

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA Nos.05 & 06/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2013-14)

(Virtual Court Hearing)

Shri NishantKantilal Patel, 9, Uma Park Society, Near Uma Bhavan, Bharuch-393002.	Vs.	Income Tax Officer, Ward-2(2), Bharuch.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AMEPP2505R		
(Assessee)		(Respondent)
Smt MuktabenNishantbhai Patel, 9-10, Patel Kubj, Uma Park Society, B/h Uma Bhavan, Old NH No.8, GIDC, Zadeshwar, Ankleshwar -393002.	Vs.	Income Tax Officer, Ward-2(2), Bharuch.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BINPP5922N		
(Assessee)		(Respondent)

आयकरअपीलसं./ITA Nos.07 & 10/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2014-15)

Smt Muktaben Nishantbhai Patel, 9-10, Patel Kubj, Uma Park Society, GIDC, Zadeshwar, Ankleshwar – 393002.	Vs.	Income Tax Officer, Ward-2(2), Bharuch.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BINPP5922N		
(Assessee)		(Respondent)
Shri Nishant Kantilal Patel, 9, Uma Bhavan, Bharuch– 393002.	Vs.	Income Tax Officer, Ward-2(2), Bharuch.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AMEPP2505R		
(Assessee)		(Respondent)

Assessee by : Shri Rasesh Shah -CA

Respondent by : Ms Anupama Singhla -Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 21/12/2020

घोषणाकीतारीख/Date of Pronouncement: 07/01/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

The Captioned four appeals filed by the different assessees, pertaining to the Assessment Year 2013-14 and 2014-15, are directed against the separate orders passed by the Id. Commissioner of Income Tax (Appeals)-3, Vadodara [in short “the Id. CIT(A)”], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 [hereinafter referred to as the “Act”].

2. Since the issue involved in these four appeals are common and identical, therefore these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. First we shall adjudicate the appeals pertaining to Assessment Year 2013-14. For the sake of convenience, the facts as well as grounds of appeal narrated in the assessee’s appeal in ITA No.05/SRT/2019, for AY.2013-14, in the case of Shri Nishant Kantilal Patel, is taken as the lead case.

4. The grounds of appeal filed by the assessee as per its lead case in ITA No.05/SRT/2019, for AY.2013-14, are as follows:

"(1).On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in reopening assessment u/s 147 of the Act by issuing notice u/s 148 of the I.T. Act, 1961.

(2). On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the assessing officer in disallowing the exemption of Rs.20,76,924/- claimed by assessee u/s.10(38) on account of Long-Term Capital Gain and treating it as the accommodation entry and thereby making addition u/s. 68 of the Act.

(3). On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in making addition of Rs.1,03,846 /- on account of

unexplained expenditure u/s.69C of the Act for commission payment for procuring the alleged accommodation entry.

(4). It is therefore prayed that the above addition made by the assessing officer may please be deleted.

(5). Assessee craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

5. We note that in the grounds of appeal, as noted above, the assessee has challenged the reassessment proceedings under section 147/148 of the Act (technical issue) and simultaneously he also raised the grounds on merits. However, at the time of hearing, the main grievance of the assessee has been confined to the reassessment proceedings under section 147/148 of the Act (technical issue).

6. The assessee before us is an individual and employed in Timber related Industries. He derived income from other sources and Long Term capital gain during the year under consideration. The case of the assessee was reopened under section 147 of the Act, since information was received from Investigation Wing of Kolkata, which had carried out survey/ search operations wherein it was established that in large number of penny stock companies the share prices were artificially raised on the Stock Exchanges in order to book bogus claims of Long Term Capital Gain/Loss. The assessing officer observed that the information as per EPS / ITS / Penny Stock reflected that the assessee had shown Long term Capital Gain of Rs.20,76,924/- on which STT has been paid, which is claimed as exempt and the scrip Global Securities Ltd, is one of the Penny Stock companies utilized by Brokers for providing accommodation entries. Therefore, the assessee's case was reopened under section 147 of the Act to examine the suspicious sale transaction in shares (penny scrip). A notice under section 148 of the Act was issued by assessing officer on 17.2.2017 after obtaining necessary approval from the higher authorities. The assessee, vide his Letter dated 31.3.2017, has requested the assessing officer to treat the original return of income filed on 29.03,2014, declaring total income of Rs.7,77,230/- as return of income filed in response to notice under section 148 of

the Act. Thereafter, reasons for reopening the case were furnished to the assessee, vide letter dated 10.4.2017.

7. The reasons for reopening the case of the assessee was to examine the earning of suspicious capital gain from transaction in penny stock. In the reassessment proceedings, the assessing officer examined the assessee's case on merits. The assessing officer noticed that assessee had claimed exemption of Long Term Capital Gain (for short 'LTCG') on of the scrip of **Global Securities Ltd.** On perusal of the assessment records of earlier years of the assessee it was noticed that such a huge amount of exempted capital gain has never been earned by the assessee in earlier years. During the course of scrutiny, it was noted that assessee had shown income from LTCG from sale of shares of Global Securities Ltd amounting to Rs.20,76,925. This LTCG was claimed exempt as per Schedule EI in the return of income filed for the AY.2013-14. On going through the documents filed by the assessee it was observed that the assessee purchased the shares of Global Securities on 1.11.2011, the details of the same is given below:

<i>Name of Seller</i>	<i>Name of Script</i>	<i>No. of shares</i>	<i>Date of purchase</i>	<i>Amount</i>	<i>How acquired</i>
<i>Shri Mansukhbhai Devchandbhai</i>	<i>M/s Global Securities Ltd</i>	<i>15,000</i>	<i>1.11.2011</i>	<i>18,750 @ Rs.1.25 P.</i>	<i>Off market purchase. Payment made in cash.</i>

During the reassessment proceedings, the assessee furnished a debit note cum receipt of invoice received from Shri Mansukhbhai Devchandbhai Sangvi dated 01.11.2011 with regard to purchase of 15000 shares of Global Securities Ltd. He also submitted delivery challan of same date i.e. 01.11.2011. The assessee in turn sold entire 15000 shares on 28.02.2013 and 01.03.2013 through the broker Arcadia Share and Stock Brokers Pvt. Ltd. Mumbai after dematerialization on 08.11.2012. It was noted that the assessee made a gain of almost 11100% in a span of around fifteen months and within three months after dematerialized of these shares. Some

points that were to be prima facie noted by the assessing officer based on information and submission made by the assessee, are as follows:

- (i). The scrip was named in Kolkata Investigation Report titled 'Project Bogus LTCG/STCL through BSE Listed penny stocks' prepared by DDIT(Inv), Unit 2(3).
- (ii). There are statements by the promoters, brokers and associated persons, who have on record confirmed the involvement of Global Securities Ltd. in the stock price manipulation.
- (iii). The assessee derived income from salary and other sources.
- (iv). Assessee has invested in shares of the company, 'Global securities Ltd. which had no worthwhile credential on record.
- (v). Assessee is not an ardent trader in shares rather had invested in only handful of shares in his life.
- (vi). The purchase of the shares of 'Global Securities Ltd' were off market transactions whereby no STT has been paid.
- (vii). Finally, to make transaction look genuine, sale of shares happened through a broker (which has been categorically involved in LTCG scam as named in Kolkata Investigation Report) through online mode and STT is paid and assessee, derives exempt income u/s. 10(38) of the income tax Act.

In the light of above facts, the Investigation was carried out by the assessing officer. The assessing officer also referred the report of the Kolkata Investigation Directorate who had undertaken investigation into 84 penny stocks and has given detailed findings indicating bogus LTCG/STCL entries claimed by large number of beneficiaries. The *modus operandi* involving operators, intermediaries and the beneficiaries has been detailed in the investigation report prepared and disseminated by the Kolkata directorate. Similar investigations were also conducted by the Directorate of investigation at Mumbai and Ahmedabad. The basic aim of this dubious scheme was to route the unaccounted money of LTCG Beneficiaries into

their account/books in the garb of LTCG. This entry of LTCG is taken by selling the shares on the stock exchange and registering the proceeds arising out of the sale of shares into the books as LTCG. For implementing this scheme, shares of some penny stock companies were used. The same modus operandi is adopted for providing accommodation entry of bogus loss. In this scheme, the shares of the penny stock companies are acquired by the beneficiaries of LTCG at very low prices through the route of preferential allotment and off market transaction. These shares have a lock in period of 1 year as per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. Another route to acquire the shares is through Amalgamation or merger. In this route, the beneficiaries of LTCG are allotted shares of a private limited company which is subsequently amalgamated with a listed penny stock and the beneficiaries receive shares of the listed penny stock in exchange of the shares of private limited company. The shares in some cases were acquired through stock exchange. These shares were then split, and bonus shares were issued to increase the volume. Therefore, the assessing officer issued a show cause notice to the assessee to explain the transaction of purchase and sale of the shares of 'Global Securities Ltd'.

8. In response to the show cause notice of the Assessing Officer, the assessee submitted that there is no condition stipulated as per section 10(38) of the Act regarding the timing of dematerialization of shares. Assessee submitted debit note, and delivery challan pertaining to the shares purchased. The securities transaction tax (STT) has been paid. The sale consideration was received through banking channel. The assessee has given instructions to the stock broker i.e. M/s. Arcadia Share & Stock Broker Private Limited to sell the shares, as and when he found price of shares to be reasonable based on market trend, without indulging into the process of selling the share in open market and not knowing to whom the shares were sold. In this process the assessee sold shares from Jan 2013 to March 2013. M/s. Arcadia Share & Stock Broker Private Limited has been authorized to maintain demat accounts that are also registered stock brokers of Bombay Stock Exchange. No action against M/s. Arcadia Share & Stock Broker Private Limited has been taken

either by BSE or by SEBI for alleged indulgence referred by assessing officer in the show cause notice.

9. However, the Assessing Officer rejected the contentions of the assessee and held that no STT was paid at the time of purchase of shares, however, at the time of sale of shares STT was paid. and assessee, derives exempt income u/s.10(38) of the income-tax Act. The assessing officer noted that Shri Abhay Javlekar, based on his advice the assessee has purchased the scrip of Global Securities Ltd. It is pertinent to mention here that SEBI has ordered impounding the alleged unlawful gains through fraudulent trading; it has found that he indulged in synchronized trading with two other individuals, self trade and reversal of trades that created artificial volumes in the company's shares, and so also Arcadia Share and Stock Brokers Ltd, was also a broker who was penalized vide SEBI adjudication order for price manipulation who were found to be involved in manipulating the scrips of Global Securities Ltd. The assessing officer noted that documentary evidences, circumstantial evidences, human conduct and preponderance of probabilities is that what is apparent in this case is not real, that these financial transactions were sham ones and that this entire edifice was only a colourable device used to evade tax. Thus, the claim of Long Term Capital Gain u/s 10(38) was denied by assessing officer and addition u/s 68 of the Act was made to the tune of Rs.20,76,924/-.

10. Since, it was established by the Investigation Directorate, Kolkata that for getting accommodation entries for Bogus LTCG, a commission of approximately 5% was given to the entry providers by the assessee. Therefore, a sum of Rs.1,03,846/- being 5% of Rs.20,76,924/- claimed as Long Term Capital Gain, was disallowed under section 69C of the Income Tax Act. 1961 as unexplained expenditure.

11. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition made by the assessing officer. Before the Id CIT(A), the assessee has not raised the technical issue of reopening the assessment under section 147/148 of the Act. The Id CIT(A)

has examined the case of the assessee on merits and held that assessee had not at all been able to adduce cogent evidences to prove his case and there was no economic or financial justification for the sale price of these shares (M/s Global Securities). The so-called purchaser of these shares has not been identified despite efforts of the Assessing Officer. The broker company through which shares were sold did not respond to queries, hence the fantastic sale price realization is not at all humanly probable, as there is no economic or financial basis that a share of little known company would jump abnormally. In these circumstances, Id CIT(A) did not find any infirmity in the order of the Assessing Officer. Accordingly, he held that the transactions in purchase and sell of shares of M/s. Global Securities Ltd. for Rs.20,95,674/- were sham transactions intended to claim wrong exemption u/s 10(38) of the income-tax Act, thus he upheld the addition of Rs.20,76,924/-, made by the Assessing Officer. The assessee did not challenge the technical issue of reopening the assessment under section 147/148 of the Act before the Id. CIT(A), therefore Id. CIT(A) did not give any opinion on the said technical issue.

12. The Id CIT(A) also observed that since the assessee has paid commission @ 5% of Rs.20,76,924/- to the entry operator/broker for purchase and sale of sham transactions to bring unaccounted money in the guise of exempted long term capital gains, therefore, addition in respect of payment of commission paid to the entry operator/broker for arranging the bogus LTCG entry of Rs.1,03,846/- was also upheld.

13. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

14. Shri Rasesh Shah, learned Counsel for the assessee, begins by pointing out that reassessment proceedings initiated by the assessing officer under section 147/148, was bad in law. He stated that although during the assessment stage the assessing officer furnished the reasons recorded to the assessee, vide letter dated 10.04.2017, however, the assessee has not objected the reassessment proceedings therefore now assessee is not going to take plea that objections of the assessee were not disposed of by the assessing officer by passing a speaking order as per the

mandate of the Hon`ble Supreme Court in the case of GKN Drive Shafts (India) Ltd [125 Taxmann 963(SC)]. The Id Counsel submitted that notwithstanding this fact, the assessee can raise legal ground (about validity of reassessment under section 147 of the Act) at any stage, for that he relied on the decision of the Coordinate Bench of ITAT Agra in the case of Smt. Premwati Suman Vs. ITO, In ITA No.393/Agra/2018, order dated 22.03.2019. Therefore, Id Counsel prayed the Bench that additional ground of appeal wherein the assessee has challenged the validity of the reassessment proceedings under section 147 of the Act, may be admitted as it is being purely a legal issue.

15. So far, the reasons recorded by assessing officer to reopen the assessment under section 147 of the Act is concerned, Shri Rasesh Shah, has argued that reasons recorded by the assessing officer is bad in law as there is no tangible material before the assessing officer to invoke the provisions of section 147 of the Act. He pointed out that information received from Intelligence Wing of Kolkata is only an information and this information cannot become the reason to believe that income has escaped assessment. There should be live link between the material in possession of the assessing officer and formation of belief, the said live link is missing in the reasons recorded by the assessing officer. He also argued that reasons recorded by the assessing officer is incorrect and there is no application of mind by the assessing officer in the reasons recorded for reopening the assessment. He also pointed out that sanction for issue of notice under section 151 of the Act is not in accordance with law. The assessee submitted that the Assessing officer has given the letter of approval dated 13.02.2017 wherein it was just mentioned that proposal of reopening u/s.147 was approved without giving reasons. So, there is non-application of mind by sanctioning authority as it was mentioned just "Yes" and "Approved" without giving any reasons. Therefore reassessment proceedings initiated against the assessee may be quashed.

16. On the other hand, Ms Anupama Singla, Id. Departmental Representative for the Revenue submitted before the Bench that first of all, the assessee has not raised

any ground of appeal about validity of reassessment proceedings under section 147 of the Act, before the Id CIT(A), therefore assessee cannot raise a fresh ground (Additional Ground) before the Tribunal. She has submitted written submission before the Bench on the issue of additional ground, which is reproduced below (To the extent relevant for our analysis):

“Though the Hon'ble ITAT has the discretion to admit additional grounds, the discretion can be exercised only if the appellant is in a position to show the cause as to what prevented him from taking the this additional ground at the time of filing of original appeal memo. In the application submitted by the appellant seeking admission of additional ground, the appellant is not in a position to show that as to what prevented him from taking the additional ground. In the application submitted by the appellant seeking admission of additional grounds, the appellant has squarely failed to show any reason or cause that prevented it to raise the additional grounds. The request for admission of new grounds at the stage of hearing is only due to carelessness and callousness on the part of the assessee. The assessee has failed to demonstrate what were the change in the circumstances in relation the facts and the law, which has resulted in filing of the additional grounds. On this ground alone, the application of the assessee is liable to be rejected. In the absence of any convincing reason being given by the assessee for not taking the additional grounds of appeal the discretion vested in the Hon'ble Bench deserves to be exercised by rejecting the application of the assessee.

It is important here to point out that the assessee while taking the additional grounds has to show as to why such grounds was not taken while filling the appeal before the Hon'ble ITAT. The additional ground can be admitted only under compelling circumstance and on showing that the facts and circumstance have been changed after filing of the original appeal.”

Therefore, she pleaded that the impugned issue of validity of reassessment proceedings does not emanate from the order of Id CIT(A) hence the additional ground raised by the assessee should not be admitted by the Tribunal.

17. Ms Anupama Singla, further submitted that assessing officer got the information from Investigation Wing Kolkata who had carried out survey / search operations wherein it was established that in large number of penny stock companies share prices were artificially manipulated on the Stock Exchanges in order to book bogus claims of Long Term Capital Gain / Loss. The Information as per EFS / ITS data / penny stock reflects that the assessee has shown Long Term Capital Gain of Rs.20,76,924/- on which STT has been paid which is claimed as exempt. However, the assessee has not paid the STT at the time of purchasing such

shares. The assessing officer after getting information from Investigation Wing Kolkata, has applied his mind and then after issued the notice under section 148 of the Act. She took us through page No. 76 of the paper book where reasons were recorded and pleaded that in last para of the reasons recorded, the assessing officer has clearly mentioned that he had reason to believe that chargeable income has escaped assessment. The last para of the reasons recorded vide paper book page No. 76 reads as follows:

“In view of the proceedings conducted by the Investigation Wing, Kolkata and after perusal of the information received from the Investigation wing, Kolkata as well as available data, I have reason to believe that income to the extent of Rs.20,76,924/- has escaped assessment for A.Y. 2013-14 by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary in the return of income. Hence, notice u/s. 148 r.w.s 147 of the Income tax Act, 1961 is to be issued for the assessment year 2013-14.”

Thus, she pointed out that assessing officer after getting the information from the Investigation wing, Kolkata, has examined the said information and then he got satisfaction, hence there is no defect in the reasons recorded by the assessing officer. About the sanction for issue of notice under section 151 of the Act, she argued that Joint Commissioner has examined the facts of the case and accorded the sanction under section 151 of the Act in accordance with law. She has also submitted written submissions before the Bench, on the issue of reopening and sanction for issue of notice, which are reproduced below (To the extent relevant for our analysis):

“On perusal of the reasons, it can be seen that the assessing officer has categorically , stated that the assessee has traded in M/s Global Securities, which is one of the companies utilized by Anand Rathi Share and Stock Brokers Ltd for providing bogus accommodation entries. The assessing officer has perused the return of income and EPS data while recording the reasons. The assessing officer also had the statements of Shri Sanjay Vora before him. Therefore, the assessing officer had sufficient tangible material before him, while recording the reasons.

The assessing officer has correlated the information received from the Investigation wing with the EPS data and the return of income. Therefore, it would be out of place to say that there's non-application of mind on part of the assessing officer. Further, it has been submitted by the assessee, that the assessment is made by completely relying on the statement of Sanjay Vora. It's not true as the perusal of the Assessment order shows that the assessing officer has carried independent inquiries and brought cogent; material on record to disallow the claim of exemption of the assessee.

She relied on various case laws wherein it is held that the information received from the Investigation wing is sufficient to constitute reasons to believe. The AO had sufficient tangible material at his command to form a bonafide belief. At the stage of issuance of notice, the only question is whether there was relevant material.”

Sanction u/s 151 of the Act

The assessee submitted that the Assessing officer has given the letter of approval dated 13.02.2017 wherein it was just mentioned that proposal of reopening u/s 147 was approved without giving reasons. So, there is non- application of mind by sanctioning authority as it was mentioned just "Yes" and "Approved" without giving any reasons.

It is submitted that the sanctioning authority has perused the reasons and stated that on the facts of the case, she is satisfied that it is a fit case for issuance of notice under section 148. It is not a case wherein she has just mentioned "approved".

The relevant extract is reproduced hereunder

13	<p><i>Whether the Jt. Commissioner of the Income tax is satisfied on the reasons recorded by the A.O. that it is a fit case for issue of notice u/s. 148 of the Act.</i></p>	<p><i>Yes, on the facts of the case, I am satisfied that this is a fit case for issue of notice u/s. 148 of the IT. Act.</i></p>
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Cross Examination

The assessee has relied on the apex court decision in the case of Andaman Timber Industries vs. Commissioner of Central Excise (2015) [281 CTR 0241] (SC).

In this case, since cross examination was not provided, the appeal was decided in favor of the assessee. However, the ratio laid down therein is not applicable to the Income Tax proceedings, since the judgment was delivered in context of Central excise laws. There is a specific provision of cross examination, to be given by the Central Excise Authorities, in adjudicating the manuals of Customs and Central excise. It is a thumb rule, any decision /judgment of any court is given in light of Rules/ Acts which are legislated by the specific authorities. She also relied on several case laws.

She stated that reasons were recorded by the assessing officer as per the scheme of the Act and sanction for issue of notice was also in accordance with law, hence reassessment proceedings were valid and therefore she prayed the Bench to uphold the order of the assessing officer.

18. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. The important grievance of the ld. DR

for the Revenue is that validity of reassessment proceedings does not emanate from the order of Id CIT(A) hence the additional ground raised by the assessee on technical issue should not be admitted by the Tribunal. We note that the assessee's case was reopened under section 147 of the Act to examine the suspicious sale transaction in shares (penny scrip). A notice under section 148 of the Act was issued by assessing officer on 17.02.2017 after obtaining necessary approval from the higher authorities. The assessee, vide his Letter dated 31.3.2017, has requested the assessing officer to treat the original return of income filed on 29.03,2014, declaring total income of Rs.7,77,230/- as return of income filed in response to notice under section 148 of the Act. Thereafter, reasons for reopening the case were furnished to the assessee by the assessing officer vide his letter dated 10.4.2017. However, the assessee did not object the validity of reassessment proceedings at the assessment stage. The assessee also did not raise any ground before the Id. CIT(A), challenging the validity of reassessment, however ground has been raised by assessee first time before this Tribunal. We note that additional ground raised by the assessee challenging the validity of reassessment proceedings is a legal issue which goes to the root of the matter and no further inquiry is needed for deciding the said legal issue as all facts are already on record, as narrated above, hence the said additional ground of appeal of the assessee should be admitted.

We note that if in a given circumstances, the technical consideration and substantial Justice are pitted against each other, then in that eventuality the cause of substantial Justice deserves to be preferred and cannot be overshadowed by such technical considerations. Since the assessee did not raise the said legal issue (validity of reopening proceedings) before the Id CIT(A) does not mean that he cannot raise this legal issue before the Tribunal. The assessee may raise legal issue at any stage for that we rely on the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd Vs. CIT (1998), 229 ITR 383(SC).

"5. Under section 254 of the Income-tax Act, 1961, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is, thus, expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while

the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of Jute Corpn. of India Ltd. v. CIT [1991] 187 ITR 688, this Court, while dealing with the powers of the AAC, observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the AAC in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the ITO. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The AAC must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The AAC should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) takes too narrow a view of the powers of the Tribunal - vide, e.g., CIT v. Anand Prasad [1981] 128 ITR 388/ 5 Taxman 308 (Delhi), CIT v. Karamchand Premchand (P.) Ltd. [1969] 74 ITR 254 (Guj.) and CIT v. Cellulose Products of India Ltd. [1985] 151 ITR 499/[1984] 19 Taxman 278 (Guj.) (FB). Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.”

Thus, from the aforesaid dictum of the Hon`ble Supreme Court in the case of National Thermal Power Co. Ltd (supra), it is abundantly clear that Tribunal under section 254 of the Act has power not only to decide the grounds which arise from the order of the Commissioner (Appeals) but it has also power to decide questions of law arising in assessment proceedings although not raised earlier. Therefore, we do not agree with the contention of Ms. Anupama Singla (Id DR) to the effect that since the legal issue does not emanate from the order of Id CIT(A) therefore additional ground should not be admitted by the Tribunal. Since the additional

ground raised by the assessee, challenging the validity of the reassessment proceedings is a legal issue which goes to the root of the matter therefore we admit such legal issue for adjudication.

19. Coming to the 'reasons recorded' for reopening the assessment proceedings, we note that arguments advanced by the Id Counsel are that there is no tangible material before the assessing officer, information received from Intelligence Wing of Kolkata is only an information, and there is no live link between the material in possession of the assessing officer and formation of belief, therefore these reasons recorded by the assessing officer are bad in law. On the other hand, arguments advanced by the Id DR for the Revenue are that the assessing officer after getting the information from the Investigation wing, Kolkata, has examined the said information, applied his mind and then he got satisfaction, hence there is a 'reason to believe' that chargeable income has escaped assessment, thus reasons recorded by the assessing officer are valid.

In such a controversial situation, we are of the view that first of all it would be necessary to examine the '**reasons recorded**' by the assessing officer. The '**reasons recorded**' by the assessing officer which is placed in paper book page No. 76 is reproduced below:

"The assessee filed return of income for the year under consideration on 29.3.2014 declaring total income at Rs. 7,77,230/-.

In this case, information is received from the Investigation Wing, Kolkata who had carried out survey / search operations wherein it was established that in large number of penny stock companies share prices were artificially raised/manipulated on the Stock Exchanges in order to book bogus claims of Long Term Capital Gain / Loss. The Information as per EFS / ITS data / penny stock reflects that the assessee has shown Long Term Capital Gain of Rs.20,76,924/- on which STT has been paid which is claimed as exempt.

This is one such case wherein the assessee has claimed that the Long Term Capital Gain amounting to Rs.20,76,924/- arising out of sale of shares is exempt and the scrip name being Global Securities Ltd. which is one of the companies utilized by Anand Rathi Share and Stock Brokers Ltd. for providing bogus accommodation entries. This fact was duly accepted before the Investigation Authorities, Kolkata Wing in the statement taken on oath u/s.131 of the I.T.Act of Shri Sanjay Vora, Regional Director, East Zone of M/s.Anand Rathi Shares and Stock Brokers Ltd during the course of Survey Operation u/s.133A of the Act.

In view of the proceedings conducted by the Investigation Wing, Kolkata and after perusal of the information received from the Investigation wing, Kolkata as well as available data, I have reason to believe that income to the extent of Rs.20,76,924/- has escaped assessment for A.Y. 2013-14 by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary in the return of income. Hence, notice u/s. 148 r.w.s 147 of the Income tax Act, 1961 is to be issued for the assessment year 2013-14.

Place: Bharuch
Dated: 10.02.2017

[MUKESH KUMAR]
Income-TAX Officer,
Ward-2(2). Bharuch.”

20. Now, we shall analyze the ‘reasons recorded, as follows: We note that second para of the ‘reasons recorded’ contains only general information; the said general information is not in the context of the assessee. At the cost of repetition but for the sake of convenience the second para of the reasons recorded is again reproduced below:

“In this case, information is received from the Investigation Wing, Kolkata who had carried out survey / search operations wherein it was established that in large number of penny stock companies share prices were artificially raised/manipulated on the Stock Exchanges in order to book bogus claims of Long Term Capital Gain / Loss.”

We note that above noted reasons are only **information**. This ‘**information**’ does not say that in case of assessee under consideration the income chargeable to tax has escaped assessment within the meaning of section 147 of the Income Tax Act 1961 on account of share price manipulation on the stock exchange. Moreover, Investigation Wing, Kolkata had not carried out any survey or search operation on the assessee, it is a survey or search operation conducted by the Investigation Wing on other assessee, therefore the findings of the Investigation Wing, Kolkata in respect of other assessee are not applicable on the assessee. The Assessing Officer has to record the reasons in respect of assessee, which he has failed to do so.

21. We reproduce third para of the ‘reasons recorded’ for our convenience and analysis, as follows:

“This is one such case wherein the assessee has claimed that the Long Term Capital Gain amounting to Rs.20,76,924/- arising out of sale of shares is exempt and the scrip name being Global Securities Ltd. which is one of the companies utilized by Anand Rathi Share and Stock Brokers Ltd. for providing bogus

accommodation entries. This fact was duly accepted before the Investigation Authorities, Kolkata Wing in the statement taken on oath u/s.131 of the I.T. Act of Shri Sanjay Vora, Regional Director, East Zone of M/s.Anand Rathi Shares and Stock Brokers Ltd during the course of Survey Operation u/s.133A of the Act.”

The statement taken on oath u/s.131 of the I.T.Act of Shri Sanjay Vora, Regional Director, East Zone of M/s.Anand Rathi Shares and Stock Brokers Ltd during the course of Survey Operation u/s.133A of the Act, does not contain the name of the assessee. The said statement does not relate to broker of assessee, moreover, the assessee did not sell shares through M/s Anand Rathi Share & Brokers but through Arcadia Share and Brokers Pvt. Ltd. Therefore, the said “reasons recorded” by the assessing officer are not directly related to the assessee under consideration.

22. We reproduce fourth para of the ‘reasons recorded’ for our convenience and analysis, as follows:

“In view of the proceedings conducted by the Investigation Wing, Kolkata and after perusal of the information received from the Investigation wing, Kolkata as well as available data, I have reason to believe that income to the extent of Rs.20,76,924/- has escaped assessment for A.Y. 2013-14 by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary in the return of income. Hence, notice u/s. 148 r.w.s 147 of the Income tax Act, 1961 is to be issued for the assessment year 2013-14.”

We note that above proceedings were not conducted by the Investigation Wing, Kolkata, with reference to the assessee under consideration. The proceedings conducted by the Investigation Wing, Kolkata was not related to the assessee but it was related to other assessees.

23. Thus, it is abundantly clear from our above analysis of “reasons recorded” that assessing officer used the general “information” available with Investigation Wing Kolkata. This ‘Information’ is not a tangible material which can suggest that in assessee`s case the income chargeable to tax has escaped assessment. The statement taken on oath u/s.131 of the Income Tax Act of Shri Sanjay Vora, does not contain the name of the assessee and it does not relate to broker of assessee, moreover, the assessee did not sell shares through M/s Anand Rathi Share & Brokers. The Investigation Wing, Kolkata did not conduct any survey and search operation on the assessee. In the reasons

recorded the findings of survey or search operation in relation to other assesseees were applied on the assessee, which is not acceptable. Thus, we note that the reasons which had been given for the belief which was formed by the assessing officer hopelessly failed to satisfy the requirements of the statute. It is required that whole of the process of taxation must follow the procedures which are valid under the law and must adhere to law i.e. substantive one as well as procedural one too. It should be ensured that levy and collection of the taxes is strictly in accordance with law – not only substantive one but the procedural law, as well.

24. As noted by us above in our analysis of reasons recorded. The words reason to believe suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and the assessing officer may Act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The assessing officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section.

There was no material or fact which had been stated in the reasons for starting proceedings in the assessee`s case on which any belief could be founded of the nature contemplated by section 147 of the Act. Hence, the requirements of section 147 of the Act were not satisfied and, therefore, the reasons recorded by the assessing officer are not valid, for this reliance can be placed on the judgment of the Hon`ble Supreme Court in the case of Sheo Nath Singh Vs. ACIT, 82 ITR 147(SC) wherein it was held as follows:

“All that have been found in the records are reports in Form "B" made in connection with starting of proceedings under section 34(1A), each report relating to a different assessment year. Items (7) and (8) of this Form relate to brief reasons for starting proceedings and whether the Central Board of Revenue was satisfied that it was a fit case for issue of notice. Against item (7) it is stated "reasons as per separate sheet attached". Against item (8), the Secretary of the Central Board of Revenue signed after writing "yes, satisfied". The reasons for starting the proceedings given in the separate sheet may be fully reproduced.

"For the reasons hereinafter recorded I believe that income, profits and gains earned by the assessee in his personal capacity and in conjunction with others and chargeable

to income-tax have escaped assessment and that the amount of such concealed income relating to the accounting years covering the period beginning on the 1st day of September, 1939; and ending on the 31st day of March, 1949, amount to or is likely to amount to Rs. 1,00,000. The reason for such belief, inter alia, is as follows:

(1) The assessee who is or was at the relevant time a managing director in about a dozen limited companies alongwith "Oberois" is believed to have made some secret profits which were not offered for assessment.

(2) The assessee is believed to have received a sum of Rs. 22 lakhs from "Oberois" and this sum or at least part of which represents income which has escaped assessment.

(Sd.) A. K. Bhowmik

Income-tax Officer,

Dist. II(2), Calcutta."

It is abundantly clear that the two reasons which have been given for the belief which was formed by the Income-tax Officer hopelessly fail to satisfy the requirements of the statute. In a recent case, Chhugamal Rajpal v. S. P. Chaliha [1971] 79 ITR 603 (SC), which came up before this court, a similar situation had arisen and under the directions of the court, the department produced the records to show that the Income-tax Officer had complied with the conditions laid down in the statute for issuing a notice relating to escapement of income. There also, the report submitted by the Officer to the Commissioner and the latter's orders thereon were produced. In his report, the Income-tax Officer referred to some communications received by him from the Commissioner of Income-tax, Bihar and Orissa, from which it appeared that certain creditors of the assessee were mere name-lenders and the loan transactions were bogus and, therefore, proper investigation regarding the loans was necessary. It was observed that the Income-tax Officer had not set out any reason for coming to the conclusion that it was a fit case for issuing a notice under section 148 of the Income-tax Act, 1961. The material that he had before him for issuing notice had not been mentioned. The facts contained in the communications which had been received were only referred to vaguely and all that had been said was that from those communications, it appeared that the alleged creditors were name-lenders and the transactions were bogus. It was held that from the report submitted by the Income-tax Officer to the Commissioner it was clear that he could not have had reasons to believe that on account of the assessee's omission to disclose fully and truly all material facts, income chargeable to tax had escaped assessment.

In our judgment, the law laid down by this court in the above case is fully applicable to the facts of the present case. There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court.

There is no material or fact which has been stated in the reasons for starting proceedings in the present case on which any belief could be founded of the nature contemplated by section 34(1A). The so-called reasons are stated to be beliefs thus leading to an obvious self-contradiction. We are satisfied that the requirements of section 34(1A) were not satisfied and, therefore, the notices which had been issued were wholly illegal and invalid.”

25. We note that in assessee`s case, the assessing officer received information from the Investigation Wing, Kolkata who had carried out survey / search operations wherein it was established that in large number of penny stock companies share prices were artificially raised/manipulated on the Stock Exchanges in order to book bogus claims of Long Term Capital Gain / Loss. We note that on the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information/material received from other source, the Assessing Officer is required to consider the material on record in case of the assessee and thereafter is required to form an independent opinion on the basis of the material on record that the income has escaped assessment. In the assessee`s case, the assessing officer has failed to do so. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment for the verification. We note that from the reasons recorded, it appeared that the impugned reopening proceedings were on the borrowed satisfaction. No independent opinion was formed by Assessing Officer in the assessee`s case under consideration. Under the circumstances, the assumption of the jurisdiction to reopen the assessment under section 147 of the Act is bad in law. We note that Hon`ble High Court of Gujarat in the case of Harikishan Sunderlal Virmani, 394 ITR 146 (Guj-HC), on the similar facts quashed the reassessment proceedings. The findings of the Hon`ble Court is reproduced below:

“5.3 Thus from the reasons recorded, the reopening of the assessment is on the information/data supplied by the office of the Principal Director of Income Tax (Investigation), Ahmedabad and the information received from the Principal Director of Income Tax (Investigation), Ahmedabad vide his confidential letter dated 8/3/2016. From the information received, it appears that though the client code of the assessee with the broker - Guinness Securities Limited was WW/2647, modified client code was found to be WW/2108 and therefore, to verify the genuineness of the modification of the client code, by applying Lavenshtein Distance Analysis or digit edit analysis utility, distance was found to be 3 and therefore, it is believed that the code is not wrongly typed and it is termed as deliberate change and establishing non-genuineness and contrived nature of the

code change. From the reasons recorded, it does not appear that verification of the material on record there is independent formation of opinion by the A.O. and that any income has escaped assessment due to any failure on the part of the assessee in not disclosing truly and correct facts/material necessary for assessment. From the reasons recorded, it appears that the impugned reopening proceedings are on the borrowed satisfaction. No independent opinion is formed. On the plain reading of the reasons recorded what emerges is that the A.O. on considering the information received from the Principal Director of Income Tax (Investigation), Ahmedabad, reassessment proceedings have been initiated on the ground that the income escaped assessment. However, there is no assertion regarding the basis on which material on record, he has come to such conclusion. Therefore, the material on the basis of which the A.O. seeks to assume the jurisdiction under section 147 if the Act is the information received from the external source viz. the Principal Director of Income Tax (Investigation), Ahmedabad. It cannot be disputed that on the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information/material received from other source, A.O. is required to consider the material on record in case of the assessee and thereafter is required to form an independent opinion on the basis of the material on record that the income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment for the verification.

5.4 At this stage it is required to be noted that even in the reasons recorded, there is no allegation that there was any failure on the part of the assessee in not disclosing truly and fully material facts necessary for assessment. Under the circumstances, the assumption of the jurisdiction to reopen the assessment beyond the period of four years in exercise of powers under section 147 of the Act is bad in law and contrary to the provisions of section 147 of the Act. Under the circumstances, on the aforesaid ground alone, the impugned reassessment proceedings deserve to be quashed and set aside.

5.5 In view of the above and for the reasons stated above, present petition succeeds. The impugned notice issued under section 148 of the Income Tax Act, 1961 and reopening of the proceedings for A.Y. 2009-2010 cannot sustain and the same deserves to be quashed and set aside and are hereby quashed and set aside. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.”

26. The grounds or reasons which lead to the formation of the belief contemplated by section 147 of the Act must have a material bearing on the question of escapement of income of the assessee from assessment. As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year. It is no doubt true that the court cannot go into the sufficiency or adequacy of the

material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. The reason for the formation of the belief must be held in good faith and should not be a mere pretence. From our above analysis of reasons recorded in the assessee's case under consideration, we note that the reasons recorded by the assessing officer falls in the zone of "reason to suspect" and not "reason to believe", therefore we quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

27. Before parting, we would like to mention that sanction for issue of notice under section 151 is in accordance with law, as the JCIT has gone through the facts and then approved it, hence there is no irregularity so far sanction for issue of notice under section 151 is concerned.

28. In the result, appeals filed by the assessees in ITA No.05/SRT/2019 and ITA No.06/SRT/2019 are allowed.

29. Now we shall adjudicate the appeals pertaining to Assessment Year 2014-15. For the sake of convenience, the facts as well as grounds of appeal narrated in the assessee's appeal in ITA No.07/SRT/2019, for AY.2014-15, in the case of Smt. Muktaben N Patel, is taken as the lead case.

30. The grounds of appeal raised by the assessee as per its lead case in ITA No.07/SRT/2019 for AY.2014-15 are as follows:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the assessing officer in disallowing the exemption of Rs.29,08,385/- claimed by assessee u/s.10(38) on account of Long-Term Capital Gain and treating it as the accommodation entry and thereby making addition u/s. 68 of the Act.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the

action of Assessing Officer in making addition of Rs.2,87,047/- on account of unexplained expenditure u/s.69C of the Act for commission payment for procuring the alleged accommodation entry.

3. It is therefore prayed that the above addition made by the assessing officer may please be deleted.

4. Assessee craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

31. Brief facts *qua* the issue are that during the course of assessment proceedings, the Assessing Officer observed that the assessee declared Long Term Capital Gain on sale of shares at Rs.29,08,385/- and claimed the same as exempt u/s.10(38) of the Act. Based upon the analysis from different sources as well as from the findings of the Investigation Wing that has carried out Search/Survey on the entry operators it was observed by assessing officer that entry in form of bogus LTCG through sale of penny stock claimed as exempt u/s. 10(38) of the Act was pre-arrange method adopted by the assesseees to evade capital gain taxation. The Assessing Officer noted that in the assessee`s case under consideration, the assessee has purchased 35,500 shares of M/s. Sun & Shine Worldwide Ltd. on 30.10.2012 for Rs. 19,525/- The said 35,500 shares sold between February 2014 and March 2014 for rates ranging between Rs.22.90 and Rs. 25.25 for a total consideration of Rs. 29,08,385/-. Therefore, the Assessing Officer issued show-cause notice to the assessee to explain these transactions.

32. In response to the show cause notice of the Assessing Officer, the assessee submitted written submission before the Assessing Officer which is reproduced below (to the extent relevant for our analysis):

“We have carefully looked into the concerns raised by your honour and of the view that show-cause notice running into thirteen pages issued by your honour refers to the suspicion and apprehension running into your mind but does not hold/carry any material to support your contention that the amount so received from the share broker on account of stock exchange transaction was in the nature of accommodation entry or otherwise than that claimed by the assessee. Hon'ble Supreme Court in series of decisions has conclusively held that assessment of income under the provisions of the income-tax Act cannot be made merely on suspicion or surmises but it should be based on the concrete material and more particularly while invoking provisions of section 68

of the Act and additions, if made any, would not be sustainable at higher forum. Your honour would appreciate that had it been a transaction other than on stock exchange or it had been done contrary to the provisions of SEBI as well as of BSE; the stock broker would have been penalized or debarred from the stock exchanges. Nothing of that sort happened which itself indicate that transaction entered into by your assesses is genuine and correct and which is supported by the information available at BSE. Any farther doubt raised against the genuineness of transaction is best left upon your honour as doubting the competency of SEBI which is an autonomous body. It is this background, we offer our comments as below on the concerns/ apprehension/ suspicion made in the show cause notice which prompted your honour to issue show cause as to why amount received on sale of shares should not be taxed within the meaning of section 68 of the Act:

(i).As per details published in Economic Times, which stated that small value stocks are arguably the riskiest segment of the capital markets, has witnessed a surge of investor interest in the past 12 months. On certain days, the volume of shares traded was almost double the average. It's mostly small investors who go shopping in this junkyard, trying to find unpolished gems and undiscovered nuggets. For such investors, these low-priced shares are both an opportunity and a threat. Find the right stock and you can make big money, like Karuturi Global, several other shares have given returns of over 200% in the past six months. At the same time, investors in several other scrips have lost money. When the markets tanked on 28 July, 19 small value stocks hit their 52-week low. The extent of the decline in some of these losers was eye-popping. Centron Industrial Alliance touched 38 paise, down 98.8% from its 52-week high of Rs 32 and PMC Fincorp touched Rs.3.59, down 98.5% from its yearly high. Hence, risks and rewards of dealing in small value shares are considerably high.

(ii) Your honour would appreciate that fresh subscription in shares of a company which is not listed on the stock exchanges is always off market transaction. Similarly, purchase of shares is also off market transaction. Long Term Capital Gains are never disallowed when shares sold were initially the shares acquired in an IPO or as Bonus Shares (which are also Off Market). Even in the case of subscription to the shares of listed entity is also off market transaction and therefore, there is no substance in your honour's contention that the assesses had acquired shares through off market transaction. Your honour would appreciate that transfer of shares @ Rs.0.55/- per share was very much justified based on the financial.

(iii) The assesses had sold the shares in piecemeal manner over a period and not in one shot. The assessee sold the shares in piecemeal manner because he was of the view that her junkyard's (share) price would go high owing to the hope which was created due to Q2 result for quarter ending September 2012. Hence, the shares were not sold immediately, but the assessee had elected to wait and watch. The assessee was confident that he would get much more money in the subsequent quarters where the business turnover of the company had started to gain momentum.

(iv) Contract notes issued by Broker M/s Tradebulls Securities Pvt. Ltd, indicates BSE Settlement No in which sale was executed, date on which sale was executed, price at which sale was negotiated, brokerage charged by them; STT paid by the assessee and

deducted from the consideration payable to the assesses, BSE transaction charges, stamp duty and other charges deducted from the sale consideration. Your honour would appreciate that brokerage charged is the same as has been charged from other clients and is not unusual to give rise of suspicion for dubious or doubted nature of transaction. Allegation that price of share remained high for almost one year because these were accommodation entry transactions is without any substance because it is difficult to be maintained in free stock market wherein anyone can buy and sell any quantity of shares both by way of delivery or through intra-day transactions and therefore, possibility of manipulation in the price of shares was remote, more particularly when open market transactions cannot be controlled by any one.

(v) Transactions reflected in the assessee's demat account also mentions all transactions including settlement no of BSE in which such transaction was executed which matches with the corresponding settlement no appearing in contract note issued by the broker. This also indicates have all transactions are genuine, correct and in accordance with the provisions of SEBI as well as BSE bylaws.

(vi) General conventional method as envisaged and stated in the notice for converting unaccounted money into accounted money through use of penny stocks does not apply in the present case because no trail of movement of funds have been noticed or brought on record evidencing handing over of unaccounted funds to someone and rotation of the same to the assessee though cheques of electronic transfer from the broker.

(vii) It is hereby stated through the authority of the assesses, that the assessee did not know any directors of M/s Sun and Shine Worldwide Ltd. Had it been an accommodation entry transactions, the assessee would have certainly knowing any other directors of the company because the assessee would have met them before entering into understanding for such huge amount which is realised to the assessee in stock market transactions but which your honour suspect to be in the nature of accommodation entry but without implicating the assessee with concrete and cogent evidences. Till this moment nothing adverse against the assessee has, been brought on record.

(viii) Further, though your honour have referred to statements of various persons viz. Shri Abhiset Basu, Pradip Dey, Rakesh Bajaj, Pradip Garg & Abhijit Dey, stating that they were indulged in providing accommodation entries in the shares of the company referred to in the show cause notice but have failed to provide corresponding supporting documents evidencing that your assessee was party to such transactions by providing corresponding bank statements and cash trail of respective parties. In absence of such authentic material, no adverse inference could be taken in the case of the assessee until or unless corroborative evidence of involvement of the assessee is brought on record.

(ix) Your honours have referred to the statement recorded u/s 133A of Shri Anil Kumar Khemka, and have provided copy of the same duly embedded in the Show Cause Notice. We have gone through the same and find that said statement does not implicate the assessee adversely in any manner. We find that it is a statement recorded u/s 133A of the Act but without any supporting material or any materiel impounded in the course of survey. Statements of this nature have no evidentiary value as held by Hon'ble Supreme Court in S Kader Khan and other cases. We also find that name of the stock broker

does not appear in the entire statement because transactions entered into by the assessee was an independent transaction than the transactions those referred in the said statement. Further, no specific question has been asked in relation to dealings in the shares of M/s Sun and Shine Worldwide Ltd, purchased or sold by the assessee or in relation to her stock broker i.e. M/s Tradebulls Securities Pvt. Ltd. We, therefore, submit that no adverse view can be taken from the statement of Shri Anil Kumar Khemka in the present case.

(x) We submit that allegation leveled against the assessee, that he took advantage of long term capital gain for the purpose of tax evasion. We submit that assertion made by you is without any substance. The assessee acquired shares in the previous year and have been duly disclosed in by books as already furnished before Your honours. Sources from which these shares had been acquired are also not in dispute. There is no dispute regarding date of purchase of shares. Price of the shares at which the assessee had acquired the shares are also not in dispute except for the higher price of Rs.2/- instead of Rs.0.55/- per share, confirmed from the party. The shares which the assessee had acquired were later on demated and then the assessee sold the shares at stock exchange through registered stock broker after making payment of STT. Neither the Stock Exchange or SEBI has disputed the assessee's transaction nor was any action against the assessee's broker taken by BSE or SEBI. The assessee's dealings in shares are supported by the contract notes issued by broker as well as demat account. Genuineness of contract notes or demat accounts have not been disputed even in the show cause notice, it is not your honours allegation that amount credited in the assessee's bank account have been received from person other than the assessee's stock broker. The facts relating to assessee's holding period are also confirmed by the seller viz. Corporate Commodity Brokers Pvt. Ltd, as well as broker M/s Tradebulls Securities Pvt. Ltd and hence the holding period is also not in dispute. There is no dispute as to compliance of conditions specified in section 10(38) of the Act and under these circumstances receipt of legitimate sale consideration by the assessee on her dealings on stock market after making payment of STT cannot be said to be colourable device for the purpose of evasion of tax because tax is not liable to be paid due to operation of law and not otherwise.

(xi) Addition of the 0.10 paisa deemed commission which is deemed to have been given to "operator", is rather a ridiculous fiction, which the revenue should refrain from deploying to extract more money as taxes than are rightly eligible. Since, there was no such arrangement, question of commission never arises. Under these circumstances, we submit that sale consideration received of Rs.28,70,475/- cannot be treated as bogus and addition cannot be made u/s 68 of the Act but proposed in the show cause notice."

33. However, the assessing officer rejected the contention of the assessee and observed as follows:

(i) The assessee was not in a position to give any satisfactory explanation regarding physical delivery of shares and transaction slips of transfer of shares either at the time of assessment proceedings or during the course of appellate proceedings.

(ii) Financial health of M/s. Sun & Shine Worldwide Ltd. did not improve to an extent to have spiraled the price of shares many times within a short span of time and

(iii) The findings of the investigation wing where the entry operators had accepted the modus operandi of providing bogus LTCG through purchase and sale of shares of few companies.

The assessee has stated that he had acquired 35500 shares of M/s. Sun & Shine Worldwide Ltd, @ Rs. 0.55 per share on 30.10.2012 from M/s Corporate Commodity Brokers Pvt. Ltd through private placement. The shares of M/s. Sun & Shine Worldwide Ltd. were having market price of share at around Rs.21.90 in 15 months. After that the price was fell down tremendously, and purchase price of shares declared by the assessee were not in conformity with the rates prevailing on the respective dates, and the lowest and highest price quoted does not match with the purchase price shown by the assessee. It is evident that when at the time of booking of LTCG the share price tremendously on a higher side and thereby bogus gains were booked those who have huge profit can avail LTCG to set off their profit. The entire process was managed by operator who works for commission, the beneficiary who wants loss, buys the share at a high rate form the beneficiary who is taking LTCG. The loss taking beneficiary pays cheque to the LTCG taking beneficiary and the cash provided by the LTCG beneficiary is returned to the loss taking beneficiary. The assessing officer noted that Statement of Shri Anil Kemkha, the entry provider, who is the key person, was recorded on oath before the Investigation Wing, Kolkata. Vide Answer to Q.No.01, wherein he has admitted as follows:

"Generally, there are few companies engaged in providing accommodation entries in the form of long term capital gains who used to allot preferential shares of those listed companies to beneficiaries, to whom entry of long term capital gains has to be provided. After holding these shares for one year, clients used to sale such shares on very higher rates. Such shares are bought from beneficiaries by our companies mentioned at question no. 14. When party beneficiary, come to us for having accommodation entry, we used to get cash from them, get it deposited in various bank account and then finally, we used to transfer it to party/beneficiary's bank account. For doing so, we used to get a commission income in cash from party @ 0.10 paisa per 100 rupees of cheque amount. Our companies buy the shares after the prices raised through artificial synchronized trading."

The assessing officer also observed that M/s. Sun & Shine Worldwide Ltd, the trading activities of the said script were very less during the period prior to FY.2013-14 and it was negligible trading were carried out during the period prior to 2012, wherein no buyers in the market for the said script. There was no extraordinary event which could justify the huge price rise and huge trading volume. The SEBI after thorough investigation has certified that such transactions are rigged and are carried out to convert black money into white.

Thus, assessing officer stated that the onus was on the assessee to prove that either there was no such scheme and even if there was one, the benefit to the assessee was as a result of genuine transaction. Thus, the assessee miserably failed to discharge this onus with any supporting documentary evidence and it is clearly proved that it was an entry of bogus long term capital gain by paying unaccounted income.

34. Based on the above facts, the assessing officer made two additions, which are as follows:

(i). Since, the entry operator Shri Anil Khemka in his statement taken on oath under section 133A of the Act has stated that he received Rs.0.10 paisa on such transactions, therefore, assessing officer made addition of Rs.2,87,047/- (Rs.0.10 of Rs.28,70,475).

(ii). Addition of Rs.29,08,384/-, being income earned from undisclosed sources not offered for taxation during the year.

35. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT (A) who has confirmed the addition made by the Assessing Officer. Before the Id CIT(A) the assessee has filed written submission along with copy of Share Transfer Form and Bank Statement and other documents. However, Id CIT(A) observed that on a close observation, it transpires that the authenticity of the said transfer form is doubtful and does not give strength in support of the claim of the assessee. From the Bank Statements, it revealed that the assessee has opened the particular account for this purpose as no other entries were

available except the bogus sale transactions of the shares. The intention is very clear and well planned by the assessee for the ulterior motive of entire gamut for taking undue benefit under the grab by misusing the Income-tax Act claiming exemption. The Id CIT(A) referred various case law on the issue and then confirmed the addition made by the assessing officer.

36. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

37. Shri Rasesh Shah, Id. Counsel for the assessee submitted before the Bench that there is no substance in Assessing Officer's apprehension that the assessee had acquired shares in order to avail tax benefit through accommodation entry. Nothing has been brought on record to indicate that amount invested by the assessee in shares was in the nature of accommodation entry. No financial transaction between promoters of M/s Sun & Shine Worldwide Ltd and the assessee have been brought on record that the assessee had paid any unaccounted funds to them in order to get the said money back by way of sale of shares through stock exchange. Both seller and purchaser on the stock market are unknown to each other when transactions are done at stock exchange. Shares sold by the assessee were open market transactions and not through black deal and therefore, transactions executed by the assessee at BSE through BSE registered stock broker cannot be treated as bogus or unexplained for the purpose of taxation. No such cogent evidence or material has been noticed by the Investigation Directorate or by the AO and therefore, merely because the assessee was able to get good return on her investment does not mean that it is bogus transaction. Such return is in the nature of long term gain within the meaning of provisions of Income-tax Act, 1961 and also it is exempted within the meaning of section 10(38) of the Act because sale transaction suffered STT and transaction was entered at Bombay Stock Exchange through BSE registered stock broker. M/s Tradebulls Securities Pvt Ltd, has been authorised to maintain demat accounts and it is also registered stock brokers of Bombay Stock Exchange. No action against M/s Tradebulls Securities Pvt Ltd has been taken either by BSE or by SEBI for alleged indulgence referred by the AO in his order. This indicates that there was no

involvement of M/s Tradebulls Securities Pvt Ltd, in alleged price, rigging or arranging accommodation entries.

The Ld Counsel submitted that Assessing Officer had put serious allegations relating to the genuineness of the transactions, in the Assessment Order without any cogent reasons. During the assessment stage the assessee submitted Contract notes issued by Broker M/s Tradebulls Securities Pvt. Ltd, indicating BSE Settlement number in which sale was executed, date on which sale was executed, price at which sale was negotiated, brokerage charged by them; STT paid by the assessee and deducted from the consideration payable to the assessee, BSE transaction charges, stamp duty and other charges deducted from the sale consideration etc, were submitted before the assessing officer. The consideration was received through banking channel which was credited in assessee's savings bank account with Oriental Bank of Commerce. The assessing officer had referred to the statement recorded u/s 133A of Shri Anil Kumar Khemka, the said statement does not implicate the assessee adversely in any manner. It is a statement recorded u/s 133A of the Act without any supporting material or any material impounded in the course of survey. Statements of this nature have no evidentiary value. This way, Id Counsel prayed the Bench that addition made by the assessing officer may be deleted.

38. Ms Anupama Singla, Learned Departmental Representative for the Revenue vehemently submitted that assessee himself stated that he had purchased 35,500 shares of M/s Sun & Shine Worldwide Ltd. @ 0.55/- per share from M/s Corporate Commodity Brokers Pvt Ltd through private placement, however, the seller has confirmed sale of shares to the assessee at Rs.2/- per share in response to letter issued under section 133(6) of the Act, and the market price of the share was around Rs.22.90 to 25.25 during the said period. This clearly proves that the assessee has manipulated the price of shares. The Learned Departmental Representative submitted that assessee took the accommodation entries and the transactions done by the assessee is bogus which has been proved by the Information of the Investigation Wing of Kolkata and statement of Shri Anil Kumar Khemka taken on oath by the Investigation Wing under section 131/133A during the course of survey

of proceedings. The statement of Shri Anil Kumar Khemka clearly says that he was one of the operators in Kolkata who has provided accommodation entries through his many bogus companies. Therefore, Assessing Officer has not made addition merely on the basis of suspicion and surmise, but he has made addition based on the investigations done in the matter. The assessee has utilized the services of the entry providers and the assessee is one of the beneficiaries from the entities operated by Shri Anil Khemka. Further, Shri Anil Khemka in his statement taken an oath under section 133A has stated that he received Rs.0.10 paisa on such transaction as a commission of Rs.2,87,047/- being the income from undisclosed sources and not offered for taxation during the year which were added by the Assessing Officer under section 69C of the Act. The assessee has not shown anything during the assessment proceedings which can prove the genuineness of the transactions and therefore addition made by the Assessing Officer should be upheld. In addition to her verbal arguments, she also submitted written submissions before the Bench, which is reproduced below(to the extent relevant for our analysis):

“The assessee returned long term capital gain in schedule A-OI of ITR which was claimed as exempt u/s 10(38) of the Act and the same was not credited to Income and Expenditure a/c and was shown in the Capital Account for the A.Y. 2014-15. The assessee purchased shares of M/s. Sun and Shine Worldwide Limited through private placement (offline). It was observed that the assessee allegedly purchased 35500 shares from M/s Corporate Commodity Brokers Private Limited on 30/10/2012. The payment for this transaction was made through cash on 30.10.2012. Subsequently, the shares were given for dematerialization, nearly after one year from the receipt of original share certificate. Thereafter, in the months of February 2014 and March 2014, the entire shares were sold for Rs. 29,08,385/- through broker M/s Tradebulls Securities (p) Ltd, through the platform of BSE . The assessing officer issued notices under section 133(6) to the various entities such as M/s. Sun and Shine Worldwide Limited, M/s Corporate Commodity Brokers Private Limited and Bombay Stock Exchange.

The assessing officer observed from the reply received from M/s Corporate Commodity Brokers Pvt. Ltd. that shares were purchased for Rs.2/- each and total amount of Rs. 71,000/- was paid in cash on 30.10.2012 towards purchase of 35,500 shares of Sun and Shine Worldwide Ltd. as per debit Note No 187.

The assessee claimed that total shares of 35,500 were purchased for Rs.19,525/- on 30.10.2012 which was paid in cash as per debit note No.1. The assessing officer noted, on perusal of the Annual report of M/s Sun and Shine Worldwide Limited, that the minimum and maximum price of these shares was between Rs. 32.90 and Rs. 25.25 during the month of October 2012 i.e. during the period the assessee

claimed to have purchased these shares at Rs.0.55 or Rs.2 when the market price of shares is Rs. 22.90 to Rs.25.25.

Moreover, the Auditor in his Annual Report for FY 2012-13 had very categorically specified that "all the shares are compulsory traded in the dematerialized form by all the investor. Further, the assessing officer noticed discrepancy between the reply submitted by M/S. Corporate Commodity Brokers Private Limited, which stated that the assessee purchased these shares for Rs 2 each while the assessee had claimed the cost price at Rs 0.55 per share.

Further, it was observed that the financial health of M/S. Sun and Shine Worldwide Limited, did not improve to an extent to have spiraled the price of shares many times within a short span of time. For a scrip to trade 13 times its face value, in a few months, only implies, if not price manipulation, a trail blazing performance, while in the instant case, the company's business or industry or future program is conspicuous by its absence.Ld. CIT(A) observed from the bank statements, that the assessee had opened the particular account for the purpose of this bogus sale transaction as no other entries were available."

39. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that assessee had acquired 35500 shares of M/s Sun & Shine Worldwide Ltd. @ Rs 0.55/- per share from M/s Corporate Commodity Brokers Pvt Ltd. through private placement. The shares were transferred to the assessee on 30.10.2012 i.e. by way of private placement (offline).The shares were credited in the assessee's demat account one year after the receipt of original share certificates. We note that no violation of any laws has been brought on record in relation to transferring of shares to the assessee through transfer (private placement) route. Even in that matter there was no dispute with regard to the pricing of shares of transfer of shares through private placement. Nothing has been brought on record by the assessing officer to show that amount invested by the assessee in shares was in the nature of accommodation entry. No financial transaction between promoters of M/s Sun & Shine Worldwide Ltd and the assessee have been brought on record that the assessee had paid any unaccounted funds to them in order to get the said money back by way of sale of shares through stock exchange.

Both seller and purchaser on the stock market are unknown to each other when transactions are done at stock exchange. Shares sold by the assessee were open market transactions and not through black deal and therefore, transactions executed by the assessee at BSE through BSE registered stock broker cannot be treated as bogus as explained by Id Counsel. No such cogent evidence or material has been noticed by the Investigation Wing Kolkata in the context of the assessee under consideration. Merely because the assessee was able to get good return on her investment, which is exempt within the meaning of section 10(38) of the Act, does not mean that the transaction is bogus. We note that sale transaction suffered securities transaction tax (STT) because transaction was entered at Bombay Stock Exchange through BSE registered stock broker. We note that the assessee's stock broker M/s Tradebulls Securities Pvt Ltd, has not been punished for any of the acts of indulgence referred by assessing officer either by SEBI or by the Stock Exchange in relation to the company whose shares have been dealt in by the assessee. The assessee had sold the shares in piecemeal manner over a period and not in one shot.

The Contract notes issued by Broker M/s Tradebulls Securities Pvt Ltd, indicates BSE Settlement number in which sale was executed, date on which sale was executed, price at which sale was negotiated, brokerage charged by them, STT paid by the assessee and deducted from the consideration payable to the assessee, BSE transaction charges, stamp duty and other charges deducted from the sale consideration clearly proves that assessee's transaction is genuine. We note that transactions reflected in the assessee's demat account also mentions all transactions including settlement number of BSE in which such transaction was executed which matches with the corresponding settlement number appearing in contract note issued by the broker. This indicates that transactions are in accordance with the provisions of SEBI as well as BSE bylaws. We note that in assessee's case no trail of movement of funds have been noticed or brought on record evidencing handing over of unaccounted funds to someone and rotation of the same to the assessee though cheques or electronic transfer from the broker.

40. We note that Assessing Officer has referred the statement recorded u/s 133A of Shri Anil Kumar Khemka, however the said statement does not implicate the assessee adversely in any manner. We find that it is a statement recorded under section 133A of the Act, without any supporting material or any material impounded in the course of survey. Statements of this nature have no evidentiary value as held by Hon'ble Supreme Court in the case of S Kader Khan [300 ITR 157], the findings of the Hon'ble Supreme Court in the said case is reproduced below:

"6. What is more relevant, in the instant case, is that the attention of the CIT(A) and the Tribunal was rightly invited to the circular of the CBDT dt. 10th March, 2003 with regard to the confession of additional income during the course of search and seizure and survey operations. The said circular dt. 10th March, 2003 reads as follows :

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

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

7. From the foregoing discussion, the following principles can be culled out :

(i) An admission is extremely an important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of accounts do not correctly disclose the correct state of facts, vide decision of the apex Court in Pullangode Rubber Produce Co. Ltd. vs. State of Kerala (supra);

(ii) In contradistinction to the power under s. 133A, s. 132(4) of the IT Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the IT Act. On the other hand, whatever statement is recorded under s. 133A of the IT Act it is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law, vide Paul Mathews & Sons vs. CIT (supra);

(iii) *The expression "such other materials or information as are available with the AO" contained in s. 158BB of the IT Act, 1961, would (not) include the materials gathered during the survey operation under s. 133A, vide CIT vs. G.K. Senniappan (supra);*

(iv) *The material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment, vide decision of this Court in Tax Case (Appeal) No. 2620 of 2006 (between CIT vs. S. Ajit Kumar);*

(v) *Finally, the word "may" used in s. 133A(3)(iii) of the Act, viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act", as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under s. 133A are not conclusive piece of evidence by itself.*

8. For all these reasons, particularly, when the CIT(A) and the Tribunal followed the circular of the CBDT dt. 10th March, 2003, extracted above, for arriving at the conclusion that the materials collected and the statement obtained under s. 133A would not automatically bind upon the assessee, we do not see any reason to interfere with the order of the Tribunal. Accordingly, finding no substantial question of law arises for consideration, the tax case appeal stands dismissed''

We note that name of the stock broker does not appear in the entire statement because transactions entered into by the assessee was an independent transaction than the transactions those referred in the said statement. Further, no specific question has been asked in relation to dealings in the shares of M/s Sun and Shine Worldwide Ltd, purchased or sold by the assessee or in relation to her stock broker i.e. M/s Tradebulls Securities Pvt Ltd. Therefore, we are of the view that no adverse view can be taken from the statement of Shri Anil Kumar Khemka in the assessee`s case.

41. We note that no violation of provisions of Companies Act has been brought on record by the assessing officer in relation to transfer of shares. Allegation that price of share remained high for almost one year because these were accommodation entry transactions is without any substance, more particularly when open market transactions cannot be controlled by any one. We note that Assessing Officer in his assessment order had referred various statements of persons viz. Shri Abhiset Basu, Pradip Dey, Rakesh Bajaj, Pradip Garg & Abhijit Dey, stating that they were indulged in providing accommodation entries in the shares of the company referred in the show cause notice of the assessing officer, however, the assessing officer has failed to provide corresponding supporting documents evidencing that the assessee was party to such transactions by providing

corresponding bank statements and cash trail of respective parties. In absence of such authentic material, no adverse inference could be taken in the case of the assessee until or unless corroborative evidence of involvement of the assessee is brought on record. The assessee has also requested the assessing officer for cross examination of all such persons; however, the assessing officer has failed to do so. Hon`ble Supreme Court in the case of Andaman Timber Industries [281 CTR 214](SC) held that not allowing the assessee to cross examine the witness by the adjudicating authority though the statements of those witness were made the basis of impugned order is a serious flaw which makes the order nullity. On the same issue, the Hon`ble Calcutta High Court in the case of Eastern Commercial Enterprises 210 ITR 103 (cal) held as follows:

“It is a trite law that cross examination is the sine qua non of due process of taking evidence and no adverse inference can be drawn against the party unless the party is put on notice of the case made out against him.”

42.Conclusion:

We note that there is no dispute regarding date of purchase of shares. Price of the shares Rs.2/- instead of Rs.0.55/- per share, confirmed from the party. The shares which the assessee had acquired were later on demated and then the assessee sold the shares at stock exchange through registered stock broker after making payment of STT. Neither the Stock Exchange or SEBI has disputed the assessee’s transaction nor was any action against the assessee’s broker taken by BSE or SEBI. The assessee’s dealings in shares are supported by the contract notes issued by broker as well as demat account. Genuineness of contract notes or demat accounts have not been disputed even in the show cause notice by the assessing officer.

The Ld Counsel also stated that in the course of assessment proceedings, the Assessing officer made inquiry with M/s. Corporate Commodity Broker Private Ltd. from whom assessee purchased shares. He stated that he sold the shares at Rs.2/- not at Rs.0.55/-. This doesn’t help the revenue as Corporate Commodity Broker Private Ltd. has only confirmed the sale of the shares to the assessee. Assessee purchased the shares on 30.10.2012 relevant to A.Y. 2013-14. No adverse inference was drawn

in this regard in the Assessment order u/s.143(3) r.w.s 147 on 27.12.2017, by the assessing officer in the case of assessee.

In order to prove the Sale of shares of Sun & Shine Worldwide Ltd., assessee filed the following documents before the assessing officer, viz: Ledger Account of Tradebulls Securities Pvt. Ltd, Contract Notes of Tradebulls Securities Pvt. Ltd and Bank Statement. In order to prove purchases of shares, assessee filed the following documents, viz: Contra confirmation of broker M/s. Corporate Commodity Broker Private Ltd, Share Certificate, Share Transfer Form, Debit Note and Cash Receipt. The payments were received through account payee cheque and transaction was done through recognized stock exchange. The inflow of shares is reflected by way of physical share certificate and demat account. The shares were transferred through demat account. There is no evidence that the cash was recycled back to the assessee. The assessing officer has failed to bring any cogent evidence on record to show that these documents and evidences filed by the assessee are false.

The assessee merely acted on the basis of such market information and happened to get phenomenal gain. It could have been otherwise as well. The rags to riches story in the stock market are galore. It has been submitted that the alleged, circumstantial evidence and material has led the Assessing Officer to believe that the real is not the apparent. In the absence of any link between the assessee and the alleged admissions of the directors and brokers, human probability is being used as a vague and convenient medium for the department's conjectures. To draw an adverse inference without any admissible evidence on record, is bad in law. The Hon'ble Supreme Court in the case of Omar Salav Mohamed Sait reported in (1959) [37 ITR 151] (SC) had held that no addition can be made on the basis of surmises, suspicion and conjectures. In the case of CIT(Central), Kolkata vs. Daulat Ram Rawatmull reported in [87 ITR 349], the Hon'ble Supreme Court held that, the onus to prove that the apparent is not the real is on the party who claims it to be so. The burden of proving a transaction to be bogus has to be strictly discharged by adducing legal evidences, which would directly prove the fact of bogusness or establish circumstance unerringly and reasonably raising an interference to that effect. The

Hon'ble Supreme Court in the case of Umacharan Shah & Bros. Vs. CIT [37 ITR 271] held that suspicion however strong, cannot take the place of evidence.

In the light of the discussions that have preceded and for the reasons alluded we are of the view that the addition made by the assessing officer and confirmed by the Id CIT(A) needs to be deleted. Accordingly, we delete the additions made by assessing officer in case of Smt. Muktaben N.Patel and Shri Nishant K Patel in the assessment year 2014-15.

43. In the result, the appeals filed by the assessee (In ITA No.06/SRT/2019, ITA No.05/SRT/2019, ITA No.07/SRT/2019, and ITA No.10/SRT/2019) are allowed.

Order is pronounced on 07/01/2021 at the time of Virtual Court Hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 07/01/2021

Samanta, PS

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr.PS/PS
ITAT, Surat