

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI RAJPAL YADAV HON'BLE VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**IT(SS)A No.140/Ind/2019
Assessment Year:2015-16**

Shri Manoharlal Dudani Pipariya (Appellant)	बनाम/ Vs.	DCIT(Central)-II Bhopal (Revenue)
P.A. No.ABDPD4796Q		
Appellant by	Shri Girish Agrawal and Ms. Nisha Lahoti, ARs	
Revenue by	Shri S.S. Mantri, CIT-DR	
Date of Hearing:	03.08.2021	
Date of Pronouncement:	13.10.2021	

आदेश / O R D E R

PER MANISH BORAD:

The above captioned appeal at the instance of assessee is directed against the order of Ld. Commissioner of Income Tax(Appeals)-3, (in short 'CIT(A)'), Bhopal dated 26.04.2019 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 27.12.2017 framed by DCIT(Central)-II Bhopal.

The assessee has raised following grounds of appeal:

(1). That on the facts and in the circumstances of the case and in law, the addition, which has been sustained by the learned CIT(A) of Rs.28512276, has been made in violation of principles of natural justice. Hence the said addition is unlawful and unjustified and be deleted.

(2) That on the facts and in the circumstances of the case and in law, the learned lower authorities have not supplied the material, despite the request of the assessee in his letter filed on 19.12.2017, and without supplying the said material made the addition of Rs. 28512276. Therefore, the addition is unlawful and be deleted.

(3) That on the facts and in the circumstances of the case and in law, the additions have been made by the learned A.O and sustained by the learned CIT(A) on the basis of statement recorded in the search without appreciating/considering judiciously the submissions made and evidences produced in the course of assessment proceedings by the assessee. The assessee submits that the statement in the search was made due to coercion, pressure tactics and undue influence adopted by the search officials in the search and, therefore, the addition made in the assessment of the income is neither justified nor lawful and also contrary to the CBDT Instructions dated 10.03.2003 and 18.12.2014. Hence, the additions made at Rs. 28512276 & Rs. 800000 are bad in law and, therefore, be kindly deleted.

(4) That on the facts and in the circumstances of the case and in law, the addition has been made/sustained by the learned lower authorities solely on the basis of retracted statement of the assessee and without finding any falsity in the evidences submitted before them in support of the claim that the income earned from the long term capital gain is a genuine income. Therefore, the addition made/sustained at Rs. 28512276 & Rs. 800000 are unlawful and unjustified and bad in law, hence be kindly deleted.

(5) That on the facts and in the circumstances of the case and in law, the A.O. has made the addition in violation of sub-section (3) of section 142 of the LT. Act and, therefore, the addition of Rs. 28512276 & Rs. 800000 are unlawful and unjustified and, therefore, be deleted.

(6) That on the facts and in the circumstances of the case and in law, the income from long term capital gain of the assessee in the impugned assessment year was a genuine income exempt u/s.10(38) of the Act. The learned lower authorities erred in law in treating the same as the income from undisclosed sources and denying the exemption i/s.10(38) of the LT. Act. The contention of the assessee that the income from long term capital gain is genuine income exempt u/s.10 (38) be accepted and the addition of Rs 28512276 be kindly deleted.

(7) That on the facts and in the circumstances of the case and in law, no material/evidence have been found in the search suggesting that the assessee had entered into bogus share transactions and the receipt of

money is in the nature of accommodation entry hence in the absence of any such evidence found in the search, the addition of Rs. 28512276 and Rs. 800000 be kindly deleted.

(8) That on the facts and in the circumstances of the case and in law, the assessee has not made any payment of commission of Rs. 800000 and also no evidence were found in the search suggesting any such payment hence the addition of Rs. 800000 neither justified nor lawful and therefore be deleted.

(9) That on the facts and in the circumstances of the case and in law, that the levy of interest u/s.234A, 234B and 234C are contrary to the provisions of law as prescribed in the said section and hence the same is unlawful and without jurisdiction, therefore, be cancelled.

2. Brief facts of the case as culled out from the records are that the assessee is an individual and is a partner in M/s Mahesh Traders and sole proprietor of Murali Bus Service. Search action u/s 132 of the Act was carried out at the residential and business premises of the assessee's business associates on 05.10.2015. Subsequently notice u/s 153A of the Act served upon the assessee for A.Y. 2010-11 to 2015-16. Since the instant appeal pertains to A.Y.2015-16, we will confine our discussion only for A.Y. 2015-16. In response to the above notice the assessee filed return of income for A.Y. 2015-16 on 29.03.2017, declaring income of Rs.29,39,750/-, Ld. AO served the assessee with notices u/s 143(2) & 142(1) of the Act along with the detailed questionnaire. During the course of assessment proceedings Ld. AO confronted the assessee with the statement given during the course of search wherein the assessee stated to

have taken accommodation entry in the form of bogus Long Term Capital Gain of Rs. 2,85,12,276/-. The assessee did not offered the alleged Long Term Capital Gain (LTCG), to tax in the income tax return. Ld. AO observed that the assessee retracted the statement within five months of the date of search stating that no such accommodation entry was taken by him and the transaction of purchase and sale of Long Term Capital Gain falls under the provision of u/s 10(38) of the Act and the income is exempt. During the course of assessment proceedings Ld. AO referred the reports of Investigation Wing, Kolkata alleging that various stock brokers and paper companies are involved in providing Accommodation entry in the form of bogus LTCG. Ld. AO linked these reports to the statements given by the assessee during the course of search wherein the assessee categorically admitted to have taken accommodation entry in the form of bogus LTCG. Ld. AO also referred to the financial statements of company, M/s Premier Capital Services Limited observing that turnover of the company is very low and so are the profits which are not sufficient to support the steep increase in the share prices of this company of which the assessee held the equity shares and claimed to have earned LTCG

from sale of the equity shares during the year. It was submitted on behalf of the assessee before the Ld. AO that the alleged LTCG is genuine as he is regularly engaged in purchase/sale of equity shares and equity shares in question were held in Demat Account for more than a year. It was also submitted that out of the 2,00,000 equity shares held by the assessee of the company named 'PCSL', assessee has only 96256 equity shares and the remaining are still held by the assessee. It was also claimed that all the condition of section 10(38) of the Act are complied with regard to the alleged transactions. However, Ld. AO was not satisfied with these submission and came to a conclusion that the assessee had taken accommodation entry of bogus LTCG and accordingly made an addition of Rs.2,85,12,276/- as "income from other sources" and also made addition for unexplained commission expenditure of Rs.8,00,000/- alleged to have been incurred for obtaining the bogus LTCG. Income assessed at Rs.3,22,52,026/-.

3. Aggrieved assessee preferred an appeal before the ld. CIT(A) raising various grounds on legality of the additions as well as

on merits contending that no incriminating material was found during the course of search, additions are purely made on the basis of statement and alleged LTCG squarely falls under the provision of section 10(38) of the Act, but could not succeed in getting any relief from the Ld. CIT(A) and the addition made by the Ld. AO was confirmed.

4. Now assessee is in appeal before this Tribunal Ld. counsel for the assessee referred to the paper book dated 15th June, 2020 running from 1 to 332, detailed written submission filed on 16.03.2021 containing 40 pages and also referred to relevant pages of the paper book with the help of the table reproduced below summarizing contentions made before us:

Sr. No.	Contentions	Paper book (PB) and AO reference
1.	Shares purchased – preferential allotment	PB 6-9, 231-232
2.	Shares sold – out of 2,00,000 shares only 96,256 shares sold i.e. unsold quantity is 1,03,744 which is 51.8%	PB 11
3.	Assessee invested in the shares of other companies	PB 10-12
4.	Addition made without reference to any incriminating material	PB 42
5.	Addition made merely on the basis of statement	PB 44-56, CIT(A) order pg 8
6.	Statement retracted within 5 months , before issue of notice u/s 153A	PB 35-41 & 275 AO pg 33 para 7.36
7.	Copy of the statements of alleged operators not provided	PB 35, CIT(A) pg 11 para 16-21
8.	No evidence on record to establish if there is any element of cash (Hon’ble Apex Court - Lalchand Bhagat Ambica Ram)	PB 05
9.	No credibility of list of 20 persons as it is a stock market transaction	AO pg 23-31

10	Provisions of section 142(3) not complied with No opportunity of cross examination Copy of the statement not provided	PB 35, CIT(A) pg 11 para 16-21
11	Nothing brought on record to establish any live link for price rigging	PB 35, CIT(A) pg 11 para 16-21
12	Trading suspended NOT by SEBI but BY STOCK EXCHANGE for nonpayment of listing fees	AO page 22
13	Hon'ble Mumbai ITAT – Amit Mafatlal Shah dealt with the same scrip – Premier Capital Services Limited	PB 315-332 and 07
14	Books of accounts not rejected except for LTCG, book results accepted by Ld. AO	AO pg 6 Q. no.18 AO pg 40
15	Ld. AO did not disprove or controvert the documentary evidences furnished by the assessee	
16	Claim of assessee u/s 10(38) not rejected but a separate addition u/s 68 has been made	AO Pg 35 para 7.4

5. Ld. counsel for the assessee referring to the written submission and paper book submitted that the addition made by the Ld. AO are vague and based on *surmises and conjectures*. No specific enquiry was made by the Ld. AO with regard to the alleged transaction and the additions have been made purely on the borrowed documents relating to some other assessee remotely not connected to the assessee in appeal. He also submitted that the Ld. AO failed to prove any direct nexus of the assessee with the alleged investigation reports, no common material/documents/report was referred which could indicated that the assessee was part of the alleged racket providing accommodation entry of bogus LTCG. It was also submitted that Ld. AO erred in was not providing the material gathered on the basis of the enquiry u/s 142(2) or 142(2A) which

was utilized for the purpose of making addition in the hands of assessee nor any opportunity of being heard was given as provided in section 142(3) of the Act. Id. counsel for the assessee also submitted that the alleged transaction of sale of equity shares of M/s. Premier Capital Services Limited involved the purchase of shares through account payee cheque, equity shares held in Demat Account for more than a year, sale of part of the equity shares carried out through recognized stock exchange, security transaction tax paid on the sale of shares and the sale consideration directly credited to the assessee's bank account through stock exchange. Id. counsel for the assessee submitted that all these documents relating to purchase and sale of equity shares have not been found to be untrue/incorrect by both the lower authorities which in itself prove that the alleged transaction is genuine. It was also submitted that all the conditions enumerated in section 10(38) of the Act are duly complied. Placing reliance on the judgment of Hon'ble Supreme Court in the case of *CIT vs. Sinhgad Technical Education (2017) 84 Taxmann.com 290 (Hon'ble Supreme Court)* it was submitted that the additions cannot be made without referring to any incriminating material as in the instant case assessee was subjected to search.

Further referring to the decision of this Tribunal in the case of *Ultimate Builders ITANo.134/Ind/2019 dated 09.08.2019* it was submitted that the addition made in the instant case are merely based on statements recorded but there is no reference to any incriminating material or any other documents/report. It was also submitted that the provisions of section 68 of the Act were wrongly applied by the Ld. AO as the source of credit i.e. a sale consideration is through a recognized stock exchange wherein all the details of purchaser and seller are with the stock exchange and transactions are carried out on the online portal of recognized stock exchange and the sale consideration is directly received in the bank account linked with the Demat Account of the assessee. It was also submitted that the provisions of section 69C of the Act for unexplained expenditure for the alleged addition of Rs.8,00,000/- is uncalled for, as no positive material have been brought on record with regard to allege expenditure. Reliance placed on following decisions:

- i. No addition where all the documents submitted are considered:-
 - a. Krishna Devi-ITANo.125/2020 Delhi HC
 - b. Achal Gupta -ITANo.501/2019 -Lknw
 - c. Aditya Mundra -ITANo.632/2019-Indore

ii. No addition can be made based on document not confronted:-

- a. Sona Builders (2001) 119 Taxman 430-Hon'ble Supreme Court
- b. Amit Fafatlal Shah ITANo.5793/2019 Mum
- c. Shweta Agrawal ITA 280/2019-Indore

iii. Decisions on addition can be made in the absence of incriminating material:-

- a. Sinhgad Technical Education (2017) 84 Taxman.com 290-Hon'ble Supreme Court
- b. Mechmen (2015) 60 taxmann.com 484-MP
- d. Satish Neema ITA(SS)A No.149 of 2016-Ind
- e. Meeta Gugutia 395 ITR 526-Delhi HC

iv. No addition can be made merely on the basis of admission in the statement

- a. *Pullangode Rubber Produce Co. Ltd. (1973) 91 ITR 18-Hon'ble Supreme Court*
- b. *Satinder Kumar (HUF) (1977) 106 ITR 64-Hon'ble Supreme Court*
- c. *Anand Kumar (HUF)-Income-tax Act, 1961. 23 of 2021-Delhi HC*
- d. *Ag8 Ventures-IT(SS) A 83/Ind/2019-Ind*

6. Per contra ld. DR vehemently argued supporting the orders of both the lower authorities and submitted that the assessee has stated on oath that he has taken accommodation entry in the form of bogus LTCG for evading tax and for taking this accommodation entry an expenditure of Rs.8,00,000/- was incurred. Ld. DR also submitted that the ld. AO has exhaustively dealt with the issue and carried out various enquiries which proves that the alleged transactions of LTCG is not genuine and the same is rightly held as

bogus LTCG of Rs.2,85,12,276/- and unexplained expenditure of Rs.8,00,000/- liable to be taxed and no exemption u/s 10(38) of the Act should be allowed to the assessee on the alleged transaction of capital gain.

7. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions referred and relied by the Ld. counsel for the assessee as well as referred by both lower authorities. Assessee has raised nine (9) grounds. Ground No.9 is general in nature which needs no adjudication and the remaining eight grounds raises three issues which are dealt as follows:

8. Ground No. 1,2 & 5, through which assessee has contended that the principles of natural justice were violated in the case of assessee as the material referred to by the ld. AO used to make addition in the hands of assessee were not supplied to the assessee nor any opportunity was provided to cross verify the persons whose statement were utilized against the assessee.

8a. We find that the assessee was subjected to search u/s 132 of the Act wherein it was found that the assessee has transacted in the purchase and sale of equity shares namely M/s Premier Capital

Services Limited. As per the information available with the search team this company is alleged to be a Paper Company having poor financial strength and the share prices of this company were rigged with the help of few brokers based at Kolkata. Search team took the statement of assessee wherein he stated to have taken accommodation entry but subsequently, he retracted the statement. Nowhere in the assessment order any detail of alleged report of the Investigation wing is available nor copy of the same has been filed before us. It is also not proved that in which statement the name of assessee was taken by so-called brokers engaged in providing accommodation entry. There is also no whisper that whether the assessee was provided an opportunity to go through material gathered by the revenue authorities. Nor any opportunity seems to have been provided to cross examine those persons whose statements were used to make addition in the hands of assessee. There seems to be a clear violation of principles of natural justices and it is judicially settled that in case any addition is made in the hands of assessee on the basis of any material gathered behind the assessee in the form of documentary material or statement of any 3rd party then before making addition in the hands of assessee proper

opportunity of cross examining and opportunity to reply to such material gathered behind the assessee is mandatory before taking any adverse view or making any addition in the hands of assessee.

Our this view is supported by the following decisions:

- i. M/s Andaman Timber Industries vs. CCE Civil Appeal No. 4228 of 2006*
- ii. Lalchand Bhagat Ambica Dav vs. CIT (37 ITR 28) (SC)*
- iii. Dhakeswari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 777*
- iv. Seth Surumukh Singh vs. CIT (1944) 12 ITR 393*
- v. Jai Karan Sharma vs. DCIT ((2012) 23 taxmann.com 300(Delhi)*
- vi. Hamish Engineering Industries (P.) Ltd. vs. DCIT (2009) 120 ITD 166(Mum-Trib)*
- vii. Kishinchand Chollaram vs. CIT (1980) 4 Taxman 29 (SC)*
- viii. C Vasantlal & Co. Vs CIT (1962) 45 ITR 206 (SC)*

8b. We accordingly allow all this legal issue raised by the assessee in ground no.1, 2 & 5 are hold that the additions for the alleged bogus LTCG at Rs. 2,85,12,276/-/- and unexplained expenditure at Rs.8,00,000/- are unjustified and liable to be deleted.

9. Now we take up ground no.3, 4 & 7 through which the assessee has contended that the addition for alleged LTCG of Rs.2,85,12,276/- & alleged commission paid for acquiring such

bogus LTCG of Rs.8,00,000/- should not have been made as no incriminating material pertaining to these additions were found during the course of search and the additions are based purely on the statement given during the course of search which was subsequently retracted.

9a. We find that the search authorities were having information that the assessee had dealt into purchase and sale of equity shares of *M/s Premier Capital Services Limited*. and also possessed the information that this company is being used as a conduit for providing bogus LTCG to various persons. Assessee in his statement u/s 132(4) of the Act stated to have taken such accommodation entries which was subsequently retracted. During the assessment proceedings Ld. AO further made independent enquiries by calling details of the purchasers who purchased the shares from the assessee. Inspector report was also taken about the where about of the purchaser of such equity shares which were not found satisfactory.

9b. Under these given facts, we do not find any merit in the contention of the Ld. counsel for the assessee that the alleged addition is purely based on the statement recorded during the

course of search. Ld. AO has extensively dealt with the issue by referring to various material gathered before the search, though not specifically related to the assessee but related to such type of transaction carried out in some other cases and in the statement during the course of search assessee has clearly spelt out to have accepted the accommodation entry and further ld. AO made enquiries about the purchasers of the equity shares, their bank accounts and other details as mentioned in the assessment order. Though Ld. counsel for the assessee has referred to various judicial pronouncements but on going through the same we find that the facts of the case of the assessee are different to the facts dealt in these decisions and therefore they are not applicable on the instant issue before us. Therefore, since addition is not based purely on the statement recorded during the course of search, this legal issue raised in ground no.3,4 & 7 stands dismissed.

10. Now we take up ground No.6 & 8 raised on merits of the case with regard to the alleged transactions of earning Long Term Capital Gain contending it to be genuine and condition of section 10(38) of the Act are fulfilled and the addition for commission payment of

Rs.8,00,000/- is not based on any evidences. We note that the assessee was allotted 20,000 equity shares of *M/s Premier Capital Services Limited* during F.Y. 2012-13 as preferential allotment. The shares were allotted at face value of Rs.10 per share with premium of Rs.65/-. Purchase consideration of Rs.15,00,000/- was given on 30th August 2012 directly to the bank account of *M/s Premier Capital Services Limited*. Shares were allotted on 3rd September 2012 and were credited to the Demat account maintained by assessee with Ashika Stock Broking Ltd. Thereafter, the shares were split from face value of Rs. 10 to Rs.1/-, as a result the 20,000/- equity shares allotted to assessee were converted to 2,00,000/- equity shares. Out of these 2 lakhs equity shares assessee sold 96,256/- equity shares during A.Y. 2015-16 and the remaining 1,03,744/- equity shares are still held by assessee in his Demat Account.

10a. We also observe that the assessee has made investment in other equity shares also as appearing in the Demat Account. 96256 equity shares of PCSL were sold on the recognized stock Exchange through a registered broker. Provision of section 10(38) of the Act requires that for claiming exemption of the capital gain earned from

sale of equity shares, they should be held for more than one year, the assets transferred should be Long Term Capital Asset which may be either equity shares or unit of an equity oriented fund or a unit of a business trust and the transaction should be chargeable to securities transaction tax. Examining facts of the instant case we find that all the condition provided u/s 10(38) of the Act are duly fulfilled as the shares purchased during the F Y 2012-13 were held by assessee for more than a year in the Demat Account and sale has been carried out on a recognized Stock Exchange after paying security transactions tax.

10b. So far as the revenue's claim that the *M/s Premier Capital Services Limited* is a bogus company engaged in the providing accommodation entry in the shape of LTCG, we find that the Coordinate Bench Mumbai in the case of *Amit Mafatlal Shah – ITA No. 5793/MUM/2019* dated 20th April 2020 has dealt with the very same issue of the genuineness of claim of section 10(38) of the Act arising from sale of equity shares of *M/s Premier Capital Services Limited* and has held in favour of assessee allowing the claim of exemption u/s 10(38) of the Act observing as follows:

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 irrefutable 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 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.

10c. From perusal of the above finding of the Coordinate Bench of Mumbai in the case of *Amit Mafatlal Shah (supra)*, we find that this decision is squarely applicable on the facts of the instant appeal and we thus have no hesitation to hold that the assessee has rightly claimed the exemption u/s 10(38) of the Act at Rs.2,85,12,276/- from sale of equity shares of PCSL and also addition for unexplained expenditure of Rs.8,00,000/- is uncalled for. Accordingly addition of Rs. 2,85,12,276/- and Rs.8,00,000/- are deleted. Ground no.6 & 8 of the assessee's appeal are allowed.

11. In the result, Appeal of the assessee in IT(SS)ANo.140/Ind/2019 is partly allowed as per terms indicated above.

Order pronounced as per Rule 34 of I.T.A.T., Rules 1963 on ...13.10.2021.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 13/10/2021

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore