

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष

BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 289/JP/2020
निर्धारण वर्ष/Assessment Year :2013-14

Late Shri Satpal Singh (Represented by Shri Satnam Singh) A-5, Transport Nagar, Jaipur	बनाम Vs.	ACIT, Circle-05, NCR Building Bhagwan Dass Road, C Scheme- Ashok Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No : AEMPS7947E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Ronak Khandelwal (CA)
& M/s Devendra Pareek & Co
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 09/09/2021
उदघोषणा की तारीख / Date of Pronouncement: 14/10/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Udaipur dated 27.02.2020 wherein the assessee has taken the following grounds of appeal:-

- "1. That the Learned Commissioner of Income Tax (Appeals)-2, Udaipur, Rajasthan erred in passing an order dated 27th of February, 2020 under section 250 of the Income Tax Act, 1961 partially allowing the appeal of the Appellant without considering the facts and grounds of appeal.*

2. *That, on the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals)-2, Udaipur, Rajasthan erred in confirming the addition towards purchase of immoveable property of Rs. 1,65,53,295/- out of Rs. 1,97,50,500/- made by the Assessing Officer as unexplained investment under section 69 of the Income Tax Act 1961 whereas the property was purchased by M/s. Seven Star Township Pvt. Ltd.*
3. *That the Learned Commissioner of Income Tax (Appeals)-2, Udaipur, Rajasthan erred in confirming the addition of Rs. 1,65,53,295/- out of Rs. 1,97,50,500/- made by the Assessing Officer under section 69 of the Income Tax Act, 1961 on the basis of incorrect facts and arbitrarily grounds*
4. *That, on the facts and circumstances of the case, the Ld Commissioner of Income Tax (Appeal)-2, Udaipur, Rajasthan erred in confirming the disallowance of claim of Long Term Capital Gain Rs. 93,34,545/- made by the Assessing Officer under section 68 of the Act on the alleged ground that the transactions relating to Long Term Capital Gains on sale of shares of "Unisys Software & Holdings Industries Ltd" were dubious, suspicious and meant to book Long Term Capital Gain.*
5. *That the learned Commissioner of Income Tax (Appeal)-2, Udaipur, Rajasthan erred in confirming the aforesaid disallowance of Rs. 93,34,545/- made by the Assessing Officer as unexplained cash credit after disallowing the claim of the assessee of exemption of Rs 93,34,545/- under section 10(38) on the alleged ground that the transactions resulting in Long Term Capital Gain were the result of accommodation entries.*
6. *That the Ld. Commissioner of Income Tax (Appeal)-2, Udaipur, Rajasthan erred in agreeing with the aforesaid addition of Rs. 93,34,545/- made by the Assessing Officer solely relying on the report of the Investigation Wing, Kolkata and the statements of third parties recorded by them in some other cases without furnishing the copy thereof and without allowing any opportunity of cross-examination of the Assessee and without conducting any independent inquiry himself.*

7. *That the Ld. Commissioner of Income Tax (Appeal)-2, Udaipur, Rajasthan erred in arbitrarily confirming the aforesaid disallowance of Rs. 93,34,545/- and thereby consequentially denying the claim of the Assessee of Long Term Capital Gain of Rs. 93,34,545/- on mere surmises, suspicions, conjectures and irrelevant considerations.*
8. *That the denial of exemption of Rs. 93,34,545/- claimed under section 10(38) of the Act and the addition made thereof under section 68 of the Act of the Income Tax Act, 1961 made by the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeal)-2, Udaipur, Rajasthan was in complete disregard of the binding judgments of different High Courts and Hon'ble Appellate Tribunals including Jurisdictional High Court and Appellate Tribunal."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. There is delay of 91 days in filing this appeal, for which the assessee filed an application for condonation of delay and the contents of application for condonation of delay reads as under:

- "1. In reference to the above subject, the assessee received order passed by Id. CIT(A)-2, Udaipur, Rajasthan on 02/03/2020. The above appeal has been filed by the assessee against the appeal order dated 27/02/2020 passed by Id. CIT(A)-II, Udaipur in Appeal No. 10102/IT/UDR/2017-18.*
- 2. That, the assessee aggrieved by the intended to file an appeal to the Hon'ble Appellate Tribunal.*
- 3. That, the due date to file the appeal was 27/05/2020 but under the current circumstances and due to the unexpected lockdown we failed to file the appeal within time.*
- 4. That, as per the CBDT notification No. 35/2020 dated 24th June, 2020, it was mentioned that all the compliance dates falling during the lockdown period shall be extended up to 31st March, 2021.*

5. *That, the legal heir of the deceased assessee is a super senior citizen and owing to the current circumstances we were not able to get the necessary documents signed."*

4. On the other hand, the Id DR could not rebut the facts submitted by the assessee before us for seeking condonation of delay.

5. We have considered the rival submissions as well as relevant material on record. As regards the sufficiency of cause for filing the appeals belatedly, it is settled principles of law that the Courts have to take liberal approach while interpreting the expression 'sufficient cause' for condonation of delay. In case **of Collector, Land Acquisition Vs. Mst. Katiji (1987) 167 ITR 471**, the Hon'ble Supreme Court has laid down the principle that the power to condone the delay provided under the statute is to enable the Courts to do substantial justice to the parties by disposing of the matter on merits, therefore, while considering the matters for condonation of delay, the law must be applied in a meaningful manner which subserves ends of justice and technical considerations should not come in the way of cause of substantial justice. There is no quarrel that the explanation and reasons explained for delay must be bonafide and not merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in the underhand way. If the party who is seeking condonation of delay has not acted in malafide manner and reasons explained are factually correct then the Court should be liberal in construing the sufficient cause and lean in favour of such party. A justice-oriented approach has to be taken while deciding the matter for condonation of delay. However, this does not mean that a litigant gets free right to approach the court at its will.

6. If we apply the settled principles as laid down by the Hon'ble Supreme Court as well as other courts on the facts of the present case we find that the assessee has explained cause of delay, therefore, in the facts and circumstances of the case, we condone the delay of 91 days in filing the present appeal and admit the appeal for hearing.

7. The brief facts of the case are that the assessee run business in the name and style of M/s Satnam Motor, a proprietary concern. He e-filed the return of income for the Assessment Year 2013-14 on 23.09.2013 declaring total income at Rs. 17,96,840/-. The case was selected for scrutiny under CASS and notice u/s 143(2) of the Income Tax Act, 1961 (in short, the Act) was issued on 04.09.2014. The AO issued various statutory notices, which were not complied with by the assessee. Accordingly, the AO passed an ex-parte assessment order within meaning of provisions of sec. 144 of the Act on 27.03.2016, determining the total income at Rs. 6,35,62,970/- making the additions/disallowances as mentioned in the assessment order.

8. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A) and during the pendency of the appeal before the Id. CIT(A), the assessee also filed additional evidences. The Id. CIT(A) after considering the additional evidences filed by the assessee as well as after considering the material placed on record, had given part relief to the assessee.

9. Being aggrieved by the order of Id. CIT(A), the assessee has preferred the present appeal before us on the grounds mentioned hereinabove.

10. Grounds No. 1 to 3 of the assessee raised by the assessee are interrelated and interconnected and relate to challenging the order of Id.

CIT(A) in upholding the additions of Rs. 1,65,53,295/- u/s 69 of the Act, therefore, we thought it fit to decide all these grounds through the present consolidated order. In this regard, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon written submissions filed before the Bench and contents of the same are reproduced as under.

- “1. *The assessee filed Income Tax Return for the Assessment Year 2013-14 on 23.09.2013 and during the regular assessment proceedings the previous authorized representative did not made any submission and the Assessee was never informed for the above negligence on the part of the Authorized Representative. That may be due to some unavoidable reason on part of the previous authorized representative (best known to him) of the Assessee, the representative was not able to give the reply of the notice issued by the assessing officer on time while the Assessee had provided all the information required by the A/R.*
2. *The A.O had completed the assessment proceedings as per Best Judgment and passed assessment order u/s 144 dated: 27.03.2016 received by us (Present A/R) on 18.07.2016 in respect of assessment year referred above, wherein a sum of Rs. 6,17,66,128/- has been added in the income of the assessee for such assessment year.*
3. *Further, the assessee aggrieved by the impugned order passed by the Ld. AO filed an appeal on 16.08.2016 to the Commissioner of Income Tax seeking relief against the addition of Rs. 6,17,66,128/-.*
4. *During the appeal proceedings all the facts were duly placed on record and the Ld. CIT (A)- II, Udaipur after considering the same allowed the appeal partly, deleting the addition of Rs. 3,58,42,288/- against the addition made by the Id. AO.*
5. *The assessee on perusal of such impugned order passed by the Ld. CIT(A)-II, Udaipur wherein an addition u/s 69 of the Income Tax Act, 1961 has called into question correctness of order dated 27.02.2020 passed by the Ld. CIT(A)-II Udaipur, in the matter of*

assessment under section 144 of the Income Tax Act, 1961 for the assessment year 2013-2014.

6. *The Ld. AO during the assessment proceedings made an addition of Rs. 1,97,500,00/- u/s 69 of the Income Tax Act, 1961 for the property purchased by M/s Seven Star Township Pvt. Ltd. during the relevant assessment year in which the assessee was a director. During the appeal proceedings all the relevant facts were duly placed on records and further an affidavit dated 15.06.2019 was furnished before the Ld. CIT(A)-II, Udaipur wherein the director of the company explicitly mentioned that the said property belonged to the company and the assessee had no claim or interest over the same.*
7. *It is submitted that during the assessment as well as appeal proceedings the Ld. AO and Ld. CIT(A)-II, Udaipur have grossly erred while applying the provisions of section 69 of the Income Tax Act, 1961. As per section 69:*

“Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”
8. *On a plain reading of the section it is clearly evident that section 69 is applicable if the assessee has made any investment and failed to show the same in the books of accounts maintained by him or fails to provide satisfactory explanation w.r.t any investment or income in his name.*
9. *It is submitted that assessee was holding directorship in M/s Seven Star Township Private Limited, company engaged in real-estate & construction activities. During the relevant assessment year assessee in the capacity of director performed registries/ legal formalities for registry of the property situated at Village Dabla*

Khurd, Tehsil Faghi, which was purchased by the company in its own name. The assessee was only a POA holder for the registry/documentation purpose on behalf of company, moreover on the registry document (purchase deed) it is specifically mentioned that the assessee has signed under the capacity of being a director in the company. Moreover, in our case the property is not purchased by the Assessee and also not in the name of the Assessee. Assessee is only playing role on behalf of the company as he is director in the company. The Assessee is being authorized by the company for purchase of the property situated at Village Dabla Khurd, Tehsil Faghi and for the necessary formalities in relation to the purchase of the property. At this juncture I would like your kind attention to the landmark judgments;

- *In the case of Salomon v Salomon & Co. Ltd*

One of the case was regarding Salomon v Salomon & Co Ltd it was held that Separate means that the artificial legal person, the company, can do almost everything a human person can do; it can make contracts, employ people, borrow and pay money, sue and be sued, among other things.

- *In the case of State Trading Corporation of India Ltd. AIR (1963) SC 1811 Once a company or corporation is formed, the business which is carried on by the such company or corporation is the business of that company or corporation and is not the business of the citizens who get the company or corporation incorporated and the rights of the incorporated body must be judges on that footing and cannot be judged on the assumption that they are the rights attributed to the business of individual citizens.*

10. *During the appeal proceedings various documents were submitted by the assessee which were very evident to prove that the land belonged to the company i.e. M/s Seven Star Township Private Limited and they were shown in the financial statements of the company for the relevant year, owing to the above explanations the Ld. CIT(A)-II, Udaipur asked the assessing officer to submit a remand report for the same.*

11. *Per contra, remand report dated 03.10.2019 by the Ld. AO advertently assumes that investment in the property situated at Village Dabla Khurd, Tehsil Faghi was not rightfully done by the company and thus an addition u/s 69 of the Income Tax Act, 1961 was made to the assessee.*
12. *It is respectfully submitted that bank statements of the company i.e. M/s Seven Star Township Private Limited for the relevant period were provided to the Ld. CIT(A)-II, Udaipur which duly showed that cheques to the respective parties were issued by the company and not the assessee, total cheques issued by the company for a total of Rs. 1,97,05,000/- were duly mentioned in the purchase deeds.*
13. *It is submitted that neither Ld. AO or Ld. CIT(A)-II, Udaipur tried to look into the details to make a fair opinion rather their negligence can be seen from the fact that the bank accounts of the company provide that out of the total cheques issued amounting to Rs. 1,97,05,500/-, cheques amounting to Rs. 49,07,450/- were debited from the company bank accounts and rest other got dishonored. The Ld. AO in his remand report dated 03.10.2020 claimed that a total of Rs. 34,50,000/- could only be verified, contradicting which the Ld. CIT(A)-II, Udaipur in the order dated 27.02.2020 claimed that only Rs. 31,15,705/- could be verified, on the facts supra, it is clearly evident that the Ld. AO has erred both in facts and law thus it seems there was no intention to provide relief rather the motive was to increase litigation. I would place on record the judgment made in the case of Ashok Kumar Rastogi V CIT (1991) 100 CTR 204 wherein it was laid down that "Assessing Officer is expected to appreciate the reasonable explanation offered to him, the evidences produced before him about the nature and source of investment and he cannot make the addition merely on surmises, conjectures as well as without any supporting evidences."*
14. *It is clearly evident from the facts supra, the Ld. CIT(A)-II Udaipur has erred in accepting the claim made the Ld. AO and thus without considering the facts provided during the appeal proceedings wrongfully applied the provisions of section 69 and made an addition to the assessee for an amount of Rs. 1,65,53,295/-.*

15. *We are hereby submitting the bank accounts provided earlier, details of all the properties purchased (along with reconciliation) by the company M/s Seven Star Township Private Limited during the relevant assessment year, the affidavit furnished during the appeal proceeding. Moreover the facts are completely verifiable from the documents annexed to the paper book submitted with the letter.*
16. *It is respectfully submitted that the facts are verifiable from the following documentary evidences;*

(1) Audited Balance Sheet and Profit & Loss account of M/s Seven Star Township Private Limited for the Financial Year 2012-13.

(2) Copies of all the purchase deeds of the properties which the company had bought during the relevant assessment year along with Reconciliation of the deeds with the figure mentioned in the audited financials.

(3) Copies of the relevant bank accounts through which the company made payment towards the purchase of these property which has been added to the assessee.

(4) Declaration by the Director of M/s Seven Star Township Private Limited through the affidavit dated 15.06.2019.

In view of the above facts and circumstances of the case it is requested that impugned addition of Rs. 1,65,53,295/- made by the Ld. CIT (A)- II, Udaipur is wrong and bad in law may very kindly be deleted."

11. On the other hand, Id. DR has relied upon the orders passed by the Revenue authorities. He also relied on the following case laws:

- (i) Soman Sun City Vs JCIT ITA No. 2960/Mum/2016 order dated 23/01/2017.
- (ii) Sumati Dayal Vs CIT dated 28/03/1995 (SC)
- (iii) CIT Vs Durga Prasad More dated 26/08/1971 (SC)

- (iv) Sh. Satish Kishor, Delhi Vs ITO (ITA No. 1704/Del/2019 dated 06/09/2019.
- (v) Sanjay Bimalchand Jain Vs CIT, Nagpur (HC, Bombay), appeal No. 18/2017 dated 10/04/2017.
- (vi) Udit Kalra Vs ITO ITA No. 6717/Del/2017 dated 08/01/2019.
- (vii) Suman Poddar ITA No. 841/2019 HC of Delhi.

12. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per the facts of the present case, we noticed that, since according to the AO, the assessee had purchased immovable property of Rs. 1,97,50,500/-, therefore, the sources of the said investment was sought from the assessee. Since, the assessee could not produce evidences; therefore, the addition u/s 69 of the Act was made. The Id. AR further submitted that no property was ever purchased by the assessee in his own name. Rather, the facts are that the assessee was one of the Director of Company M/s Seven Star Developers Township Pvt. Ltd and the immovable property of Rs. 1,97,50,500/- was purchased by the company in his own name. It was further submitted that the company is a legal person different from its members/shareholders and possesses the right to enter into valid contracts for sale, to purchase, to hold, to lease out or take on lease and to mortgage immovable properties in its own name. Being the Director of the Company, the assessee was only authorized to represent the company through Board resolution passed in Board Meetings of the Board of Directors of a Company. Being the authorized person, the assessee was only required to complete relevant administrative, revenue and legal

formalities in relation to purchase of the property. It was further submitted that the immovable property in question was never purchased in the name of the assessee rather, the assessee is only playing role on behalf of the company as he was only the director of the company. It was further submitted that the assessee is being authorized by a Board Resolution for purchase of the property situated at Village Dabla Khurd, Tehsil Faghi and for the necessary formalities in relation to the purchase of the property.

13. In support of his submission, the Id. AR has drawn our attention to documents filed in the paper books which are in the shape of audited balance-sheet and profit and loss account of M/s Seven Star Township Pvt. Ltd for the F.Y 2012-13 which are at page Nos. 1 to 18 of the paper book, copies of all the purchase deeds of the properties which the company had bought during the relevant assessment year along with reconciliation of the deeds with figure mentioned in the audited financials which are placed at paper book page nos. 19 to 76, copies of the relevant bank statements which are at paper book page nos. 76 to 84, affidavit dated 15.06.2019 of Sh. Nagendra Singh, Director of M/s Seven Star Developers Township Pvt. Ltd which is a paper book page no. 85. The Id. AR has further relied upon the following decisions and the details of the same are mentioned in the assessee's paper book as under:

S. No.	PARTICULAR OF DOCUMENT	PAGE NO.
1	<i>Deepak Kumar Agarwal HUF vs ITO Ward 2(3) ITA 223& 222/JP/2020 (ITAT Jaipur) dated 09.02.2021</i>	1-47
2	<i>CIT vs. Smt. Pooja Agarwal (DB Appeal No. 385/2011 dated 11.09.2017)</i>	48-53
3	<i>PCIT vs Pramod Jain & others (DB Appeal No. 209/2018 dated 24.07.2018)</i>	54-58
4	<i>Manish Kumar Baid vs. ACIT (1236/KOL/2017 dated 18.08.2017)</i>	59-67

5	<i>DCIT vs. Saurabh Mittal (ITA No. 16/JP/2018 dated 29.08.2018)</i>	68-108
6	<i>Meghraj Singh Shekhawat vs. DCIT (ITA No. 444/JP/17 dated 07.03.2018)</i>	109-127
7	<i>PCIT vs Smt. Krishna Devi (Delhi High Court) dated 15.01.2021</i>	128-137
8	<i>Achal Gupta vs. ITO (ITAT Lucknow) dated 16.12.2020</i>	138-153
9	<i>Dipesh Ramesh Vardhan vs. DCIT (ITAT Mumbai) dated 11.08.2020</i>	154-174
10	<i>Gateway Leasing Pvt. Ltd vs. ACIT (Bombay High Court) dated 11.03.2020</i>	175-214
11	<i>Suresh Kumar Agarwal vs. ACIT (ITAT Delhi) dated 29.06.2020</i>	215-251
12	<i>Vijayrattan Balkrishan Mittal vs. DCIT (ITAT Mumbai) dated 01.10.2019</i>	252-343

14. We noticed from perusal of the record that the Id. CIT(A) had sought remand report from the AO. The AO had made addition on account of disallowance out of purchase immovable property u/s 69 of the Act to the effect that creditworthiness of the company namely M/s Seven Star Developers Township Pvt. Ltd could not be established. Hence, the source of investment of Rs. 1,97,50,500/- remained to be explained and hence, the addition was made u/s 69A of the Act. In this regard, the assessee through its AR had controverted the comments made in the remand report and filed a detailed submission which is available at para No. 6.2 and 6.3 of the order of Id. CIT(A) and the same are reproduced below.

" 6.2 *The AO's remand report dated 09-05-2018 was provided to the appellant on 21-05-2018. The appellant's AR furnished counter comments on the said report on 05-06-2018, which are reproduced as under:-*

"As per the remand report AO's comment, regarding the purchase of immovable property of Rs 1,97,05,000/, As the following transaction performed by the assessee on behalf of the company in which he was holding directorship. The investment was done by the company in property and the source for such investment also belongs to such company itself as the assessee was only a POA holder for the registry/documentation purpose on behalf of company. As due to non compliance done by the previous A/R and non awareness about such non compliance to assessee, he was himself unable prove the correctness of the transaction during the assessment proceedings. We hereby contend that Company is a legal person different from its members/shareholders and possesses the right to enter into valid contracts for sale, to purchase, to hold, to lease out or take on lease and to mortgage immovable properties in its own name.

According to the provision of the companies act, every company has the power to sell, purchase or mortgage immovable property unless specifically excluded in the company's memorandum. The Articles of Association specifically deal with powers of the directors regarding sale, purchase and mortgage of immovable property.

Director of the company is being authorized to represent the company through board resolution passed in Board Meetings of the Board of Directors of a Company, Such persons are however required to complete relevant administrative, revenue and legal formalities in relation to purchase of the property.

Now, as in our case the property is not purchased by e Assessee and also not in the name of the Assessee. Assessee is only playing role on behalf of the company as he is director in the company. The Assessee is being authorized by a board resolution for purchase of the property situated at Village Dabla Khurd, Tehsil Faghi and for the necessary formalities in relation to the purchase of the property.

The said property is in the name of the company i.e. Seven Star Township Developers Private Limited and also reflected in the books of the company. Assessee has no concern with this property neither he has purchased nor the property is in his

name. We are submitting the copies of Income Tax Return with computation and Copy of Audit Report with complete annexure for the Assessment Year 2013-14 with this letter.

We would like to draw your attention towards certain vital cases and rulings being made by various courts in India.

In the case of Salomon v Salomon & Co Ltd.

One of the case was regarding Salomon v Salomon & Co Ltd it was held that Separate personality means that the artificial legal person, the company, can do almost everything a human person can do; it can make contracts, employ people, borrow and pay money, sue and be sued, among other things.

It was held in State Trading Corporation of India Ltd. AIR (1963) SC 1811, Once a company or corporation is formed, the business which is carried on by the such company or corporation is the business of that company or corporation and is not the business of the citizens who get the company or corporation incorporated and the rights of the incorporated body must be judges on that footing and cannot be judged on the assumption that they are the rights attributed to the business of individual citizens.

Since the land is in the name of the company and assessee is only entered into the agreement for purchase of the land on behalf of the company. Therefore, we request you not to add back the same to the total income of the assessee after considering the above case laws.

Subsequently, the appellant's AR filed written submissions dated 20-052019, which are reproduced as under:-

"As per the remand report AO's comment, regarding the purchase of immovable property of Rs 1,97,05,000/- that the company having negative reserves and low figures of loans & advances. The assessing officer has consider the negative reserves and low figures of loans and advances for the financial year 2011-12 whereas the respective company purchased the land in the financial. The assessee was holding directorship in

M/s Seven Star Township Private Limited, company engaged in real-estate & construction activities. During the relevant assessment year assessee in the capacity of director performed registries/ legal formalities for registry of the property situated at Village Dabla Khurd, Tehsil Faghi purchased by the company in his own name. The assessee was only a POA holder for the registry/documentation purpose on behalf of company even on the registry document it is specifically mentioned director. The company has made investment in property in the financial year 2012-13 and the source of investment is unsecured loans and advances from customers taken during the year balance as on 31.03.2013 Rs. 1,93,78,768/-(unsecured loans) and 10,01,96,502/- (Advances from Customers) respectively. We are also enclosing the copies of bank statement of the company showing payment for the purchase of property.

Director of the company is being authorized to represent the company through board resolution passed in Board Meetings of the Board of Directors of a Company. Such persons are however required to complete relevant administrative, revenue and legal formalities in relation to purchase of the property.

Now, as in our case the property is not purchased by the Assessee and also not in the name of the Assessee. Assessee is only playing role on behalf of the company as he is director in the company. The assessee is being authorized by a board resolution for purchase of the property situated at Village Dabla Khurd, Tehsil Faghi and for the necessary formalities in relation to the purchase of the property.

The said property is in the name of the company i.e. Seven Star Township Developers Private Limited and also reflected in the books of the company. Assessee has no concern with this property neither he has purchased nor the property is in his name. We are enclosing copies of Income Tax Return with computation and Copy of Audit Report with complete annexure for the Assessment Year 2013-14 of M/s Seven Star Township Private Limited. 'Annexure-A''

Besides the above submissions, the appellant furnished an affidavit of Sh. Narendra Singh, director of the company and sale deed dated 24-09-2012 in support of his claim that investment in the land purchased at Village Dabala, Tehsil Fagi, Jaipur was in fact made by the company M/s. Seven Star Township Pvt. Ltd.

Considering the details and evidences produced by the appellant, my Id. predecessor vide letter No. CIT(A)-2/UDR/2019-20/737 dated 31-07-2019 required the AO to submit remand report on the specific issues after taking into consideration the evidences produced by the assessee. As regards the addition of Rs. 1,97,05,550/- made on account of unexplained investment in the land purchased at Village Dabala and in order to ascertain the veracity of the appellant's claim that all payments were made by Seven Star Township Pvt. Ltd. by cheques from Axis Bank and Punjab National Bank (PNB), the CIT(A) directed the AO to obtain a copy of the bank account from PNB u/s. 133(6) of the Act. In response, the AO, vide letter No. F.NO. DCIT/Circle-5/JPR/2019-20/528 dated 03-10-2019, submitted remand report stating as under:-

"Addition of Rs. 1,97,05,500/-,

As directed, a copy of the bank statement of M/s Seven Star Township Developers Private Limited, B-15, Ganga Sagar-B, Vaishali Nagar, Jaipur for the period from 01.04.2012 to 31.03.2014 was required and obtained from the Punjab National Bank, Vaishali Nagar, Jaipur by issuing notice u/s 133(6) dated 14.08.2019 and 23.09.2019. Since, the copy of the bank statement of M/s Seven Star Township Developers Private Limited was available with the undersigned hence it was not called for from the Axis Bank, Vaishali Nagar, Jaipur."

2. The claim of the assessee that the payment of Rs. 1,97,03,295/- for the purchase of agriculture land at Village Dabala, Tehsil, Fagi, Jaipur was made by the company M/s Seven Star Township Developers Private Limited and the payment to the land owners were made by cheques issued from Axis Bank, Vaishali Nagar, Jaipur and Punjab National Bank, Jaipur of the company, was verified from the bank statements

obtained from Punjab National Bank, Vaishali Nagar, Jaipur and the Axis Bank, Vaishali Nagar, Jaipur.

On the scrutiny of the Axis Bank, Vaishali Nagar, Jaipur account No. 911020067929974 it is revealed that the cheque no. 620494, 620495 and 620496 have been debited in the bank account bank of the company for the payment of Rs. 3,32,000/- , Rs. 3,95,750/- and Rs. 1,29,700/- to the land owners namely Sh. Rajendra Singh, Bheru Singh and Dakh Kanwar on 28.09.2012 and 10.10.2012 respectively. The payments made to the land owners by the company from the Axis Bank, Vaishali Nagar, Jaipur has been confirmed as claimed by the assessee.

2.1. Further, on verification of the bank account no. 4144002100009766 of the company M/s. Seven Star Township Developers Private Limited with Punjab National Bank, Vaishali Nagar, Jaipur it is found that out of the total payment of Rs. 45,61,770/- claimed to Sh. Rajendra Singh by issuing 05 cheques (Cheques no. 663187 to 663191) by the company, payment of Rs. 9,50,000/- only has been found to be made to Sh. Rajendra Singh on 26.04.2013 by clearing and as such the payment of examining 04 cheques of Rs. 36,11,770/- has not been found to be made from the bank account of the assessee company as no such payment / cheques are debited in the bank account of the assessee company with Punjab National Bank, Vasihali Nagar, Jaipur. It is suspected that the payment of the amount of Rs. 36,11,770/- is paid to the land owners either by the assessee or the company in cash.

2.2. As per the sale deed of the land the company of which has been forwarded to this office, payment of Rs. 1,36,84,0765/- has been made to the land owner Sh. Bheru Singh by cheque as per the detail given at page no. 13 of the sale deed. On the examination of the bank statement of the company M/s Seven Star Township Developers Private Limited it has been revealed that the payment of Rs. 25,00,000/- only has been made to Sh. Bheru Singh on 18.04.2013 by clearing. It means the company has not made the payment of the remaining amount of Rs. 1,11,84,075/- to Sh. Bheru Singh which is apparent from the bank statement of the company obtained

from the bank. It is suspected that this amount of Rs. 1,11,84,075/- has been paid to the land owners either by the assessee or the company in cash which may kindly enquired during, the appellate proceedings.

2.3. After careful examination of the aforesaid bank statements of the company M/s. Seven Star Township Developers Private Limited it is concluded and submitted that out of the total payment claimed to be paid to the land owners namely Sh. Rajendra Singh, Dakh Kanwar and Bheru Singh of Rs. 1,97,03,295/-, the payment to the extent of Rs.34,50,000/- only has been verified from the bank accounts and the balance of Rs. 1,62,53,295/- remained unverified.

3. Further, after examination of the bank statement of the company M/s Seven Star Township Private Limited for the period from 01.04.2012 to 31.03.2013 it is submitted that the company has deposited huge cash of Rs. 89,41,000/- in the bank account during the period relevant to AY 2013 14. It has also been found from the bank account that as soon as the cash is deposited in the account of the assessee the same is transferred to some individual persons by issuing cheques or RTGS. There is no regular income appears to be credited in the account of the company and the huge cash deposition in the bank account of the company appears from undisclosed sources which may kindly be enquired during the appellate proceedings. Similarly, in the FY 2013-14 it is also noted that the company has deposited cash of Rs. 33,62,000/-."

6.3 Vide this office letter No. CIT/APPEAL-2/UDAIPUR/2019-20/1228 dated 08-11-2019, this report was provided to the appellant for rejoinder submissions / comments thereon. In response, the appellant vide letter dated 18-11-2019 made counter comments as under:-

"1. Addition of Rs. 1,97,05,000: An addition of Rs. 1,97,05,000/- had been made by the assessing officer regarding the purchase of immovable property of at

Village Dabla Khurd Tehsil Faghi, where as the assessee claims that he was only a POA holder for the registry/documentation purpose on behalf of company, even on the registered deed of the said land it is specifically mentioned assessee Late. Satpal Singh as Director of Alts Seven Star Township Developers Private Limited.

- 2. In the reply of point No. 2.1, 2.2 & 2.3 of remand report, the assessing officer as duly verified that all 117e payments made from the Axis Bank, Vaishali Nagar account No. 911020067929974 held in the name M/s Seven Star Township Developers Private Limited vide cheque no. 620494,620495 and 620496 for the payment of Rs. 3,32,000/ , Rs. 9,95,750/- & Rs. 1,29,700,¹- were found to be correct.*
- 3. In the reply of point No. 2.1, 2.2 & 2.3 of remand report, the assessing officer duly verified another bank account i. e Punjab National Bank Account No. 4144002100009766 held in the name of Ws Seven Star Township Developers Private Limited and payments made from the same account for the purchase of said land to the various land owners. The ld. assessing officer has duly confirmed that the payment of Rs. 9,50,000/- and. Rs. 25,00,000/- was made through the PNR bank account held in the name of company Ws Seven Star Township Developers Private Limited hence its is prima facie proved that the both the bank accounts were operated in the name of said company and payments were made by the company to the land owners through these bank account hence assessee Shri Late Satpal Singh has no monetary transaction in relation to the purchase of land said land.*

Further, the Ld assessing officer has erred in his reply of remand report stating "that the remaining amount of Rs. 36,11,770/- and Rs. 1,11,84,075/- were made in cash by assessee or said company". We would like your kind

attention to the fact that all of the cheques mentioned in the registry deed were duly presented in the bank. It is duly mentioned in law that company has a separate legal identity and "the existence of a company is distinct and separate from that of its members. It can own property, bank accounts, raise loans, incur liabilities and enter into contracts. According to Law, it is altogether different from the subscribers to the Memorandum of Association". Hence the contention made by the Ld. Assessing Officer is baseless and not as per law. As the aggrieved assessee was only power of attorney holder for the registry purpose, he had no financial interest in the land purchased by the company and did not make any payment for such transaction. We have already submitted the bank statements of all bank accounts held by the assessee for reference. As per the Powers of Attorney Act, 1882 power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

Moreover one of the director Shri Narendra Singh of the company has duly submitted the affidavit stating that the above land was registered in the name of company and the same has been duly disclosed by the company in its financial statements for the financial year 2012-13 and the aggrieved assessee was the only power of attorney holder for the purpose of registry formalities.

In the profit and loss account of company M/s Seven Star Township Private Limited for the year ended 31.03.2013, total amount of inventories of Rs. 5,97,14,378/-includes the

cost of land at Land at Village Dab/a Tehsil Fagi Kahsara No. 79 Date of Registry: 24/09/2012 of Rs. 1,97,05,000/-

We have already submitted the copies of Income Tax Return with computation and Copy of Audit Report with complete annexure for the financial year 2013-14 for your reference we are also enclosing the bifurcation of closing inventories of the company M/s Seven Star Township Private Limited as on 31.03.2013, which includes land, cost of Rs. 19705000/-:

4. *In the reply of point No. 3 of remand report the assessing officer has mentioned that the company M/s Seven Star Township Developers Private Limited has deposited cash of Rs. 89,41,000/- in F.Y 2012-2013 and Rs. 33,62,000/- in F.Y. 2013-14, as the above cash was deposited in the account of the company there we would request your good self to kindly question the company for the same.*

In the appellant's case, the last hearing was conducted on 21-01-2020. Sh. Rounak Khandelwal, FCA attended and relied on various written submissions /details / evidences made earlier. The appellant's written submissions details and evidences brought on record by the appellant and AO's remand reports and appellant's counter comments thereon have been duly considered while deciding the issue at hand.

15. After having meticulously gone through the facts of the present case as well as orders passed by the Revenue authorities and material placed on record we noticed that the Id. CIT(A) upheld the liability upon the assessee only by holding that in the remand report proceedings, the A.O. could only verify that out of the total investment of Rs. 1,97,05,000/- made by the company i.e M/s Seven Star Township Pvt. Ltd. only an amount of Rs. 31,15,705/- was made by the company to the respective land owners. However, with regard to balance amount of Rs. 1,65,53,295/- is concerned, the same remains unexplained investment, therefore, the Id. CIT(A)

fastened the liability of the said amount on the assessee. It is important to mention here that the assessee is not recorded as registered owner of the property in question. The registered sale deed has already been placed on record and after going through the terms of the said registered sale deed, we noticed that the said sale deed pertains exclusively in the name of M/s Seven Star Township Pvt. Ltd. which was executed by the land owners in the name of the company i.e. M/s Seven Star Township Pvt. Ltd. thus, in this way, the assessee is not connected in any manner whatsoever with regard to the property in question as the assessee only acted merely as power of attorney holder on behalf of the company that too for carrying out a specific administrative work i.e. for executing the sale deed. Whereas the ownership of the property in question is concerned, the same exclusively vests in the company and the company is the beneficiary of the said transaction carried out through the registered sale deed with the land owners. It is also important to mention here that all the payments to the land owners were made by the company from their respective bank accounts. The Id. CIT(A) doubted the creditworthiness and the veracity of the payments made through bank account maintained with Punjab national Bank. However, the Id. CIT(A) has not doubted the payments made from the bank account of the company maintained with Axis bank limited. The Id. CIT(A), in our view, has based his findings only on the basis of assumptions and presumptions whereas it is an admitted fact that the registered document carries presumption of correctness. Thus, in that eventuality, it is incumbent upon the Revenue authorities to uproot that presumption. However, in the present case, the Revenue authorities have not placed on record any evidence to uproot that presumption which is attached with a registered document moreover, registered documents are got registered before the registering authority and the Registrar carries out

or executes the registration of a document during discharge of his official duties, therefore, more presumption of correctness is attached with the registration of a document. It is also an admitted fact that the assessee only being the Director of the company and power of attorney holder was entitled to perform legal formalities for the purpose of registration of sale deed. The Revenue has not placed on record even a single document to demonstrate that the assessee had any financial interest in the land purchased by the company. Even no document has been placed on record to show that at any stage, the sale consideration was ever paid by the assessee from his bank accounts. On the contrary, the assessee had also furnished an affidavit to this effect which is sworn by Shri Narendra Singh, another Director of the company who also reiterated the same stand taken by the assessee. It is also a fact that the company is a separate legal entity as distinct from its Members, therefore, it is separate at law from its share holders, Directors, promoters etc. and as such is conferred with rights and is subject to certain duties and obligations.

15.1 In the instant case, at the outset, the assessee being a Director and power of attorney holder, executed the said transaction of purchase of immovable property on behalf of the company. There is absolutely no doubt that after passing a Board Resolution, the assessee was authorized to execute such transaction of purchase of immovable property by giving a power of attorney in his favour.

15.2 A power of attorney is a legal document whereby it give one person i.e. agent, the power to act for another person i.e. the principal. However, the agent can have broad legal authority or limited authority to make legal decisions about the principal's property, finances or medical care. The power of attorney is frequently used in the event of a principal's illness or

disability or when the principal cannot be present to sign necessary legal documents for financial transactions. Thus, it is a case where a company i.e. M/s Seven Star Township Pvt. Ltd. by way of issuing power of attorney in favour of the assessee, authorized him to execute and signed the registered sale deed dated 24/09/2012 on behalf of the company which is clearly evident from the contents of the sale deed dated 24/09/2012.

16. The Revenue authorities have doubted regarding the financial position of the company as the A.O. has stated that the company had negative reserves and low figures of loans and advances and hence doubted the creditworthiness of the company i.e. M/s Seven Star Township Pvt. Ltd. However, that doubt do not ipso facto gives right to the Revenue to fasten the liability upon the assessee.

17. Even on the plain reading of the Section 69 of the Act, it clearly speaks that Section 69 of the Act is applicable upon the assessee in case the assessee has made an investment and failed to show the same in the books of account maintained by him or fails to provide satisfactory explanation with respect to any investment or income in his name. As per the facts of the present case, it has not been proved on record that the assessee had ever made any investment in the land in question whereas on the contrary, he was only a Director and power of attorney holder of the company and the properties were purchased through registered sale deed in favour of the company and the assessee was only acting as a power of attorney holder on behalf of the company which is specifically mentioned in the sale deed itself and thus in this way, the capacity of the assessee was only that of a power of attorney holder. Since the property belongs to assessee i.e. M/s Seven Star Township Pvt. Ltd. and the company had already shown the said property in their financial statements for the year

under consideration and the said documents have not been rebutted or controverted by the Revenue at any stage of proceeding. Since the assessee had acted only as a power of attorney holder, therefore, no liability could have been fastened upon the assessee on behalf of the company. In this respect, we draw strength from the decision in the case of **Salomon v Salomon & Co. Ltd** wherein it was held that *Separate means that the artificial legal person, the company, can do almost everything a human person can do; it can make contracts, employ people, borrow and pay money, sue and be sued, among other things.* We also draw strength from the decision in the case of **State Trading Corporation of India Ltd. AIR (1963) SC 1811** wherein it was held that *"once a company or corporation is formed, the business which is carried on by the such company or corporation is the business of that company or corporation and is not the business of the citizens who get the company or corporation incorporated and the rights of the incorporated body must be judges on that footing and cannot be judged on the assumption that they are the rights attributed to the business of individual citizens.*

17.1 The Revenue authorities were expected to appreciate the reasonable explanation put forth by the assessee and the evidences produced about the nature and source of investment, however, in this case, the revenue authorities made additions merely on the basis of surmises and conjectures as well as without any supporting evidence which they were not entitled to do so. In this respect, we draw strength from the decision in the case of **Ashok Kumar Rastogi V CIT (1991) 100 CTR 204** wherein it was laid down that *"Assessing Officer is expected to appreciate the reasonable explanation offered to him, the evidences produced before him about the*

nature and source of investment and he cannot make the addition merely on surmises, conjectures as well as without any supporting evidences."

18. Although, in the remand report, the A.O. has expressed doubts regarding the financial position of the company but be that as it may, the fact still remains that no property was purchased in the name of assessee and no payments were made by the assessee in his personal capacity and the said fact has also been admitted by the A.O. in his remand report that out of total payment of Rs. 1,97,03,295/- claimed to be paid to the land owners namely Sh. Rajendra Singh, Dakh Kanwar and Bheru Singh, the payments to the extent of Rs. 34,50,000/- could only be verified from the two bank accounts and the balance of Rs. 1,62,53,295/- remained unverified. Therefore, under these circumstances, the A.O. merely presumed that such payments might have been made/paid by the assessee. Whereas no documentary evidence has been placed on record to prove the said contention of the A.O. Thus, the A.O. merely acted on the basis of surmises and conjectures, therefore, the additions made by the A.O. are not tenable in the eyes of law. Therefore, keeping in view the facts of the present case, and discussions made by us and the case laws relied upon by the assessee, we are of the considered view that no liability can be fastened upon the present assessee U/s 69 of the Act. Therefore, we direct the A.O. to delete the said addition. Thus, these grounds of appeal raised by the assessee are allowed.

19. Ground Nos. 4 to 8 of the appeal raised by the assessee are interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in confirming the disallowance of Rs. 93,34,545/- made by the Assessing Officer as unexplained cash credit after disallowing claim of the assessee of exemption u/s 10(38) of the Act and therefore, we thought it fit to decide these grounds through the present consolidated order.

20. The Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon the written submissions submitted before the Bench and same are reproduced as below.

- "1. The assessee filed Income Tax Return for the Assessment Year 2013-14 on 23.09.2013 and during the regular assessment proceedings the previous authorized representative did not made any submission and the Assessee was never informed for the above negligence on the part of the Authorized Representative. That may be due to some unavoidable reason on part of the previous authorized representative (best known to him) of the Assessee, the representative was not able to give the reply of the notice issued by the assessing officer on time while the Assessee had provided all the information required by the A/R.*
- 2. The A.O had completed the assessment proceedings as per Best Judgment and passed assessment order u/s 144 dated: 27.03.2016 received by us (Present A/R) on 18.07.2016 in respect of assessment year referred above, wherein a sum of Rs. 6,17,66,128/- has been added in the income of the assessee for such assessment year.*
- 3. Further, in continuation to the reply submitted by us on 13.10.2020 wherein we had placed on record the detailed submission regarding the addition made against the assessee for an amount of Rs. 1,65,53,295/-, we would like to conclude our submission by placing on record the details for the impugned addition of Rs. 93,34,545/- made by the Ld. CIT(A)-II, Udaipur.*
- 4. The Ld. CIT(A)-II, Udaipur during the appeal proceedings made an addition of Rs. 93.34.545/- by disallowing the claim made by the assessee u/s 10(38) of the Income Tax Act, 1961 for the long term capital gain claimed by the assessee in his return of income for the relevant assessment year.*
- 5. As per the Income Tax Act following conditions are to be satisfied for claiming the exemption of u/s 10(38);*
 - * Tax payer is an individual, HUF, firm or a company*
 - * The asset which is transferred is a long term capital asset.*
 - * Such asset is equity share in a company or units of equity oriented mutual funds.*

- * At the time of transfer, the transaction is chargeable to securities transaction tax.
- * If the above conditions are satisfied, long term capital gain is exempt from the tax.
6. On a plain reading of the section it is clearly evident that section 10(38) is applicable if the assessee has satisfied all the conditions in respect of claiming exemption u/s 10(38) of the Income Tax Act 1961 as mentioned above, moreover shares sold by the assessee are long term capital asset and also STT paid.
7. During the appeal proceedings we have duly furnished all the evidences for purchase of shares as well as sale of shares, which inter alia included copies of bills for purchase of shares and contract notes for sale of shares, Demat account and bank statements evidencing payments for purchase of shares and receipts against sale of shares by account payee cheques.
8. During the assessment year 2010-11 assessee had purchased shares of Unisys Softwares & Holdings Ind. Ltd. on 16/03/2010 vid cheque no. 0004936 amounting to Rs. 11,50,000/-. Assessee had 50,000 shares of Unisys Softwares & Holdings Ind. Ltd. which were duly credited to his demat account on 30/06/2010. Details of purchase and sale with contract notes are annexed to the paper book submitted, details synopsis of the same is provided below for your kind perusal;

<u>S. No.</u>	<u>Particulars</u>	<u>Date</u>	<u>Details</u>
1.	Purchase of Shares	16/03/2010	50,000 shares of Unisys Softwares & Holdings Ind. Ltd.
2.	Credit to Dema Account	30/06/2010	Transfer of 50,000 shares of Unisys Softwares & Holdings Ind. Ltd. to Demat
3.	Sale of Shares	09/04/2012	35,000 shares sold
4.	Sale of Shares	11/04/2012	11,000 shares sold
5. D	Sale of Shares	12/04/2012	4,000 shares sold

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ring the relevant assessment year assessee sold such shares and made a long term capital gain of Rs. 93,34,545/-, per se it is very evident that assessee held such shares for a period of more than 12 months before selling them and such long term capital gain is exempt as per the section 10(38) of the Income Tax Act, 1961.

10. *During the appeal proceedings the Ld. CIT(A)-II, Udaipur without due consideration of the facts mentioned advertently added the same to the income of assessee by taking support and under shelter of various judgments which had different facts. In the matter of Vijayrattan Balkrishan Mittal vs. DCIT (ITAT Mumbai) it was concluded that "the fact that a scam has taken place in some penny stocks does not mean that all transactions in penny stocks can be regarded as bogus. In deciding whether the claim is genuine or not, the authorities have to be guided by the legal evidence and not on general observations based on statements, probabilities, human behavior, modus operandi etc.*
11. *It must be mentioned that various pronouncements have ideally accepted the facts of the case and judged the case with fair view, list of all such recent pronouncements are as follows;*
- *Deepak Kumar Agarwal HUF vs ITO Ward 2(3) ITA 223& 222/JP/2020 (ITAT Jaipur) dated 09.02.2021*
 - *CIT vs. Smt. Pooja Agarwal (DB Appeal No. 385/2011 dated 11.09.2017)*
 - *PCIT vs Pramod Jain & others (DB Appeal No. 209/2018 dated 24.07.2018)*
 - *Manish Kumar Baid vs. ACIT (1236/KOL/2017 dated 18.08.2017)*
 - *DCIT vs. Saurabh Mittal (ITA No. 16/JP/2018 dated 29.08.2018)*
 - *Meghraj Singh Shekhawat vs. DCIT (ITA No. 444/JP/17 dated 07.03.2018)*
 - *PCIT vs Smt. Krishna Devi (Delhi High Court) dated 15.01.2021*
 - *Achal Gupta vs. ITO (ITAT Lucknow) dated 16.12.2020*
 - *Dipesh Ramesh Vardhan vs. DCIT (ITAT Mumbai) dated 11.08.2020*
 - *Gateway Leasing Pvt. Ltd vs. ACIT (Bombay High Court) dated 11.03.2020*
 - *Suresh Kumar Agarwal vs. ACIT (ITAT Delhi) dated 29.06.2020*
 - *Vijayrattan Balkrishan Mittal vs. DCIT (ITAT Mumbai) dated 01.10.2019*

It is therefore categorically submitted that based on all the facts and upon studying the same with the above mentioned judgments the long term capital gain arising out of such sale is correct and the AO has passed such order based on conjectures and without studying the facts of the matter to make his opinion.

In view of the above facts and circumstances of the case it is requested that impugned addition of Rs. 93,34,545/- made by the Ld. CIT (A)- II, Udaipur is wrong and bad in law may very kindly be deleted."

21. On the contrary, Id. DR appearing on behalf of the Revenue has relied upon the order passed by the Id. CIT(A).

22. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per facts of the present case, we noticed that assessee had shown capital gain of Rs. 93,34,545/- and claimed exemption u/s 10(38) of the Act. In this regard, the AO had sought information from the assessee to provide the proof of claiming said exemption. But since the assessee could not submit any proof of claim, therefore, the exemption claimed by the assessee was disallowed by the AO. On appeal before Id. CIT(A), the assessee filed written submission and additional evidences under Rule 46(A) of the IT Rules. Therefore, Id. CIT(A) called for AO's remand report in which it was stated before the AO that the assessee had purchased shares of M/s Unisys Software who was one of the 84 penny stock companies investigated by the DG(Inv.), Kolkata was managed by the Syndicate of Directors, Promoters and Entry providers to introduce unaccounted money in the books of accounts of various persons in lieu of commission, therefore, long term capital gains (LTCG) by the assessee was treated as bogus. The Id. AR had submitted that the counter comments as well as written submissions to the remand report submitted by the AO which is reproduced as under:-

"1. "Disallowance of Exemption of Capital Gain u/s 10(38): As per the remand report, AO's comment, regarding disallowance of the capital gain earned from sale of shares, as assessee did not provide proof of claiming said exemption like copies of contract notes, Demat account and bank statements hence the same

exemption remained unverifiable. As the assessee was not aware about non-compliance done by the A/R on behalf of him, he was himself unable to prove the reliability of the genuine long term capital gain.

We hereby contend in relation to it that following condition are to be satisfied for claiming the exemption of u/s 10(38) of the Income Tax Act 1961.

Tax payer is an individual, HUF, firm or a company

The asset which is transferred is a long term capital asset.

Such asset is equity share in a company or units of equity oriented mutual funds.

At the time of transfer, the transaction is chargeable to securities transaction tax.

If the above conditions are satisfied, long term capital gain is exempt from the tax.

The Assessee has satisfied all the conditions in respect of claiming exemption/s 10(38) of the Income Tax Act 1961 as mentioned above. The shares sold by the Assessee are long term capital asset and also STT paid.

We hereby furnish all the evidences for purchase of shares as well as sale of shares, which inter alia included copies of bills for purchase of shares and contract notes for sale of shares, Demat account and bank statements evidencing payments for purchase of shares and receipts against sale of shares by account payee cheques.

Further, we would like to draw your attention on the circular issued by CBDT. dated: 29.02.2016, Circular no. 6/2016, which says:

CBDT realizing that major part of shares /securities transactions takes place in respect of the listed shares ones and with a view to reduce litigation and uncertainty in that matter, in partial modification to the earlier circulars no. 04 of 2007 dated June 15, 2007.

In this circular it further instructs that assessing officers in holding whether the surplus generated from sale of listed or other securities would be treated as Capital Gain or Business Income, shall take into the account the following:

a. Where assessee itself irrespective of the period of holding the listed shares and securities, opts to treat as stock-in trade, the income arising from transfer of such shares /securities would be treated as its business income.

b. In Respect of listed shares and securities held for more than 12 months immediately from the date of transfer, if assessee desires to treat the income arising from the transfer thereof as a capital gain, the same shall not be put to dispute by assessing officer. However, this stand, once taken by the assessee in a particular assessment year, shall remain applicable in subsequent Assessment years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years.

c. In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

However assessee has sold 50000 shares of Unisys Software & holdings Industries limited which is listed on the stock exchange. After considering the above circular the same was treated as per desire of assessee i.e. Long Term capital gain from shares and this will not be put to dispute by Assessing Officer.

Therefore, we request you not to add back the same to the total income of the assessee.

23. Subsequently, the Id AR of the assessee filed written submissions dated 20-05-2019 and the same are reproduced as under:-

1. Disallowance of Exemption of Capital Gain u/s 10(38): As per the remand report, AO's comment, regarding disallowance of the

capital gain earned from sale of shares, as assessee did not provide proof of claiming said exemption like copies of contract notes, Demat account and bank statements hence the same exemption remained unverifiable. As the assessee was not aware about non-compliance done by the previous A/R on behalf of him, he was himself unable to prove the reliability of the genuine long term capital gain of Rs. 9334545/-.

We hereby contend in relation to it that following conditions are to be satisfied for claiming the exemption of u/s 10(38) of the Income Tax Act 1961.

Tax payer is an individual, HUF, firm or a company

The asset which is transferred is a long term capital asset.

Such asset is equity share in a company or units of equity oriented mutual funds

At the time of transfer, the transaction is chargeable to securities transaction tax.

If the above conditions are satisfied, long term capital gain is exempt from the tax.

The Assessee has satisfied all the conditions in respect of claiming exemption u/s 10(38) of the Income Tax Act 1961 as mentioned above. The shares sold by the Assessee are long term capital asset and also STT paid.

We hereby furnish all the evidences for purchase of shares as well as sale of shares, which inter alia included copies of bills for purchase of shares- and contract notes for sale of shares, Demat account and bank statements evidencing payments for purchase of shares and receipts against sale of shares by account payee cheques.

'Annexure-B'

However assessee has sold 50000 shares of Unisys Software & holdings Industries limited which is listed on the stock exchange. After considering the above circular the same was treated as per desire of assessee i.e. Long Term capital gain from shares and this will not be put to dispute by Assessing Officer.

Therefore, we request you not to add back the same to the total income of the assessee."

24. However, the Id. DR submitted that assessee had purchased shares of M/s Unisys Software @ Rs. 23 per share on 16.03 2010 which were surprisingly sold @ Rs. 209 to 211 per share on 12.04.2012 within a period of two years, however, the financial position of the company was not increased during this period that clearly indicated that the shares of the penny stock company were managed by the Syndicate of Directors, promoters and entry providers to introduce unaccounted money in the books of accounts of the beneficiaries in lieu of commission. Whereas Id. AR specifically submitted that transaction of the shares and entered by him were genuine and well proved from the various documentary evidences. In support of his submission, the Id. AR has drawn our attention to the paper book which contents of copy of Demate Account and holding statement which are at page No. 1 to 5 of the paper book, copy of bank statement which are at paper book page No. 6, copy of purchase bill dated 16.03.2010 which is at paper book page No. 7 and copy of sale bills which are at paper book page No. 8-10.

25. Per contra, the Id. DR relied upon the following case laws and details of the same are as under:-

S. No.	Case Law	Page No.
1	Soman Sun City vs. JCIT ITA No. 2960/Mumbai/2016 order dated 23.10.2017	1-15
2	Sumati Dayal Vs. CIT dt. 28.03.1995 (SC)	16-21

3	CIT vs. Durga Prasad More dt. 26-08.1971 (SC)	22-26
4	Sh. Satish Kishor, Delhi vs. ITO (ITA No. 1704/Del/2019 dt. 06.09.2019)	27-47
5	Sanjay Bimalchand Jain vs. CIT, Nagpur (HC, Bombay) appeal NO. 18/2017 dt. 10.04.2017	48-51
6	Udit Kalra vs. ITO ITA No. 6717/Del/2017 dt. 08.01.2019	52-60
7	Suman Poddar ITA No. 841/2019 HC of Delhi	61-79
8	Nipul Builder Delhi HC ITA No. 120/2012 dt. 07.01.2013	80-87
9	NR Portfolio Delhi HC Appeal No. 1018/2011 dt. 22.11.2013	88-100
10	Pratham Telecom India Pvt. Ltd. vs. DCIT ... on 17..Sept, 2018	101-102
11	Prem Castings (P) Ltd... vs. Department of Income Tax on 11 September, 2015 (Relevant page only)	103-106
12	CIT vs. NRA Iron and Steel Pvt. Ltd. (2019) 412 dt. 161 SC	107-120
13	Rameshwar Lal Mali vs. CIT 256 ITR 536 (Raj. HC)	121-122
14	SEBI vs. Rakhi Trading civil appeal No. 1969 of 2011 order dt. 08.02.2018 (Relevant pages only)	123-128

26. It was further submitted by the Id. DR that these judgments and documents as submitted by the assessee mainly to hide the real nature of transaction. It was submitted that by analyzing the balance sheet, profit & loss account and the trade pattern of Unisys Software and Holding Industries Ltd. during the relevant year, it was observed that the share price of this company was neither affected by the movement of sensex nor the financials of the company justified such extraordinary jump in the price of its shares. Therefore, the claim of capital gain of the assessee cannot be accepted as genuine.

26.1 After hearing both the parties and after perusing the material available on record as well as the documents placed on record, we notice that as per Income Tax Act following conditions are to be satisfied for claiming the exemption U/s 10(38) of the Act as under:

- * *Tax payer is an individual, HUF, firm or a company*
- * *The asset which is transferred is a long term capital asset.*
- * *Such asset is equity share in a company or units of equity oriented mutual funds.*

* *At the time of transfer, the transaction is chargeable to securities transaction tax.*

27. It was submitted that in case, the above conditions are satisfied, long term capital gain needs to be examined from the tax point of view. On the plain reading of section it is clearly evident that section 10(38) of the Act is applicable if the assessee has satisfied all the conditions in respect of claiming exemption u/s 10(38) of the Act as mentioned above. During the appellate proceedings before Id. CIT(A), the assessee has furnished all the evidences for purchase of shares as well as sale of shares, which inter alia included copies of bills for purchase of shares and contract notes for sale of shares, Demat account and bank statements evidencing payments for purchase of shares and receipts against sale of share by account payee cheques.

28. During the assessment year 2010-11, assessee had purchased shares of Unisys Software & Holdings Ind. Ltd. on 16/03/2010 vide cheque No. 0004936 amounting to Rs. 11,50,000/-. Assessee had 50,000 shares of Unisys Software & Holdings Ind. Ltd. which were duly credited in his demat account on 30/06/2010. Details of purchase and sale with contract notes are annexed to the paper book submitted, details synopsis of the same is as under:

<u>S.No.</u>	<u>Particulars</u>	<u>Date</u>	<u>Details</u>
1.	Purchase of Shares	16/03/2010	50,000 shares of Unisys Softwares & Holdings Ind. Ltd.
2.	Credit to Demat Account	30/06/2010	Transfer of 50,000 shares of Unisys Softwares & Holdings Ind. Ltd. to Demat
3.	Sale of Shares	09/04/2012	35,000 shares sold
4.	Sale of Shares	11/04/2012	11,000 shares sold
5.	Sale of Shares	12/04/2012	4,000 shares sold

29. During the relevant assessment year, assessee sold such shares and made a long term capital gain of Rs. 93,34,545/-, per se it is very evident that assessee held such shares for a period of more than 12 months before selling them and such long term capital gain is exempt as per the section 10(38) of the Act. However, the Id. CIT(A) considering while relying upon various judgments on different facts denied the claim of the assessee. However, we are of the view that while deciding the claim of the assessee, the authorities have to be guided by legal evidence in each particular case and not on general observation. In this regard, we draw strength from the decision in the case of **Vijayrattan Balkrisham Mittal vs. DCIT (ITAT Mumbai)** had concluded that *“the fact that a scam has taken place in some penny stocks does not mean that all transactions in penny stocks can be regarded as bogus. In deciding whether the claim is genuine or not, the authorities have to be guided by the legal evidence and not on general observations based on statements, probabilities, human behavior, modus operandi etc.*

30. In the present case, the assessee had satisfied all the conditions in respect of claiming exemptions u/s 10(38) of the Act as mentioned for claiming exemption, therefore, the shares sold by the assessee are entitled for long term capital gain. The assessee had furnished all the required evidence for the purchase of shares as well as sale of shares which inter alia included copies of bills for purchase of share and contract notes for sale of share, Demat account and bank statement evidencing payments for purchase of shares and receipts against sale of shares by account payee cheques. The assessee has also relied upon the circular issued by CBDT dated 29.02.2016, bearing Circular No. 6/2016 which is read below:-

“Further, we would like to draw your attention on the circular issued by CBDT dated: 29.02.2016, Circular no. 6/2016, which says:

CBDT realizing that major part of shares /securities transactions takes place in respect of the listed shares ones and with a view to reduce litigation and uncertainty in that matter, in partial modification to the earlier circulars no. 04 of 2007 dated June 15, 2007.

In this circular it further instructs that assessing officers in holding whether the surplus generated from sale of listed or other securities would be treated as Capital Gain or Business Income, shall take into the account the following:

a. Where assessee itself irrespective of the period of holding the listed shares and securities, opts to treat as stock-in trade, the income arising from transfer of such shares /securities would be treated as its business income.

b. In Respect of listed shares and securities held for more than 12 months immediately from the date of transfer, if assessee desires to treat the income arising from the transfer thereof as a capital gain, the same shall not be put to dispute by assessing officer. However, this stand, once taken by the assessee in a particular assessment year, shall remain applicable in subsequent Assessment years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years.

c. In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT."

31. Since the assessee had sold 50,000/- share of Unisys Software and Holding Industries Ltd. which is listed on the stock exchange. Therefore, while taking into consideration, circular issued by CBDT dated 29.02.2016, bearing Circular No. 6/2016 and also decisions in the following cases i.e.

- *Deepak Kumar Agarwal HUF vs ITO Ward 2(3) ITA 223& 222/JP/2020 (ITAT Jaipur) dated 09.02.2021*
- *CIT vs. Smt. Pooja Agarwal (DB Appeal No. 385/2011 dated 11.09.2017)*
- *PCIT vs Pramod Jain & others (DB Appeal No. 209/2018 dated 24.07.2018)*
- *Manish Kumar Baid vs. ACIT (1236/KOL/2017 dated 18.08.2017)*
- *DCIT vs. Saurabh Mittal (ITA No. 16/JP/2018 dated 29.08.2018)*
- *Meghraj Singh Shekhawat vs. DCIT (ITA No. 444/JP/17 dated 07.03.2018)*

- *PCIT vs Smt. Krishna Devi (Delhi High Court) dated 15.01.2021*
- *Achal Gupta vs. ITO (ITAT Lucknow) dated 16.12.2020*
- *Dipesh Ramesh Vardhan vs. DCIT (ITAT Mumbai) dated 11.08.2020*
- *Gateway Leasing Pvt. Ltd vs. ACIT (Bombay High Court) dated 11.03.2020*
- *Suresh Kumar Agarwal vs. ACIT (ITAT Delhi) dated 29.06.2020*
- *Vijayrattan Balkrishan Mittal vs. DCIT (ITAT Mumbai) dated 01.10.2019*

32. We set aside and quash the findings of Revenue authorities and apart from above we also draw strength from the decision of the Coordinate Bench of Delhi ITAT in the case of **Meenu Goel Vs ITO in ITA No. 6235/Del/2017 order dated 19/03/2018** wherein the assessee has purchased 45000 shares of Unisys Software Holding Industries Ltd. amounting to Rs. 9,38,600/- at a premium of Rs. 20.85 per share in physical form. The Coordinate Bench has deleted the addition by holding 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 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 AO?

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."*

33. From perusal of the case laws as relied by the Id. DR we observed that the case laws relied by the Id DR are not applicable on the facts and circumstances of the present case. Therefore, considering the totality of the facts and circumstances of the case, case laws relied by the assessee and

the decision of the Coordinate Bench, New Delhi in the case of **Meenu Goel Vs ITO in ITA No. 6235/Del/2017 order dated 19/03/2018** wherein similar identical issue had been decided in favour of the assessee, we are of the view that the assessee is entitled for exemption u/s 10(38) of the Act. Accordingly, we set aside the order passed by the Id. CIT(A) and direct the AO to grant exemption to the assessee u/s 10(38) of the Act.

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

Order pronounced in the open Court on 14/10/2021

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 14/10/2021

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Late Shri Satpal Singh, Represented by Shri Satnam Singh Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-05, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 289/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar