

**आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI**  
BEFORE SRI RAJESH KUMAR, AM AND SRI RAM LAL NEGI, JM

**आयकर अपील सं./ ITA No. 5793/Mum/2019**

(निर्धारण वर्ष / Assessment Year 2015-16)

Shri Amit Mafatlal Shah 78/80 Gora Gandhi Building, CP Tank Road, C.P. Tank Mumbai-400 004	बनाम/ Vs.	The Asst. Commissioner of Income Tax, Circle 19(1), Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABPS5009A		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Vimal Punmiya, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Michael Jerald, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	25.02.2020
घोषणा की तारीख / <b>Date of pronouncement:</b>	20.04.2020

**आदेश / ORDER**

राजेश कुमार, लेखा सदस्य /  
PER RAJESH KUMAR, AM:

This is appeal by the assessee directed against the order of learned CIT(A) pertaining to Assessment Year 2015-16.

2. The ground raised by the assessee are as under

- On the facts and in the circumstances of the case and in law the Ld-CIT(A) erred in confirming order made under section 143(3) of the Act by the Ld. AO which is illegal , bad in law, ultra vires and without providing opportunity of cross examination , without appreciating the facts, submission and evidences in their proper perspective, without providing copies of material used against the appellant is liable to be annulled.*
- On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming total sales consideration of Rs. 3,43,62,880/- as unexplained cash credit u/s 68 of the Act and rejecting genuine Long*



*term capital gain of Rs. 3,32,77,358/- and Rs.9,30,375/- cost of acquisition of the shares sold.*

- 3. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in confirming commission paid of Rs.6,87,257/- by treating it as unexplained expenditure under sec 69C of the Income Tax Act, 1961.*
- 4. The Ld.CIT(A) erred in confirming the charging of interest under section 234A, 234B, 234C and 234D of the Income Tax Act, 1961.*
- 5. The Ld.CIT(A) erred in confirming the initiation of the penalty proceeding under section 274 r.w.s. 271(1)(c) of the Income Tax Act, 1961.*
- 6. The Assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.*

3. The assessee has raised two effective issues in the various grounds of appeal. The first issue which of legal nature is that the assessee was not provided the cross examination of those parties who gave statements against the assessee and also that materials used against the assessee in framing the assessment order were not provided to the assessee. The second effective issue raised by the assessee is on merit and is against the order of CIT(A) confirming the addition of Rs.3,43,62,880/- has made by the Assessing Officer as unexplained cash credit under section 68 of the Act by rejecting the long term capital gain of Rs.3,32,77,358/- and cost of acquisition of Rs.9,30,375/-.

4. The facts in brief are that the assessee filed his return of income on 31.10.2015 declaring a income of Rs.64,34,450/-. The assessee was deriving income by way of business, capital gain, house property and other sources. During the year, the assessee has earned long term capital gain on sale of shares of M/S Premier Capital Services Ltd. to the tune of Rs. 4,23,74,991/- which was claimed as exempt u/s 10(38) of the Act. . The case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee. During the course of assessment proceedings, the Assessing Officer



called for the details of sale of shares. The Assessing Officer had also received information from the investigation wing of the department which conducted investigation on 84 penny stocks and M/S Premier Capital Services Ltd was one of them. In the said investigation it was revealed and brought to light that illegal transactions of bogus LTCG/STCG for the benefit of large beneficiaries. A detailed modus operandi of the operators, intermediaries and the beneficiaries has been given in the said investigation. In the said report it has been reported that the prices of the penny stocks companies were rigged and are raised through circular trading and manipulation. As per the said report the shares of these penny stocks are closely held by the promoters of penny stock companies and operator who controls the affairs on the stock exchange, arranges the bogus LTCG/STCG or loss for beneficiaries. The public has no interest in these companies as these companies have no financial credentials movements of shares are strictly controlled through connivance and manipulation.

5. The Assessing Officer accordingly issued show cause notice to the assessee vide letter dated 7.12.2017 calling upon the assessee to explain as to why amount credited in the books of accounts in the guise of sales consideration realized from sale of shares should not be treated as unexplained cash credit and added to the income u/s 68 of the Act. The assessee filed detailed reply to the said show cause notice filing all the evidences such as details of account payee cheques, copies of contract notes, copy of Demat Account evidencing the purchase and sale of shares duly supported with contract notes, bank statements, evidencing the movement of funds through banking channel and proof of payment of STT and service tax etc. The AO rejected the submissions and contentions of the assessee and came to the conclusion that the said Long Term Capital Gain (LTCG) is a bogus and was just accommodation entry which has been transacted by the assessee in connivance with



operators operating on the recognized stock exchange to obtain bogus LTCG.. The Assessing Officer noted that the assessee bought 20000 shares on 4.9.2012 at a price of Rs.15,00,000/- upon preferential allotment of Rs. 75/- of face value of Rs. 10/- per share and duly transferred in the Dmat account of the assessee. On 21.3.2014 these were split into 10 shares for each exiting share. Thus each share was split into 10 shares of the face value of Rs. 1 each and total holding of the assessee after split became 200000 shares. The assessee sold 124050 shares sold the shares after a period of 12 months between June 2014 to August 2014 for a consideration of Rs.3,43,62,880/- thereby making LTCG of Rs.3,32,77,358/-. When the assessee sold his shares, the shares rate on the exchange was Rs. 277/-. According to the Assessing Office neither the turnover of the company increased substantially nor was there any profit registered by the company but the share price shoots up by 3576%. The Assessing Officer also referred to the findings of the investigation Wing, wherein it has been noted that director of income-tax (Inv.), Kolkata, Mumbai and Ahmadabad have undertaken investigation into 84 penny stocks which include M/s Premier Capital Services Limited and thus, the Assessing Officer discuss the modus operandi. The Assessing Officer also noted in Para 6.3, the scheme under which the assessee owned money was routed into penny stock at a very low price and thereafter, the prices of the shares and off market transactions in the stock exchange and thereby converting the said own unaccounted money into long term capital gain which was claimed as exempt under section 10(38) of the Act. Ultimately the AO framed the assessment by assessing the income at Rs.4,24,84,590/- by making addition of Rs. 3,43,62,880/- qua the sales consideration of shares and Rs. 6,87,257/- as commission paid to operator being 2% of total sales consideration vide order **dated** 28.12.2017 passed under section 143(3)



of the Act. Aggrieved, assessee went in appeal before the first appellate authority challenging the order of the Assessing Officer.

6. The learned CIT(A) dismissed the appeal of the assessee by observing in Para as under:-

*5.5.1 The appellant declared long term capital gains of Rs.3,32,77,358/- from sale of shares of M/s Premier Capital Services Ltd. and claimed this as exempt u/s 10(38). The appellant had purchased 20,000 shares of M/s Premier Capital Services Ltd. through preferential allotment @Rs.75/- per share with face value of Rs.10/- with one year lock in period on 04.09.2012 and lock in release on 04.09.2013 and the company split the shares from us 10/- to Rs 1/- paid up on 21.03.2014 and the resultant shares were 2,00,000 shares as on 21.03.2014 due to stock split.*

*1,24,050 shares were sold through share broker M/s. P-P.J. Shroff Securities Pvt. Ltd. during the period 04.06.2014 to 19.08.2014 with price ranging from Rs 229/- to Rs 297/- per share for salt; consideration of Rs 3,42,07,733/-. The appellant declared long term capital gains of Rs 3,32,77,358/- as against sale consideration received of Rs 3,43,62,880/-. The paid up capital as on issue of preferential allotment is Rs 71,46,000/- for 7,14,600/- shares. Thus, there is no basis for the payment of premium of Rs 65/- per share by the appellant*

*The demat statement on preferential allotment and on split of shares is at pp 11 and pp 20 of the paper book filed by appellant and placed at annexure. The details at pp 20 reveal 2,00,000 shares as on 21.03.2014 on split with FV of Rs. 1/- and total value of Rs.2,20,00,000/-. This demat statement cannot be relied on as the value can only be Rs 2,00,000/- and not Rs 2,20,00,000/-.*

*The appellant has not been able to explain to the satisfaction of the Ld. AO nor during appellate proceedings as to how he was allotted equity on a preferential basis - that is which of the promoters allotted the same or if it was part of the non-promoter's group, how he had access for purchase of the same. No application of the appellant for issue of preferential shares and approval of the Board has been furnished.*

*5.5.2 In view of the aforesaid facts, the purchase of the shares is held to be bogus/sham transaction. The appellant has not adduced any evidence in support of how he was allotted these shares on a preferential basis, that is which of the promoters allotted the same or if it was part of the non-promoter's group, how he had access for purchase of the same. No application of the appellant for issue of preferential shares or reason why he was willing to invest at such a premium of Rs.65/- per share etc. The spectacular gain in the price of shares from*



*Rs. 9,30,375 (purchase price) in Dec. 2012 to Rs. 3,43,62,880/- (sale price) in June-August 2014 is unexplained. Reliance is further placed on the decisions cited in para 5 supra.*

*A sale transaction against which no purchase ever took place, does not satisfy the test of human probability. This challenges the test of human probability. The Hon'ble Supreme Court in the case of Sumnati Dayal (214 ITR 801 SC) and Durga Prasad More ([1971]82 ITR 540 SC) has held that the apparent must be considered real until it is shown that there are reasons to believe that the apparent is not real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. In this case, the surrounding circumstances, as detailed above, establish that the purchase is not real. Thus, the entire transaction is a sham transaction and the Ld AO has rightly held so.*

*Addition of Rs. 6,87,257/- u/s 69C of the Act, being 2% commission paid for the accommodation entries is also held to be reasonable and is upheld. Therefore, all the grounds of appeal are dismissed.*

*6. In the result, for the statistical purposes, the appeal filed for the A.Y. 2015-16 is treated as dismissed."*

7. The learned AR submitted before the Bench that the assessee is a regular trader in securities. The learned AR submitted that assessee has purchased 20000 shares of M/s Premier Capital Services Limited through preferential allotment of 75 per share with face value of 10 each on 04.09.2012 and these shares were transferred into assessee's Demat account with standard chartered securities limited copy of which is filed at page no. 55 of the paper book. The said shares were split from the face value of Rs. 10 each to shares of Rs.1 and thus the total number of shares held by the assessee after split were 2 lacs shares. Thereafter, the assessee sold 124050 of these shares through broker M/s PPJ Shroff Securities Pvt. Ltd during the period commencing from 04.06.2014 to 19.08.2014 at a total consideration of Rs. 3,43,62,880/-and the Long Term Capital gain of Rs. ₹3,32,77,358 was made. The learned AR submitted that even the STT and Service Tax was paid on the sale of shares. The IdAR also referred to copies of the said contract notes at page No.51 to 89 of the paper book. The learned AR submitted that the



Assessing Officer has primarily relied on the report of investigation wing and thus came to the conclusion that the assessee also alleged bogus transaction/ accommodation entries. The learned AR submitted that the assessee is a genuine purchaser and seller of shares and has purchased and sold shares at the prevailing market prices. The learned AR also submitted that the assessee has filed various documents before the Assessing Officer in order to substantiate the purchase and sale of shares comprising payments proof by account payee cheques, copies of contract notes, copy of Demat Account evidencing the purchase and sale of shares duly supported with contract notes, bank statements, evidencing the movement of funds through banking channel and proof of payment of STT etc. The learned AR submitted that the Assessing Officer has used the report of the investigation wing against the assessee without offering any opportunity to the assessee to controverting the said report. The Id AR stated that the Assessing Officer has only discussed the said report in the assessment order and modus operandi of the operators on the stock exchange qua these penny stocks companies. The learned AR also submitted the Assessing Officer has not provided any cross examination to the assessee and went head with the passing of assessment order. The Id. AR contended that on this count alone the assessment order passed by the Assessing Officer cannot be sustained. The learned AR submitted that Assessing Officer has not issued any notice for conducting cross examination, mainly relied on the report of the investigation and so much so that no further investigations were carried out to find out the truth. The learned AR therefore submitted that the order passed by the Assessing Officer needs to be quashed. In defence officer arguments the learned AR's specific decision as under: -

1. *CIT vs. Mukesh Marolia ITA 456 of 2007-Bmbay HC*
2. *Muksh R Morolia Vs Add CT(2006) 6 SOT 247*
3. *ITO vs. Mrs. Rasila N Gala ITA No.1773/Mum/2010*





4. CIT vs. Kan Singh Rathore ITA 192 of 2014 (Rajasthan HC)
5. M/s SBD Estate Private Limited Vs. ITO 584/Mum/2015
6. Ms Farrah Market V.s ITO ITA No.3801/Mum/2015 order dated 27/04/2016
7. Mr. ARvind Asmal Mehta Vs ITO ITA No.2799/Mum/2015
8. Smt. Jyoti D Shah Vs ITO ITA No.2799/Mum/2015
9. ITO vs Deep Darshan Properties Pt Ltd. 2117 & 2118/Mum/2014
10. CIT-13 vs Shyam R.OPawar (2015)-54 Taxmann.com 108-Bombay High Court
11. Jafferli K. Rattonsey vs DCIT ITA No.5068/Mum/2009
12. Kamla Devi S.Doshi ITA No.1957/Mum/2015
13. Pratik Suryakant Shah (2017)-77 Taxmann.com 260 Ahmedabad Tribunal
14. Aarti Mittal (2014) 41 Taxmann.com 118(Hyderabad Tribunal)
15. CIT Appeal order in case of Uman D Soni
16. CIT Mumbai vs Mukesh Ratilal Mrolia Supreme Court -2015 (9) TMI 854-SUPREME COURT
17. The Commissioner of Income Tax-16. Vs. Mrs. Kesar A. Gada 2015 (1) TMI 1220-BOMBAY HIG COURT
18. Ramprasad Agarwal vs ITO2(3)(2), Mumbai [2018] 100 taxmann.com 172 (Mumbai-Trib)
19. Shri Amar Nath Goenka Vs. The ACIT, Circle-20(1), New Delhi. ITA NO.5882/Del./2018
20. Mukta Gupta vs. ITO, Ward -1(4), Ghaziabad. ITA No.2766/Del/2018
21. Ajay Goel Vs. ITO Ward 39(5) ITA NO.4481/DEL/2018
22. Principal Commissioner of Income tax(Central), Ludhiana v. Prem Pal Gandhi (P&H HC)
23. CIT vs Bhagwati Prasad Agrwal ITA No.22/Kol/2019 Calcutta High Court
24. Mr.Shyam R Pawar Vs DCIT Central Circle 24 & 26 ITAT Mumbai(ITA NO.5585/M/11, 5620,5621 &5622/M/11)
25. CIT (Jamshedpur) vs Arun Kumar Agarwal (HUF) Jharkhand HC
26. PCIT (Ludhiana) vs Sh. Hitesh Gandhi P & H HC
27. ACIT central Circle-II, Jalandhar vs Hitesh Gandhi ITAT Amritsar [ ITA No.129(Asr)/2014]
28. Manish Kumar Baid and Mahndra Kumar Baid vs ACIT, Cir-35, ITA NO.1236, 1237/Kol/2017[ Kolkata-Tribunal]
29. Shri Jignesh Desai vs Income Tax Officer 35(2), ITA NO1263/Kol/2017 [Kolkata-Tribunal]



30. *Navneet Agarwal, Legal Heir of Late Kiran Agarwal vs ITO, Ward-35(3) ITA No.2281/Kol/2017 [Kolkata ITA No.443/Kol/2017]*
31. *Kiran Kothari HUF vs ITO Ward 35(3), Kolkata ITA No.443/Kol/2017*
32. *Shri Gautam Kumar Pincha vs ITO 34(4), Kolkata (ITA No.569/Kol/2017)*
33. *Ketulkumar D Jaishwal vs ITO s.K.Ward -4 Modasa(ITA No.546/Ahd/2015) [Ahemdabad-Tribunal]*
34. *CIT-I Jaipur Vs Smt Pooja Agarwal, Shri Jitendra 2017 Rajasthan High Court*
35. *Shri Pramod Jain, Shri Ankit Jain, Shri Sunil Jian, Naina Jain and Smt. Nisha Jain vs DCIT & ITO Wd 3(2) Jaipur [Jaipur-Tribunal]*
36. *Shri Vivek Agarwal vs ITO Wd 1(2), Jaipur [Jaipur-Tribunal]*
37. *Mr Vimalchand Gulabchand, Mr PRvaeen chand, Mr. Gatraj Jain & Sons (HUF), Mr. Mehdnra Kumar Bhandari vs ITO Chennai, ITA No. 2003, 1721, 2293, 2748/CHNY/2017 [Chennai-Tribunal]*
38. *Anand Paul vs ACIT Circle-50 ITA No.165/Kol/2015 [Kolkata –tribunal]*
39. *M/s Bhorka Engineering Industries Ltd vs DCIT, Bangalore, KARNATAKA HIGH COURT*
40. *CIT vas Pushpa Malpani ITA No.50 of 2010 Rajashtan HC*
41. *M/s Amit Rastogi HUF, Shilpa Rstogi, Sadhana Rastogi, Ajay Kumar Rasogi vs ITO wd 1(1) wd-2(3), Meerut ITA N o.2128/2129/2131/2132/Del/2018 [Del-Tribunal]*
42. *Smt Shikha Dhawan vs ITO, Wd-4(2) ITA No.3035/Del/2018 [Delhi-Tribunal]*
43. *Shamim Imtiaz Hingora, Parvez Hingora, Shabeena Irfan Hingora, Arif Abdul Razak Hingora vs ITO Wd-I Jalna, ITA No.1875,1876,1877,1878/Pun/2018 [Pune-Tribunal]*
44. *CIT(A)-45 order in case of Parul Hemant Patel*
45. *Mukesh B Sharma vs ITO 11(3)(2) ITA No.6249/Mum/2018*
46. *Deepak Nagar vs The ACIT-17 ITA No.3212/Del/2019*
47. *Kaushalya Agarwal vs ITO 35(3) ITa No.194/Kol/2018*
48. *Vijayrattan Balkrishan Mittal Vs DCIT ITA No.3427,3428,3429/Mum/2019*

8. The learned AR further submitted that additions were made based upon the information which were never disclosed to the assessee in violation of principle of natural justice. The Id. AR argued that on this count also the assessment framed by the Assessing Officer cannot be



sustained. The assessee relied on the following decision in support of this case.

1. *M/s. Andaman Timber Industries vs. CCE Civil Appeal No.4228 of 2006.*
2. *Lalchand Bhagat Ambica Dav vs. CIT (37 ITR 28) (SC)*
3. *Dhakeswari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 777*
4. *Seth Gurumukh Singh v. CIT (1944) 12 ITR 393*
5. *Jai Karan Sharma vs. DCIT (2012) 23 taxmann.com 300 (Delhi)*
6. *Hamish Engineering Industries (P) Ltd. vs. DCIT (2009) 120 ITD 166 (Mum. Trib.)*
7. *Kishinchand Chellaram vs. CIT (1980) 4 Taxman 29 (SC)*
8. *C Vasantlal & Co. vs. CIT (1962) 45 ITR 206 (SC)*

9. The Ld. A.R. finally prayed that in view of the above facts and the ratio laid down in the various decisions the assessment framed by the AO and as affirmed by the Ld. CIT(A) may kindly be quashed as the same is in violation of principle of natural justice as the information was not confronted to the assessee and also that no cross examination was allowed to the assessee.

10. The Ld. D.R., on the other hand, relied heavily on the order of AO and Ld. CIT(A) by submitting that the assessee is beneficiary of hawala purchase and sale racket which was being operated by some unscrupulous operators on the stock exchange in order to give undue and bogus benefits to the purchasers in order to convert the black money into white. The modus operandi was fully revealed during the course of search conducted on these hawala operators and how the prices of the shares were jacked up through manipulation and over a period of few months manifold increase was registered on the stock exchange. Undoubtedly, the assessee has purchased these shares at a very low price and sold after 12 months and thus made huge gain of

Rs.3,32,77,358/- on the purchase value of Rs.9,30,375/-. Though the shares were held in D-Mat account but that does not make the bogus transaction sacrosanct. The Ld. D.R. submitted that the modus operandi how these operators operated in the stock exchange in order to give gains to the beneficiaries was fully brought to light by the search and investigation wing and fully discussed by the AO in para 6 of the assessment order. The Ld. D.R. also referred to the financial position of the company M/s. Premier Capital Services Ltd. whose shares were bought and sold and submitted that the said company was not having any financial strength or any business, therefore there was no chance or any possibility that such an astronomical increase in the share prices are feasible. This can only be done through manipulation and collusions. In the system of stock exchange which was duly proved in the search conducted on these operators. In view of these facts the Ld. D.R. submitted that the order passed by Ld. CIT(A) is quite reasonable and justified and kindly may be upheld.

11. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts of the case are that the assessee purchased 20000 shares of M/s. Premier Capital Services Ltd. through preferential allotment at Rs.75 with face value of Rs.10 each on 04.09.2012. The said shares were transferred in the D-Mat account with Standard Chartered Securities India Ltd. on 15.12.2012. Copy of which is filed at page No.55. Thereafter, the said shares were split in the ratio of 1-10 meaning thereby that 10 shares issued at face value of Rs.1 each per share of the face value of Rs.10 each and thus the assessee holdings went up to 2 lakh shares. Subsequently, the assessee sold these shares through stock broker M/s. P.P. J Shroff Securities Pvt. Ltd. between the period 02.06.14 to 19.08.14 to the tune of Rs.1,24,050/- at a sale consideration of Rs.3,43,62,880/- and after deducting the cost of acquisition from the sale price on net gain of Rs.3,32,77,358/- was



calculated and claimed as exempt under section 10(38). Pertinent to state that the assessee has paid STT and Service Tax on the said sale of shares. The necessary evidences are filed at page No.59 to 81. Thus the assessee held these shares for more than 12 months and all these transactions were routed through the banking channels. Thereafter, the investigation wing of the department conducted the investigation and searches on various operators in Kolkata and elsewhere and a racket of shares manipulation came to notice of the department. In the said racket the shares were purchased at a very minimal price and after certain period sold at a very astronomical price which is manifold the purchase price. In the whole racket which was found that the various investors were indulged in these transactions in order to book the bogus long term capital gain/short term capital gain and routed their own money in order to convert the same into the long term capital gain. It was also found that these penny stock companies were not having any financial strength or genuine business and the increase in the prices of the share was only through manipulation and connivance with the brokers. The assessee's name was found to be in the list of beneficiary and accordingly the AO inquired upon these transactions by the assessee during the year. Needless to mention that assessee has duly disclosed these long term capital gains in his return of income filed for the year. We note that the AO has not supplied any material to the assessee before finalizing the assessment and has merely relied upon the investigation report received by the assessee that assessee is a beneficiary of this racket. The AO merely reproduced the report of the investigation wing in the assessment order and discussed the financial of Premier Capital Services Ltd. However, it was never confronted to the assessee or any cross examination was allowed to find out the truth behind it. We note that assessee has purchased the shares and subsequently sold on the stock exchange through online trading portal and where it is very difficult to

note about the subsequent buyer. The assessee also filed the following documentary evidences.

1. *Profile of "Premier Capital Services Ltd.,"*
2. *Copy of Board Resolution dated 23.07.2012 of "Premier Capital Services Ltd..*
3. *Copy of Allotment of shares of "Premier Capital Services Ltd.. dated 04.09.2012.*
4. *Copy of HDFC bank statement (highlighting payment) with copy of cheque (dated 18.08.2012.)*
5. *Copy of statement of account of Standard Chartered from 01.12.2012 till 30.06.2013 reflecting the purchased shares quantity.*
6. *Copy of sale contract note of "Premier Capital Services Ltd.. Shares from PPJ Shroff Securities Pvt Ltd., from 01.06.2014 till 20.08.2014.*
7. *Copy of Bank of Baroda Bank Statement (highlighting receipts)*
8. *Copy of Transaction slips of Demat A/C from Standard Chartered.*
9. *Copy of statement of Account from Standard from 01.06.2014 to 31.08.2014*
10. *Copy of Ledger confirmation from broker PPJ Shroff Securities Pvt Ltd.,*
11. *Copy of balance No. of shares as on dated.*
12. *List of share holders as per "Premier Capital Services Ltd.. From 2012- to 2017.*

12. After examining the facts of the case and the orders of the authorities below, we note that assessee has filed all the necessary evidences as stated above before the AO as well as before the Ld. CIT(A). However, no further enquiry was carried out by the AO or by Ld. CIT(A) but merely relied on the report of the investigation wing and statements of certain individuals recorded during the course of search who have stated that they were engaged in providing accommodation entries for LTCG/LTCL in various shares which are called penny stocks. However, these information were never provided to the assessee. Similarly, no cross examination was allowed by the AO to the assessee

during the assessment proceedings. In other words, the AO has merely relied on the investigation report and did not try to collect further evidences by conducting further investigation to prove that the assessee own funds have changed hands.. Under these circumstances, we are not in a position to subscribe to the conclusion by the authorities below. The case of the assessee is squarely covered by a series of decisions referred and relied by the Ld. A.R. during the course of hearing as reproduced hereinabove a few of which are discussed below:-

- In the case of CIT vs. Mukesh Ratilal Marolia (supra). In this case, the issue is whether the amount received by the assessee on sale of shares can be treated as unexplained investment under section 69 of the Act. The Tribunal deleted the addition by allowing the appeal of the assessee by holding that the purchase of shares were duly recorded in the books of accounts and the source of funds is also explained and the shares were in fact transferred in the name of the assessee and thus the purchases of the assessee can not be fault with. Similarly, the sale of shares was effected can not be disputed because the amount received by the assessee is not in dispute and it is not the case of the Revenue that shares are still lying with the assessee or amount received by the assessee on sale of shares is more than the declared value by the assessee. Under these circumstances, the Hon'ble High Court has held that AO is not justified in holding that sale proceeds of Rs.1,41,08,484/- represented unexplained investment under section 69 of the Act and thus the order of the Tribunal was upheld by the Hon'ble High Court. The Hon'ble Supreme Court also dismissed the appeal of the Revenue filed against the Hon'ble Bombay High Court order.

-Similarly, in the case of CIT vs. Mrs. Kesar A. Gada (supra) the ITAT deleted the addition by holding that the transaction of purchase and sale of shares made by the assessee were genuine and no addition under section 68 was called for by relying on the decision of Hon'ble Bombay High Court in the case of CIT vs. Mukesh Ratilal Marolia (2005) 12 TMI 457 ITAT, Mumbai. The High Court also dismissed the appeal of the Revenue by holding that no substantial question of law arises for reconsideration.

-In the case of CIT vs. Sham R Pawar (supra) the Hon'ble Bombay High Court has decided the issue against the Revenue by upholding the order of ITAT wherein the Tribunal has held that the assessee has declared the capital gain on sale of shares and mere

observation of the AO that transactions were done through brokers at Kolkata and the performance of the concerned company was not satisfactory as it would not justify the increase in share prices and thus held the transaction as bogus as assessee converted his own unaccounted money into accounted income and thus made the addition under section 68 of the Act. The Tribunal deleted the addition by observing that D-Mat account and contract notes showed the details of shares, transactions and Revenue stopped enquiry at particular point and did not carry forward it to discharge the basic onus and High Court has upheld the order of ITAT.

- Ramprasad Agarwal vs. ITO (supra) wherein assessee has produced all the relevant records to show the allotment of shares by the company on payment of consideration by cheque and subsequent dematerialization of shares in the D-mat account. The Tribunal reversed the order of AO wherein the AO has made addition by not allowing cross examination to the assessee and also not providing the information to the assessee which were used against the assessee while making addition. The tribunal followed the decision of coordinate bench in the case of Meghraj Singh Shekhawat Vs DCIT ITA No. 444/JP/2017 AY 2013-14 and 2014-15 which in turn has followed apex court decision in the case of **M/s. Andaman Timber Industries vs. CCE Civil Appeal No.4228 of 2006.**

In the case of Fara Marker vs. ITO (supra) the similar issue has been decided under the similar set of facts by holding that the long term capital gain is genuine as the assessee has fully discharged its onus and AO has not done any further verification.

In the case of Kamaladevi vs. Doshi vs. ITO the similar issue has been decided by the Tribunal in favour of the assessee by observing and holding as under:

“14. We have given a thoughtful consideration to the facts of the case and are of the considered view that the assessee had placed on record substantial documentary evidence to substantiate the genuineness and veracity of the purchase and sale of 10,200 shares of M/s Talent Infoways Ltd., viz. copy of the Contract note, dated. 15.04.2004 evidencing the purchase of shares; Copy of the contract note, dated. 06.04.2004 as regards the speculation income, and the copy of the cash receipt for Rs. 168/-; Copy of her account in the books of account of M/s MSPL; Copy of the letter from M/s Talent Infoways Ltd., dated. 29.05.2004, therein confirming the transfer of shares; Copy of the contract notes for sale of shares in the months of September and October, 2005; Copy of the bank statement evidencing receipt of





payment for sale of shares; Copy of STT paid statements on the shares of M/s Talent Infoways Ltd ; Copy of its account as appearing in the books of account of M/s Alliance Intermediateries & Network Pvt. Ltd. evidencing the sale of the shares of M/s Talent Infoways Ltd.; Copy of delivery instructions of shares to the depository for dematerialization of the shares; and Copy of the return of income alongwith the computation of income for A.Y. 2005-06, which revealed the speculation income of Rs. 15,975/-, and the fact of purchase of 10,200 shares of M/s Talent Infoways Ltd, alongwith the source of purchase. We find that the aforesaid substantial documentary evidence placed on record by the assessee, which as a matter of fact supported the entire chain of events of purchase and sale of 10,200 shares of M/s Talent Infoways Ltd. by the assessee, was however never rebutted by the A.O on the basis of any concrete and irrebutable evidence which could go to inescapably disprove the genuineness of the said documents which were brought on record by the assessee We find that the A.O had rather chosen to merely rely on the stand alone statement of Sh. Mukesh Choksi (supra) and taking the same as gospel truth, had therein drawn adverse inferences in the hands of the assessee by merely referring to the said statement of Sh. Mukesh Choksi (supra). We though do not approve of the reliance placed by the A.O on the stand alone statement of Sh. Mukesh Choksi (supra) for drawing of adverse inferences in respect of the share transactions carried out by the assessee during the year under consideration, but rather find that even no cross examination of Sh. Mukesh Choksi (supra), whose statement was so heavily being relied upon by the A.O, was ever provided to the assessee. We find that the failure on the part of the A.O to provide cross examination of the person, relying on whose statement adverse inferences are drawn in the hands of the assessee goes to the very root of the validity of such adverse inferences drawn in the hands of the assessee, had been looked into by the Hon'ble High Court of Bombay in the case of : CIT-13 Vs. M/s Ashish International (ITA No 4299 P a g e | 26 of 2009; dated. 22.02.2011), wherein the order of the Tribunal was affirmed by the Hon'ble High Court. We thus in the backdrop of our aforesaid observations, are neither able to persuade ourselves to subscribe to the adverse inferences drawn by the lower authorities in respect of the share transactions of the assessee by referring to the stand alone statement of Sh. Mukesh Choksi, as the same as observed by us hereinabove, suffer from serious infirmities, and as such cannot be summarily accepted, nor are able to dislodge the genuineness of the purchase and sale of shares of the aforesaid 10,200 shares of M/s Talent Infoways Ltd., which we find had been duly substantiated by the assessee on the basis of material made available on record, which we find had not been dislodged by the lower authorities. We thus in the backdrop of the totality of the facts of the case are unable to find ourselves to be in agreement with the view arrived at by the lower

authorities. We thus set aside the order of the CIT(A), and delete both of the additions of Rs. 9,36,164/- and Rs. 46,808/- made by the A.O, which thereafter were sustained by the CIT(A). The appeal of the assessee is allowed. “

13. We have also gone through other decisions cited by the Ld. A.R. and observed that the case of the assessee is squarely covered by the various decisions. We therefore respectfully following the same set aside the order of CIT(A) and direct the AO to delete the addition of Rs.3,43,62,880/- under section 68 of the Act.

Ground No.1 & 2 are allowed.

14. The issue raised in ground no.3 is against the confirmation of addition of Rs.6,87,257/- by CIT(A) as made by the AO towards arranging this purchase and sale of shares by applying 2% on the total value of transactions. The ground No.3 is consequential to ground no.1 & 2 which have been allowed in favour of the assessee (supra). Accordingly, the addition made under this ground of Rs.6,87,257/- is ordered to be deleted. Ground is allowed.

15. The ground Nos. 4 & 5 are consequential in nature and becomes infructuous and accordingly needs no adjudication. Similarly, ground No. 6 is general in nature and hence not adjudicated.

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

Order pronounced under rule 34(4) of the I.T. Rules on 20.04.2020.

**Sd/-**

(श्री राम लाल नेगी /RAM LAL NEGI)  
(न्यायिक सदस्य/ JM)

**Sd/-**

(राजेश कुमार /RAJESH KUMAR)  
(लेखा सदस्य / AM)

मुंबई, दिनांक/ Mumbai, Dated: 20.04.2020



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai