

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4738/Del./2018
Assessment Year 2015-2016

Smt. Radhika Garg, Faridabad. PAN AGRPG9753D C/o. Sunil Suresh & Associates, B-20/21, Fruit Garden, NH-5, NIT, Faridabad – 121 001.	vs.	The Income Tax Officer, Ward-2(2), Faridabad.
(Appellant)		(Respondent)

For Assessee :	Shri Vivek Bansal And Shri Sanjay Goel, Advocates
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

ITA.No.2429/Del./2018
Assessment Year 2014-2015

Smt. Nishika Aggarwal, Gurgaon, PAN ARTPA1889P C/o. RRA Tax India, D-28, South Extension, Part-I, New Delhi – 110 049.	vs.	The Income Tax Officer, Ward-3(1), Gurgaon.
(Appellant)		(Respondent)

For Assessee :	Shri Somil Aggarwal, Advocate
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	04.12.2018 & 06.12.2018
Date of Pronouncement :	01.01.2019

ORDER

ITA.No.4738/Del./2018 of the Assessee has been directed against the Order of the Ld. CIT(A), Faridabad, Dated 28.05.2018, for the A.Y. 2015-2016, challenging the addition of Rs.26,40,725/- under section 69 of the I.T. Act, on account of alleged bogus sale of shares.

2. ITA.No.2429/Del./2018 of the Assessee has been directed against the Order of the Ld. CIT(A)-1, Gurgaon, Dated 22.01.2018, for the A.Y. 2014-2015, challenging the addition of Rs.28,14,180/- under section 68 of the I.T. Act, in not allowing exemption under section 10(38) of the I.T. Act, 1961.

3. This Order shall dispose-of the above appeals filed by different Assesseees on an identical question with regard to addition under sections 68/69 of the I.T. Act, 1961 on account of claim of long term capital gains. Since, common issue is involved in these appeals, the appeals are heard on same issue and are being disposed of by this single consolidated order. First, I will take up the appeal in ITA.No.4837/Del./2018.

ITA.No.4738/Del./2018 – Smt. Radhika Garg, Faridabad :

4. Briefly, the facts of the case are that assessee filed return of income of Rs.6,66,100/-. During the year assessee's source of income is salary from M/s. Prayas Tracon Ltd., and M/s. Satymaya Trading Company. During the year, the assessee has claimed exemption of Rs.26,40,725/- under section 10(38) of the Income Tax Act, 1961, on account of sale of securities. The case was selected for scrutiny assessment on the basis of information uploaded by the Investigation Wing that "*Suspicious Transaction relating to Long Term Capital Gain on sale of shares.*" The A.O. discussed about the term 'Penny Stock' which transactions are of those shares which are purchased or sold in abysmally low quantity in stock exchange. It was noted that DIT, Investigation, Kolkata carried-out countrywide Investigation to un-earth the organized racket of generating bogus entries of long term capital gains which is exempt from tax. Certain statements have also been recorded. The assessee was found one of the beneficiary who has taken entry of Rs.26,40,725/- in assessment year

under appeal. The assessee submitted written submissions along with copy of computation, bank statements and furnished details of long term capital gains before A.O. The assessee has purchased and sold shares of M/s. Lifeline Durgs and Pharma Ltd. The assessee purchased 10000 shares on 19.11.2013 for Rs.10,000/- which were purchased directly off-line. All the shares were sold through National Stock Exchange on 09.12.2014 and 17.12.2014 through broker M/s. SMC Global Securities Ltd. The A.O. referred to statement of Shri Sanjay Vora, Kolkata who has confirmed in his statement on oath that he had provided accommodation entries of long term capital gains including M/s. Lifeline Drug and Pharma Ltd. Explanation of assessee was called for as to why the addition of the same amount may not be made on account of income from undisclosed sources. It is noted in the show cause notice that even SEBI has directed to BSE to suspend trading in securities of the aforesaid company. The assessee's reply is reproduced in the assessment order in which the assessee explained that she has purchased shares of the aforesaid company from

her source which were sold through broker M/s. SMC Global Services Ltd. Sale consideration has received in the bank account of assessee on which brokerage and STT have been paid. The shares have been sold electronically on recognized Stock Exchange i.e., Bombay Stock Exchange in accordance with SEBI guidelines. All the details were submitted and shares were sold as per Rules on which tax have been paid. The amount of sale consideration have been received through banking channel which was received in the account of assessee. The A.O. recorded statement of assessee under section 131 of the I.T. Act, in which also she has confirmed purchase and sale of the shares in question to earn capital gain. The statement of the broker Shri Sanjay Vora was confronted to assessee. However, in her statement she denied having any knowledge about the same. The A.O. did not accept the contention of assessee and referred to the rule of preponderance of probabilities and noted the financials of the aforesaid company in the assessment order and held that it was a 'sham transaction' which was aimed only to bring unaccounted money in the

guise of exempted long term capital gains. The A.O. accordingly made the addition of the aforesaid amount under section 69 of the I.T. Act.

5. The assessee challenged the addition before the Ld. CIT(A) and reiterated the submissions made before the A.O. The Ld. CIT(A) however confirmed the addition and dismissed the appeal of assessee.

6. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that the statement of Shri Sanjay Vora, Broker, was not subjected to cross-examination on behalf of the assessee, therefore, it cannot be read in evidence against the assessee. He has filed two letters from website of BSE scrip Code 506113 of the company in question to show it is still continuing and doing the transactions on the Stock Exchange. He has relied upon the following Orders of the Tribunal and submitted that the issue is covered in favour of the assessee by these decisions.

1. Order of ITAT, Delhi SMC-Bench in the case of Smt. Shikha Dhawan, Gurgaon vs. ITO, Ward-

4(2), Gurgaon in ITA.No.3035/Del./2018, Dated 27.06.2018.

2. Order of ITAT, Delhi SMC-Bench in the case of Mr. Arun Kumar, Delhi vs. ACIT, Circle-1, Noida & Others in ITA.No.457/Del./2018 etc., dated 05.11.2018.
3. Mr. Anubhav Jain vs. ITO (2018) 54 CCH 273 (Del.) (Tribu.)

7. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and relied upon the following decisions :

1.	Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain vs. CIT (2017) ITA.No.18 of 2017 – Bombay High Court – Nagpur Bench.
2.	Chandan Gupta vs. CIT (2015) 229 Taxman 173 (P & H)
3.	Balbir Chand Maini vs. CIT (2012) 340 ITR 161 (P & H)
4.	Usha Chandresh Shah vs. ITO 2014-TIOL-1459-ITAT-Mumbai.
5.	Ratnakar M. Pujari vs. ITO 2016-TIOL-1746-ITAT-MUM.
6.	Abhimanyu Soin vs. ACIT 2018-TIOL-733-ITAT-CHD.
7.	Arvind M. Kariya vs. ACIT ITA.No.7024/Mum/2010.
8.	ITO vs. Shamim M. Bharwani (2016) 69 taxmann.com 65

8. I have heard the Learned Representatives of both the parties and perused the material available on record. In this case assessee filed all the documentary evidences before A.O. to prove genuineness of the transaction in the

matter. The assessee filed copy of the computation, bank statements and details of long term capital gains. The assessee purchased the shares directly which was sold through recognized Stock Exchange through the Broker. All the payments have been received through banking channel and on the sale, STT have been paid. The Ld. CIT(A) noted in the appellate order that transaction was conducted through Stock Exchange with payment of STT after getting these shares dematerialized. The documentary evidences furnished by assessee clearly supports the claim of assessee that assessee entered into genuine transaction of sale of shares through recognized exchange upon which STT has also been paid. The A.O. relied upon statement of Shri Sanjay Vora, Broker to prove that he had provided accommodation entries of M/s. Lifeline Drugs and Pharma Ltd., in question. However, it is an admitted fact that his statement was not subjected to cross-examination on behalf of the assessee. Therefore, such statement cannot be read in evidence against the assessee. I rely upon the decision of Hon'ble Supreme Court in the case of Kishan Chand

Chelaram 125 ITR 713. There is no other evidence available on record against the assessee so as to make the impugned addition. The broker who has sold the shares have not made any statement against the assessee. The A.O. has not brought any other material on record to justify the addition. Similar issue have been considered by ITAT, SMC-Bench in the group case of Shri Amar Nath Goenka, Delhi vs. ACIT, Circle-20(1), New Delhi in ITA.No.5882, 5883, 6457 to 6459/Del./2018 vide Order dated 12.12.2018 wherein the Appeals of the Assesseees are allowed. The submissions of the parties and findings of the Tribunal are reproduced as under :

“IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCHES “SMC” : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

*ITA.No.5882/Del./2018
Assessment Year 2015-2016*

<p><i>Shri Amar Nath Goenka, New Delhi – 110 070. PAN AAPPG9369R C/o.Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110085.</i></p>	<p><i>vs.</i></p>	<p><i>The ACIT, Circle-20(1), New Delhi.</i></p>
<p><i>(Appellant)</i></p>		<p><i>(Respondent)</i></p>

ITA.No.5883/Del./2018
Assessment Year 2015-2016

<i>Shri Arvind Goenka, New Delhi – 110 070. PAN ACTPG1708Q C/o.Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110085.</i>	<i>vs.</i>	<i>The ACIT, Circle-20(2), New Delhi.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

ITA.No.6457/Del./2018
Assessment Year 2014-2015

<i>Smt. Preeti Yadav, New Delhi – 110 070. PAN AALPY3249A C/o.Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110085.</i>	<i>vs.</i>	<i>The Income Tax Officer, Ward-33(5), New Delhi.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

ITA.No.6458/Del./2018
Assessment Year 2014-2015

<i>Smt. Sneha Yadav, New Delhi – 110 070. PAN ACVPY0483A C/o.Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110085.</i>	<i>vs.</i>	<i>The Income Tax Officer, Ward-33(5), New Delhi.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

ITA.No.6459/Del./2018
Assessment Year 2014-2015

<p>Smt. Pooja Yadav, New Delhi – 110 070. PAN AHXPY2139G C/o.Shri Kapil Goel, Advocate, F-26/ 124, Sector-7, Rohini, Delhi – 110085.</p>	vs.	<p>The Income Tax Officer, Ward-33(5), New Delhi.</p>
<i>(Appellant)</i>		<i>(Respondent)</i>

<i>For Assesseees :</i>	<i>Shri Kapil Goel, Advocate</i>
<i>For Revenue :</i>	<i>Shri S.L. Anuragi, Sr. D.R.</i>

<i>Date of Hearing :</i>	<i>08.12.2018</i>
<i>Date of Pronouncement :</i>	<i>12.12.2018</i>

ORDER

This Order shall dispose-of all the above five appeals filed by different Assesseees on an identical question with regard to addition under section 68 of the I.T. Act, 1961, on account of claim of long term capital gains.

2. *I have heard the Learned Representatives of both the parties and perused the findings of the authorities below and considered the material available on record. Learned Representatives of both the parties*

mainly argued in ITA.No. 5882/Del./2018 and have submitted that the issue is same in the remaining appeals, therefore, Order in this case may be followed in other four appeals. In this view of the matter, I proceed to decide ITA.No.5882/Del./2018 as under.

ITA.No.5882/Del./2018 - Shri Amar Nath Goenka, New Delhi :

3. *This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-7, New Delhi, Dated 08.08.2018, for the A.Y. 2015-2016, challenging the addition of Rs.14,61,585/- under section 68 of the I.T. Act, 1961, on account of long term capital gains.*

4. *Briefly, the facts of the case are that the assessee filed its original return of income declaring income of Rs.25.35.010/-. The assessee is an individual and declared income from Salary, House Property and Income from other sources. The assessee is Employee-Director of M/s. Premier Polyfilm Ltd. The assessee filed necessary details which have been*

examined by the A.O. The A.O. found that the assessee claimed Rs.23.44.613/- as long term capital gain (LTCG) on sale of listed shares. Part of the Long Term Capital Gain (LTCG) has been claimed to have been earned is through sale of shares of M/s.Esteem Bio Organic Food Processing Ltd., (Scrip Code - EBFL Security Id-534927) listed on Bombay Stock Exchange (BSE). The summary of the share transaction is as under :

<i>Sale consideration of 1200 shares</i>	<i>Rs.14,61,585/-</i>
<i>Less: Cost of acquisition</i>	<i>Rs. 60,000/-</i>
<i>LTCG :</i>	<i>Rs.14,01,585/-</i>

4.1. The assessee claimed LTCG from sale of Esteem Bio Shares as exempt from taxation under section 10(38) of Income-Tax Act, 1961. The assessee at assessment proceedings furnished details of mode of acquisition of these shares, bank A/c statements where sale proceeds are credited, depository participant statements and stock broker notes to support claim of exempt LTCG. The A.O. observed from the submissions of the assessee together with facts and circumstances of case in general and those surrounding the share

transactions of M/s Esteem Bio Organic Food Processing Ltd (“EBFL”) in particular and noted that the events are not as simple as described in assessee's submissions. There are several important circumstantial as well as direct evidences that lead to the conclusion that the exempt Long-Term Capital Gain claimed by assessee on sale of shares of EBFL is not genuine but is pre-arranged collusive transaction in form of accommodation entry without real substance. The A.O. noted that the assessee has earned windfall gain within a short span of time that too with the investment in a relatively unknown company. The financial figures of the above company are noted in the Order to show that net profit on turnover have declined. There is unreasonable and inexplicable rise in the share prices of the Company within a short span. The transactions are carried-out with predetermined understanding, plan. Increase of share price of the Company did not commensurate with its financial results and fundamentals. There is unrealistic returns on the investment. The DIT (Investigation),

Kolkata carried-out countrywide investigation to un-earth organized racket/ syndicate for generating bogus entries of long term capital gains which is exempt from tax. Statement of several entry operators were recorded which include statement of Shri Sanjay Vohra who has admitted in his statement that M/s. Esteem Bio Organic Food Processing Ltd., is a penny stock company whose shares have been artificially manipulated to provide long term capital gains. The assessee was given show cause notice as to why the same should not be treated as non-genuine transactions. The assessee explained before A.O. that all evidences related to sale and purchase of shares have been provided and there is no material to hold that transactions are bogus. All the purchases have been made through banking channels and sold through stock market platform. Reason of suspicion is insufficient. The allegation that price is rigged is baseless and without any evidence. No opportunity to cross-examine have been given of the statements which are used against the assessee. The A.O. however, did

not accept the contention of the assessee and by applying the test of human probability held that long term capital gains claimed by assessee is not genuine and falls within the ambit of Section 68 of the I.T. Act. Therefore, Section 115BBE of the I.T. Act is applicable and the same is taxable @ 30%. The A.O. accordingly made the addition of Rs.14,61,585/-.

5. *The assessee challenged the addition before Ld. CIT(A). The written submissions of the assessee and grounds of appeals are reproduced in the appellate order in which the assessee briefly explained that cost of the acquisition of Rs.60,000/- have not been reduced. The addition is perverse and invalid and based on irrelevant reason. The statement of Shri Sanjay Vohra was not confronted to the assessee and no right of cross-examination have been given to rebut his statement. Therefore, such statement cannot be read in evidence against the assessee. No copy of the Investigation report of SEBI have been provided to assessee. The transaction is done on online through*

recognized Stock Exchange through Demat account and Security Transaction Tax (“STT”) as per the contract note duly paid. The assessee produced all the documentary evidences like bank statement, contract notes, transaction statement of Demat account, copy of share certificates, financial ledger of the assessee with broker etc., to prove the transaction as genuine. No specific material have been brought against the assessee on record to disprove the claim of assessee. The amount is paid and received through banking channel. No information of any inquiry made from the broker have been provided. Oral evidence cannot prevail over documentary evidence. M/s. Esteem Bio Organic Food Processing Ltd., has been very much a going concern company, an acting Company on MCA website allowed till recently to trade on recognized stock exchange by the SEBI. No copy of report of Investigation Wing have been provided. Assessee has no control over activity of the company in question whether its price rig etc., The SEBI after detailed investigation pronounced its order dated

06.09.2017 that there is no irregularity found in the case of M/s. Esteem Bio Organic Food Processing Ltd., Therefore, interim order was revoked. This company still listed with BSE and shares of the company are being traded regularly. The assessee purchased 6000 shares through public issue and payment for this is made through banking channel, out of which, part shares have been sold and remaining are still with the assessee. The shares were directly transferred to Demat account, copy of which is also filed. The assessee held shares for more than the period specified by the Act to claim long term capital gains. The assessee has sold the shares through recognized stock exchange as governed by the SEBI on which STT has been paid. The contract note issued by the stock exchange/broker cannot be doubted. The assessee relied upon several decisions in support of the contention that assessee entered into genuine transaction. The assessee relied upon Judgment of Hon'ble Delhi High Court in the case of Pr. CIT-5 vs. Jatin Investment Pvt. Ltd., in ITA.No.43

& 44 of 2016, Dated 18.01.2017 approving the Order of ITAT, Delhi Bench in the case of ITO, Ward-4(2), New Delhi vs. Jatin Investment Pvt. Ltd., New Delhi in ITA.No.4325 & 4326/Del./2009. The Ld. CIT(A), however, did not accept the contention of assessee and dismissed the appeal of assessee. The Ld. CIT(A), more or less on the same reasoning as given by the A.O. noted that there is strong circumstantial evidence against the assessee and that transaction is an accommodation entry, therefore, following the rule of preponderance of probability decided the issue against the assessee. It is also observed that A.O. is not under obligation to allow cross-examination of any person. The appeal of assessee was accordingly dismissed by the Ld. CIT(A).

6. *Before the Tribunal, the Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that that all documentary evidences were filed before A.O, of which were filed in the paper book. The documents are, copy of*

the application for allotment of shares along with copy of the cheque. Allotment of shares, copy of the bank pass book, copy of the Demat account of Oriental Bank of Commerce showing accrued 6000 shares of the aforesaid company, copy of the contract note of share broker for sale of the shares, copy of the financial ledger of the share broker showing sale of the shares, copy of the credit payment with bank statement. Learned Counsel for the Assessee filed copies of several Orders of the ITAT, Delhi Bench, Kolkata Bench and Mumbai Bench to show that in similar circumstances additions have been deleted. Learned Counsel for the Assessee also relied upon the Order of ITAT, Delhi SMC Bench, in the case of Arun Kumar, Delhi & Others vs. ACIT, Circle-1, Noida in ITA.No.457, 2825 & 2826/ Del./ 2018, Dated 05.11.2018 in which the Tribunal followed several decisions of various Benches of the Tribunal including the Order of ITAT, Delhi Bench in the case of ITO vs. Jatin Investment Pvt. Ltd., in ITA.Nos.4325 & 4326/Del./2009, Dated 27.05.2015 in which similar

addition has been deleted, in which it was held that “on sale of investment, provisions of Section 68 will not be applicable”. He has submitted that the said decision has been confirmed by the Hon’ble Delhi High Court in the case of Pr. CIT-5 vs. Jatin Investment Pvt. Ltd., 2017-TMI-342-Del-HC. He has submitted that the Tribunal following this decision decided the issue in favour of the assessee. Learned Counsel for the Assessee also relied upon the Order of the ITAT, Delhi Bench in the case of Smt. Shikha Dhawan, Gurgaon vs. ITO, Ward-4(2), Gurgaon in ITA.No.3035/Del./2018, Dated 27.06.2018 in which the Tribunal following its earlier decisions as well as decision of Hon’ble Punjab & Haryana High Court in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi in ITA.No.95 of 2017, Dated 18.01.2018, decided similar issue in favour of the assessee. Copies of the Orders are placed on record. Learned Counsel for the Assessee, therefore, submitted that the issue is covered by the aforesaid decisions of the Tribunal.

7. *On the other hand, Ld. D.R. relied upon the Orders of the authorities below.*

8. *I have considered the rival submissions and perused the material on record. The ITAT, Delhi Bench in the case of Smt. Shikha Dhawan, Gurgaon vs. ITO, Ward-4(2), Gurgaon (supra) in paras 6 to 10 noted the submissions of both the parties and decided the issue in favour of the assessee. The findings are reproduced as under :*

6. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and submitted that an inquiry conducted in the cases of other assessees and statements referred to by the AO in the assessment order have not been confronted to the assessee. The assessee has not been named by any of these Ld. persons for indulging in taking accommodation entries. He has, therefore, submitted that such evidence cannot be read in evidence against the assessee and relied upon the decision of the Hon'ble Supreme Court

in the case of Kishan Chand Chela Ram 125 ITR 713 (SC). He has submitted that for claiming exemption u/s 10(38) of the Act, the assessee shall have to prove twin conditions i.e. the income arise from the transfer of long term capital asset and being equity share in a company where the transfer of sale of such equity share is entered into on or after the date of which Chapter-VII of the Finance Act, 2004 comes into force and such transaction is chargeable to security transaction tax under that Chapter. In the case of the assessee, both twin conditions are satisfied. He has filed copy of the shares certificate with transfer form, copy of debit note issued by Shreeji Broking (P) Ltd., copy of cash receipt of Shreeji Broking (P) Ltd., copy of ledger account of Indus Portfolio (P) Ltd., Page | 18 ITA No.3035/Del/2018 copy of form for evidence for payment of securities transaction tax on transaction entered in a recognized stock exchange and copy of the bank statement of the assessee in the Paper Book. He

has further submitted that on identical facts, ITAT SMC Bench, Delhi in the case of [Meenu Goel vs ITO](#) in ITA No.6235/Del/2017 for AY 2014-15 vide order dated 19.03.2018 relying upon the decision of Hon'ble Punjab & Haryana High Court in the case of [Pr.CIT vs Prem Pal Gandhi](#) in ITA No.95-2017 vide order dated 18.01.2018, allowed the claim of the assessee. The findings of the Tribunal in para 6 to 8 are reproduced as under:-

“6. I have heard both the parties and perused the relevant records available with me, especially the orders of the revenue authorities and the case law cited by both the parties. I note that assessee has earned Long Term Capital Gain amounting to Rs.18,46,600/- during the financial year 2013-14 and the same has been claimed exempt under [Section 10\(38\)](#) of Income Tax Act, 1961. The assessee had purchased of 45,000/- shares of Unisys Software Holding Industries Ltd amounting

Rs. 9,38,600/- at a premium of Rs. 20.85 per share in physical form. Out of the aforesaid 45000/- Shares assessee sold of 8000 Shares only i.e. 17.77%. Thus, the major part of the Shares i.e. 82.33% are still in the hand of the assessee. In my view the assessee just wanted to enter into the transaction to earn exempted capital gain, but the assessee did not sell all the share 45000 shares instead of sale of a part i.e. 8000 shares only when that time was the best price ever. All the transaction were made through account payee cheque/banking channel and assessee had purchased share in financial year 2009-10 and sold the same in the financial year 2013-14 resulting in Long Term Capital Gain. The assessee has submitted various documentary evidences to prove the genuineness of the transaction of sale and purchase of shares which includes a copy of purchase bill dated 22.02.2010; a copy of share

transfer form in the favour of the assessee; Copy of bank statement highlighting the payment made against the share purchased; Transaction statement of the stock broker i.e. Pace Stock Broking Services (P) Ltd., account; copy of bank statement in which sale proceed from the sale of shares received; copy of calculation of long term capital gain, which was not faulted by the AO. However, the lower authorities have not considered the aforesaid documents and rejected all the claims made by the assessee by relying on the report of the Investigation Wing and thereby made the addition, which is not sustainable in the eyes of law. I further find that the AO has given detailed explanation in the order regarding the modus operandi of bogus LTCG scheme but failed to substantiate how the assessee fell in the purview of the same without bringing any material on record and proving that the assessee was directly

involved in the so called bogus transaction. I further note that the addition in dispute made by the AO and upheld by the Ld. CIT(A) u/s 68 as unexplained credit instead of long term capital gain as claimed by the assessee, however, the source identity and genuineness of the transaction having been established by documentary evidences and there is no case for making addition u/s 68 of the Act, hence, the same deserve to be deleted. I note that in most of the case laws of the Hon'ble High Courts referred by the Ld. DR the reason on the basis of addition was confirmed was that the assessee had not tendered cogent evidence with regard to share transaction, however, in the present the case assessee has submitted all the documents / evidences, therefore, the case laws relied by the Ld. DR are based on distinguished facts and circumstances, hence, the said case laws are not applicable in the present case. However, in my

considered opinion, the issue in dispute is squarely covered by the various decisions of the ITAT and the Hon'ble High Courts including the recent decision dated 18.1.2018 of the Hon'ble High Court i.e. Hon'ble High Court of Punjab & Haryana in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi passed in ITA No. 95 of 2017.

Decision dated 18.1.2018 of the Hon'ble High Court of Punjab & Haryana in the case of PCIT (Central), Ludhiana vs. Prem Pal Gandhi passed in ITA No. 95 of 2017 wherein it has been held as under:-

"2. The following questions of law have been raised:-

(i) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in upholding the order of the CIT(A) deleting

the addition of Rs. 4,11,77,474/- made by the AO on account of sham share transactions ignoring an important aspect that the transaction of shares showing their purchase price at Rs. 11,00,000/- and sale consideration at Rs. 4,23,45,295/- within a period of less than two years / purchases of shares made in cash not cheque that too before shares got dematerialized / worth of the company at the time of purchase / sale of shares not proved- All suggest non- genuineness of the said transaction?

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in upholding the order of the CIT(A) deleting the addition of Rs. 4,11,77,474/- made by the AO on account of sham share

transactions, whereas the CIT(A) himself had held that the assessee had not been able to substantiate the source of investment of Rs.11,00,000/- in the said shares purchased during the financial year 2005-06 and the AO was directed to reopen the case of the assessee for the assessment year 2006-07 on this issue?

iii) Whether the Hon'ble ITAT has erred in ignoring an important aspect that in such cases of sham transactions of shares showing abnormal hike in their value, where the facts themselves speak loud and clear, the AO is justified to even draw an inference from the attendant circumstances ?

(iv) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in

law in upholding the order of the CIT(A) deleting the addition of Rs.12,59,000/- made by the AO on the basis of seized document on the grounds that the AO has not pointed out as to how the figures of Rs. 12.59 lacs has been worked out ignoring the fact that the assessee himself in his reply to the AO had tried to explain the source of the receipts of Rs. 12,59,000/- instead of challenging the working out of the said figure by the A.O. ?

3. The first three questions of law raised in this appeal are covered against the appellant by an order and judgment of a Division Bench of this Court dated 16.02.2017 in ITA-18-2017 titled as [The Pr. Commissioner of Income Tax \(Central\), Ludhiana vs. Sh. Hitesh Gandhi, Bhatti Colony, Chandigarh Road, Nawanshahar.](#)

4. The issue in short is this : The assessee purchased shares of a company during the assessment year 2006-07 at Rs. 11/- and sold the same in the assessment year 2008-09 at Rs. 400/- per share. In the above case, namely, ITA 18- 2017 also the assessee had purchased and sold the shares in the same assessment years. The AO in both the cases added the appreciation to the assessee's income on the suspicion that these were fictitious transactions and that the appreciation actually represented the assessee's income from undisclosed sources. In ITA-18-2017 also the CIT(Appeals) and the Tribunal held that the AO had not produced any evidence whatsoever in support of the suspicion. On the other hand, although the appreciation is very high, the shares were traded on the National Stock Exchange and the payments and receipts were routed through the bank. There was no evidence to indicate for

instance that this was a closely held company and that the trading on the National Stock Exchange was manipulated in any manner.

5. In these circumstances, following the judgment in ITA- 18-2017, it must be held that there is no substantial question of law in the present appeal.

6. Question (iv) has been dealt with in detail by the CIT(A) and the Tribunal. Firstly, the documents on which the AO relied upon the appeal were not put to the Assessee during the assessment proceedings. The CIT(A) nevertheless considered them in detail and found that there was no correlation between the amounts sought to be added and the entries in those documents. This was on an appreciation of facts. There is nothing to indicate that the same was perverse or irrational. Accordingly, no question of law arises.

7. In the circumstances, the appeal is dismissed."

7. Keeping in view of the facts and circumstances of the case as explained above and respectfully following the precedent, as aforesaid, the addition amounting Rs.18,46,600/- made by the AO and confirmed by the Ld. CIT(A) is hereby deleted and ground raised by the assessee is allowed.

8. In the result, the appeal of the assessee is allowed."

6.1. He has, therefore, submitted that the issue is covered in favour of the assessee by above decision. The assessee entered into genuine transaction, therefore, no addition u/s 68 of the Act be made against the assessee.

7. On the other hand, Ld. Sr. DR relied upon the orders of the authorities below.

8. I have heard the rival submissions and perused the material available on record. The assessee placed sufficient documentary evidences before the AO which are copy of the

shares certificates with transfer form, copy of debit note issued by Shreeji Broking (P) Ltd., copy of cash receipt of Shreeji Broking (P) Ltd., copy of the account statement of the assessee in the books of the broker, copy of ledger account of Indus Portfolio (P) Ltd., copy of evidence for payment of securities transaction tax and copy of the bank statement of the assessee to show that the assessee had entered into genuine transaction of purchase of share which were later on sold through the broker on recognized stock exchange after payment of STT. The claim of the assessee for sale of shares has been supported by the documentary evidences which have not been rebutted by the authorities below. Whatever inquiry was conducted in the cases of other parties and statement recorded of several persons namely Sh. Anil Khemka, Sh. Sanjay Vohra and Sh. Bidyoot Sarkar as referred in the assessment order and the report of the Investigation Wing were not confronted to the assessee and above statements were also not subject to cross-examination on behalf of the assessee. Therefore, such evidences cannot

be read in evidence against the assessee. The order of the SEBI was also not confronted to the assessee. AO did not mention any such fact in assessment order. More so in those reports and statements, the name of the assessee has not been referred to. Ld. Counsel for the assessee, therefore, rightly contended that the twin conditions of [section 10\(38\)](#) of the Act have been satisfied in the case of the assessee. The assessee has been able to prove that she has entered into the genuine transaction of purchase and sale of shares and the sale consideration is received from broker through banking channel. The brokers have not denied the transaction with the assessee. The assessee routed the transaction of sale of shares through recognized stock exchange after making payment of STT. In similar circumstances, ITAT SMC Bench, Delhi in the case of [Meenu Goel vs ITO](#) (supra) following the decision of Jurisdictional Hon'ble P&H High Court in the case of [Pr.CIT vs Prem Pal Gandhi](#) (supra) deleted the similar addition. Therefore, the issue is covered in favour of the assessee by the order of ITAT, Delhi Bench in the case of

[Meenu Goel vs ITO](#) (supra) followed by judgment of Jurisdictional P&H High Court which is binding. There is no other material available on record to rebut the claim of the assessee of exemption claimed u/s 10(38) of the Act.

9. Keeping in view of the above discussion and the material on record, in the light of the order of the Tribunal in the case of [Meenu Goel vs ITO](#) (supra), I set aside the orders of the authorities below and delete the addition of Rs.19,51,357/-. The appeal of the assessee is, accordingly, allowed.

10. In the result, the appeal of the assessee is allowed.”

8.1. *The ITAT, Delhi SMC Bench, in the case of Arun Kumar, Delhi vs. ACIT, Circle-1, Noida (supra) following several decisions of various Benches of the Tribunal and following the decision of ITAT, Delhi Bench in the case of ITO, Ward-4(2), New Delhi vs. Jatin Investment Pvt. Ltd., New Delhi and Judgment of Hon’ble Delhi High Court in the same case (supra) allowed the appeal of assessee on identical facts. The*

Hon'ble Bombay High Court in the case of CIT-13 vs. Shyam R. Pawar (2015) 229 Taxman 256 (Bom.) held as under :

“Where DMAT account and contract note showed details of share transaction, and Assessing Officer had not proved said transaction as bogus, capital gain earned on said transaction could not be treated as unaccounted income under section 68.”

8.2. *ITAT, Hyderabad Bench in the case of ITO, Ward-2, Nizamabd vs. Smt. Aarati Mittal (2014) 149 ITD 728 (Hyd.) (Trib.) held as under :*

“Where assessee having purchased shares in physical form, converted them in D-Mat form and thereupon sale of those shares was carried out through recognized stock exchange after paying securities transaction tax, said transactions were to be regarded as genuine in nature and, therefore, assessee's claim for exemption under section 10(38) was to be allowed.”

8.3. *ITAT, Delhi Bench in the case of ITO, Ward-4(2), New Delhi vs. Jatin Investment Pvt. Ltd., New Delhi in ITA.No.4325 & 4326/Del./2009 vide Order Dated 27.05.2015 in paras 12 to 14 held as under :*

"12. We have considered the submissions of both the parties and gone through the material available on the record. In the present case, it is noticed that the assessee purchased the shares in earlier years which were shown as investment in the books of accounts and reflected in the "Asset Side" of the "Balance Sheet", out of those investments (copy which is placed at page no. 23 and 24 of the assessee's paper book), the assessee sold certain investments and accounted for the profit / loss and offered the same for taxation. In the present case, the amount in question was neither a loan or the deposit , it was also not on account of share application money, the said amount was on account of sale of investment therefore the provisions of [Section 68](#) of the Act were not applicable and the AO was not justified in

making the addition. In our opinion, the Ld. CIT(A) rightly deleted the addition made by the AO.

13. On a similar issue the Hon'ble Jurisdictional High Court in the case of [CIT vs. Vishal Holding and Capital Pvt. Ltd.](#) vide order dated 9th August, 2010 upheld the order dated 30.7.2009 of the ITAT in ITA no. 1788/Del/2007 for the assessment year 2000-2001 wherein the order of the Ld. CIT(A) making the similar deletion was upheld by observing in para 6 as under :-

"We are of the view that the assessee had produced copies of accounts, bills and contract notes issued by M/s. MKM Finsec Pvt. Ltd., and had been maintaining books of account as per [Companies Act](#). The assessee had also demonstrated the purchase and sale of shares over a period of time as seen from the balance sheet's. In our

opinion, the Assessing Officer has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently the addition made by the Assessing Officer cannot be sustained."

14. We, therefore, considering the totality of the facts do not see any valid ground to interfere with the findings of the Ld. CIT(A). Accordingly, we do not see any merit in this appeal of the department. In ITA no. 4326/Del./2009 of the assessment year 2004- 05 identical issue having similar facts is involved, the only difference is in the amount of addition which was deleted by the Ld. CIT(A). Therefore, our findings given in former part of this order, in respect of assessment year 2003-04, shall apply mutatis mutandis for assessment year 2004-05.

In the result, appeals of the department are dismissed.”

8.4. *The Order is confirmed by the Hon'ble Delhi High Court by dismissing the Departmental Appeal in case of PCIT vs. Jatin Investment Pvt. Ltd., in ITA.No.43 & 44 of 2016 Dated 18.01.2017 and decided the similar issue in favour of the assessee.*

8.5. *Considering the material on record in the light of above decisions it is clear that assessee placed sufficient documentary evidences before A.O. to prove genuineness of the transaction. The assessee purchased shares through banking channel and actually got the shares transferred in his name. Purchase was made through cheque which is supported by bank statement. The transactions of sale have been made through Demat account. The contract note along with other details were produced to show that purchase and sale of the shares have been made through banking channel through recognized Stock Exchange through*

Demat account on which Security Transaction Tax have also been paid. The A.O. did not make any enquiry on the documentary evidences filed by the assessee. No material have been brought on record against the assessee to disprove the claim of assessee. It is not the case of the Revenue that amount received on sale of shares is more than what is declared by the assessee. The assessee pleaded that the Interim Order of the SEBI have been diluted by passing final order in which no adverse view have been taken against the aforesaid company. Thus, the claim of assessee of purchase and sale of shares have been supported by documentary evidences. The statement of Shri Sanjay Vohra was recorded by the Investigation Wing, Kolkata, but, the same was not confronted to the assessee and his statement was also not subjected to cross-examination on behalf of the assessee. Therefore, his statement cannot be read in evidence against the assessee. I rely on the decision of Hon'ble Supreme Court in the case of Kishan Chand Chela Ram 125 ITR 713 (SC). The A.O.

did not mention any fact as to how the claim of assessee was sham or bogus. The assessee thus, satisfied the conditions of Section 10(38) of the I.T. Act. The broker through whom transactions have been carried out have not denied the transaction conducted on behalf of the assessee. It, therefore, appears that the addition is merely made on presumption and assumptions of certain facts which are not part of the record. The issue is, therefore, covered in favour of the assessee by several Orders of the Tribunal including the case of Smt. Shikha Dhawan, Gurgaon vs. ITO, Ward-4(2), Gurgaon (supra). There is no other material available on record to rebut the claim of assessee of exemption claimed under section 10(38) of the I.T. Act. Keeping in view of the above discussion and material on record in the light of above decisions of the Tribunal and Hon'ble Delhi High Court, I set aside the Orders of the authorities below and delete the addition of Rs.14,61,585/-. The appeal of Assessee is accordingly allowed.

9. In the result, ITA.No.5882/Del./2018 of the Assessee is allowed.

ITA.No.5883/Del./2018 – Shri Amarnath Goenka, Delhi:

10. This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-7, New Delhi, Dated 08.08.2018, for the A.Y. 2015-2016 challenging the addition of Rs.7,00,793/- under section 68 of the I.T. Act on account of long term capital gains. The facts in this case are similar as have been considered in the case of Shri Amar Nath Goenka in ITA.No.5882/Del./2018 hereinabove.

ITA.No.6457/Del./2018 – Smt. Preeti Yadav, New Delhi:

ITA.No.6458/Del./2018 – Smt. Sneha Yadav, New Delhi :

ITA.No.6459/Del./2018 – Smt. Pooja Yadav, New Delhi:

11. These appeals by the above Assesseees are directed against the different Orders of the Ld. CIT(A)-11, New Delhi, Dated 10.08.2018, for the A.Y. 2014-2015 challenging the additions of Rs.33,79,407/-, Rs.34,70,815/- and Rs.34,10,399/- respectively, under

section 68 of the I.T. Act, 1961, on account of long term capital gains.

12. *Learned Representatives of both the parties submitted that the issue is same as have been considered in the case of Shri Amar Nath Goenka, Delhi in ITA.No.5882/ Del./2018 (supra) except that in these cases the sale is shares of M/s. KAPPAC Pharma Limited, through broker. Learned Representatives of both the parties submitted that the issue being the sale, therefore, Order in the case of Shri Amar Nath Goenka, Delhi (supra) may be followed.*

13. *We find that the issue in the remaining four appeals is same as has been considered in the case of Shri Amar Nath Goenka, Delhi (supra). Therefore, following the reasons for decision in the case of Shri Amar Nath Goenka, Delhi (supra), we set aside the Orders of the authorities below and delete the entire additions. Accordingly, appeals of the Assessees are allowed.*

14. *In the result, ITA.No.5883, 6457, 6458 and 6459/Del./2018 of the Assessee are allowed.*

15. *To sum-up, all the appeals of the Assessee are allowed.”*

9. The decisions relied upon by the Ld. D.R. would not support the case of the Revenue.

10. Considering the totality of the facts and circumstances of the case, I am of the view that the issue is covered in favour of the assessee by the aforesaid Order of the Tribunal in the group case of Shri Amar Nath Goenka, Delhi vs. ACIT, Circle-20(1), New Delhi (supra). I am of the view that the assessee has complied with the conditions of Section 10 (38) of the I.T. Act. I accordingly set aside the Orders of the authorities below and delete the addition.

11. In the result, ITA.No.4738/Del./2018 of the Assessee is allowed.

ITA.No.2429/Del./2018 : Smt. Nishika Aggarwal, Gurgaon :

12. Brief facts of the case are the assessee claimed exemption under section 10(38) of the I.T. Act on account of sale of securities. The assessee has purchased 4000 shares of M/s Kappac Pharma Ltd., on 25.06.2012 by paying amount of Rs.48,000/- which were purchased through M/s. Sarala Space Manager Pvt. Ltd., These shares were sold through National Stock Exchange from 03.02.2014 to 18.03.2014 through broker M/s. F6 Fineserve Pvt. Ltd., The assessee received an amount of Rs.28,14,180/-. The A.O. similarly referred to Investigation conducted by Kolkata Investigation Wing team. The statement of Brokers Shri Nikhil Jain and Shri Anil Kumar Khemka recorded by Investigation Wing, Kolkata have been referred in the assessment order in which they have admitted to have provided accommodation entries of various companies and assessee was also found as one of the beneficiary. After explanation of assessee, A.O. made addition of Rs.28,14,180/-.

12.1. The assessee submitted before Ld. CIT(A) that all the documentary evidences were filed in respect of the genuine transaction. The assessee filed copies of the share certificates and purchase bills, copy of annual return from ROC records of M/s. Kappac Pharma Ltd., regarding share transactions indicating claim of assessee, copy of the Demat Account with HDFC, ledger account and copy of the bank statement. It was explained that STT have been paid and the statement of above two persons were not subjected to cross-examination on behalf of the assessee. Therefore, such statement cannot be read in evidence. The Ld. CIT(A) however confirmed the addition and dismissed the appeal of assessee.

13. The Learned Counsel for the Assessee referred to the same documentary evidences in the paper book which are shares held by assessee, purchase bill, cash receipts, return filed with ROC showing name of assessee, Demat Account, ledger of broker through whom shares have been sold, copy of the bank statement etc., to show that assessee entered into genuine transaction and statements of brokers

Shri Nikhil Jain and Shri Anil Kumar Khemka were not subjected to cross-examination on behalf of the assessee.

14. The Ld. D.R. similarly relied upon the Orders of the authorities below.

15. After considering the submissions of both the parties, I am of the view that the issue is same as have been considered hereinabove in the case of Smt. Radhika Garg, Faridabad vs. ITO, Ward-11(2), Faridabad in ITA.No.4738/Del./2018. Following the reasons for decision in that case, I set aside the Orders of the authorities below and delete the addition.

16. In the result, ITA.No.2429/Del./2018 is allowed.

17. To sum-up both the appeals of the Assessees are allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st January, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.