

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

[Before Sri S. S. Godara, Judicial Member]

M.A No.04/Kol/2020
(in I.T.A No.1649/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Ward-48(1), Kolkata	Vs.	Pradeep Kr. Pansari (HUF) Sri Ganga Apartment, 23, Guha Park, 3rd Floor, Liluah, Howrah 711204
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AALHP 4741 G		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr DR
Respondent by : None

M.A No.07/Kol/2020
(in I.T.A No 24/Kol/2019)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Ward-45(2), Kolkata	Vs.	Sanjay Kumar Agarwal P-6, Majeti House, Kalakar Street, 4th Floor, Kolkata 007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACQPA 8886 J		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Anuj Musaddi, A/R

M.A No.298/Kol/2019
(in I.T.A No.2075/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT, Circle-47, Kolkata	Vs.	M/s Jaychand Lal Chopra [HUF] 88, Block-G, 4th Floor, Rabindra Nagar, a Complex, College Road, Howrah-711103
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABHJ 7560 B		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Miraj D Shah, AR

M.A No.300/Kol/2019
(in I.T.A No.23/Kol/2019)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Wd-43(4), Kolkata	Vs.	Babita Agarwal 30, Addition Banstalla Lane, Burra Bazar, Kolkata-700007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADVPA 0277 H		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Anuj Musaddi, AR

M.A No 05/Kol/2020
(in I.T.A No.1374/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Ward-48(4), Kolkata	Vs.	Surendra Sharma "Vikram Vihar", Bunglow No. 29/30, 3rd Floor, 493/B/61, G.T. Road (South), Howrah-711102
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AUNPS 2017 G		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Amit Agarwal, Advocate

M.A No.299/Kol/2019
(in I.T.A No.2524/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Wd-43(3), Kolkata	Vs.	Smt. Anita Digga
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		Geetea Katra, 2nd Floor, 1, Mullick Street, Kolkata700007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADEPD 7460 H		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Subash Agarwal, Advocate

M.A No.304/Kol/2019
(in I.T.A No.2462/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2015-16)

ITO, Wd-47(4), Kolkata	Vs.	Kailash Kumar Madhogaria (HUF) 42, Dobson Road, 2 nd Floor, Golabari, Howrah-711101
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADHK 9853 N		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Sunil Sur na, FCA

M.A No.16/Kol/2020
(in I.T.A No.1629/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Ward-47(4), Kolkata	Vs.	Jaya Madhogaria C/o S.L. Kochar, Advocate, 5, Ashutosh Choudhury Avenue, Kolkata-700019
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AITPM 8644 F		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : None

M.A No.17/Kol/2020
(in I.T.A No.1630/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Ward-47(4), Kolkata	Vs.	Vivek Madhogaria C/o S.L. Kochar, Advocate, 5, Ashutosh Choudhury Avenue, Kolkata-700019
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BLEPM 6272 L		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : None

M.A No.08/Kol/2020
(in I.T.A No.78/Kol/2019)
(निर्धारण वर्ष / Assessment Year: 2015-16)

ITO, Ward-45(1), Kolkata	Vs.	Smt. Shilpi Jain 174 Rabindra Sarani, Burrabazar, Kolkata 700007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AGSPH 1244 R		
(Appellant)	.	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Miraj D. Shah, AR

M.A No.15/Kol/2020
(in I.T.A No.1737/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Ward-47(3), Kolkata	Vs.	Shree Niwas Lahoti, L/h of Mohan Lal Lahoti 171, Ramkrishna Lane, Shibpur Opp Pally Math, Howrah-711102
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABAPL 6200 G		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Somnath Ghosh, Advocate

M.A No.06/Kol/2020
(in I. T. A No.2505/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Ward-45(2), Kolkata	Vs.	Sri Sumit Jain 12/2 Sovaram Bysack Street, Burrabazar, Kolkata-700 007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AHZPJ 9406 B		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Miraj D. Shah, Advocate

M.A No.303/Kol/2019
(in I. T. A No.1739/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Wd-47(3), Kolkata	Vs	Mahesh Lahoti 171, Ramkrishna Lane, Opposite Pally Math, Shibpur, Howrah-711102
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACUPL 9515 D		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Somnath Ghosh, Advocate

M.A No.295/Kol/2019
(in I. T. A No.832/Kol/2019)
(निर्धारण वर्ष / Assessment Year: 2015-16)

ITO, Wd-2(3), Purba Burdwan	Vs.	Tapati Sahana C/o S.N. Ghosh & Associates, Advocates "Seben Brothers" lodge, P.O. Buroshibtala, P.S.s Chinsurah, Dist. Hooghly, Pin-712105
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJIPS 7560 E		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Somnath Ghosh, Advocate

M.A No.302/Kol/2019
(in I.T.A No.1654/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO, Wd-47(4), Kolkata	Vs.	Sushila Madhogaria C/o S.L. Kochar, Advocate, 5, Ashutosh Chowdhury Avenue, Kolkata-19
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFHPM 6512 M		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Sunil Surana, FCA

M.A No.301/Kol/2019
(in I.T.A No.2461/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2015-16)

ITO, Wd-47(4), Kolkata	Vs	Shri Vivek Madhogaria 42, Dobson Road, 2nd Floor, Golabari, Howrah711101
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BLEPM 6272 L		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Sunil Surana, FCA

M.A No.296/Kol/2019
(in I.T.A No.833/Kol/2019)
(निर्धारण वर्ष / Assessment Year: 2015-16)

ITO, Wd-2(3), Purba Burdwan	Vs.	Souvik Sahana C/o S.N. Ghosh & Associates, Advocates "Seben Brothers" lodge, P.O. Buroshibtala, P.S.s Chinsurah, Dist. Hooghly, Pin-712105
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: CAPPs 7002 B		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Somnath Ghosh, Advocate

M.A No.297/Kol/2019
(in I.T.A No.834/Kol/2019)
(निर्धारण वर्ष / Assessment Year: 2015-16)

ITO, Wd-2(3), Purba Burdwan	Vs.	Suraj Sahana C/o S.N. Ghosh & Associates, Advocates "Seben Brothers" lodge, P.O. Buroshibtala, P.S.s Chinsurah, Dist. Hooghly, Pin-712105
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BQFPS 1733 Q		
(Appellant)	..	(Respondent)

Appellant by : Shri Jayanta Khanra, JCIT, Sr. DR
Respondent by : Shri Somnath Ghosh Advocate

सुनवाई की तारीख/ Date of Hearing : 28/02/2020
घोषणा की तारीख/Date of Pronouncement : 18/03/2020

आदेश / ORDER

Per Shri S. S. Godara:

The Revenue's instant eighteen miscellaneous applications filed u/s 254(2) of the Act seek to recall tribunal's order(s) reversing both the learned lower authorities' action adding long/short term capital gains/losses as bogus unexplained cash credits u/s 68 since involving alleged artificial rigging of the corresponding scrip prices in collusion with entry operators concerned.

2. I have heard Shri Jayanta Khanra, learned departmental representative and the assessee(s) through their authorized representative(s). Mr. Khanra vehemently

contended during the course of hearing that the tribunal has committed an apparent error on record whilst deleting the impugned addition(s) in these cases. It is emphasised that the Assessing Officer as well as the CIT(A) had found these assesseees to have been engaged in artificial rigging of scrip(s) prices in collusion with entry operators resulting in the alleged bogus unexplained cash credits addition(s). It is lastly submitted that the tribunal's has also not distinguished the issues involved i.e long-term and short-term capital gains/losses.

3. I have given my thoughtful consideration to the Revenue's three folded pleadings. Suffice to say, I make it clear that section 254(2) is a remedy for modification/rectification in case there is an apparent error on record. I notice that the tribunal has taken into consideration all the relevant facts on record in light of various judicial precedents whilst coming to the conclusion that the learned lower authorities' action based on circumstantial than actual evidence for the purpose of treating the long/short-term capital gains/losses, is not liable to be sustained. The same cannot be termed as an apparent error on record which could form subject matter of section 254(2) proceedings.

5. Next comes the Revenue's latter plea(s) that the tribunal has not distinguished the factum of the issue(s) involved i.e. long-term & short-term capital gains/losses based on entry operators' collusion with assesseees. I find no force in these arguments as well since the learned lower authorities have followed the very reasoning in these aspects capital gains without quoting any specific material against these assesseees. And also the lower authorities had gone by identical reasoning of circumstantial evidence as per case law Sumati dayal v. CIT 214 ITR 801(SC) and CIT v. Durga Prasad More 82 ITR 540(SC) and not actual evidence. This tribunal has held, in nutshell, that such a course of action of treating all categories of gains or losses; as the case may be, must be based as actual evidence only. The same reasoning applies mutatis mutandis in all these cases therefore.

6. The Revenue's eighteen miscellaneous applications fail therefore. A copy of this instant common order be placed in the respective case file(s). I make it clear before concluding that since the Revenue's instant miscellaneous applications involve identical grievances, the same are disposed off by way of the foregoing common adjudication.

8. These Revenue's eighteen miscellaneous applications are dismissed.

Order is pronounced in the open court on 18.03.2020.

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 18/03/2020

RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - (i) ITO Ward-48(1), Kolkata
(ii) ITO, Ward-45(2), Kolkata
(iii) DCIT, Circle 47 Kolkata
(iv) ITO, Wd-43(4), Kolkata
(v) ITO, Ward-48(4), Kolkata
(vi) ITO, Wd-43(3), Kolkata
(vii) ITO, Wd-47(4), Kolkata
(viii) ITO, Ward-45(1), Kolkata
(ix) ITO, Ward-47(3), Kolkata
(x) ITO, Wd-2(3), Purba Burdwan
2. The Respondent- (i) Pradeep Kr. Pansari (HUF)
(ii) Sanjay Kumar Agarwal
(iii) M/s Jaychand Lal Chopra [HUF]
(iv) Babita Agarwal
(v) Surendra Sharma
(vi) Smt. Anita Digga
(vii) Kailash Kumar Madhogaria (HUF)
(viii) Jaya Madhogaria

- (ix) Vivek Madhogaria
(x) Smt. Shilpi Jain
(xi) Shree Niwas Lahoti, L/h of Mohan Lal Lahoti
(xii) Sri Sumit Jain
(xiii) Mahesh Lahoti
(xiv) Tapati Sahana
(xv) Sushila Madhogaria
(xvi) Shri Vivek Madhogaria
(xvii) Souvik Sahana
(xviii) Suraj Sahana
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.