**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**

**IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI**

**श्री जोगिंदर सिंह, उपाध्यक्ष एवं ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष**

**BEFORE SHRI JOGINDER SINGH, VICE PRESIDENT AND**
**SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपीलसं./**I.T.A.No.1413/CHNY/2018**

(निर्धारण वर्ष / Assessment Year: 2014-15)

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| M/s. Pankaj Agarwal & Sons (HUF),<br>9A-54, Arihant Orchid,<br>Flowers Road, Kilpauk,<br>Chennai – 600 010 | Vs | The Income Tax Officer,<br>Non-Corporate Ward – 10(3),<br>Chennai. |
| PAN: AAKHP9439E | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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आयकर अपीलसं./**I.T.A.No.1414/CHNY/2018**

(निर्धारण वर्ष / Assessment Year: 2014-15)

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| Smt. Mamta Agarwal<br>9A-54, Arihant Orchid,<br>Flowers Road, Kilpauk,<br>Chennai – 600 010 | Vs | The Income Tax Officer,<br>Non-Corporate Ward – 10(3),<br>Chennai. |
| PAN: AAGPD2614R | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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आयकर अपीलसं./**I.T.A.No.1415/CHNY/2018**

(निर्धारण वर्ष / Assessment Year: 2014-15)

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| M/s. Rajnish Agarwal & Sons (HUF),<br>9A-54, Arihant Orchid,<br>Flowers Road, Kilpauk,<br>Chennai – 600 010 | Vs | The Income Tax Officer,<br>Non-Corporate Ward – 10(5),<br>Chennai. |
| PAN: AANHR4564B | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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आयकर अपीलसं./**I.T.A.No.1416/CHNY/2018**

(निर्धारण वर्ष / Assessment Year: 2014-15)

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| Shri Ramkishan Agarwal,<br>9A-54, Arihant Orchid,<br>Flowers Road, Kilpauk,<br>Chennai – 600 010 | Vs | The ACIT,<br>Non-Corporate Circle – 10(1),<br>Chennai. |
| PAN: AAKPR4148L | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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आयकर अपीलसं./**I.T.A.No.1417/CHNY/2018**

(निर्धारण वर्ष / Assessment Year: 2014-15)

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| M/s. R K Agarwal & Sons (HUF),<br>9A-54, Arihant Orchid,<br>Flowers Road, Kilpauk,<br>Chennai – 600 010 | Vs | The Income Tax Officer,<br>Non-Corporate Ward – 10(5),<br>Chennai. |
| PAN: AAFHR1747A | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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आयकर अपीलसं./**I.T.A.No.1418/CHNY/2018**

(निर्धारण वर्ष / Assessment Year: 2014-15)

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| Smt. Sampatti Agarwal,<br>9A-54, Arihant Orchid,<br>Flowers Road, Kilpauk,<br>Chennai – 600 010 | Vs | The Income Tax Officer,<br>Non-Corporate Ward – 10(3),<br>Chennai. |
| PAN: AZZPS9269D | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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आयकर अपीलसं./**I.T.A.No.1419/CHNY/2018**

(निर्धारण वर्ष / Assessment Year: 2014-15)

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| Shri Rajnish Agarwal,<br>9A-54, Arihant Orchid,<br>Flowers Road, Kilpauk,<br>Chennai – 600 010 | Vs | The Income Tax Officer,<br>Non-Corporate Circle – 10(1),<br>Chennai. |
| PAN: AFRPA1436Q | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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आयकर अपीलसं./**I.T.A.No.1420/CHNY/2018**

(निर्धारण वर्ष / Assessment Year: 2014-15)

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| Shri Pankaj Kumar Agarwal,<br>9A-54, Arihant Orchid,<br>Flowers Road, Kilpauk,<br>Chennai – 600 010 | Vs | The Income Tax Officer,<br>Non-Corporate Circle – 10(1),<br>Chennai. |
| PAN: AAEPA4769Q | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| अपीलार्थी की ओर से /Appellant by | : | Shri N. Vijay Kumar, CA |
| प्रत्यर्थी की ओर से /Respondent by | : | Shri S. Nataraja, JCIT |

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|---|---|---|
| सुनवाई की तारीख/Date of hearing | : | 04.12.2018 |
| घोषणा की तारीख /Date of Pronouncement | : | 06.12.2018 |

**आदेश / O R D E R**

**Per BENCH:-**

These appeals by the assessees are directed against the orders passed by the learned Commissioner of Income Tax (Appeals)-12, Chennai as detailed herein below for the assessment year 2014-15 passed U/s.250(6) r.w.s.143(3) of the Act :-

| Appeal No. | Assessee | Order of the Ld.CIT(A)-12, Chennai | |
|---|---|---|---|
| | | No. | Dated |
| ITA 1413 of 2018 | M/s. Pankaj Agarwal & Sons (HUF) | ITA No.192/CIT(A)-12/2016-17 | 23.02.2018 |
| ITA 1414 of 2018 | Smt. Mamta Agarwal | ITA No.185/CIT(A)-12/2016-17 | 01.03.2018 |
| ITA 1415 of 2018 | M/s. Rajnish Agarwal & Sons (HUF) | ITA No.191/CIT(A)-12/2016-17 | 26.02.2018 |
| ITA 1416 of 2018 | Shri Ramkishan Agarwal | ITA No.194/CIT(A)-12/2016-17 | 27.03.2018 |
| ITA 1417 of 2018 | M/s. R. K. Agarwal & Sons (HUF) | ITA No.190/CIT(A)-12/2016-17 | 26.02.2018 |
| ITA 1418 of 2018 | Smt Sampatti Agarwal | ITA No.187/CIT(A)-12/2016-17 | 28.02.2018 |
| ITA 1419 of 2018 | Shri Rajnish Agarwal | ITA No.184/CIT(A)-12/2016-17 | 27.02.2018 |
| ITA 1420 of 2018 | Shri Pankaj Kumar Agarwal | ITA No.188/CIT(A)-12/2016-17 | 26.02.2018 |

Since the issues in all these appeals are identical, they have been taken up for hearing together and disposed off by this common order.

2. The assessees have raised several identical grounds in their appeals however the following grounds were argued before us at the time of hearing:-

(i) The Ld.CIT(A) has erred in confirming the addition made by the Ld.AO U/s.68 of the Act, by rejecting the assessees claim of exemption U/s.10(38) of the Act on the Long Term Capital Gains earned out of the purchase & sale of equity shares of the company M/s. SRK Industries Ltd., by holding that the

transactions are sham and tailored to bring the unaccounted money as the legitimate gain in the guise of Long Term Capital Gain which is exempt U/s.10(38) of the Act.

(ii) In the case of Shri Ramkishan Agarwal in ITA No.1416/Chny/2018 the assessee has raised the ground that the Ld.AO had erroneously adopted the total income as Rs.5,95,016/- as against Rs.5,25,690/- declared by the assessee in the return of income while computing the income of the assessee.

(iii) The Ld.AO had erroneously computed the aggregate value of the sale of shares of M/s. SRK Industries Ltd., as follows while computing the Long Term Capital Gain:

| Assessee / Appeal No. | Actual value of the shares sold | Erroneous value adopted by the Ld.AO |
|---|---|---|
| Smt. Sampati Agarwal ITA No.1418/Chny/2018 | Rs.63,46,801 | Rs.64,71,191 |
| Shri Rajnish Agarwal ITA No.1419/Chny/2018 | Rs.63,80,898 | Rs.66,77,520 |
| Shri Pankaj Agarwal ITA No.1420/Chny/2018 | Rs.62,97,298 | Rs.63,93,702 |

(iv) In the case of Rajnish Agarwal in ITA No.1419/Chny/2018 the assessee has raised the ground that the Ld.CIT(A) has erred in confirming the order of the Ld.AO who had not allowed the

benefit of set-off of losses on the sale of shares amounting to Rs.6,01,730/- while computing the total income.

(v) The assessees object to the levy of interest U/s.234B & 234C of the Act.

3. The brief facts in all these appeals are that the assessees cases were selected for scrutiny and orders were passed U/s.143(3) of the Act on 29.12.2016, wherein the Ld.AO treated the purchase and sale of shares of M/s. SRK Industries Ltd., as sham transaction and thereby the claim of exemption U/s.10(38) of the Act, with respect to the Long Term Capital Gain earned by the assessees on those transactions were denied and the same was treated as unexplained cash credit U/s.68 of the Act.

4. While doing so, the Ld.AO analyzing the issue in detail arrived at the conclusion that the following findings of the wing corroborates with the findings of the SEBI:-

(i) The company in which the assessees had purchased the equity shares had no creditability and no prudent investor would make such investment.

(ii) As per the finding of the investigation report of the investigation wing, the members who participated in the trading of the scrip during mid-2013 to mid-2014 were part of the syndicate of brokers and brokering entities indulging in price rigging.

(iii) The ultimate beneficiary of all the price manipulation is the beneficiaries like the assessees who sold the shares when the share price was sufficiently brought to a high level and could take the benefit of Section 10(38) of the Act.

(iv) For facilitating such bogus entries, the brokers were paid commission in cash generally around 6% of the value of the transaction or Rs.0.50 to Rs.1/- for every Rs.100/- transacted.

(v) But for the price rigging and manipulative actions of the brokers the assessee would not have earned such Long Term Capital Gain.

(vi) The motive of the price manipulation is only to bring out their black money as legitimately earned Long Term Capital Gain for which exemption U/s.10(38) of the Act is available.

5. The Ld.AO further relied on the following decisions while deciding the cases against the assessees:-

(i) The Hon'ble Apex Court in the case Sumathi Dayal reported in 214 ITR 801, it was held that "*In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is based on evidence*."

(ii) The Hon'ble Apex Court in the case M/s. Durga Prasad More reported in 82 ITR 540, it was held that "*Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal, Therefore the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities."*

(iii) In the Landmark McDowell Vs. CTO case, the Hon'ble Apex Court had held *"Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.*"

6. On appeal the Ld.CIT(A) confirmed the order of the Ld.AO after detailed deliberations.

7. Before us the Ld.AR submitted that the assessees were not provided with an opportunity to cross-examine the witness who were relied by the Revenue and further failed to furnish the investigation report of the intelligence wing of the Revenue before concluding the assessment. The Ld.AR further argued that the assessees were not provided with proper opportunity of being heard. It was therefore pleaded that the matter may be remitted back to the file of Ld.AO for fresh consideration. The Ld.DR strongly opposed to the submission of the Ld.AR and requested for confirming the orders of the Ld.Revenue Authorities.

8. We have heard the rival submissions and carefully perused the materials on record. At the outset we must say that the Ld.AR could not justify before us any of their claims made before the Ld.Revenue Authorities that the transaction was genuine. Further the Ld.AR could not successfully controvert to any of the findings of the Ld.Revenue Authorities before us which are against the assessees. Instead the Ld.AR has only come out with the plea that the assessees were not provided with opportunity of cross-examining the witness, the

investigation report was not furnished and proper opportunity was not provided of being heard. However we find that all these arguments raised by the Ld.AR before us was never alleged before the Ld.Revenue Authorities when the matter was before them. In this situation we do not have any other option but to confirm the orders of the Ld.Revenue Authorities in the case of all the assessees because the Ld.AO as well as the Ld.CIT(A) have arrived at their respective decisions after considering the issues in the appeal in detail and there is nothing before us to disturb their findings. Accordingly we hereby confirm the Order of the Ld.Revenue Authorities on this issue. Thus the first ground raised by the assessees herein above in all the appeals are held against the assessees.

9. With respect to the Ground No. 2(ii) & 2(iii) raised by the assessees in the respective appeals, we find that the issue is with respect to computation of total income from the basic facts of those cases and therefore we hereby remit back the matter to the file of Ld.AO to verify the claim of the assessees and thereafter decide the matter in accordance with law and merit.

10. In the Ground No. 2(iv), the assessee has raised the issue that the Ld.AO has denied the benefit of set-off losses. Since we do not find any detailed discussion on the issue by the Ld.AO as well as the Ld.CIT(A), we remit back the matter to the file of Ld.AO for fresh consideration.

11. Levy of interest U/s.243B and 243C of the Act is consequential in nature and therefore this ground raised by the assessees is devoid of merits.

12. In the result the appeals of the assessees in ITA Nos.1416, 1418,1419 & 1420/Chny/2018 are partly allowed and the appeals of the assessees ITA Nos.1413, 1414, 1415 & 1417/Chny/2018 are dismissed.

Order pronounced on the 6th December, 2018 at Chennai.

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|---|---|
| Sd/- | Sd/- |
| ( जोगिंदर सिंह ) | (ए. मोहन अलंकामणी) |
| (Joginder Singh) | (A. Mohan Alankamony) |
| **उपाध्यक्ष** / Vice President | लेखा सदस्य/Accountant Member |

चेन्नई/Chennai,
दिनांक/Dated 6th December, 2018

***RSR***

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF