IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 4271/Mum/2023
(Assessment year: 2013-14)

Shaily Prince Goyal, Flat No.10, Block No.77, Prabha Building, R.B. Mehta Marg, 60 Feet Road, Ghatkopar (East), Mumbai-400 077 **PAN : AEDPG5633E**	**vs**	**Income-tax Officer-27(3)(3), Mumbai,** Tower No.6, 4th Floor, Room No.426, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703
APPELLANT		**RESPONDENT**

Assessee by	:	Dr. K Shivaram Sr. Advocate & Shashi Bekal
Respondent by	:	Ms. Sujatha Iyangar SR AR
Date of hearing	:	21/05/2024
Date of pronouncement	:	30/ 05/2024

O R D E R

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), date of order 19.09.2023 for Assessment Year 2013-14.The impugned order was emanated from the order of the ld. Income-tax Officer, Ward-27(3)(3), Mumbai(in short, 'the A.O.') passed under section 143(3) r.w.s. 147 of the Act date of order26/12/2017.

2. The assessee has taken the following grounds: -

"1. Addition of Rs. 2,54,98,050/- under section 68 of the Income-tax Act, 1961 (Act).

1.1. *That on the facts and circumstances of the case and in law the Ld. National Faceless Appeal Centre (NFAC) has erred in upholding the order of the Ld. Assessing Officer (AO) in*

Rs.2,54,98,050/- under section 68 of the Act, without appreciating the ; p facts that the appellant has sold the quoted shares through a recognized stock broker, SIT paid and the payment was through a banking channel, hence the capital gains exempt under section 10(38) of the Act cannot be assessed under section 68 of the Act.

1.2. *Without prejudice to the above, that on the facts and circumstances of the case arid in law the Ld. NFAC has erred in upholding the order of the Ld. AO in making an addition of Rs. 2,54,98,050/- under section 68 of the Act by alleging that the sale of shares of Luminaire Tech Limited was a sharn transaction by relying on the statements of Mr. Brijesh Bhagat arid Mr. Deepak Patwari without providing the appellant with a copy of the statements and an opportunity of cross-examination as the order passed which was affirmed being in violation of principles of Natural Justice i.e., Audi Alteram Partem, the addition confirmed under section 68 of the Act may be deleted.*

1.3. *That on the facts and circumstances of the case and in law the Ld. NFAC has erred in upholding the order of the Ld. AO in making an addition of Rs. 2,54,98,050/- under section 68 of the Act by alleging that the sale of shares of Luminaire Tech Limited was a sham transaction on the basis of presumption, surmises and conjunctures, without any evidence of a round trip cash transaction.*

1.4. *That on the facts and circumstances of the case and in law the Ld. NFAC has erred in relying on the various case laws and observations which are not applicable to the facts of the appellant hence addition confirmed by the NFAC contrary to the ratio laid down by the jurisdictional High Court and Tribunal, the addition may be directed to be deleted.*

2. Addition of Rs. 7,50,772/-under section 69C of the Act.

2.1. *That on the facts and circumstances of the case and in law the Ld. NFAC has erred in upholding the order of the Ld. AO in making an addition of Rs. 7,50,772/- under section 69C as an alleged commission paid to entry arid exit providers.*

2.2. *That on the facts and circumstances of the case and in law the Ld. NFAC has erred in upholding the order of the Ld. AO in making an addition of Rs. 7,50,772/- under section 69C as an alleged commission paid to entry and exit providers without any evidence of such payments.*

2.3. *That on the facts and circumstances of the case and in law the Ld. NFAC has erred in upholding the order of the Ld. AO in making an addition of Rs. 7,50,772/- under section 69C as an alleged commission paid to entry arid exit providers on the basis of statements without giving the appellant a copy of the same or an opportunity for cross-examination.*

3. The Reassessment proceedings under section 148 of the Act are bad in law as the due process of law is riot followed."

3. The assessee's case was reopened under section 148 of the Act due to earning of capital gain amount of Rs.2,54,98,050/- during the impugned assessment year. After the verification, the addition was confirmed under section 68 and treated the entire transaction as penny stock transaction. Further, an amount of Rs.7,50,772/- was added back with the total income U/s 69C as an alleged commission paid to entry and exit providers. Aggrieved, assessee filed an appeal before Ld.CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved, assessee filed an appeal before us.

4. The Ld.AR filed written submission which is kept in the record (in short, 'APB'). The assessee first invited our attention in the assessment order page 40, para 12. The Ld.AR placed that the entire transactions were made by the

assessee through the proper stock exchange and by purchasing the shares and sold them to the market. The Ld.AR placed that assessee purchased 2 lakh shares of M/s Paridhi Properties Ltd (PPL) at cost of Rs.10 per share which is amounting to Rs.20 lakhs., in March 2014. Later on, M/s Paridhi Properties Ltd merged with Luminaire Technologies Ltd which allotted 20 lakhs equity shares at face value of Rs.1/-. Out of the 20,00,000 shares, 47,2000 shares were sold during March 2013, within a gap of 10-12 days amounting to Rs. 2,50,24,074/-. Considering the period for holding the assessee's claimed long term capital gain exemption U/s 10(38) of the Act. The relevant documents like bank transaction, share transaction copy, paid through STT, ledger and demat account were duly submitted before the revenue authorities. The Ld.AR relied on the order of the Hon'ble jurisdictional High Court and the Tribunal which are as follows: -

4.1. **Luminaire Technologies Limited. order dated 27/07/2012, CSP 275 of 2012**Connected with Company Summons for Direction No **77 of 2012.**

"IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.275 OF 2012
CONNECTED WITH COMPANY SUMMONS FOR DIRECTION NO.76 OF 2012.
PARIDHI PROPERTIES LIMITED ...Petitioner/Transferor Company
AND

COMPANY SCHEME PETITION NO.276 OF 2012
CONNECTED WITH COMPANY SUMMONS FOR DIRECTION NO.77 OF 2012.
LUMINAIRE TECHNOLOGIES LIMITED ....Petitioner/Transferee Company
In the matter of the Companies Act 1 of 1956;
AND
In the matter of Sections 391 to 394 of the Companies Act, 1956;
AND
In the matter of the Scheme of arrangement between PARIDHI PROPERTIES LIMITED, the Transferor Company
WITH

Mr. Rajesh Shah with Mr. Chandrakant Mhadeshwar /b Rajesh Shah &Co. Advocates for Petitioners in both Petitions.

Mrs. R. N. Sutar, Asstt. Official Liquidator, present in CSP No. 275 of2012.
Mr. N.D. Sharma i/b Dr. T. C. Kaushik for Regional Director in bothPetitions.
PC:

CORAM: S.J. Kathawalla, J.
DATE : 27th July, 2012

PC:

"1. Heard counsel for the parties.

2. The sanction of the Court is sought to a Scheme of Arrangement between PARIDHI PROPERTIES LIMITED, the Transferor Company with LUMINAIRE TECHNOLOGIES LIMITED, the Transferee Company, under Sections 391 to 394 of the Companies Act, 1956.

3. Counsel appearing on behalf of the Petitioners has stated that the Petitioners have complied with all requirements as per directions of this Court and that the Petitioners have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the Rules made thereunder. The said undertaking is accepted.

4. The Official Liquidator has filed his report in Company Scheme Petition No. 275 of 2012 stating that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

5. The Counsel appearing for the Regional Director has drawn my attention to paragraphs 6 (a) to 6 (c) of the Affidavit of the ; Regional Director in which it is stated that:-

> *"(a) Clause 2 (k) (e) page 22-33 of the Scheme, states that "the difference between Net Assets Value i.e. Bank value of /Assets minus liabilities (including reserves) of the Transferor Company as on appointed date and equity share capital issued to the shareholders of Transferor Company on amalgamation by the Transferee Company shall be ' -credited/ debited by the Transferee Company to its General Reserve/Goodwill Accounts as the case may be General Reserve shall constitute as free reserve as if the same was created by the Transferee company out of its own earned and distributable profits." In this connection it is submitted that the*

reserve shall not constitute as free reserve as per section 2(29) of the Act and the same be styled as "Capital Reserve" by the Transferee Company.

(b) In Clause No. 13 the Scheme the period fixed for approving the scheme is by 31/03/2012 which has already expired. In this connection Board of Directors of the petitioner companies may be directed to take necessary steps to extend the date by passing board Resolution before giving effect to the Scheme.

(c) Clause 6 of the Scheme deals with change of Objects of the Memorandum of Association of the Transferee Company. In this connection, the Transferee Company may be directed to comply with provisions of section 40 read with section 18 of the Act and to file amended copy of Memorandum of Association along with Form No.21 with the Registrar of Companies."

6. In response to the observations raised by the Regional Director in Paragraph 6(a) of his Affidavit, the Petitioner/Transferee Company through its counsel undertakes to comply with the suggestions of the Regional Director that the Reserve arising out of this scheme shall not constitute as free reserve as per section 2(29) of the Act and the same be styled as "Capital Reserve" by the Transferee Company, The said undertaking is accepted.

7. In response to the observations raised by the Regional Director in Paragraph 6(b) of his affidavit, the Counsel appearing on behalf of the Petitioner Companies has tendered the copy of the Board Resolutions and states that the Petitioner Companies has already passed a Resolutions in its Meetings of the Board of Directors held on 14th February, 2012 and in the said meetings the Board of Directors of the Petitioner Companies has resolved to extend the period fixed for seeking approval of the Scheme by the Court from 31/03/2012 to 31/12/2012.

8. In response to the observations raised by the Regional Director in Paragraph 6(c) of his Affidavit, the Petitioner/Transferee Company through its counsel undertakes to comply with provisions of section 40 read with section 18 of the Act and to file amended copy of Memorandum of Association along with Form No. 21 with the Registrar of Companies. The said undertaking is accepted.

9. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.

10. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 275 of 2012 is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 276 of 2012 is made absolute in terms of prayer clauses (a) to (c).

11. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of order.

12. Petitioners are directed to file a copy of this order alongwith a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form 21 in addition to physical copy within 30 days from the date of issuance of the order by the Registry

13. The Petitioners in both Petitions to pay costs of Rs. 10,000/- each to the Regional Director. Petitioner in Company Scheme Petition No. 275 of 2012 to pay sum of Rs. 10,000/- to the Official Liquidator, High Court, Bombay toward his Costs. Costs to be paid within four weeks from today.

14. Filing and issuance of the drawn up order is dispensed with.

15. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S.J. KathawallaJ.)"

4.2. **Purushottam Soni v. ITO ITA 368-372/JP/21017 dated 27/11/2017 (JP Trib).** The relevant paragraphs are reproduced as below:-

"We further note that an identical issue was considered by the Coordinate Bench of this Tribunal in the case of Pramod Jain and Others vs. DCU vide order dated 31st January, 2018 in

ITA No. 368/JP/2017 as well as in the case of Shri Meghraj Singh Shekhawat vs. DCIT vide order dated 7th March, 2018 in ITA No. 443 & 444/JP/2017 in paras 5 & 6 as under:- .

> *"5. We have considered the rival submissions as well as relevant material on record. The assessee has produced record of allotment of 3,50,000 equity shares of M/s Rutron International Ltd. under preferential issue at par of face value of Rs. 10/- each vide allotment letter dated 08.03.2012. The Assessing Officer has not disputed the genuineness of the letter of allotment issued by the company to the assessee wherein it has been communicated that the assessee has been allotted 3,50,000 equity shares vide allotment letter dated 08.03.2012 against the application of the assessee at par of face value of Rs. 10/- each without any premium. The assessee has also produced the bank statement showing the payment of consideration of the acquisition of shares on 29.02.2012. It appears that the said payment was made by the assessee at the time of applying for allotment of shares and subsequently the shares were allotted by the company on 01.03.2012. Thus, it is clear that the shares acquired by the assessee is not a trading transaction but these were allotted directly by the company under the preferential issue and hence, the role of intermediate is ruled out. Once, the shares were directly allotted by the company M/s Rutron International Ltd. against the consideration paid by the assessee through cheque. Then the role of any intermediately particular of Shri Anil Agrawal is said allotment does not appear from any of the record. Even as per the statement as reproduced by the Assessing Officer in the assessment order Shri Anil Agrawal has stated that he is having business nexus with the companies including M/s Rutron International Ltd. The department put a question about the association with as many as 13 companies and in response to that he has accepted that he is having business nexus with these companies including M/s Rutron International Ltd. The nature of service was also explained by Shri Anil Agrawal as the consultancy services. For ready reference we quote question No. 4 and 5 and answer, thereto in the statement of Shri Anil Agarwal as reproduced as under:-*
>
> *Q 4. Whether M/s Comfort Securities Pvt. Ltd. or you have any association with the following companies or have ever had any business transactions with the companies as mentioned below:*

1. First Financial Services Ltd. (FFSL)

2. Splash Media and Infra Ltd. (SPMIL)

3. D B (International) stock Brokers Ltd. (DBSBL)

4. Unisys Softwares & Holdings Industries Ltd. (USHL)

5. Fact Enterprises Ltd. (FEL)

6. Parikh Herbal Ltd. (now Safal Herbs Ltd)

7. Premier Capital Service

8. Rutron Internationa Ltd.

9. Radford Global Ltd

10. JMD Telefilms Industries Ltd \ .

11. Dhanleela Investments & Trading Co. Ltd.

12. SRK Industries Ltd.

13. Dhenu Buildcon Infra ltd.

Ans.** M/s Comfort Securities Ltd has business nexus with the following companies **Name of the Company** **Nature of Business Transaction

1. First Financial Services Ltd.	*Brokerage and Consultancy Services*
2. Splash Media and Infra Ltd.	*Brokerage, Share Holding and Consultancy Services*
3. Fact Enterprises Ltd	*Broking as well as share holding*
4. Rutron International Ltd.	*Consultancy Services*
5. D.B. (International) Stock Brokers Ltd.	*Consultancy Services*
6. Unisys Software & Ho/ding Industries ltd.	*Broking Services*

Apart from the above mentioned companies neither I nor M/s Comfort Securities Ltd. has any business nexus with the companies mentioned supra.

***Q5.** Do you know the promoters and directors of the above said companies? Whether M/s Comfort Securities Pvt. Ltd. or you have any association with the promoters and directors of the above said companies or have ever had any business transactions with the promoters and directors of the above said companies."*

Ans. *Sir, I know some of the directors of First Financial Services Limited, Splash Media & Infra Services Ltd, Rutron International Limited and FACT enterprise Ltd. Regarding other companies I am not aware who are the directors of these companies."*

Thus, it is clear from the relevant part of statement of Shri Anil Agrawal as reproduced by the AO that he has stated having business nexus with these companies and nature of business being consultancy services. Hence, he has not stated anything about providing bogus long term capital gain in respect of the equity shares of M/s Rutron International Ltd. A business nexus with any company will not automatically lead to the conclusion that the shares allotted by the other company is bogus transaction. As per question no. 5 and answer thereto it is clear that Shri Anil Agrawal was not the Director of M/s Rutron International Ltd. but he has stated to know some of the directors of these companies including M/s Rutron International Ltd.

Hence, from this relevant part of the statement of Shri Anil Agrawal it cannot be inferred that he has provided the bogus long term capital gain from purchase and shares of equity shares of M/s Rutron International Ltd. much less the specific transaction of preferential issue allotment of shares by the company itself to the assessee. Further, though he has explained the modus operandi of providing bogus long term capital gain entries in the equity shares however, when the transaction was not routed through Shri Anil Agrawal and the shares were allotted directly by the company to the assessee at par on face value then the same cannot be considered as a penny stock transactions. The assessee has produced the D-mat account and therefore, as on 18.06.2012 the assessee was holding 3,50,000 equity shares of M/s Rutron International Ltd. in D-mat account. This fact of holding the shares in the D-mat account as on 18.06.2012 cannot be disputed. Further, the Assessing Officer has not even disputed the existence of the D-mat account and shares credited in the D-mat account of the assessee. Therefore, once, the holding of shares is D-mat account cannot be disputed then the transaction cannot be held as bogus. The AO has not disputed the sale of shares from the D-mat account of the assessee and the sale consideration was directly credited to the bank account of the assessee, therefore, once the assessee produced all relevant evidence to substantiate the transaction of purchase, dematerialization and sale of shares then, in the absence of any contrary material brought on record the same cannot be held as bogus transaction merely on the basis of statement of one Shri Anil Agrawal recorded by the Investigation Wing, Kolkata wherein there is a general statement of providing bogus long term

capital gain transaction to the clients without stating anything about the transaction of allotment of shares by the company to the assessee. Further, Shri Anil Agrawal was not a director of M/s Rutron International Ltd. as perceived by the AO and therefore, the entire finding of the AO is without any corroborative evidence or tangible material."

4.3. **Pramod Jain & Ors vs. DCIT ITA 368-372/JP/2017 dated 27/11/2017 (JP-Trib).** The relevant paragraphs are reproduced as below:-

"7. In case of equity shares M/s Paridhi Properties Ltd. the assessee purchase 50,000 equity share on 26.03.2011 by paying share application money of Rs. 5 lacs which is duly reflected in the bank account of the assessee as paid on 28.03.2011. Therefore, the payment of share application money has been duly established by the assessee through his bank account for allotment of shares of 50,000 equity shares of M/s Paridhi Properties Ltd. The share allotted in private placement as per of Rs. 10/- cannot be termed as penny stock. The AO doubted that the entire process of application and allotment of shares as it have been completed within a short duration of 5 days, which in the opinion of the AO is not possible in ordinary course. However, when the assessee has produced the record including the share application, payment of share application money, allotment of share then merely because of a short period of time will not be a sufficient reason to hold that the transaction is bogus. The shares allotted to the assessee vide share certificate dated 31.03.2011 were dematerialized on 21.10.2011, therefore, on the date of dematerialization of the shares the holding of the shares of the assessee cannot be doubted and hence the acquisition of the shares of the assessee cannot be treated as a bogus transaction. Nobody can have the shares in his own name in demat account without acquiring or allotment through due process hence, except the purchase consideration paid by the assessee holding of shares cannot be doubted when the assessee has produced all the relevant record of issuing of allotment of shares, payment of share application money through bank, share certificate and demat account showing the shares credited in the demat account of the assessee on dematerialization. The said company M/s Paridhi

Properties Ltd. was subsequently merged with M/s Luminaire Technologies Ltd. vide scheme approved by the Hontjle Bombay High Court order dated 27.07.2012. Hence, the assessee got allotted the equity shares of M/s Luminaire Technologies Ltd. as per swap ratio approved in the scheme and consequently the assessee was allotted 5 lacs share of Rs. I/- each on M/s Luminaire Technologies Ltd. The evidence produced by the assessee leave no scope of any doubt about the holding of the shares by the assessee. 8. As regards the purchase consideration when the assessee has shown the share application money paid through his bank account and the AO has not brought on record any material to show that apart from the share application money paid through bank account the assessee has brought his own unaccounted money back as long term capital gain. It is also pertinent to note that the shares of M/s Oasis Cine Communication Ltd. are still held by the assessee in its demat account to the extent of 17,200 shares and therefore, the holding of the shares by any parameter or stretch of imagination cannot be doubted. The AO has passed the assessment year based on the statement of Shri Deepak Patwari recorded by the Investigation Wing of Kolkata however, the assessee has specifically demanded the cross examination of Shri Deepak Patwari vide letter dated 15.03.2016 specifically in paras 3 and 4 as reproduced by the AO at page No. 7 of the assessment order as under:-

> *"3. Since, the shares were allotted by the company through private placement after completing the formalities of ROC and were sold through the recognized Bombay Stock Exchange (BSE) there is no question of knowing individual persons or company official personally in the whole process, so the assessee is not in position to produce any one for cross examination before your good self. Since your good self has got the authority, we humbly request you to kindly issue the notice u/s 131 of the Income tax Act 1961 to the concerned individual persons or company officials for cross examination. Please note that the assessee is ready to bear the cost of their travelling in this regards. 4. As regard your opportunity given to us to read the recorded statement of Shri Deepak Patwari and to produce him from the cross examination before your*

good self, we have to submit that from the reading of the statements of Shri Deepak Patwari it is clear that he has never taken the name of the assessee, nor the assessee is aware of any Shri Deepak Patwari neither he has made any transaction with him, so in what capacity he can call him for cross examination before your good self. Since your good self has got the authority, we humbly request you to kindly issue the notice u/s 131 of the income Tax act 1961 to him also for cross examination. We also request your good self to kingly provide us the copy of statements of Shri Deepak Patwari along with the other relevant documents. Please note that the assessee is ready to bear the cost of his travelling in this regard,"

It is manifest from the assessee's reply to show cause notice that the assessee had specifically demanded the cross examination of Shri Deepak Patwari however, the Assessing Officer did not offer the opportunity to the assessee to cross examine Shri Deepak Patwari. Further, the AO asked the assessee to produce the Principal Officers of the M/s Gravity Barter Ltd. and M/s Paridhi Properties Ltd. However, in our view if the Assessing Officer wanted to examine the principal Officers of those companies he was having the authority to summon them and record their statements instead of shifting burden on the assessee. It is not expected from the assessee individual to produce the principal Officers of the companies rather the AO ought to have summoned them if the examination of the officers were considered as necessary by the AO. Hence, it was improper and unjustified on the part of the AO to asked the assessee to produce the principal Officers of those companies. As regards the non grant of opportunity to cross examine, the Hon'ble Supreme Court in case of Andaman Timber Industries vs. CCE (supra) while dealing with the issue has held in para 5 to 8 as under:

"5. We have heard Mr. Kavin Gulati, learned senior counsel appearing for the assessee, and Mr. K. Radhakrishnan, learned senior counsel who appeared for the Revenue,

6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose I as to what could be the subject

matter of the cross-examination t and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

8. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice."

Therefore, the statement of witness cannot be sole basis of the assessment without given an opportunity of cross examination and consequently it is a serious flaw which renders the order a nullity. The Mumbai Special of the Tribunal in case of GTC Industries vs. ACIT (supra) had the occasion to consider the addition made by the AO on the basis of suspicion and surmises and observed in par 46 as under:-

"46. In situations like this case, one may fall into realm of 'preponderance of probability' where there are many probable factors, some in favour of the assessee and some may go against the assessee. But the probable factors have to be weighed onmaterial facts so collected. Here in this case the material facts strongly indicate a probability that the wholesale buyers had collected the premium money for spending it on advertisement and other expenses and it was their liability as per their mutual understanding with the aseessee. Another very strong probable factor is that the entire scheme of 'twin branding' and collection of premium was so designed that assessee-company need not incur advertisement expenses and the responsibility for sales promotion and advertisement lies wholly upon wholesale buyers who will borne out these expenses from alleged collection of premium. The

probable factors could have gone against the assessee only if there would have been some evidence found from several searches either conducted by DRI or by the department that Assessee-Company was beneficiary of any such accounts. At least something would have been unearthed from such global level investigation by two Central Government authorities. In case of certain donations given to a Church, originating through these benami bank accounts on the behest of one of the employees of the assessee company, does not implicate that GTC as a corporate entity was having the control of these bank accounts completely. Without going into the authenticity and veracity of the statements of the witnesses Smt. Nirmala Sun da ram, we are of the opinion that this one incident of donation through bank accounts at the direct/on of one of the employee of the Company does not implicate that the entire premium collected all throughout the country and deposited in Benami bank accounts actually belongs to the assessee-company or the assessee-company had direct control on these bank accounts. Ultimately, the entire case of the revenue hinges upon the presumption that assessee is bound to have some large share in so-called secret money in the form of premium and its circulation. However, this presumption or suspicion how strong it may appear to be true, but needs to be corroborated by some evidence to establish a link that GTC actually had some kind of a share in such secret money. It is quite a trite law that suspicionhowsoever strong may be but cannot be the basis of addition except for some material evidence on record. The theory of 'preponderance of probability' is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favourable factors in his side. The conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of facts that might go against assessee. Once nothing has been proved against the assessee with aid of any direct material especially when various rounds of investigation have been carried out, then nothing can be implicated against the assessee."

Therefore, when the Assessing Officer has not brought any material on record to show that the assessee has paid over and above the purchase consideration as claimed and evident from the bank account then, in the absence of any evidence it cannot be held that the assessee has introduced his own unaccounted money by way of bogus long term capital gain. The Hon'ble Jurisdiction High Court in case of CIT vs. Smt. Pooja Agrawal (supra) has upheld the finding of the Tribunal on this issue in para 12 as under:-

> *"12. However, counsel for the respondent has taken us to the order of CIT(A) and also to the order of Tribunal and contended that in view of the finding reached, which was done through Stock Exchange and taking into consideration the revenue transactions, the addition made was deleted by the Tribunal observing as under: -*
>
> > *"Contention of the AR is considered. One of the main reasons for not accepting the genuineness of the transactions declared by the appellant that at the time of survey the appellant in his statement denied having made any transactions in shares. However, subsequently the facts came on record that the appellant had transacted not only in the shares which are disputed but shares of various other companies like Satyam Computers, HCL, IPCL, BPCL and Tata Tea etc. Regarding the transactions in question various details like copy of contract note regarding purchase and sale of shares of Limtex and Konark Commerce & Ind. Ltd., assessee's account with P.K. Agarwal & co. share broker, company's master details from registrar of companies, Kolkata were filed.*
> >
> > *Copy of depository a/c or demat account with Alankrit Assignment Ltd., a subsidiary of NSDL was also filed which shows that the transactions were made through demat a/c. When the relevant documents are available the fact of transactions entered into cannot be denied simply on the ground that in his statement the appellant*

denied having made any transactions in shares. The payments and receipts are made through a/c payee cheques and the transactions are routed through Kolkata Stock Exchange. There is no evidence that the cash has gone back in appellants's account. Prima facie the transaction which are supported by documents appear to be genuine transactions. The AO has discussed modus operand! in some sham transactions which were detected in the search case of B.C. Purohit Group. The AO has also stated in the assessment order itself while discussing the modus operand! that accommodation entries of long term capital gain were purchased as long term capital gain either was exempted from tax or was taxable at a lower rate. As the appellant's case is of short term capital gain, it does not exactly fall under that category of accommodation transactions. Further as per the report of DCIT, Central Circle-3 Sh. P.K. Agarwal was found to be an entry provider as stated by Sh. Pawan Purohit of B.C. Purihit and Co. group. The AR made submission before the AO that the fact was not correct as in the statement ofSh. Pawan Purohit there is no mention of Sh. P. K. Agarwal. It was also submitted that there was no mention of Sh. P. K. Agarwal in the order of Settlement Commission in the case of Sh. Sushil Kumar Purohit. Copy of the order of settlement commission was submitted. The AO has failed to counter the objections raised by the appellant during the assessment proceedings. Simply mentioning that these findings are in the appraisal report and appraisal report is made by the Investing Wing after considering all the material facts available on record does not help much. The AO has failed to prove through any independent inquiry or relying on some material that the transactions made by the appellant through share broker P.K. Agarwal were non-genuine or there was any adverse mention about the transaction in question in statement of Sh. Pawan Purohit. Simply because in the sham transactions bank a/c were opened with HDFC bank and the appellant has also received

short term capital gain in his account with HDFC bank does not establish that the transaction made by the appellant were non genuine. Considering all these facts the share transactions made through Shri P.K. Agarwal cannot be held as non-genuine. Consequently denying the claim of short term capital gain (6 of 6) [TTA-385/2011] made by the appellant before the AO is not approved. The AO is therefore, directed to accept claim of short term capital gain as shown by the appellant.".....

In view of the above facts and circumstances of the case, we are of the considered opinion that the addition made by the AO is based on mere suspicion and surmises without any cogent material to show that the assessee has brought back his unaccounted income in the shape of long term capital gain. On the other hand, the assessee has brought all the relevant material to substantiate its claim that transactions of the purchase and sale of shares are genuine. Even otherwise the holding of the shares by the assessee at the time of allotment subsequent to the amalgamation/merger is not in doubt, therefore, the transaction cannot be held as bogus. Accordingly we delete the addition made by the AO on this account."

4.4. **CIT vs Shyam R Pawar [2015] 54 taxmann.com 108 (Bom)**

"5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny. It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta

Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A witr brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it

to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,000/-, Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law."

4.5. **CIT vs Jamnadevi Agrawal [2010] 328 ITR 656 (Bom).** The relevant paragraphs are reproduced as below: -

"4. In all these cases, the assessees had claimed/offered long-term capital gains on sale of shares of various listed companies, which were all accepted by the Assessing Officer in the respective assessments. Thereafter, on account of search, proceedings were initiated under section 153A of the Act. For easy reference, we may take the facts in Income-tax Appeal No. 41 of 2010. It is agreed between the parties that the decision in Income-tax Appeal No. 41 of 2010 will apply to all the remaining 42 appeals.

5. In Income-tax Appeal No. 41 of 2010, the respondent-assessee had purchased 30,000 shares of M/s. Authentic Investments and Finance Ltd. on April 8, 1999, at the rate of Rs. 0.98 per share. These shares were claimed to have been sold on July 7, 2000, July 14, 2000 and July 21, 2000, at an average value of Rs. 33.81 per share. In the assessment year in question, the assessee offered to tax the capital gains arising from the sale of the above shares, amounting to Rs. 9,84,909 as a long-term capital gain. The same were accepted.

6. Subsequently, on January 20, 2005, there was a search action in the case of various assessees belonging to a group known as Haldiram group. It appears that on March 30, 2005, the group offered additional income of Rs.2 crores, out of which Rs. 3 lakhs were offered in the hands of the assessee in Income-tax Appeal No. 41 of 2010 for the assessment year 2004-05 and Rs. 7 lakhs in the assessment year 2005-06.

7. The Assessing Officer on the basis of the seized material issued notice under section 153A of the Income-tax Act, 1961, for the assessment year 2001-02 and subsequently passed an assessment order under section 153A read with section 143(3) of the Income-tax Act, 1961, on December 20, 2006, wherein the Assessing Officer computed the total income by disallowing the long-term capital gain and added the entire sale proceeds received on sale of shares amounting to Rs. 10,14,324 as income from undisclosed sources under section 68 of the Income-tax Act, 1961.

8. On appeal filed by the assessee, the Commissioner of Income-tax (Appeals) by his order dated April 19, 2007, held that section 68 of the Act is not applicable to

the facts of the present case and accordingly deleted the addition by following his decision in the case of Kamal Kumar Agrawal for the assessment year 2002-03.

9. On further appeal filed by the Revenue, the Income-tax Appellate Tribunal by a common order dated July 24, 2009, dismissed all the 70 appeals filed by the Revenue, the lead matter being the appeal against Kamal Kumar Agrawal (individual). Challenging the aforesaid order of the Income-tax Appellate Tribunal, dated July 24, 2009, these 43 appeals have been filed by the Revenue and no appeals have been filed in the remaining cases. It is pertinent to note that the Revenue has accepted the decision of the Tribunal in the case of Kamal Kumar Agrawal (individual), which is the lead matter.

10. *The sole contention raised by the Revenue in these appeals is that the entire long-term capital gains claimed by the assessee represent undisclosed income of the assessee because :*
(a)most of the sales of the shares effected by the group are of the same companies and through the same brokers located at Calcutta, (b) Pradeep Kumar Daga, the principal broker has confirmed that the transactions with the Haldiram group are sham and explained the modus operandi as follows:
"Party A wants to claim LTCG and approaches me through a person X. Mr. X approaches me with two names, i.e., the buyer (A) and the seller (B). Mr. A buys the share of the 29 company held by the seller B at Rs. 3 through my terminal. After 365 days or one year when the share of the company has reached high of Rs. 100, Mr. X approaches me through Mr. A with the name fresh purchaser Mr. C, who is willing to buy the shares of Mr. A at Rs. 100. Mr. A (who was previously the purchaser and wants to avail of LTCG now) becomes the seller and sells his shares at Rs. 100 to Mr. C through my terminal. Mr. C gives me a cheque of Rs. 100 for the shares bought from Mr. A and subsequently I pay the sale proceeds in cheque/DD to Mr. A after deducting my brokerage. Subsequently, Mr. A on receipt of the sale proceeds by cheques/DD pays Mr. X, the same proceeds by cheques/ DD pays Mr. X the same amount by cash (No. 2 account), i.e., Rs. 100

and Mr. X pays the same to Mr. C. In this way, Mr. A converts the black money into white and avails of long-term capital gain."

(c)The sale transactions were off-market transactions and the Calcutta Stock Exchange by its letter dated May 26, 2005, has confirmed that quite a few of the transactions carried out by Shri Pradeep Kumar Daga were not borne on the records of the exchange and that the details noted on some of the other contract notes did not match.

(d)There were unexplained cash credits in some of the buyer's bank accounts prior to issuance of cheques to the assessees.

11. *We see no merit in the above contentions. The fact that the assessees in the group have purchased and sold shares of similar companies through the same broker cannot be a ground to hold that the transactions are sham and bogus, especially when documentary evidence was produced to establish the genuineness of the claim.*

12. *From the documents produced before us, which were also in the possession of the Assessing Officer, it is seen that the shares in question were in fact purchased by the assessees on the respective dates and the company has confirmed to have handed over the shares purchased by the assessees. Similarly, the sale of the shares to the respective buyers is also established by producing documentary evidence. It is true that some of the transactions were off-market transactions. However, the purchase and sale price of the shares declared by the assessees were in conformity with the market rates prevailing on the respective dates as is seen from the documents furnished by the assessees. Therefore, the fact that some of the transactions were off-market transactions cannot be a ground to treat the transactions as sham transactions.*

13. *The statement of Pradeep Kumar Daga that the transactions with the Haldiram group were bogus has been demonstrated to be wrong by producing documentary evidence to the effect that the shares sold by the assessees were in*

consonance with the market price. On a perusal of those documentary evidence, the Tribunal has arrived at a finding of fact that the transactions were genuine. Nothing is brought to our notice that the findings recorded by the Tribunal are contrary to the documentary evidence on record.

14. *The Tribunal has further recorded a finding of fact that the cash credits in the bank accounts of some of the buyers of shares cannot be linked to the assessees. Moreover, in the light of the documentary evidence adduced to show that the shares purchased and sold by the assessees were in conformity with the market price, the Tribunal recorded a finding of fact that the cash credits in the buyers' bank accounts cannot be attributed to the assessees. No fault can be found with the above finding recorded by the Tribunal.*

15. *Reliance placed by the counsel for the Revenue on the decision of the apex court in the case of Sumati Dayal [19951 214 ITR 801 is wholly misplaced. In that case, the assessee therein had claimed income from horse races and the finding of fact recorded was that the assessee therein had not participated in races, but purchased winning tickets after the race with the unaccounted money. In the present case, the documentary evidence clearly shows that the transactions were at the rate prevailing in the stock market and there was no question of introducing unaccounted money by the assessees. Thus, the decision relied upon by the counsel for the Revenue is wholly distinguishable on the facts.*

16. *For all the aforesaid reasons, we hold that the decision of the Tribunal is based on findings of fact. No substantial question of law arises from the order of the Tribunal. Accordingly, all these appeals are dismissed. No order as to costs."*

4.6. **CIT vs Mukesh Ratilal Marolia (Bom)ITA No 456 of 2007 dated 07/09/2021.** The relevant paragraphs are reproduced as below:-

"3 The Assessee was carrying on business of manufacturing handkerchiefs as the proprietor of Rumal Manufacturing Company. In the Assessment Year in question the Assessee claimed that he had sold the shares of four companies, namely, M/s Alang Industrial Gases Ltd., Mobile Telecommunication Ltd., M/s Rashel Agrotech Ltd. and M/s. Sentil Agrotech Ltd, which were purchased during the year 1999-2000 and 2000-2001. The entire sale consideration amounting to Rs.1,41,08,484/- was utilised for the purchase of a flat at Colaba, Mumbai and accordingly benefit of section 54E of the Income Tax Act, 1961 was claimed.

4 The Assessing Officer has held that neither the purchase nor sale of shares were genuine and that the amount of Rs.1,41,08,484/- stated to have been received by the Assessee on sale of shares was undisclosed income and accordingly made addition under section 69 of the Income Tax Act, 1961. The Appeal filed by the Assessee was dismissed by CIT (A).

5 On further Appeal, the ITAT by the impugned order allowed the claim of the Assessee by recording that the purchase of shares during the year 1999-2000 and 2000-2001 were duly recorded in the books maintained by the Assessee. The ITAT has recorded a finding that the source of funds for acquisition of the shares was the agricultural income which was duly offered and assessed to tax in those Assessment Years. The Assessee has produced certificates from the aforesaid four companies to the effect that the shares were in-fact transferred to the name of the Assessee. In these circumstances, the decision of the ITAT in holding that the Assessee had purchased shares out of the funds duly disclosed by the Assessee cannot be faulted.

6 Similarly, the sale of the said shares for Rs. 1,41,08,484/- through two Brokers namely, M/s Richmond Securities Pvt. Ltd. and M/s. Scorpio Management Consultants Pvt. Ltd. cannot be disputed, because the fact that the Assessee has received the said amount is not in dispute. It is neither the case of the Revenue that the shares in question are still lying with the Assessee nor it is the case of the

Revenue that the amounts received by the Assessee on sale of the shares is more than what is declared by the Assessee. Though there is some discrepancy in the statement of the Director of M/s. Richmand Securities Pvt. Ltd. regarding the sale transaction, the Tribunal relying on the statement of the employee of M/s. Richmand Securities Pvt. Ltd. held that the sale transaction was genuine.

7 In these circumstances, the decision of the ITAT in holding that the purchase and sale of shares are genuine and therefore, the Assessing Officer was not justified in holding that the amount of Rs. 1,41,08,484/-represented unexplained investment under Section 69 of the Income Tax Act, 1961 cannot be faulted."

4.7. **PCIT vs. Ziauddin A. Siddiquie ITA No. 2012 of 2017 Date 04/03/2012 (BOM)**

The relevant paragraphs are reproduced as below: -

"2. We have considered the impugned order with te assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd. ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal.

4. Mr. Waive placed reliance on a judgment of the Apex Court in ***Principal Commissioner of Income-tax (Central)-! vs. NRA Iron & Steel (P.) Ltd.***[1] but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

6. The appeal is devoid of merits and it is dismissed with no order as to costs."

merit in this Appeal and the same is dismissed with no order as to costs."

4.7. **Yogesh P Thakkar vs DCIT, ITA No.1605/Mum/2021 dated 3/2/2023 (Mum-Trib).** The relevant paragraphs are reproduced as below: -

4.1. The assessee was allotted 2,00,000 shares of M/s. Radford Global Ltd. on 12/02/2013 having a face value of Rs.10/- and a premium of Rs.5/- per share on preferential basis and consideration paid thereon was Rs 30,00,000/-. Subsequently, the shares having face value of Rs.10/- were split into 5 shares having face value of Rs.2/- per share. Post split, the total shares credited into demat account were 1000000 shares. During the year under consideration, the assessee has sold these 1000000 shares in the market. Similarly the assessee has also purchased 50,000 equity shares of Blazon Marble Ltd having face value of Rs.10/- per share on 26/05/2011 in off-market for Rs 62,500/-. Subsequently, the shares having face value of Rs.10/- were split into 5 shares having face value of Rs.2/- per share. Post split, the total shares credited into demat account were 250000 shares. During the current financial year 2013-2014, the assessee sold 97000 shares and the balance 153000 shares remain unsold as on 31/03/2022. For both the shares, the payments for purchase of shares were made by the assessee by account payee cheques out of sources duly disclosed in the books of accounts.

4.2. The assessee furnished the following documents in support of his contentions before the lower authorities :-

a) Complete details of bank accounts held by the assessee together with the bank statements evidencing the payments made for purchase of shares and sale proceeds credited in the bank account for sale of shares.

b) Payments made by account payee cheques for purchase of shares and investment made in shares were duly reflected in the books of accounts of the assessee in the year of purchase. Invoice for purchase of shares was enclosed.

c) Demat statement of the assessee for the relevant periods.

d) Contract notes cum bills raised by the share broker.

e) Securities transaction tax paid details

f) Details of long term capital gains earned by the assessee.

4.3. The ld. AO issued a show cause notice to the assessee wherein he sought to deny the claim of exemption u/s 10(38) of the Act treating the transactions as bogus and merely accommodation entries and also adding some commission on an estimated basis thereon. In response to the said notice, the assessee furnished a detailed written submission vide letter dated 05/12/2017 and gist of those submissions were summarized by the ld. AO as under:-

a. The assessee denies that any operator has approached him directly or indirectly. Securities and Exchange Board of India (SEBI in short) has investigated the allotment of preference shares by Radford Global Ltd, and has not found any adverse evidence/findings relating to the assessee. The shares of the said company were traded on the floor of the stock exchange and all the transactions were in the knowledge of stock exchange.

b. The so-called price rigging in the shares of Blazon Marble Ltd. was never in the knowledge of the assessee The shares of the said company were traded on the floor of the stock exchange and all the transactions were in the knowledge of stock exchange.

c. From the computation of the capital gains in the show cause notice, it is seen that no adverse inference or observation has been made about discrepancy in any figures. The show cause carries no negative comment and is silent on the documents submitted in the course of the assessment proceedings. It implies

that the documents have been perused, examined and the genuineness of the documents is not doubted.

d. Data has been given in the show cause to establish that the increase in the share prices of Blazon Marbles Ltd & Radford Global Ltd was not commensurate with financial results. It is submitted that the shares on the bourses work on market sentiment rather than the financial results. The Stock Exchange is full of many such companies where inspite of weak financial results, the shares hold good prices.

e. None of the people examined by the Investigation Wing have stated the name of the assessee in their depositions or that the investigation has revealed the name of the assessee to be the beneficiary of accommodation entries provided by the operator.

f. The claim of the assessee is well backed by cheque payment reflected in the bank statement, delivery of shares reflected in the Demat Statement and the transaction reflected in the Balance Sheet for the year ended 31.03.2012 & 31.03.2013. The shares were held by the assessee for more than a year before sale transaction was executed.

g. The department was not averse to the purchase transaction as no adverse inference was drawn with respect to the purchases in A.Y. 2012-2013. The return of income the A.Y. 2012- 2013 has attained finality and now the department cannot blow hot and cold where at one end drawing no adverse inference in A.Y. 2012-2013 but during A.Y. 2014-2015 doubting the genuineness of this Long Term Capital Gains and indirectly doubting the genuineness of the purchases itself. The finding of the department is not only illogical but also ill founded.

h. To the best of knowledge of the assessee, trading in the shares of Blazon Marbles Ltd was never suspected nor any penalty action was awarded on company for irregularities of price rigging by SEBI. This is a very crucial aspect where the watch dog does not find any abnormality in price change.

i. SEBI has passed final orders that investigations did not find any adverse evidence / findings in respect of violations of provisions of SEBI (Prohibition of Fraudulent & Unfair Practices relating to security market) Regulations, 2003 in the case of Radford Global Ltd.

j. It is known fact and a practice in general that whenever a person subscribes to an IPO, the investment is not done before perusing any financials. The investment is based purely upon market hear say. The assessee admits of having invested in the company inspite of weak financials but at the same time it needs to be appreciated that share market is known for fetching returns when the stock is weak and price & volume is bleak. It is therefore known as Market of Opportunities.

k. During the course of search action not an inch of paper was found to suggest that the assessee has any unaccounted source of income to buy long term capital gains from accommodation providers. No evidence was found to show that the investment in Blazon Marble Ltd or Radford Global Ltd was bogus or in the nature of accommodation. The search action is the ultimate tool available with the department to discover evidence of unaccounted transaction and unaccounted assets. If in a search action no evidence was found of any wrong doing by an assessee, to bring to tax a genuine transaction by treating it as bogus based on assumptions and surmises will not only be unjust but also unfair.

l. The assessee denies the allegation that the capital gain earned is bogus. The assessee denies involvement of any broker for facilitating bogus long term capital gain shares. The only brokerage paid by assessee is on sale of shares duly documented by broker bills which has been placed on record. No link of the assessee has been established with any person who have engaged in providing LTCG to assessee.

4.3.1. There was an Ad Interim Ex-parte order dated 19/12/2014 passed by SEBI in case of Radford Global Ltd. wherein it was alleged that the LTCG earned by various allottees on preferential basis were not genuine. The assessee"s name being preferential allottee, was also included in the said order vide serial number 57. Accordingly, the said company i.e Radford Global Ltd and the assessee together with various other parties were restrained from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner by SEBI, till their final investigation was completed. However, on completion of final investigation, the SEBI has passed a final order dated 20/09/2017 where it has been held that investigations did not find any adverse evidence/findings in respect of violation of provisions of SEBI (Prohibition of Fraudulent and unfair Practices relating to Securities Market) Regulations, 2003 in respect of 82 persons including the assessee herein and the company Radford Global Ltd. This final order of SEBI dated 20/09/2017 was also placed on record by the assessee before the ld. AO vide letter dated 23/09/2017 making a request not to take any adverse view on the issue of LTCG. 4.3.1. With regard to Blazon Marbles Ltd, SEBI vide its order dated 13.10.2017 had passed an order u/s 15I of SEBI Act read with Rule 5 thereon had levied penalty on certain persons for making some procedural violations and for non-appearance to the summons issued by SEBI. The name of the assessee or its registered share broker is not reflected in the said list.

4.4. The ld. AO while making the assessment u/s.143(3) r.w.s.153A of the Act did not heed to the aforesaid contentions of the assessee and proceeded to treat the sale proceeds of shares amounting to Rs 8,41,04,109/- as unexplained cash credit u/s 68 of the Act by treating the same as an accommodation entry and also added an amount of Rs 50,46,247/- on account of unexplained commission expenditure incurred u/s 69C of the Act at the rate of 6% of sale proceeds of Rs 8,41,04,109/- on the following reasons:-

15. CONCLUSION :-

15.1 The following points summarise that Blazon Marbles Ltd. & Radford Global Ltd. are bogus penny stock companies:

- *The business profile and financials of Blazon Marbles Ltd.ω& Radford Global Ltd. show that the company was not engaged into any substantial activity, esp. when the preferential shares were allotted. It is also seen that the company was not having any future plans which could attract investors from all over India to invest in the company.*
- *The whole process of preferential allotment was a prearranged andω managed process so as to allot preferential shares to beneficiaries of bogus LTCG/STCG.*
- *The reported profits were also not commensurate with the price rise. Theω shares were rigged on the Stock Exchange. The price of Blazon Marbles Ltd. & Radford Global Ltd. has moved in absolute disregard to the general market sentiments.*
- *Various share brokers have confirmed the fact that the shares of Blazonω Marbles Ltd. & Radford Global Ltd. have been used for providing entry of bogus LTCG/STCG.*
- *During this period of price rigging, the volume of the shares traded onω each trading day was very low and on each day just 1-2 trades have been done with a constant rise in the price of the shares which was kept just short of the circuit limit for price rise as per the exchange guidelines.*
- *Various Exit Providers have confirmed that they have purchased theω shares of Blazon Marbles Ltd. & Radford Global Ltd to provide entries of bogus LTCG/STCG.*
- *The Statements on oath of Exit Providers constitutes a strong testimony inω order to establish the manipulation of the said scrip leading to conversion of unaccounted income into bogus LTCG/STCG through accommodation entries by various beneficiaries including the assessee group.*

15.2 Reliance is placed on the recent judgement of the Nagpur Bench of the Hon"ble Bombay High Court in the case of Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain v. Pr. Commissioner of Income Tax-1, Nagpur & Another where the Hon"ble Bombay High Court vide its order dated 10.04.2017 in Income Tax Appeal No. 18 / 2017 observed

that the assessee has not tendered cogent evidence to explain how the shares in an unknown company worth Rs.5 had jumped to Rs.485 in no time and the fantastic sale price was not at all possible as there was no economic or financial basis to justify the price rise. The Hon"ble Bombay High Court held that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain and that the gain has accordingly to be assessed as undisclosed credit u/s 68. Reliance is also paid on the decision of the Mumbai „D" Bench of the ITAT dated 22.03.2017 in ITA No. 6398 / Mum / 2012 in the case of Disha N. Lalwani, Mumbai v. ITO, Ward-23 (2)(2), Mumbai wherein it was held that the mere contention that the monies have come through account payee cheques is at best neutral. In the statement given by Choksi it has been accepted to the practice of taking cash and issuing cheques in the guise of subscription to share capital. The question required a thorough examination and a superficial one. From the facts of the case, one fact is oozing out that merely a paper work was camouflaged by the assessee.

15.3 Thus, based on the above mentioned facts and circumstances, the revenue has sufficient, cogent, tangible, reliable, authenticated proof to show that Long term capital gains booked by assessee in his books were prearranged method to evade taxes and launder money which can be summarized as follows:

a. ***Failure of Assessee to discharge his onus****: assessee has been unable to provide any explanation or rationale behind the preferential/off-market allotment/purchase of the shares of the said penny stock. The assessee has not been able to prove the unusual rise and fall of share prices to be natural and based on the market forces. It is evident that such share transactions were closed circuit transactions and clearly structured one.*

b. ***Ignorance of the assessee about shares and penny stock companies****: Assessee has failed to show of having any knowledge about the shares traded and having any knowledge about the fundamentals of the penny stock companies. Assessee is unable to satisfactorily explain the reasoning behind off-market acquisition of the shares of the said bogus company which lack any fundamentals, which he has never visited, whose promoters/directors she has never met, whose meetings she has not attended and whose business activities also are not known to him.*

c. ***Financial analysis of the penny stock companies****: The net worth of the penny stock company is negligible. Even though the net worth of the company and the business activity of the company is negligible the share prices have been artificially rigged to unusual high. No genuine motive based on which assessee had decided to invest in the said penny stock which lacked any financial fundamentals.*

d. ***Cash trail in the accounts of the entry providers****: The investigations in the fund flow analysed in the accounts of the entry providers have established that the cash has been routed from various accounts to provide accommodations to assessees.*

e. Arranged transactions: The transactions entered by the assessee involve the series of preconceived steps, the performance of each of which is depending on the others being carried out. The true nature of such share transactions lacked commercial contents, being artificially structured transactions, entered into with the sole intent, to evade taxes.

15.4 Thus, it is beyond the possibilities of genuine transactions that the shares of Blazon Marbles Ltd. & Radford Global Ltd. were purchased by the assessee as a genuine investment decision. The price rigging was achieved by the bogus entry operators through manipulation.

15.5 ***Commission payment for accommodation entry of bogus LTCG***

15.5.1 As it has been discussed in detail in this assessment order as to how the assessee invested in nondescript listed companies having such meager financials by preferential allotment and made huge capital gains in complete disregard of market movement, it is clear that the assessee brought back his own unaccounted income into his books of account in the form of bogus capital gains. Moreover, the statements of various accommodation entry providers recorded by the Investigation Wing further lend credence to the fact that the assessee took accommodation entries. Now since it has been established that accommodation entries were taken, it is only logical to assume that the assessee must have also paid commission to the accommodation entry providers for arranging the accommodation entry of bogus LTCG. As it has been admitted on oath by various accommodation entry providers that for accommodation entries in the nature of LTCG they charge commission ranging from 4% 6%, thus 6% of the sale consideration is being taken as the unexplained expenditure incurred by the assessee for arranging the accommodation entries.

15.5.2 In view of the above facts it is crystal clear that the assessee utilized his unaccounted cash to obtain the above said bogus LTCG. Since it has been admitted by various accommodation entry providers that for providing accommodation entries in the nature of bogus LTCG they charge a commission ranging from 4% to 6%, it is logical that the assessee also paid commission in cash to the accommodation entry providers. In light of the above facts and evidences, the said alleged LTCG and claim of exemption u/s 10(38) is hereby rejected."

15.6.1.In the light of the facts & discussion in the preceding paragraphs, I am of the opinion that the transactions of purchase & sale of 97000 shares of Blazon Marble Ltd & 1000000 shares of Radford Global Ltd leading to generation of exempt long term capital gains are not genuine transactions. The transactions in the shares of Blazon Marble Ltd & Radford Global Ltd were purely operator driven where the share price was pushed up to a

level by the operator where the beneficiary who bought the shares at a nominal price sold it to a dummy paper company of the operator and generated huge exempt long term capital gains for the beneficiary. The assessee has converted his undisclosed income into disclosed tax exempt income during the previous year relevant to the assessment year 2014-2015. Hence the entire amount of Rs. 8,41,04,109/- purported to have been received by the assessee on sale of 97000 shares of Blazon Marble Ltd & 1000000 shares of Radford Global Ltd is treated as unexplained cash credits and charged to tax u/s 68 as the income of the previous year relevant to the assessment year 2014-2015. Alternatively, this amount is also chargeable to tax as the undisclosed income or income from undisclosed sources of the assessee for the previous year relevant to the assessment year 2014-2015. Penalty proceedings u/s 271(1)(c) are initiated as the assessee has furnished inaccurate particulars of his income.

15.6.2 There is a cost attached to getting undisclosed income converted into disclosed income without attracting penalty & prosecution and a much higher cost to convert undisclosed income into disclosed tax exempt income. As per the prevailing rate of conversion, it is held that the assesseee has incurred an commission expenditure of 6% of the amount purported to have been received on sale of shares of Blazon Marble Ltd. & Radford Global Ltd. to get the accommodation entries of bogus long term capital gains. This commission payment has been made out of his undisclosed income and, hence, an amount of Rs. 50,46,247/- (6% of Rs. 8,41,04,109/-) is taxed as unexplained expenditure u/s 69C of the Income Tax Act, 1961. Alternatively, this amount also represents the undisclosed income or income from undisclosed sources of the assessee for the previous year relevant to the assessment year 2014- 2015."

4.5. ***The ld. CIT(A) confirmed the addition of unexplained cash credit u/s.68 of the Act of Rs 8,41,04,109/- giving finding as under****:-*

7.34. In the present case, it is noted that there are sufficient evidences of the scripts of these company having been manipulated during the period during which the assessee has held the shares of these companies. Further, these shares have been offloaded to exit providers and not genuine investors. In light of the fact that the transactions are managed through synchronised trading and are not genuine transactions even though conducted on the Stock Exchange, the gain made by the assessee is required to be taken as bogus Long Term Capital Gain. 7.35. In light of the above discussion, the claim by the assessee that the addition has been made merely on presumption and without any evidence is not found acceptable. The reliance placed by the AO on the decisions in case of SumatiDayal (supra) and Durga Prasad More 82 ITR 540 (SC)is found correct. In Sumati Dayal, the Hon"ble Supreme Court has discounted the existence of well-maintained documentation as against the normal human behaviour and preponderance of probability in certain case. The

appellant"s case indeed falls within the same parameters. Instead of explaining the plausibility of the transaction, the appellant has merely harped on the technicalities and his impeccable documentation. In light of the improbable nature of transaction of the appellant, the AO has correctly rejected the plea of correct documentation to hold that the appellant has failed to meet the onus cast u/s 68 and that the credits in the books remain unexplained. He has rightly treated the amount as the income of the appellant under section 68 of the Act.

7.36. In light of the above discussion, it is held that the amounts credited in the books of the assessee as long-term capital gains during the year arising out of the sale of scripts M/s. Blazon Marbles Ltd. and M/s. Radford Global Ltd. remain unexplained and the AO has rightly treated the amount as unexplained cash credit in the books of the assessee. The ground no. 3 is decided against the assessee and is dismissed."

4.5.1. The ld. CIT(A) confirmed the addition of unexplained commission expenses u/s.69C of the Act of Rs 50,46,247/- giving finding as under:-

> *"8.4. While dealing with ground no. 3 of the appeal, it has been held that the assessee has availed of accommodation entry from such entry providers in the form of tax-exempt long-term capital gains. It is natural that such entries are provided for a commission. The AO has estimated a rate of 6% which does not appear to be excessive or unreasonable. As such, I find no reason to interfere with the addition made by the AO on this issue. Ground no. 4 raised by the assessee stands dismissed."*

5. We have heard the rival submissions and perused the materials available on record. We find that the ld. AO had relied on the findings of the investigation wing of Kolkata and an interim order dated 19/12/2014 passed by SEBI wherein assessee and the company Radford Global Ltd were prevented from accessing the securities market either directly or indirectly in any manner whatsoever, till the completion of final investigation by SEBI. Similarly an order dated 13/10/2017 u/s 15I of SEBI Act, 1992 was passed by SEBI levying penalties on certain persons for procedural violations and for non-appearance to the summons issued by SEBI. We find that assessee is not reflected in the said list of persons on whom penalties were levied. The main grievance of the ld. AO is that rise in share price of Radford Global Ltd and Blazon Marbles Ltd is devoid of commercial principle or market factors ; that transactions are based on mutual connivance on part of assessee and operators ; that assessee resorted to preconceived scheme to procure bogus long term capital gains and hence the transactions are not bonafide ; that SEBI also passed an interim order in the case of Radford Global

Ltd holding that share prices were determined artificially by manipulations ; that these are close circuit transactions and are pre-structured; that assessee had failed to discharge his onus cast on him ; that net worth of Radford Global Ltd and Blazon Marbles Ltd is negligible and that its share prices were artificially rigged ; that investigations prove that cash is routed through various accounts to provide these bogus long term capital gain entries. The ld. AO by making these observations proceeded to treat the sale proceeds of the shares as unexplained cash credit u/s 68 of the Act. Since the receipt of sale proceeds was treated as bogus, the ld. AO also proceeded to add estimated commission @ 2% for arranging the said bogus transaction as unexplained expenditure u/s 69C of the Act.

5.1. At the outset, we find that the documentary evidences submitted by the assessee were found to be genuine and no adverse inferences were drawn by the revenue on the same. The transactions were carried out by the assessee in the secondary market through a registered share broker at the prevailing market prices. Payments were received by the assessee by account payee cheques from the stock exchange through the registered broker. Amounts received on sale of shares were duly subjected to levy of Securities Transaction Tax (STT) at the applicable rates.

5.2. We find that no enquiries were carried out by the revenue either on the broker or with the stock exchange with regard to transactions carried out by the assessee. The revenue had merely relied on the Kolkata investigation report without linking the assessee with the various allegations leveled in the said investigation report.

5.3. We find that the revenue had not proved with any cogent evidence on record that assessee was involved in converting his unaccounted income into exempt long term capital gains by conniving with the so called entry operators and brokers who were involved in artificial price rigging of shares. No evidence is brought on record to prove that assessee was directly involved in price manipulation of the shares dealt by him in connivance with the brokers and entry operators.

5.4. It is not in dispute that the assessee had made purchase of shares in off-market either through preferential allotment of shares by the concerned company or from purchasing from an existing shareholder, as the case may be. Now the next issue that arises for our consideration is as to whether an off market purchase of shares could be taken as a ground to declare the entire transaction as sham. In our considered opinion, the transactions could not be treated as sham

merely because they are done in off-market, if the assessee had discharged his onus of proving the fact that shares purchased by him were dematerialized in the Demat account and held by the assessee till the same were sold from the Demat account of the assessee. The transaction of holding the shares are reflected in Demat account and sale of shares are through Demat account. More so, when there is no dispute regarding the purchase price and sale price of shares. Our view is further fortified by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Jamnadevi Agarwal reported in 328 ITR 656 (Bom) wherein it was held that –

> *From the documents produced before the Court it was seen that the shares in question were, in fact, purchased by the assessees on the respective dates and the company had confirmed to have handed over the shares purchased by the assessees. Similarly, the sale of the shares of the respective buyer was also established by producing documentary evidence. It is true that some of the transactions were off-market transactions. However, the purchase and sale price of the shares declared by the assessees were in conformity with the market rates prevailing on the respective dates, as was seen from the documents furnished by the assessees. Therefore, the fact that some of the transactions were off-market transactions could not be a ground to treat the transactions as sham transactions.*
>
> *On a perusal of those documentary evidences, the Tribunal had arrived at a finding of fact that the transactions were genuine. Nothing was brought to notice of the Court that the findings recorded by the Tribunal were contrary to the documentary evidences on record. Therefore, no substantial question of law arose from the order of the Tribunal.*

5.5. We find that independent enquiries were conducted by SEBI and SEBI had passed an interim order dated 19/12/2014 in the case of Radford Global Ltd , wherein the assessee and Radford Global Ltd were restrained from accessing the securities market, either directly or indirectly in any manner whatsoever, till the final investigation by SEBI is completed. After completion of the final investigation, SEBI had passed a final order dated 20/09/2017 in the case of Radford Global Ltd clearly acquitting 82 persons which admittedly included the assessee and the company Radford Global Ltd on the plea that they were not involved in artificial price rigging of shares. In the said order, SEBI had listed out the names and PAN of various persons who were involved in artificial price rigging of shares and the list of beneficiaries. Hence even SEBI does not allege any involvement of the assessee herein with the manipulation of share prices. The

relevant operative portion of the SEBI order dated 20/09/2017 is reproduced hereunder:-

> *10. Considering the fact that there are no adverse findings against the aforementioned 82 entities with respect to their role in the manipulation of the scrip of Radford, I am of the considered view that the directions issued against them vide interim orders dated December 19, 2014 and November 9, 2015 which were confirmed vide Orders dated October 12, 2015 , March 18, 2016 and August 26, 2016 are liable to be revoked.*
>
> *11. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4) and 11B of the SEBI Act, hereby revoke the Confirmatory Orders dated October 12, 2015, March 18, 2016 and August 26, 2016 (qua aforesaid 82 entities (paragraph 9 above) with immediate effect.*
>
> *12. The revocation of the directions issued vide the abovementioned orders (at paragraph 11) is only in respect of the entities mentioned at paragraph 9 of this order in the matter of Radford Global Limited. As regards remaining entities in the scrip of Radford, violations under SEBI Act, SCRA, PFUTP Regulations, etc., were observed and SEBI shall continue its proceedings against them. Hence, the directions issued vide Orders dated October 12, 2015, March 18, 2016 and August 26, 2016 against the remaining 24 entities shall continue. This revocation order is without prejudice to any other action SEBI may initiate as per law .*

5.5.1. We find that the name of the assessee is reflected in Serial Number 26 which is part of 82 entities acquitted by SEBI, on whom clean chit has been given. Further Radford Global Limited is reflected in Serial Number 1 which is also part of 82 entities acquitted by SEBI, on whom clean chit has been given.

5.5.2. With regard to Blazon Marbles Ltd, we find that though an order was passed u/s 15I of SEBI Act, 1992 by SEBI on 13/10/2017, the same was passed only for levying penalties on certain persons for making procedural violations and for non-appearance to the summons issued by SEBI. The said order of SEBI does not allege any involvement of the assessee herein with the manipulation of share prices.

5.6. We find that the assessee had held the shares in the instant case for 33 months in the case of Blazon Marbles Ltd and for 15 to 17 months in the case of Radford Global Ltd and then sold the shares in the open market at prevailing market prices. From the above order of SEBI , it is very clear that

SEBI, based on its investigations and replies given by various parties, had ordered either to take action against certain parties or had acquitted certain parties on the ground that they are not involved in the price manipulation. In any case, the assessee"s name or the broker, through whom assessee transacted had not figured in the said list either in the restraint list or in the acquitted list. Hence it could be safely concluded that the assessee herein is merely a gullible investor, who had resorted to make investment in the shares of Radford Global Ltd and Blazon Marbles Ltd based on market information and had sold the shares in the secondary market in prevailing market prices. It is not the case of the revenue that assessee herein had directly sold the shares in the secondary market with clear knowledge of the name of the person to whom the said shares were sold. In secondary market transactions, the buyer and seller are not supposed to know each other unless it is a case of "block deals". Same is the case of the assessee herein. Admittedly, the assessee"s case does not fall under the category of "block deals".

5.7. We find that one of the findings of ld. CIT(A) in page 70 para 7.23 is that assessee does not have elaborate experience in share trading and that the isolated investment made by the assessee is in Radford Global Ltd and Blazon Marble Ltd. This is factually incorrect as assessee has been regular in making investments in various scrips which is evident from the demat statement furnished on record by the assessee. Infact the assessee had duly furnished the demat statement for the period 01/04/2012 to 31/03/2014 and also the holding statement as on 31/03/2022 before us. From the perusal of the same, we find that the assessee had been making investments in various scrips on long term basis. Hence the observation made by the ld. CIT(A) in this regard is dismissed as factually incorrect. Moreover, the assessee in his statement recorded u/s 132(4) of the Act had stated that he has been investing in share market since financial year 2004-05 in IPOs and also on preferential allotment of shares of particular companies based on his independent market study. Infact the assessee also gave details of investments made by him through IPOs and through preferential allotment in various companies in the statement u/s 132(4) of the Act itself. The assessee also explained the complete basis of he deciding to make investment in Radford Global Ltd in his statement u/s 132(4) of the Act. It is pertinent to note that no questions were even posed by the investigation wing at the time of search proceedings and also during recording of statement u/s 132(4) of the Act with regard to shares invested by the assessee in Blazon Marbles Ltd.

5.8. Hence the entire addition has been made merely by placing reliance on the Kolkata Investigation Wing report which are more general in nature and does not

implicate the assessee herein in any manner whatsoever. We are unable to persuade ourselves to accept to the contentions of the ld. DR that Kolkata Investigation Wing had conducted a detailed enquiry with regard to the scrip dealt by the assessee herein and hence whomsoever had dealt in this scrip, would only result in bogus claim of long term capital gain exemption or bogus claim of short term capital loss. Merely because a particular scrip is identified as a penny stock by the income tax department, it does not mean all the transactions carried out in that scrip would be bogus. So many investors enter the capital market just to make it a chance by investing their surplus monies. They also end up with making investment in certain scrips (read penny stocks) based on market information and try to exit at an appropriate time the moment they make their profits. In this process, they also burn their fingers by incurring huge losses without knowing the fact that the particular scrip invested is operated by certain interested parties with an ulterior motive and once their motives are achieved, the price falls like pack of cards and eventually make the gullible investors incur huge losses. In this background, the only logical recourse would be to place reliance on the orders passed by SEBI pointing out the malpractices by certain parties and taking action against them. Since assessee or his broker is not one of the parties who had been proceeded against by SEBI, the transaction carried out by the assessee cannot be termed as bogus. We find that the revenue had primarily relied SEBI interim order dated 19/12/2014 passed in the case of Radford Global Ltd. This SEBI Interim order is subsequently revoked on 20/09/2017 duly acquitting the assessee as stated supra. Before completion of assessment, the assessee had furnished the SEBI final order dated 20/09/2017 duly acquitting the assessee before the ld.AO, which was completely ignored by the ld. AO. We find that SEBI vide its final order dated 20/09/2017 acquitting certain persons including the assessee herein together with the company Radford Global Ltd was duly brought to the notice of the ld. AO which had been ignored by the ld. AO while framing the assessment. This aspect was subject matter of adjudication by the Co-ordinate Bench of this Tribunal in the case of Sunita Chaudhry vs ITO in ITA No. 143/Mum/2022 for A.Y. 2013-14 dated 13/10/2022 wherein it held as under:-

> *12. We find that despite the aforesaid interim order dated 06/09/2017 passed by SEBI being specifically mentioned by the assessee in her objections before the AO as well as in her submission before the learned CIT(A), the impugned addition was sustained. Since, the very transaction of the assessee in the scrips of First Financial Services Ltd, which resulted in long term capital gains to the assessee, has been found to be not violative of provisions of relevant Act and Rules by the SEBI upon necessary investigation and even the initial restraint order was revoked vide interim*

order dated 06/09/2017 , therefore, we find no basis in sustaining the impugned addition made by the AO by treating the said transaction to be a penny stock transaction resulting in bogus long term capital gains. Accordingly, we direct the AO to delete the impugned addition of Rs 84,45,050. Further, since the other addition of Rs 22,712 by AO is also consequent to the aforesaid impugned addition, therefore, the said addition is also directed to be deleted.

5.9. We hold that the entire addition has been made based on mere surmise, suspicion and conjecture and by making baseless allegations against the assessee herein. Now another issue that arises is as to whether the ld. AO merely on the basis of Kolkata investigation wing report could come to a conclusion that the transactions carried out by the assessee as bogus. In our considered opinion, the ld. AO is expected to conduct independent verification of the matter before reaching to the conclusion that the transactions of the assessee are bogus. More importantly, it is bounden duty of the ld. AO to prove that the evidences furnished by the assessee to support the purchase and sale of shares as bogus. This view of ours is further fortified by the decision of Hon'ble Delhi High Court in the case of PCIT vs Laxman Industrial Resources Ltd in ITA No. 169/2017 dated 14/03/2017. It is well settled that the suspicion however strong could not partake the character of legal evidence. Hence the greater onus is casted on the revenue to corroborate the impugned addition by controverting the documentary evidences furnished by the assessee and by bringing on record cogent material to sustain the addition. No evidence has been brought on record to establish any link between the assessee herein with the entry operators who were allegedly involved in price rigging of shares artificially or any other person named in the assessment order being involved in any price rigging and also the exit provider. This onus is admittedly not discharged by the revenue in the instant case.

5.10. We find that the Co-ordinate Bench of this Tribunal in the case of Mukesh Ratilal Marolia vs Additional CIT reported in 6 SOT 247 (Mum ITAT) dated 15/12/2005 had held that personal knowledge and excitement on events should not lead the ld. AO to a state of affairs where salient evidences are overlooked. When every transaction has been accounted, documented and supported, it would be very difficult to brush aside the contentions of the assessee that he had purchased shares and had sold shares and ultimately purchased a flat utilizing the sale proceeds of those shares and therefore, the co-ordinate bench chose to delete the impugned additions. We find that this tribunal decision was approved by the Hon"ble Jurisdictional High Court in ITA No. 456 of 2007 dated 07/09/2011. It is pertinent to note that the Special Leave Petition preferred by the Revenue against

this decision before the Hon"ble Supreme Court has been dismissed vide SLP No. 20146 of 2012 dated 27/01/2014.

5.11. Further we find that the Hon"ble Jurisdictional High Court in the case of CIT vs Shyam S Pawar reported in 54 taxmann.com 108 (Bom), it was held that where Demat account and contract note showed details of share transaction and the ld.AO had not proved the said transaction as bogus, the long term capital gain earned on said transaction could not be treated as unaccounted income u/s 68 of the Act. The relevant operative portion of the said judgement is reproduced below:-

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Sureshkumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny. It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies. The Tribunal referred to the entire material and found that the investigation stopped at a particular

point and was not carried forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

7. As a result of the above discussion, we do not find any substance in the contention of Mr.Sureshkumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

8. Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.

5.12. We find that the ld. CIT(A) relied on the decision of Hon''ble Delhi High Court in the case of Suman Poddar vs ITO reported in 112 taxmann.com 329 dated 17/09/2019 where the decision was rendered in favour of the revenue. The Special Leave Petition filed by the assessee before the Hon'ble Supreme Court in this case was dismissed by the Hon''ble Apex Court vide its order dated 22/11/2019. But we find that there is yet another decision of Hon''ble Delhi High Court in the case of PCIT vs Krishna Devi and others in ITA 125/2020 ; 130 & 131/2020 dated 15/01/2021 reported in 126 taxmann.com 80 (Delhi HC) wherein similar issue of penny stock vis a vis long term capital gain exemption u/s 10(38) of the Act was subject matter of adjudication, in favour of the assessee. This decision rendered in the case of Smt Krishna Devi considers all the propositions laid out hereinabove and are squarely applicable to the facts before us. Infact the Hon'ble High Court duly endorses the elaborate findings given by the Delhi Tribunal on various facets of the issue. Moreover, in this decision, the Hon'ble Delhi High Court duly considered the decision of Suman Poddar referred to supra and also the decision of Hon'ble Supreme Court in the case of Sumati Dayal which was heavily relied upon by the ld. DR before us also herein. The relevant operative portion of the decision of Hon'ble Delhi High Court in the case of Smt Krishna Devi is reproduced hereunder:

> *10. We have heard Mr. Hossain at length and given our thoughtful consideration to his content*
>
> *11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under section 10(38), in a preplanned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income-tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the*

report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.

12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human

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

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

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

15. Accordingly, the present appeals are dismissed. (emphasis supplied by us)

5.13. We find that the ld. CIT(A) relied on the decision of Nagpur Bench of Hon'ble Jurisdictional High Court in the case of Sanjay Bimalchand Jain vide order dated 10/04/2017 reported in 89 taxmann.com 196 which is against assessee. In this regard, we find that in the facts of Sanjay Bimalchand Jain, that assessee had indulged in dubious share transactions and the broker through which shares were sold did not respond to the notices issued by the ld. AO. However, in the case of the assessee herein, all the materials in support of the share transactions were duly placed on record and are in order and the ld. AO had not drawn any adverse inference on the said documents to treat them as false or fictitious. Hence this crucial distinguishing fact of Sanjay Bimalchand Jain makes it inapplicable to the facts of the case before us. Moreover, we find that the Hon'ble Jurisdictional High Court in the recent case of PCIT vs Ziauddin A

Siddique in Income Tax Appeal No. 2012 of 2017 dated 04/03/2022 had held as under:-

> *2. We have considered the impugned order with the assistance of the learned Counsels and we have no reason to interfere. There is a finding of fact by the Tribunal that the transaction of purchase and sale of the shares of the alleged penny stock of shares of Ramakrishna Fincap Ltd ("RFL") is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax ("STT") has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against assessee that it has participated in any price rigging in the market on the shares of RFL.*
>
> *3. Therefore we find nothing perverse in the order of the Tribunal.*
>
> *4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income Tax (Central)- 1 vs. NRA Iron & Steel (P) Ltd (2019) 103 taxmann.com 48 (SC) but that does not help the revenue in as much as the facts in that case were entirely different.*
>
> *5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.*
>
> *6. The appeal is devoid of merits and it is dismissed with no order as to costs.*

5.14. We find that the ld. DR had relied on the decision of Hon'ble Calcutta High Court in the case of PCIT vs Swati Bajaj reported in 139 taxmann.com 352 which is an elaborate decision rendered after considering various decisions of various High Courts on the subject. In the said decision, it was held that assessee had to establish the genuineness of rise of price of shares within a short period of time that too when general market trend was recessive. But we find that when there are several decisions of Hon'ble Jurisdictional High Court as stated supra are already in favour of the assessee, the same would prevail over this tribunal and this tribunal need not take cognizance of the Hon'ble Non-Jurisdictional High Court. The law is very well settled by the Hon'ble Supreme Court in the case of Union of India vs Kamalakshi Finance Corporation Ltd reported in 55 ELT 43 (1991) that the decision of Hon'ble Jurisdictional High Court would have higher precedence value than the

decision of Hon'ble Non-Jurisdictional High Court on the Tribunal. The Hon'ble Supreme Court emphasized therein that the orders of the Tribunal should be followed by the authorities falling within its jurisdiction so that judicial discipline would be maintained in order to give effect to orders of the higher appellate authorities. The Hon'ble Apex Court has observed that utmost regard must be had by the adjudicating authorities and the appellate authorities to the requirement of judicial discipline. Hence we deem it fit and appropriate to follow the decisions of Hon'ble Jurisdictional High Court referred supra wherein the impugned issue is decided in favour of the assessee. Moreover, when there are two conflicting decisions of various High Courts, the Hon'ble Supreme Court in the case of Vegetable Products reported in 88 ITR 192 (SC) had held that Construction that is favorable to the assessee should be adopted. Hence by following this principle, the decision of Hon'ble Calcutta High Court and other decisions that are rendered against the assessee, need not be followed by this Court in the peculiar facts and circumstances of the instant case.

5.15. In any case, we find that the assessee had duly proved the nature and source of credit representing sale proceeds of shares of Radford Global Ltd and Blazon Marbles Ltd within the meaning of section 68 of the Act. The sale proceeds have been received by the assessee from the stock exchange through the SEBI registered share broker by account payee cheques through regular banking channels. Hence the three ingredients of section 68 of the Act are duly fulfilled by the assessee in the instant case. Hence there is no question of making any addition as unexplained cash credit u/s 68 of the Act in the instant case. 5.16. Considering the totality of the facts and circumstances of the instant case and respectfully following the judicial precedents relied upon hereinabove, we are not inclined to accept to the stand of the ld. CIT(A) in sustaining the impugned additions on account of denial of exemption for long term capital gains u/s 10(38) of the Act and estimated commission @ 6% against the same. Accordingly, ground nos. 1 & 2 raised by the assessee are allowed. 6. The Ground No. 3 raised by the assessee is challenging the levy of interest u/s 234B and 234C of the Act, which would be consequential in nature and does not require any specific adjudication. 7. The Ground No. 4 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c) of the Act, which would be premature for adjudication at this stage. Hence dismissed. 8. In the result , the appeal of the assessee Shri Yogesh Popatlal Thakkar in ITA No. 1605/Mum/2021 for A.Y. 2014-15 is partlyallowed." .

5. The Ld.DR vehemently argued and fully relied on the order of revenue authorities. The Ld. DR invited our attention in appeal order, page 23, paragraph 6.2.7 which is reproduced as below: -

> ***"6.2.7*** *Appellant does have the documents such as contract notes; undertaking share sale through the stock exchange, routing it through the banking channel and Demat accounts to indicate that the transaction is completely genuine. However, when ones looks behind the surface, it is seen that the concerned share script which made the appellant wealthier by 2.55 crores on her investment of 5 lakh by giving her 2.5 crores in return was in fact a completely worthless stock on which no prudent investor would spent even a single paise. Even the purchase of the share was an off-market transaction with appellant at Mumbai purchasing the shares directly from Paridhi Properties Ltd. which was managed by entry operators at Kolkata."*

6. We heard the rival submissions and considered the documents available in the record. The reopening was initiated only on the basis of information from the Investigation Department. The Directors of the company were duly verified by the Revenue authority. The statements are recorded. But the assessee was not able to get a link of those persons related to sale of shares. The Ld. AR submitted all relevant documents, i.e. the register, bank statement, demat account, bill copies before the authorities. But the veracity of the document has never been in question. We respectfully relied on the order of Hon'ble Bombay High Court in the case of **Shyam R Pawar** (supra) and **Smt. Jamana Devi Agarwal** (supra). During the appellate proceedings, Ld.CIT(A) relied on the order of Hon'ble Calcutta High Court in the case of **Pr.CIT-V, Kolkata Vs. Swati Bajaj 139 taxmann.com 352 (Cal)**. But, on the other hand, the Ld.AR respectfully relied on

the order of the co-ordinate bench of ITAT, D- Bench, Mumbai in the case of **DCIT Central Circle- 6(2 vs Shri Dilip B. Jiwrajka, ITA No.2349/Mum/2021** date of pronouncement 29/11/2022. The findings are as follows: -

51. Apart from the above, we have also taken suo-motto judicial notice of the judgment rendered by the Hon'ble Calcutta High Court in the case of Pr. CIT Vs Swati Bajaj (288 Taxman 403). Having carefully perused the same, it is noted that peculiar facts were involved before the Hon'ble Court wherein eighty-nine different appeals of different assessee's were disposed off by the Tribunal in a single consolidated order without taking cognizance of the specific facts involved in each case (appeals preferred by different assessee's). The relevant observations made by the Hon'ble High Court is as follows:

> *"40. Before we examine the contentions, we are tempted to point out that the exercise done by the tribunal was a bit perfunctory. There is absolutely no discussion of the factual position in any of the 89 appeals, the exception is in paragraph 4 with regard to the certain facts of the assessees case (SwatiBajaj). We are not very appreciative of the manner in which the bunch of appeals have been disposed of. The cardinal principles which courts and tribunal have followed consistently is that each assessment year is an individual unit and unless and until it is shown that there are distinguishing feature in a particular assessment year, the decision taken for the earlier years are to be followed to ensure consistency. While doing so the Courts/Tribunals are required to examine the facts and render a finding as to why the decision in the earlier assessment years should be adopted or not."*

52. Apart from the above, the Hon'ble Court noted that the assessee had never mentioned before the AO that, he wanted the copy of investigation

report or the statements of the brokers/entry operators and therefore the assessee's plea regarding non-availability of relevant material or denial of cross-examination claimed was rejected. The relevant observation of the Hon'ble High Court is as under:

> *"…Nothing prevented the assessee from mentioning that unless and until the report is furnished and the statements are provided, they would not in a position to take part in the enquiry which is being conducted by the assessing officer in scrutiny assessment under Section 143(3) of the Act."*

53. In the instant case, a specific request was made for a copy of the investigation report as well as copies of statements recorded of different persons. The assessee is noted to have rebutted whatever details were provided by the AO and had sought cross-examination as well. Hence, the facts involved in the present case are noted to be distinguishable from the above case. Further, in respect of the circumstantial evidences the Hon'ble Calcutta High Court has not disturbed the settled position of law that circumstantial evidences can be looked into only when direct evidences are not available (Para 69).In the instant case, direct irrefutable evidences were made available to the AO and, therefore, ignoring the direct evidences and jumping to circumstantial evidences is not justified even if one refers to the decision of Hon'ble Calcutta High Court. Moreover, as noted by us earlier, this issue at hand is squarely covered by the binding judgments of the Hon'ble jurisdictional High Court, in favour of the assessee, and, therefore following the judicial discipline, the order of the Ld. CIT(A) does not require any interference since we have the benefit of guidance on this subject by the Hon"ble jurisdictional High Court, which is binding upon us."

There is no nexus of price rigged by the assessee himself. The money trail of the assessee and the broker is not in evidence. The entire addition was made on report of investigation wing. The evidence which is supplied by the assessee is duly bypassed and the ld. AO is only accepted the indirect evidence in the form of repost of the Investigation wind. We relied on order of ITAT Jaipur in **Purushotam Soni** (supra) and **Pramod Jain** (supra).

In the impugned orders, the theory propounded by the ld. AO suggests larges cale generation & investment of unaccounted monies took place, but even after conducting an invasive search action, no evidence to support such addition was unearthed. As per the ld. AO, the assessee had earned & routed unrecorded income. If that were so, it would have certainly reflected in the investigated documents. The documents in the form of undisclosed sales or bogus expenses etc. The AO has however not been able to bring on record any material or evidence unearthed during search/ investigation which would reveal as to from which income earning activity did the assessee derive such unaccounted monies to support his theory that he had routed such unaccounted monies in the guise of bogus capital gains. The addition was fully dependent on indirect evidence and statement of different persons. The relevant documents in support of claims of transactions are submitted by the assessee was never been rejected by the revenue. We respectfully relied on the orders of Hon'ble Jurisdictional High Court, Mukesh **Ratilal Marolia** (supra) and **Ziauddin A. Siddiquie** (supra). The view was taken in favour of assessee by the Coordinate bench of the ITAT Mumbai in the case of **Yogesh P Thakkar**(supra) cannot be circumvented.

In our considered view, we set aside the appellate order. The ground of appeal of the assessee is succeeded. The addition amounting to Rs.2,54,98,050/- U/s 68 & amounting to Rs. 7,50,772/- u/s 69C are quashed.

7. In the result, appeal of the assessee **ITA No.4271/Mum/2023** is allowed.

Order pronounced in the open court on 30th day of May, 2024.

Sd/- sd/-

(B. R. BASKARAN) (ANIKESH BANERJEE)
ACCOUNTANT MEMBER JUDICIAL MEMBER
Mumbai,दिनांक/Dated: 30/05/2024
Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**