasons to believe that the appellant was not the real, In a case where the party relied on self-sewing recitals in the documents, It was for the party to establish the transfer of those recitals, the taxing authorities were entitled to look Into the surrounding circumstances to find out the reality of such recitals. Science has not yet Invented any Instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and the Tribunals have to Judge the evidence before them by applying the test of human probability. Human minds may differ as to the reliability of piece of evidence, but, In the sphere, the decision of the final fact finding authority is made conclusive by law."*

*5.2 I further find that the above ratio as laid down by the Hon'ble Supreme Court has been reiterated and applied by the Hon'ble Apex Court in the case*

*of Sumati Dayal (supra). It is essential on the part of the Assessing Officer to look into the real nature of transaction and what happens in the real world and contextualize the same to such transactions in the real market situation. Further, In the case of McDowell & Co. Ltd. (supra), the Hon'ble Supreme Court have observed as under:*

*"Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."*

*5.3 Every person is entitled to so arrange his affairs as to avoid taxation but the arrangement- must be real and genuine and not a sham or make believe...*

*5.4 Keeping in view of the aforesaid discussions, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that purchase and sale of shares are arranged transactions to create bogus profit in the garb of tax exempt long terra capital gain by well organised network of entry providers with the sole motive to sell such entries to enable the beneficiary to account for the undisclosed Income for a consideration or commission. I further find that the share transactions leading to long term capital gains by the assessee are sham transaction entered into for the purpose of evading tax. I note that the landmark decision of the Hon'ble Supreme Court in the case of McDowell and Co. Ltd. (supra) is squarely applicable in this case wherein it has been held that tax planning may be legitimate provided it is within the framework of the law and any colourable devices cannot be part of tax planning and It is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by dubious methods. However, the case laws cited by the Ld. counsel for the assessee are on distinguished facts, hence, not applicable in the Instant case. The assessee has not rested any legal ground and argued only on merit for which assessee has failed to substantiate his claim before the lower revenue authorities as well as before this Bench. in view of above discussions, I am*

*of the considered opinion that Ld. CIT(A) has rightly confirmed the addition in dispute, which does not need any Interference on my part, therefore, I uphold the action of the Ld. CIT(A) on the Issue in dispute and reject the grounds raised by the Assessee.*

*6. in the result, the Appeal of the Assessee is dismissed."*

**9. Anip Rastogi Vs ITO (ITA No. 3809/DEL/2018)**

*where Hon'ble ITAT Delhi upheld addition u/s 68 In respect of Income claimed exempt u/s 10(38) In view of following facts:*

*(i) The assessee has not been dealing In shares on a regular basis*

*(ii) Purchase of shares were claimed to be through off market deals*

*(iii) The financials of penny stock company M/s CCL International Ltd. and movement of etc price are abrupt, unrealistic and based upon any realistic parameters. There la no extraordinary Increase in the profits of the company to Justify the Increase in value of the shares.*

*(iv) Investigation Wing had recorded the statement of Sh. Jal Kishan Poddar who is one of the Director of M/s Consortium Capital Pvt. Ltd. which is one of the entitles utilised for providing entry of bogus long term capital gain of M/s CCL International Ltd. who had admitted that he was involved in scam of providing bogus long term capital gains through shares of M/s CCL International Ltd. had also admitted that they were also Involved in trading of these Jamakharchi Companies through which manipulative transactions in securities to either artificially raise or lower the market rate of the shares are being done.*

**10. Abhimanyu Soin Vs ACIT 2018-TIOL-733-ITAT-CHD**

*where Hon'ble ITAT Chandigarh held that unnatural LTCG 3072% over a period of 1.5 years from scrip of the unlisted company whose even net worth is not known to the assessee, without expert advice is beyond the business logics and is valid reason to make addition for undisclosed Income. When assessee falls to prove through evidences that purchase and sale transactions of shares are genuine, claim of exempted LTCO can be disallowed and*

*addition for undisclosed Income can be made. When facts Indicates that whole process of trading in shares is depicted just to avoid tax liability, the addition for undisclosed Income should be upheld.*

**11. Smt. M.K.Raleshwarl Vs ITO (ITA No.1723/Bang/2018)**

*Hon'ble ITAT Bangalore held that while dealing with the issue of Long term capital gains accrued to the assessee In short span, one has to examine the financials of the company whose shares were Inflated within a short period and after the sharp rise in the price of shares it again comes down. Upheld taxation of LTCG from penny stocks.*

**12. Chandan Gupta Vs CIT [2016] 54 taxmann.com 10 (Punjab & Haryana)/[20151 229 Taxman 173**

*Hon'ble Punjab & Haryana High Court held that where assessee could not explain receipt of alleged share transactions profits credited in his bank accounts, then sale proceeds had to be added as Income of assessee under section 68.*

**13. Balbir Chand Malni Vs CIT [20111 12 taxmann.com 276 (Punjab & Haryana)/[20111 201 Taxman 94 (Punjab & Haryana) (MAG.)/T20121 340 ITR 181 (Punjab & Haryana)/[20121 247 CTR 468 (Punjab & Haryana)**

*Section 69 of the Income-tax Act, 1961 - Unexplained Investments - Assessment year 1998-99-During assessment proceedings, Assessing Officer found that assessee had purchased certain shares of a company at rate between Rs. 2.50 and Rs. 3.40 per share in month of April, 1997 and part of those shares were sold through a broker at Rs. 55 per share He came to opinion that value of said shares could not be as high as Rs. 56 per share - He recorded statement of broker who admitted to have purchased shares in question but failed to produce books of account and other relevant documents - He also found that alleged sale of shares had not taken place through any stock exchange On scrutiny of books of account of broker, It was found that there were cash deposits In Its bank account preceding Issue of cheques In name of assessee for purchase of shares claimed to be sale proceeds of same*

*shares received In advance - Broker could not give details of purchaser of shares - Moreover, shares claimed to have been sold through broker had not been transferred even at time of making enquiry by Assessing Officer and same continued to be registered in name of assessee in those circumstances, Assessing Officer held that transaction of sale of shares was an In genuine transaction and made addition of alleged sale consideration to assessee's Income as Income from undisclosed sources - Whether on facts, addition made by Assessing Officer was Justified - Held, yes*

**14. Usha Chandresh Shah Vs ITO [2014-TIOL-1459-ITAT-MUM]**

*Where Hon'ble ITAT Mumbai held that in this case the assessee could not produce the copies of share certificates and copies of share transfer forms. The transaction of purchase of shares could not be cross verified. The shares of the company was declared as "Penny Stock" by SEBI and the broker Sanju Kabra, through whom the shares were sold by the assessee was Indicted for manipulating the prices of penny stock shares. The tax authorities have rightly applied the test of human probabilities to examine the claim of purchase and sale of shares made by the assessee. The CIT(A) was Justified in confirming the order of the AO by applying the test of human probabilities.*

**15. Ratnakar M Pujari Vs ITO [2016-TIOL-1746-ITAT-MUM]**

*Where Hon'ble ITAT Mumbai held that a transaction of 'off market purchase of share' for Which payments were made in cash and the brokers had issued pre dated contract notes, is liable to be treated as bogus transaction, and hence such cash receipts are liable to be treated as 'unexplained cash receipts'.*

**16. Hon'ble ITAT Mumbai in the case of ITO Ve Shamim M Bherwani (2016) (69 Taxmann.com 65)**

*Where Hon'ble ITAT Mumbai held that where assessee claimed Income earned from sale of shares as exempt under section 10(38), In view of fact that purchase transaction of said shares was not recorded In stock exchange and, moreover, selling rates were artificially hiked later on with no real*

buyers, Assessing Officer rightly rejected assessee's claim and added amount in question to his taxable income under section 88,

**17. Vinay Kumar Dhingra (HUF) New Delhi Vs. ITO, Ward- 49(1) ITA No. 6388/Del/2017 DOJ 28.06.2021**

*In this case the assessee had raised a ground that the CIT(A) erred in law and on facts while upholding the decision of AO of making addition of Rs. 41,00,925/- on sale of shares of Cressanda Solutions Ltd. as non-genuine LTCG without appreciating the submissions of the assessee. After examining the details of transactions and facts of the case Hon'ble ITAT, Delhi Bench 'F' held that in the facts and circumstances of the case, where the purchase has not been done through open platform of recognized stock exchange and SEBI has also noticed abnormal activities of artificial price rigging in the shares of M/s Cressande Solutions Ltd., the assessee has failed in discharging his onus of substantiating the transaction of Long Term Capital Gain as a real transaction. The order of Ld. CIT(A) on the issue in dispute is well-reasoned and we do not find any infirmity in the same. Accordingly, we uphold the same. Grounds raised by assessee are dismissed."*

*17. Further, on the Issue of circumstantial evidence and in the matters related to the discharge of 'onus of proof and the relevance of surrounding circumstances, the Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More [(1972) 82 ITR 540], has observed as under:*

*"...that though an appellant's statement must be considered real until it was shown that there were reasons to believe that the appellant was not the real, In a case where the party relied on self-sewing recitals in the documents, it was for the party to establish the transfer of those recitals, the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals. Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probability. Human minds may differ as to the*

*reliability of piece of evidence, but, in the sphere, the decision of the final fact finding authority is made conclusive by law."*

*The above ratio as laid down by the Hon'ble Supreme Court has been reiterated and applied by the Hon'ble Apex Court In the case of Sumati Dayal vs. CIT (214 ITR 801): It is essential on the part of the Assessing Officer to look into the real nature of transaction and what happens in the real word and contextualize the same to such transactions in the real market situation. Further,*

*In the case of McDowell & Co, Ltd. (1985) 154 ITR 148 (SC), the Hon'ble Supreme court have observed as under:*

*"Tax planning may be legitimate provided it is within the frame work of law. Colourable devices cannot be part of tax planning and It is wrong to encourage of entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly resorting to subterfuges.*

*18. Sandeep Bhargava vs. ACIT, Delhi [ITA No. 420/Del./2019] G Bench Delhi Hon'ble ITAT Delhi upheld the findings of CIT(A) confirming additions with disallowing benefit u/s 10(38) availed by the assessee in respect of sale of shares of M/s. HPC Biosciences."*

9. In the rejoinder, Ld. AR of the assessee brought to our notice the decision of the coordinate bench in the case of Shri Tapas Kumar Mallick (ITA No 8142/Del/2018 dated 19.03.2021, wherein, the bench has considered the similar issue of same script and decided the issue in favour of the assessee. He relied on the same.

10. Considered the rival submissions along with the case law relied upon and material placed on record. The Assessing Officer observed that assessee had

made huge profit out of this investment because of this, it makes the script as suspicious and penny stock. We observed that the assessee had invested in the shares out of IPO, which were launched as public issue, which were approved by the ROC and SEBI as well as BSE. The investors will invest based on the policy documents which are approved and no objections were there at the time of investment. The assessee had invested in good faith and subsequently sold the shares, we cannot agree to the observation of the AO, merely because of huge profit, it does not make the script a penny stock. Further, it is fact on record that the financials of the company may not be commensurate with the purchase and sale price in the market. The assessee has purchased the shares from authorized dealers, subsequently, sold the same in the stock exchange. However, there is no discrepancies in the documents filed by the assessee claiming the deductions u/s 10(38) of the Act. At the same time, even though all the characteristics of the penny stock exists in the present case, still the Revenue has not brought on record any materials linking the assessee in any of the dubious transactions relating to entry, price rigging or exit providers. Even in the SEBI report, there is no mention or reference to the involvement of the assessee. We can only presume that the assessee is one of the beneficiaries in these transactions merely as an investor who has entered in investment fray to make quick profit. Even the assessing officer has applied the presumptions and concept of human probabilities to make

the additions without there being any material against the assessee. We observed that similar issue was considered by the coordinate bench in the case of Shri Tapas Kumar Mallick (supra) and decided on the issue of same script and considered the findings in the SEBI investigation on the same script, for the sake of brevity, we are reproducing the same below:

*“17. A perusal of the assessment order clearly shows that the Assessing Officer was carried away by the report of the Investigation Wing and the exparte Ad-Interim order of the SEBI. It can be seen that the entire assessment order has been framed by the Assessing Officer without conducting any enquiry from the relevant parties or independent source or evidence but has merely relied upon the SEBI order without conducting any independent and separate enquiry in the case of the appellant.*

*18. It is provided u/s 142(2) of the Act that for the purpose of obtaining full information in respect of income of loss of any person, the Assessing Officer may make such enquiry as he considers necessary.*

*19. Similar facts were considered by the coordinate bench in the case of Smt. Karuna Garg ITA No. 1069 & 2772/DEL/2019, Smt Bindu Garg in ITA No. 1168 & 1169/DEL/2019, Smt Krishna Devi in ITA No. 1070/DEL/2019 and Har Dev Sahai Gupta in ITA No. 1264/DEL/2019. In these cases, the quarrel was in respect of scrip of M/s Esteem Bio Organic Food Processing Ltd, which is one of the four companies whose names are mentioned at Para 12 of this order.*

*20. In these cases also since the exparte interim order of the SEBI dated 29.06.2015 has named 239 persons and names of the appellants did not find place in the said lists and on the given facts, all these appeals were decided in favour of the assessee and against the revenue and order of the coordinate bench has been upheld by the Hon'ble High Court of Delhi in ITA No. 125/2020, 130/2020 and 131/2020 vide order dated 15.01.2021. The relevant findings of the Hon'ble High Court of Delhi read as under:*

*“11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under Section 10(38), in a pre-planned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income Tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent’s unaccounted money, but he did not dig deeper. Notices issued under Sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries,*

*and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.*

*12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict*

*with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on Suman Poddar v. ITO (supra) and Sumati Dayal v. CIT (supra) is of no assistance. Upon examining the judgment of Suman Poddar (supra) at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of Sumati Dayal v. CIT (supra) too turns on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.*

*13. The learned ITAT, being the last fact-finding authority, on the basis of the evidence brought on record, has rightly come to the conclusion that the lower tax authorities are not able to sustain the addition without any cogent material on record. We thus find no perversity in the Impugned Order.*

*14. In this view of the matter, no question of law, much less a substantial question of law arises for our consideration.”*

*21. In our considered view, whether the assessee has discharged his onus cast upon him by provisions of section 68 of the Act or not is purely a question of fact and considering the vortex of evidences, we are of the considered view that the assessee has successfully discharged the onus cast upon him by provisions of section 68 of the Act. As mentioned elsewhere, the discharge of onus is purely a question of fact, the judicial decisions relied upon by the ld. DR would do no good on the peculiar plethora of*

*evidences in respect of facts in hand and hence the judicial decisions relied upon by both the sides, though perused, but not considered on the facts of the case in hand except the decision of the coordinate bench discussed elsewhere because the same exparte Ad-Interim order of SEBI was considered and facts are mutatis mutandis same. We, accordingly, direct the Assessing Officer to accept the long term capital gain declared as such and delete the addition of Rs. 2,10,23,848/-.*

*22. Before parting, the ld. DR has supported his submissions by supplying print outs of the Metropolitan Stock Exchange and The Economic Times Markets, which we find that he must have searched from Google network wherein the ld. DR pointed out that SEBI now vide order dated WTM/SM/VD/D3/9896/2020-21 dated 22.12.2020 has issued the following directions:*

*'Noticee nos. 2 and 3 (promoters of the Company) are directed to make a public offer through a merchant banker to acquire shares of the Company from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order.*

*ii. BSE to facilitate valuation of shares to be purchased as directed at (i) above, and compulsorily delist the Company, if the public shareholding reduces below the minimum level in view of aforesaid purchase.*

*iii. The Noticee no. 1 is hereby restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner for a period of 8 years. iv. Noticee no. 2 and 3 are hereby restrained from holding post of director, any managerial position or associating themselves in any capacity with any listed public company and with any public company which intends to raise money from the public, or with any intermediary registered with SEBI for a period of 3 years. www.taxguru.in 15*

v. The Noticees, as mentioned below are hereby restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever manner, for the period specified in their respective columns:

v. The Noticees, as mentioned below are hereby restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever manner, for the period specified in their respective columns:

Sr. No.	Name of the Noticee	PAN	Debarred vide interim order	Period of debarment Till date of this order
1	HPC Biosciences Ltd^—	AABCH6762Q	Yes	
Sr. No.	Name of the Noticee	PAN	Debarred vide interim	Period of debarment
2	Shri. Tarun Chauhan	AGXPC3049G	Yes	Till date of this order
3	Ms. Madhu Anand	AXTPA8813F	Yes	Till date of this order
4	Goldline International Finvest Ltd.	AACCG6377M	Yes	Till date of this order
5	Shri. Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, Magnum Industrial	AIJPD7329J	Yes	Till date of this order
6	Shri. Satendra Kumar & its Proprietorship firm viz. Nisha Traders	AWWPK8525E	Yes	Till date of this order
7	Avisha Credit Capital Pvt. Ltd	AAACA5715D	Yes	Till date of this order
8	Shri. Sumit Kumar & its Proprietorship firm viz. Durga Prasad & Co.	ARUPK1589P	Yes	Till date of this order
9	Shri. Raj Kumar & its Proprietorship firm viz. Bright Securities	BNBPK2681L	No	1 Year
10	Shri. Prakash Gupta & its Proprietorship firm viz. Shiv Traders	ARVPG7849R	Yes	Till date of this order
11	AMS Powertronic Pvt. Ltd	AAECA8718H	Yes	Till date of this order

*23. This SEBI order is dated 22.12.2020 whereas the transactions which have been considered in this appeal took place in F.Y. 2014-15 and therefore, restrain after a gap of more than 5 years would do no good to the Revenue. This order has restrained named notices from accessing security market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner for a period of 8 years. Obviously, this restraint is prospective.”*

11. Further, there is no evidence with the AO involvement of the assessee in any of the dubious transactions linking the assessee, merely because the script under consideration is under investigation by the SEBI, he presumed. We observed that Hon’ble Bombay High Court in the case of Pr. CIT v. Ziauddin A Siddique in Income Tax Appeal No. 2012 of 2017 dated 04/03/2022 held as under: -

*“1. The following question of law is proposed:*

*"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of Rs.1,03,33,925/- made by AO u/s 68 of the I.T. Act, 1961, ignoring the fact that the shares were bought/acquired from off market sources and thereafter the same was demated and registered in stock exchange and increase in share price of Ramkrishna Fincap Ltd. is not supported by the financials and, therefore, the amount of LTCG of Rs.1,03,33,925/- claimed by the assessee is nothing but unaccounted income which was rightly added u/s 68 of the I. T. Act, 1961?"*

*2. We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd. ("RFL") is done through stock exchange and through the registered Stock*

*Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.*

3. *Therefore we find nothing perverse in the order of the Tribunal.*
4. *Mr. Walve placed reliance on a judgment of the Apex Court in Principal Commissioner of Income-tax (Central)-1 vs. NRA Iron & Steel (P.) Ltd. but that does not help the revenue in as much as the facts in that case were entirely different.*
5. *In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.*
6. *The appeal is devoid of merits and it is dismissed with no order as to costs."*

12. Further, Hon'ble Delhi High Court in the case of Pr. CIT v. Smt. Krishna Devi in ITA 125/2020 dated 15.01.2021 held as under: -

*"8. Mr. Hossain argues that in cases relating to LTCG in penny stocks, there may not be any direct evidence in the hands of the Revenue to establish that the investment made in such companies was an accommodation entry. Thus the Court should take the aspect of human probabilities into consideration that no prudent investor would invest in penny scrips. Considering the fact that the financials of these companies do not support the gains made by these companies in the*

*stock exchange, as well as the fact that despite the notices issued by the AO, there was no evidence forthcoming to sustain the credibility of these companies, he argues that it can be safely concluded that the investments made by the present Respondents were not genuine. He submits that the AO made sufficient independent enquiry and analysis to test the veracity of the claims of the Respondent and after objective examination of the facts and documents, the conclusion arrived at by the AO in respect of the transaction in question, ought not to have been interfered with. In support of his submission, Mr. Hossain relies upon the judgment of this Court in Suman Poddar v. ITO, [2020] 423 ITR 480 (Delhi), and of the Supreme Court in Sumati Dayal v. CIT, (1995) Supp. (2) SCC 453.*

*9. Mr. Hossain further argues that the learned ITAT has erred in holding that the AO did not consider examining the brokers of the Respondent. He asserts that this holding is contrary to the findings of the AO. As a matter of fact, the demat account statement of the Respondent was called for from the broker M/s SMC Global Securities Ltd under Section 133(6) of the Act, on perusal whereof it was found that the Respondent was not a regular investor in penny scrips.*

*10. We have heard Mr. Hossain at length and given our thoughtful consideration to his contentions, but are not convinced with the same for the reasons stated hereinafter.*

*11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for*

*the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under Section 10(38), in a pre-planned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income Tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under Sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat*

*account and the consideration has been received through banking channels.” The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.*

*12. Mr. Hossain’s submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on *Suman Poddar v. ITO (supra)* and *Sumati Dayal v. CIT (supra)* is of no assistance. Upon examining the judgment of *Suman Poddar (supra)* at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, *inter alia*, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of *Sumati**

*Dayal v. CIT (supra) too turns ITA 125/2020 and connected matters Page 10 of 10 on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.*

*13. The learned ITAT, being the last fact-finding authority, on the basis of the evidence brought on record, has rightly come to the conclusion that the lower tax authorities are not able to sustain the addition without any cogent material on record. We thus find no perversity in the Impugned Order.*

*14. In this view of the matter, no question of law, much less a substantial question of law arises for our consideration.*

*15. Accordingly, the present appeals are dismissed.”*

13. Therefore, we respectfully follow the ratio of the above decisions. In this case also, the Assessing Officer and Ld. CIT(A) has applied the concept of Human probabilities and held the above said scrip to be a penny stock without bring on record how the assessee is involved in any of the scrupulous activities or directly linked to one of the person who has involved in manipulation/rigging of share prices, entry operator or exit provider as observed by the Hon'ble Bombay High Court in the case of Ziauddin A Siddique (supra). Therefore, there is no material with the tax authorities to substantiate their findings that the impugned transaction is non-genuine. Therefore, we are inclined to allow the grounds raised by the assessee. Accordingly, the grounds raised by the assessee are allowed.

14. In the result, appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 13<sup>th</sup> March, 2026.**

**Sd/-  
(VIMAL KUMAR)  
JUDICIAL MEMBER**

**Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Dated: 13.03.2026

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-XXVI, New Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**