आयकर अपीलीय अधिकरण, मुंबई **"ई"** खंडपीठ
**Income-tax Appellate Tribunal -"E"Bench Mumbai**
**सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य**
**Before S/Shri Rajendra,Accountant Member and C.N. Prasad,Judicial Member**
**आयकर अपील सं./ITA/2333/Mum/2015,निर्धारण वर्ष /Assessment Years: 2006-07**

| | | |
|---|---|---|
| Ecofriendly Hotels India Private Limited<br>35/40, Mahalaxmi Bridge Arcade, Mahalaxmi<br>Mumbai-400 034.<br>**PAN:AABCE 2260 L** | **Vs.** | ACIT-10<br>Mumbai. |
| (अपीलार्थी **/Appellant**) | | (प्रत्यर्थी **/ Respondent)** |

**Revenue by:**Shri R.K. Sahu-DR
**Assessee by:** Shri Haridas Bhatt
सुनवाई की तारीख **/ Date of Hearing: 27.07.2016**
घोषणा की तारीख **/ Date of Pronouncement: 21.09.2016**
**आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश**
**Order u/s.254(1)of the Income-tax Act,1961(Act)**

**<u>लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-</u>**

Challenging the order,dated 02/02/2015,of the CIT (A)-10,Mumbai the assessee company has filed the present appeal.The return of income,declaring total income of Rs.46.52 lakhs,was filed on 26/05/2006.The return was processed u/s. 143(1) of the Act,on 28/06/2007.Subsequently,the case was re-opened by issuing a notice u/s.148 of the Act, dated 28/03/2013. In response to the same, the assessee,vide its letter,dated 01/04/2013,stated that return filed by it on 26/05/2006 should be treated as a return having been filed in response to the re-opening notice.As per the request of the assessee,reasons recorded by the AO were supplied to it by the AO vide his letter,dated,28/10/2013.The assessee objected the reopening vide letter dated 11/11/2013.The AO rejected the objections in his letter,dated 21/11/2013.He completed the assessment u/s.143(3) r.w.s.147 of the Act,on 06/03/2014. Aggrieved by the order of the AO,the assessee filed an appeal before the First Appellate Authority (FAA). Before him, the assessee agitated the issue of reopening as well as challenged the addition made by the AO. The FAA upheld the reopening as well as the addition.Hence,the assessee is before us.

**2.**First effective ground of appeal (GOA.1-3) deals with reopening. Before the FAA, it was argued that the AO had reopened the assessment on the basis of information received, that it had entered into accommodation entries with M/s. Mahasagar Securities Group,that the action of the AO was without any sufficient and relevant material on record to prove the genuineness of the statement given by Mukesh Choksi(MC) of Mahasagar Group,that the AO did not consider the objection letter, dated 11/11/2012,that he had wrongly placed reliance on the finding of the search proceedings and statements recorded in the case of Mahasagar Securities Group, that he had wrongly considered capital gain as undisclosed income of the assessee, that the assessee had provided the detailed explanation for Short-Term Capital Gains(STCG),that it had purchased shares through M/s. Alliance Intermediaries & Networks Private Ltd.(Alliance), that it had sold the shares through other broker, that it had paid STT on sale of shares,that it had enclosed the copy of bills for purchase and sales of shares and also the demat-statement highlighting the transaction,that the purchase of shares had been disclosed in the books of accounts, that the copies of bank statement evidencing the payment made to Alliance for purchas -ing the shares were produced, that it had genuinely purchased the shares of two companies namely Maruti Infra (Maruti) and Sundram Multi Pap Ltd.(Sundram), that the claim of the assessee could not be denied merely because the broker through whom the shares were purchased and were sold failed to produce his books.

**3.**After considering the submission of the assessee,the FAA held that during the appellate proceedings,the assessee had not shown any reason to support the claim that the reopening was bad in law, that specific information was received by the AO from the departmental authority on the basis of which he came to the conclusion that the assessee had obtained bogus entry of capital gain, that return filed by the assessee was processed u/s.143 (1) of the Act,that the AO found reasons to believe that taxable income had escaped assessment,that accordingly

he had issued the notice u/s.148,that in the case under consideration the AO had material reasons for initiating action u/s.147.Finally,he upheld the reopening.

**4.**Before us,the Authorised Representative(AR) argued that the AO was not justified in reopening the assessment,that all the details were available on the record,that the statement of MC had no relevance, that the assessee had objected to issue of notice u/s. 148 of the Act.The Departmental Representative (DR) supported the order of the FAA and argued that the AO had sufficient material to reopen the case,that the return was processed, that the AO had dealt with the objections raised by the assessee.He relied upon the case of Shamim M. Bharwani (ITA No.4906/Mum/2011,dated 27.03.2015,AY :2006-07).

**5.**We have heard the rival submissions and perused the material before us. We find that the return,filed by the assessee,was processed by CPC and no regular assessment was completed as per the provisions of section 143(3) of the Act. The processing of return and acknowledging the income filed by the assessee by the computer is a mechanical process and it does not involve application of mind by the AO.In the case under consideration,he had received specific information and accordingly reopened the assessment.We would like to reproduce the reasons recorded by him for reopening the assessment and same reads as under:

> *"The assessee, has filed the return of income for the A. Y 2006-07 on 26.05.2006 declaring total income of Rs 46,52,348/-. A search action u/s. 132 of the Act had been conducted in the case of Mukesh Choksi and its related group Companies, which include M/s. Alliance Intermediatories & Net Work Pvt. Ltd., M/s. Gold Star Finvest Pvt. Ltd., M/s Mihir Agencies Pvt. Ltd. on 25/11/2009. The search was conducted on the basis of information received from Financial Intelligence Unit, New Delhi regarding suspicious transactions in the bank account of one M/s. Mahasagar Securities Pvt. Ltd., having address at Block-H, Shree Sadashiv CHS, Santa Cruz East, Mumbai-400055. Investigation of the bank account mentioned in the FIU revealed that there were several high value cash deposits in certain accounts and transfers between the account and other accounts. Further investigation revealed that the other accounts which had received credits, were companies floated by the same two Directors of M/s. Mahasagar Securities Pvt. Ltd.- one Shri Mukesh C. Choksi and Shri Jayesh K. Sampat. All these Companies claimed to be 'Share broking' companies but the pattern of cash deposits and transfers did not correspond with the business claimed to be carried on. Thus the search action was carried out in the said companies. Shri Mukesh Choksi, one of the Directors of these companies, in the sworn-in statement recorded admitted that he and his group companies were engaged in fraudulent billing activities and*

*in giving accommodation entries in order to enable the clients to declare Speculation profit/loss, Short Term Capital Gain, Long Term Capital Gain, Profits/loss on account Commodity Trading, introduce Share Application Money or introduce money in the form of Gifts. In the latest sworn statement dated 16/01/2013, Shri Mukesh Choksi had identified 829 names of beneficiaries and certified that there are accommodation entries. Mr. Choksi has stated that he was only involved in giving accommodation entries.*

*The Chief CIT(Central-1 ), Mumbai has forwarded data relating to beneficiaries of accommodation entries facilitated by Mukesh Choksi. On verification of the data from the statement recorded it is found that the above named assessee has obtained accommodation entries during the F. Y 2005-06 relevant to A.Y 2006-07 in respect of purchase of shares of Maruti Infra amounting to Rs. 12,66,943/- through Alliance Intermediaries P. Ltd. which is one of the 34 odd companies floated by Mukesh Choksi. This is nothing but income earned from sources which has not been disclosed to the department in his return of income. Hence, the assessee has suppressed the primary facts required In his return of income. This is nothing but his own money, sources of which has not been disclosed to the department.*

*I have gone through the record available & I am satisfied that the assessee has failed to disclose true and complete particulars of income for the year under consideration.*

*Since the accommodation entries are provided to account for a transaction that does not exist in rea- lity, I have reason to believe that the Purchases of Rs 12,66,943/- are non-genuine and that extent income of the assessee has escaped assessment for the AY 2006-07.*

*In view of the above, I have reason to believe that Income chargeable to tax to the tune of Rs. 12,66,943/- or any other income chargeable to tax which comes to my notice subsequently in the course of proceedings for re-assessment, has escaped assessment, within the meaning of provision of Sec. 147 of the Act, 1961. Therefore, I am satisfied that the assessee has failed to disclose true and complete particulars of its income for the year under consideration. Accordingly, the case is being re-opened u/s. 147 of the IT Act for Asst. Year 2006-07. Issue notice u/s. 148 of the Act. Requisite approval of the Joint CIT-Range 16(1),*

*The decision of the Supreme Court in the case of* KELVINATOR OF INDIA LTD. [2010] 320 ITR 561 *was rendered in the background of a case of reopening of an assessment which was previously framed after scrutiny. The observations of the Supreme Court as to the requirement of reason to believe even after the amendment of section 147 of the Income-tax Act, 1961, therefore, must be seen in the background of such facts. The Supreme Court never meant to convey that to reopen an assessment, which was accepted u/s. 143(1) of the Act, there must be some tangible material, which is alien to the record. To say that when the Assessing Officer records his reason to believe that income chargeable to tax has escaped assessment, he cannot rely on the original assessment records and he must have some material outside or extraneous to the records to enable him to form such a belief would not be correct.*

*"……**this being a case where the return was originally accepted u/s. 143(1) of the Act without scrutiny, the only requirement to be fulfilled for issuing notice for reopening was that the Assessing Officer must have reason to believe that income chargeable to tax had escaped assessment.** The reasons for reopening the assessment were not perverse or untenable so as to terminate the assessment on the ground that the Assessing Officer could not be stated to have had any reason to believe or tangible material to form an opinion that income chargeable to tax had escaped assessment. Prima facie the facts were glaring. Whether the assessee would be able to discharge the burden of establishing the identity, source and creditworthiness of the*

*depositors was not a question which could be answered without scrutiny. Whether or not the assessee had started its manufacturing activity and its business operations to earn income were issues to be judged on the basis of evidence which may be brought on record. It was open for the assessee to contend before the assessing authority that there was no over-valuation of allotted shares or that for any legal reasons, in any case the addition could not be made in the hands of the assessee, despite such glaring facts. Those were issues in the realm of assessment, once allowed to be reopened. The reopening of the assessment was valid."*

In the case of Rajesh Jhaveri Stockbrokers Private Ltd(291 ITR 500) the Hon'ble Supreme Court has held as under:

"*Under the scheme of section 143(1) of the Income-tax Act, 1961, as substituted with effect from April 1, 1989, and prior to its substitution with effect from June 1, 1999, what were permissible to be adjusted under the first proviso to section 143(1)(a) were : (i) only apparent arithmetical errors in the return, accounts or documents accompanying the return, (ii) loss carried forward, deduction, allowance or relief, which was prima facie admissible on the basis of information available in the return but not claimed in the return, and similarly (iii) those claims which were, on the basis of the information available in the return, prima facie inadmissible, and were to be rectified/allowed/dis-allowed. What was permissible was correction of errors apparent on the basis of the documents accompanying the return. The Assessing Officer had no authority to make adjustments or adjudicate upon any debatable issues. In other words, the Assessing Officer had no power to go behind the return, accounts and documents, either in allowing or in disallowing deductions, allowance or relief. Though technically the intimation issued was deemed to be a demand notice u/s. 156, that did not preclude the right of the Assessing Officer to proceed u/s. 143(2) : that right is preserved and not taken away.*

*With effect from April 1, 1998, the second proviso to section 143(1)(a) was substituted. During the period between April 1, 1998, and May 31, 1999, sending of an intimation was mandatory. The legislative intent is very clear from the use of the word "intimation" as substituted for "assessment" that two different concepts emerge. While making an assessment, the Assessing Officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to section 143(1)(a) no addition which is impermissible by the information given in the return could be made by the Assessing Officer. The intimation u/s. 143(1)(a) cannot be treated to be an order of assessment.*

*Under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation u/s. 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. It cannot therefore be said that an "assessment" is done by them. The intimation u/s. 143(1)(a) was deemed to be a notice of demand u/s. 156 for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. Nothing more can be inferred from the deeming provisions. Therefore, there being no assessment u/s. 143(1) (a), the question of change of opinion does not arise.*

*The expression "reason to believe" in section 147 would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to believe that income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. What is required is "reason to believe" but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether material would conclusively prove escapement of income is not the concern at that stage. This is so because the formation of the belief is within the realm of the subjective satisfaction of the Assessing Officer."*

After going through the above judgments and the reasons recorded by the AO, we are of the opinion that the AO was justified in issuing the reassessment notice. He had sufficient material,at the time of issuing the notice u/s.148 of the Act,that certain portion of income had not suffer taxation.We are of the opinion that the order of the FAA does not suffer from any legal infirmity. Therefore, confirming the same we decide the first effective ground of appeal against the assessee.

**6.**The second effective ground of appeal is about the addition made of Rs. 33.98 lakhs as income from undisclosed sources.During the re-assessment proceedings, the assessee had claimed that it had received genuine capital gain of the said sum from sale of shares.However,the AO had held that transactions in question were not genuine,that the assessee had taken accommodation entries from the companies controlled by MC group.He found that assessee had shown the STCG on transfer of shares of marketing and Sundram as under:

| Scrip | Dt. of purchase | Qty | Amount | Dt. of sale | Qty | Amount |
|---|---|---|---|---|---|---|
| Maruti Infra | 02.05.05 | 12800 | 96640 | 07.12.05 | 12500 | 200625 |
| | | 0 | 0 | 29.12.05 | 300 | 6219 |
| | 13.05.05 | 14000 | 69300 | 29.12.05 | 14000 | 290220 |
| | 16.05.05 | 9200 | 43240 | 29.12.05 | 9200 | 190716 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 17.05.05 | 12500 | 60625 | 29.12.05 | 12500 | 259125 |
| | 17.05.05 | 44000 | 214975 | 29.12.05 | 44000 | 912120 |
| | 23.05.05 | 8000 | 47200 | 29.12.05 | 8000 | 165840 |
| | 24.05.05 | 40000 | 248000 | 29.12.05 | 12000 | 248760 |
| | | 0 | 0 | 30.12.05 | 28000 | 593040 |
| Sundaram | 04.07.05 | 125000 | 476250 | 07.12.05 | 40000 | 556000 |
| Multi | | 0 | 0 | 12.12.05 | 51541 | 749921 |
| | | 0 | 0 | 13.12.05 | 26800 | 386992 |
| | | 0 | 0 | 15.12.05 | 6659 | 95356 |
| | 12.12.05 | 41 | 644 | 02.02.06 | 41 | 533 |
| **Total** | | **265541** | **1256874** | | **265541** | **4655467** |

He directed the assessee to furnish confirmation from the broker namely Alliance for purchase of shares,executed with Alliance and UCC code, proof of delivery of physical shares on the date of purchase.As per the AO the assessee did not furnish any of the above details.He had received information from the investigation wing that the assessee was one of the beneficiaries of bogus STCG entries from the MC group.The AO issued a notice to the assessee on 20/01/2014 wherein details of STCG were given and assessee was directed to explain as to why the purchase of shares of Maruti and Sundaram should not be treated as non-genuine transaction and resultant STCG shown by it should not be added as its income from undisclosed sources.The assessee filed its reply on 23/01/2014,wherein it heavily relied on the broker's note and bills issued by Alliance.The AO issued summons to the principal officer of Alliance and recorded the statement of its director i.e. MC on 13/02/2014. A specific question was put to him,with regard to the contract notes and bills issued by Alliance to the assessee,by the AO in following manner :

*"Q.4. I'm showing you the contract notes and bills issued by M/s. Alliance Intermediaries & Network P.Ltd. to M/s. Ecofriendly Hotels Pvt.Ltd,as under:*

| S.No. | Contract Note No. | Bill No. | Date |
|---|---|---|---|
| 1. | 091/720 | 082 | 21/05/2005 |
| 2. | 092/719 | 092 | 16/05/2005 |
| 3. | 093/609 | 093 | 17/05/2005 |
| 4. | 097/717 | 097 | 23/05/2005 |
| 5. | 098/718 | 098 | 24/05/2005 |

| | | | |
|---|---|---|---|
| 6. | 127/602 | 127 | 04/07/2005 |
| 7. | 91/720 | 91 | 13/05/2005 |

*Please state whether the transactions mentioned in the contract note were actually executed or the contract notes were issued for facilitating the accommodation for capital gain by M/s. Ecofriendly Hotels Pvt.Ltd.*

In his reply, the director of Alliance stated as under:

*"I confirm that these contract notes were issued only to felicitate the short-term capital gains by M/s. Ecofriendly Hotels Pvt.Ltd."*

After considering the above statement of MC,the assessee was given another opportunity by the AO to prove the genuineness of the transaction.It was also supplied the copies of statement of MC,recorded on various occasions.He issued one more letter to the assessee giving it one more opportunity to present its case with supporting document.He asked the assessee to show cause as to why the addition proposed by him vide his notice,dated 20/01/2014,should not be made to the total income.After considering the submission of the assessee dated 25/ 02/2014,the AO held that assessee had not purchased the shares of Maruti and Sundram in the de mat mode, that it had dematerialised the shares on the date of sale,that it had not furnished any supporting evidence of physical delivery of shares on the date of purchase,that the assessee had wrongly claimed that it had furnished evidence regarding purchase of shares,that the shares of Maruti and Sundram were claimed to have been purchased in the month of May and June, that it had made the payment to Alliance in the month of December just before a day or two of the date of sale,that no genuine purchase was made by the assessee in the month of May/ July,2005.The AO also made enquiries with the NSE.After considering the available material,he held that no actual transactions were carried out by the assessee as per the contract note for purchase of shares,that MC had specifically confirmed on both that contract notes issued by him to the assessee were just to fabricate the STCG of the assessee,that it was supplied the copies of statement given by MC,that the assessee failed to negate the same evidences,that it had not produced client registration agreement with

Alliance,that as per the mandatory requirement of SEBI Regulations client registration was a must,that no unique client code was allotted to the assessee by Alliance as required by the SEBI regulations,that as per the circular of the SEBI only a share broker would issue contract-notes to its clients of sub-broker after 01/04/2005, that in the case under consideration sub broker had issued a contract note,that the Tribunal had declared Alliance an entry-provider. Finally,he held that no genuine purchase were made by the assessee of the shares of Maruti and Sundaram, that the transactions were fabricated transact - tions resulting in artificial/bogus capital gains, that the STCG of Rs. 83. 98 lakhs was to be treated as undisclosed income of the assessee introduced in the garb of sale proceeds of the shares which were generally not purchased. He further held that assessee must have paid certain commission to the broker in order to fabricate the capital gain. On that account he made a further addition of Rs.5,097/-.

**7.**Aggrieved by the order of the AO,the assessee preferred an appeal before the FAA.Before him,the assessee made elaborate submissions and relied upon certain case laws.After considering the submission of the assessee and the assessment order,the FAA held that MC had admitted that his group companies were indulged in paper transactions of providing hawala entries of capital gains, share application money/giftsthat the statement was further corroborated by the fact that none of the entities were carrying out any genuine business,that the onus was on the assessee,in respect of the amount credited in its books of accounts,to prove that transactions questioned by the AO were genuine,that there appeared a well thought design by which the assessee had arranged the profit,that it had had introduced its own unaccounted money under the guise of capital gains through the companies controlled by MC,that the AO had rightly held that the transaction of capital gains was not genuine.He further held that the cases relied upon by the assessee were distinguishable on facts.He referred

to the case of Sumati Dayal(214ITR801)and P Mohan Kala(291ITR278) and upheld the addition made by the AO.

**8.**Before us, the AR argued that .He relied upon the cases of Chamatkar Properties and Investments Private Limited (46 CCH 75 (Mum-Trib.));Kinjal A Shah(45CCH 38,Mum-Trib.);Jafferali K. Rattonsey (31 CCH 308,Mum-Trib)) and Eastern Commercial Enterprises(210 ITR 103). The DR supported the order of the AO and the FAA and referred to the case of Shameem M Bharwani(ITA/ 4906/ Mum/2011-AY.2006-07,dated 27/03/2015).

**9.**We have heard the rival submissions and perused the material before us.We find that the assessee had claimed capital gains of Rs.38.98 lakhs,that the AO and FAA had rejected the claim,that it did not provide supporting evidence of purchasing of shares in physical form,that both the authorities had considered the surrounding circumstances of the transactions and the probabilities of human behaviour,while deciding the issue.

**9.1.**It is said that in the application of the law relating to income-tax,it is the substance and not the form of the contract that should be regarded. In analysing a transaction,it is not necessary that the documents should be construed from the purely legal aspect.It is open to the AO/FAA not merely to look at the documents but to consider the surrounding circumstances so as to conclude what is the real character of the transaction.In that context,the income-tax authorities are entitled to decide as to whether a transaction is illusory or a device or a ruse.For that purpose they can penetrate the veil covering such transaction and ascertain the truth. Transactions entered into the normal course of business have to be accepted as such.But,where an assessee adopts the path of tax avoidance,the authorities are entitled to look into the material on record,documents and other surrounding circumstances. In such cases,various factors may come into the reckoning of the question,including reasonable

probabilities and legal inferences arising from proved or admitted facts.Income tax proceedings are completed on preponderance of probabilities and necessity of proving the case to the hilt,as required in criminal proceedings,is not there.Tax liability can be decided considering the surrounding circumstances and logical inferences based on certain facts.One is required to arrive at the conclusion on the basis of human probability.Human probability cannot be ignored for persons like share-broker not to charge money for the shares sold for months together.Alliance,a company controlled by MC,would not leave the sale price unrealised.It was upon the appellant to discharge the onus which heavily lay on him and he miserably failed.

The Hon'ble Apex court, in the case of Durga Prasad More (82 ITR 540 ),has held as under :

> *"Now,coming to the question of onus,the law does not prescribe any quantitative test to find out whether the onus on a particular case has been discharged or not. It all depends on the facts and circumstances of each case. In some cases, the onus may be heavy whereas, in others, it may be nominal....Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities.Human minds may differ as to the reliability of a piece or evidence."*

Similarly,the Hon'ble Supreme Court had decided the matter of Sumati Dayal(214 ITR 801),after considering the surrounding circumstances and applying the test of human probabilities.In the matter of L.N.Dalmia the Hon’ble Calcutta High Court (207 ITR 89)had considered the surrounding circumstances to decide the issue.

In the case under consideration,what the AO and the FAA have done is that instead of putting on blinkers,while looking at the documents produced before them,looked into the surrounding circumstances to find out the reality of the transaction.They could logically and successfully establish that it was a case

where ingenuity was expended to avoid tax-payment by producing documents that may seem convincing prima-facie.But,behind the smoke-screen true state of affairs were hidden and they were successful in unearthing it.The AO after receiving the specific information from the investigation wing,directed the assessee to produce the proof the purchase of shares of two companies.It could not furnished any documents that could lead to establish fact that the transaction entered in to by the assessee was genuine one.It was claimed that it had purchased shares from Alliance.But, the director of Alliance i.e. M C had,during the search proceedings, admitted of providing accommodation entries.When the AO had,during the re-assessment proceedings,recorded his statements he again reiterated that the transactions entered in to by Alliance with the assessee were not genuine.The AO had supplied him the copy of the statements of MC. Nothing has been brought on record to prove that assessee had asked for cross examination of MC and the AO had denied it.Not only,this the AO had specifically directed to the assessee to prove the genuineness of the transactions in light of the statements of MC.It was duty of the assessee to produce MC and to prove that purchase of share from Alliance was above board.It is also a fact that the assessee had not furnished any supporting evidence of physical delivery of shares on the date of purchase,that payment for shares allegedly purchased in the months of May and July was made in the month of Decemeber,that the assessee was not the regular customer of Alliance,that there was no justification for holding payment for months together, that MC had admitted during the search operations that about 45 group companies, controlled by him and run from the same premises,were merely giving paper entries.If all these facts are considered cumulatively,one thing becomes clear that the transaction entered in to by the assessee was not genuine.Payment of STT proves selling of shares but does not prove genuineness of the purchases and the AO have made inquiries about purchases and has proved it to be not genuine.

Now,we would like to refer to the cases relied upon by the assessee.First of them is Chamatkar Properties and Investments Private Limited(supra).In that case original assessment was completed u/s.143(3)of the Act after making inquiries about a particular transaction.The Tribunal found that the AO had re-opened the assessment for the same issue that was scrutinised earlier.Therefore, it quashed the re-assessment proceedings.Next case is of Kinjal A Shah where in provisions of section 69 were challenged.The case is of no help to the assessee.We find that in the case before us,the AO had doubted the purchase of shares from MC and had asked the assessee to prove the genuineness of the transaction.Therefore,any of the cases relied upon by it are distinguishable on facts.It had never asked for cross examination.In his statement MC had specifically admitted that Alliance had provided entries to the assessee.

In the case under consideration,it was proved that the apparent is not real. Genuineness of the transaction was examined,not only taking into consideration the documents,but considering the surrounding circumstances were also considered.In our opinion,these aspects were of significance and importance, when the genuineness of the transaction in question was an issue.We find that in the case of Shamim M Bharvani(supra),in almost identical circumstances, the Tribunal has upheld the addition made by the AO.Therefore,we hold that the order of the FAA does not suffer from any legal or factual infirmity.Upholding the same,we decide the second effective ground against the assessee.

As a result,appeal filed by the assessee stands dismissed.
फलतःनिर्धारिती द्वारा दाखिल की गई अपील नामंजूर की जाती है.
Order pronounced in the open court on 21st September, 2016.
आदेश की घोषणा खुले न्यायालय में दिनांक 21 सितंबर, 2016 को की गई।

| | |
|---|---|
| **Sd/-** | **Sd/** |
| (सी. एन. प्रसाद **/ C.N. Prasad** ) | (राजेन्द्र **/ Rajendra**) |
| न्यायिक सदस्य **/ JUDICIAL MEMBER** | **लेखा सदस्य / ACCOUNTANT MEMBER** |

मुंबई Mumbai; दिनांकDated : 21.09.2016.
*Jv.Sr.PS.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

**1.**Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी

**3.**The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त

**5.**DR "E " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

**6.**Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai.**