



**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

AND

SHRI SUDHIR PAREEK, JUDICIAL MEMBER

**ITA No:- 9580/Del/2019
Assessment Year: 2014-15**

Late Arvind Kumar Kotawal, Through L/H Manish Kumar Kotawala,4842/24, Govind Gali, Ansari road, Darya Ganj, New Delhi-110002.	vs	ACIT, Circle 70(1), New Delhi.
PAN No: AAJPK0073A		
APPELLANT		RESPONDENT

Assessee by : Shri Ruchesh Sinha, Adv. &
Ms. Monalisa, Adv.

Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing : 27.12.2024

Date of Pronouncement : 27.03.2025

ORDER

PER SUDHIR PAREEK, JM

This appeal by Assessee is directed against the order of Ld.
Commissioner of Income Tax (Appeal)- 28, New Delhi, [for short

hereinafter referred to as the “(Ld. CIT(A))” dated 18.10.2019 pertaining to Assessment Year 2014-15, on the following grounds of appeal: -

“ 1. The Ld. CIT(A) has wrongly failed to quash the order in the light of the fact that the notice was served and assessment was made on a dead person.

2. The Ld. CIT(A) erred in law and on facts in confirming the addition of Rs. 88,84,000/- u/s 68 r.w.s. 115BBE being sale proceeds of shares by denying exemption u/s 10(38) merely on suspicion, probabilities and generalization, while ignoring the facts and evidences placed on record. Thus, the addition so made must be deleted.

3. The Ld. CIT(A) erred in law and on facts in confirming the above addition of Rs. 88,84,000/- made without confronting any direct material / statement collected against the assessee and without affording any opportunity to cross-examine despite specific request made. Thus, the assessment proceedings are vitiated and the addition so made must be deleted.

4. The Ld. CIT(A) erred in law and on facts in confirming the addition of Rs. 4,44,200/- allegedly paid as commission without any bringing any evidence on record but merely on conjectures and surmises. Thus, the addition so made must be deleted.

5. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”

2. Facts of the case may be concisely described as that the return of income for A.Y. 2014-15 was filed by the assessee / appellant on 14.07.2014, declaring total income at Rs. 38,26,220/- and in pursuance thereof return was processed u/s 143(1) of the Act.

Thereafter, selected for scrutiny and initial notice u/s 143(2) dated 21.09.2015 was issued and duly served upon the assessee through legal heirs.

3. It is said to be that the assessee during the year under consideration was in employment with M/s Kotwala Creation Pvt. Ltd., and earned salary income, income from house property, capital gains and other sources and assessee Arvind Kumar Kotawala, was stated to have expired on 5th of May, 2015 and Shri Sushil Agarwal, CA, appeared for assessee through his son and legal heir Manish Kotawala,.

4. After the conclusion of the assessment proceedings, the Ld. AO added Rs. 93,28,200/- to the total income of the assessee. By aggrieving with the assessment order, the assessee / appellant knocked the door of Ld. CIT(A), but appeal of the assessee dismissed, and hence, assessee before us, as appellant.

5. The Ld. AR in the course of hearing, submitted that original assessee Arvind Kumar Kothwal expired on 05.05.2015, who is being represented by his sons and legal heir, Manish Kumar Kotwala, was a habitual investor in shares and was trading in the same for last

many years. In fact, his first D-mat account was opened before the year 2000. While filing the return of income for the assessment year 2014-15, the assessee / appellant declared an amount of Rs. 88,84,000/- as LTCG earned from sale of shares of the listed entity i.e M/s UNNO industries Ltd., and claimed the same amount as exempt u/s 10(38) of the Act.

6. In this regard, the Ld. AO treated his LTCG as bogus and unexplained cash credit u/s 68 and the same has been taxed u/s 115BBE of the Act and also added Rs. 4,44,200/- i.e. 5% of Rs. 88,84,000/- as the alleged commission paid to the broker. The relevant operative part of the ld. AO, in para 12 as under:

“ 12. Thus in view of the elaborate discussion made above, I hereby hold the amount of Rs. 88,84,000/-, which accrued to the Assessee out of these purported share sale receipts during the Financial Year 2013-14 (AY 2014-15), are his income which is of the nature of unexplained cash credit u/s 68 of the Income Tax Act (taxable at the rate of 30% as provided u/s 115BBE). Further, it is also established after investigations that these transactions are carried out on a commission basis. From the statement of the Entry Operator it is observed that commission @5% is normally charged for providing arranged capital gains. Since the assessee has claimed LTCG of Rs. 88,84,000/- and this amount actually represents the cash given to the Entry Operator, a further amount of Rs. 4,44,200/- i.e. 5% of Rs. 88,84,000/- is also assessable as undisclosed cash payments to the Entry Operator, hence, this amount is also liable to be added to the income of the Assessee u/s 68 of the Income Tax Act. Thus, a total amount of Rs. 93,28,200/- is being added to the total income declared by the Assessee.

Addition: Rs. 93,28,200/-.”

7. In this regard, the Ld. CIT(A) confirmed the addition in question of Rs. 93,28,200/- and relevant para nos.-4.5 and 4.6 are reproduced as under:

“ 4.5 In the line of aforesaid conclusion drawn by Hon'ble Court, the Jurisdictional High Court, in the case of Udit Kalra vs. ITO dated 3rd April, 2019 has decided the issue against the appellant on identical facts for the transactions entered into by appellant in the case of investment in shares of M/s. Kappac Pharma Ltd and claiming u/s 10(38) of IT Act. Similar view has been taken by jurisdictional ITAT also in such cases. In a recent case namely Shri Sandeep Bhargav vs ACIT, Circle-60(1), New Delhi, vide their order dated 20.08.2019, have taken a view that such transactions, as mentioned, are bogus and to be taxed as cash credit u/s 68 of IT Act. The decision was given by Hon'ble ITAT in favour of department and against the appellant. Thus, the case of appellant is covered by the decision of Jurisdictional High Court and ITAT also.

4.6 Similarly, following the aforesaid decisions of Hon'ble Courts, the Chennai Bench of Hon'ble ITAT in the case M/s. Pankaj Agarwal & Sons (HUF) vs ITO and other cases of group in ITA No. 1413-1420 of 2018, ITAT Delhi in the case Anip Rastogi, Meerut vs ITO in ITA No. 3809-10/Del/2018 and ITAT Pune in the case Bharat R Agarwal vs DCIT in ITA No. 1648 & 1649/PUN/15 and ITAT Chandigarh in the case of Abhimanyu Soin vs ACIT, Circle-07, Ludhiana LL-0418-97 dated 18.04.2018 have also decided the issue of penny stock rejecting the claim of assessee on the basis of similar facts as are applicable in the case of the appellant who has taken the benefit of long term capital gain of Rs. 88,84,000/- on account of sale of investments amounting to Rs. 93,28,200/- during the year. In view of this, I confirm the addition of Rs. 93,28,200/- made by AO u/s 68 of the Act on account of sale of above shares and dismiss the grounds taken by the appellant.”

8. Heard the rival submissions and perused the material available on record.

9. The Ld. AR while reiterating the ground of appeal submitted that addition in question made without confronting any direct material / statement collected against the assessee. He also submitted that during the assessment proceedings on being enquired, assessee / appellant duly submitted that shares were originally purchased in cash and were physically delivered on 28.04.2011, and then bonus share were also issued to the appellant and all of them were dematerialized in the demat account ledger, transaction account statement with the registered broker namely M/s Quest Securities Ltd. and copies of the bank statement etc. The Ld. AR also submitted that perusal of abovementioned documents the legitimacy of the transaction is clearly proved and the Ld. AO only on the basis of some investigation report, made the aforesaid addition and it is relevant to mentioned here that the assessee has not been provided the copy of said investigation report.

10. The Ld. AR also submitted that in this case notice was served and assessment was made on a dead person. He submitted that bare perusal of the assessment order itself shows that notice dt. 21.09.2015 issued to Arvind Kotawala, who dies on 05.05.2015, was

served on legal heir Manish Kumar Kotawala and thereafter assessment proceedings were initiated, hence would say that notice issued on dead person and only this count assessment proceedings became null and void.

11. The Ld. AR further submitted that from the perusal of investigation report it is crystal clear that it does not contain the name of the assessee / appellant or its registered broker in any manner and no logical conclusion can be drawn from the said report. So far as the statement of Mr. Vikrant Kayan, which is referred by the Ld. AO was also not provided to the appellant.

12. The Ld. AR also emphasized that the Ld. AO strangely mentioned that provision of Section 131(1), should not be in the present case and expressed the illogical observations that no useful purpose shall be served even if the summons u/s 131 may issue and he expressly avoid the requirement of cross examination by stating that cross examination of the operators would serve. The Ld. AR draws our attention at AO's order in para no. 8.3, which is reproduced as under:

“ 8.3 On the issue of examination and cross-examination the discussion is being initiated here suo-moto. Appellate Authorities have, in numerous

decisions, held that an Assessing Officer is vested with enormous powers under Section 131 of the Income Tax Act. In this regard the reality / actual ground situation is that these powers, more or less, exist on paper and in reality / truth compliance to Notices u/s 131 is generally made by law-abiding Income Tax Assesseees. The sad truth is that the Operators / Share Brokers, who already are guilty of breaking many laws, hardly care any bit about the Summons issued u/s 131 of the Act. The maximum penalty which can be imposed is Rs. 10,000/- only. This amount is peanuts for such people indulging in large scale financial irregularities. Further, the consequent action to be taken, related to arrest and production of the individual who fails to comply with the Summons u/s 131 of the Act, is such a long drawn and laborious process that it is futile to even initiate such an action. It is humanly not possible for the directors and the entry operators to be present for Oral cross examination in all the cases where the magnitude of the case is not less than a scam. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed. Cross-examination of the Operators by the Assessee would serve no purpose because the transactions have been done through a chain of intermediaries and it is a 100% true fact that the Assessee would never have even met or known the Operator.”

13. It is also submitted that similar additions made in the case of other assessee's pertaining to the srips of M/s UNNO Industries Ltd. has been deleted by the Coordinate Benches of ITAT, Delhi, and also of Kolkatta Benches in around nine-ten cases as follows.

- ITA No. 410/D/2018 Mohit Hora (HUF) vs. ITO
- ITA No. 2021/D/2018 Shoubit Goel (HUF) vs. ITO
- ITA NO.- 5662/D/2018 Veena Gupta vs. ACIT
- ITA NO.- 6087/D/2018 Sh. Rajeev Agarwal & Sons vs. ITO
- ITA No.- 2394/Kol/2017 Prakash Chand Bhutoria vs. ITO
- ITA No. 1790/Kol/2018 Sumaysh Aggarwal
- ITA No.- 2474/Kol/2018 Mahavir Jhanwar vs. ITO
- ITA No.- 1693/Kol/2018, Sh. Pawan Kumar Kabra vs. ITO
- ITA No.- 1694/Kol/2018, Sh. Raj Kumar Kabra vs. ITO
- ITA No.- 731/Kol/2018 Smt. Minu Gupta vs. ITO.

The Ld. AR also submitted that unless some defects are pointed out by the Ld. AO in the documents submitted the same needs to be accepted and, in this case, it is crystal clear that the same does not contain even a whisper that the document submitted by the appellant was not genuine or defective. The appellant invested in shares, which

gave rise to capital gains in a short period, does not been produced before Ld. AO. He also submitted that there is no whisper in the assessment order or the order passed by the Ld. CIT(A) that assessee/ appellant has taken accommodation entry or has routed his unaccounted money. The bank statement evidencing receipt of funds from the share broker has already been furnished in the course of assessment proceedings. So far the documents and evidence submitted by the assessee appellant there is absolutely no adverse material to implicate the appellant to the entire gamut of unfounded / unwarranted allegation leveled by the AO against the appellant.

14. In order to strengthening above arguments, the Ld. AR relied upon the judgment of Hon'ble High Court in the case of Principal of Commissioner of Income-tax vs. Sandipkumar Parsottambhai Patel {2023} 150 taxmann.com 192 (Gujarat), the relevant para no. 26 to 28 reproduced as under:

“ 26. In the light of the documents and evidences submitted by the assessee, we find that there is absolutely no adverse material to implicate the assessee to the entire gamut of unfounded/unwarranted allegations leveled by the AD against the assessee, which in our considered opinion has no legs to stand and therefore has to fall. We take note that id. DK could not controvert the facts which are supported with material evidences furnished by the assessee. We note that the allegations that the assessee/brokers got involved in price rigging/manipulation of shares must therefore consequently fall. At the cost of repetition, we note that the

assessee had furnished all relevant evidences in the form of bills, contract notes, demat statement and bank account to prove the genuineness of the transactions relevant to the purchase and sale of shares resulting in long term capital gain. Neither these evidences were found by the AO nor by the id. CIT(A) to be false or fictitious or bogus. The facts of the case and the evidences clearly support the claim of the assessee that the transactions of the assessee were genuine and the authorities below was not justified in rejecting the claim of the assessee exempted u/s 10(38) of the Act on the basis of suspicion, surmises and conjectures. It is to be kept in mind that suspicion how so ever strong, cannot partake the character of legal evidence. in the aforesaid facts and circumstance, for allowing the appeal we rely on the decision of the Hon'ble Calcutta High Court in the case of M/s Alipine Investments in ITA No. 620 of 2008 dated 26th August, 2008 where in the High Court held as follows:

"It appears that there was loss and the whole transactions were supported by the contract notes, bills and were carried out through recognized stock braker of the Calcutta Stock Exchange and all the bills were received from the share broker through account payee which are also fled in accordance with the assessment. It appears from the facts and materials placed before the Tribunal and after examining the same, the tribunal allowed the appeal by the assessee. In doing so the tribunal held that the transactions cannot be brushed a side on suspicion and surmises. However, it was held that the transactions of the shares are genuine. Therefore, we do not find that there is any reason to hold that there is no substantial question of law held in this matter. Hence the appeal being ITA No. 620/2008 is dismissed.

27. In the aforesaid facts and circumstances of the case, we hold that the Id.CIT(A) was not justified in upholding the addition of sale proceeds of the shares as undisclosed income of the assessee u/s 68 of the Act. We therefore delete the addition of Rs. 33,15,263.

28. Since, we have deleted the main addition of Rs. 33,15,263/-, therefore, the addition on account of commission payment of Rs. 3,29,188, which is consequential in nature, and hence the same is here by deleted."

15. The Ld. AR relied upon the Order passed by the Co-ordinate Bench of ITAT in ITA No.- 5662/Del/2018, Veena Gupta vs. ACIT, in which by following the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE reported in (2015) 62

taxmann.com 3, allowed the appeal of assessee on legal ground relating to opportunity of cross examination despite specific request. The relevant para of above order is reproduced as under:

“ 14. In our view this amounts to gross violation of principles of natural Justice. We draw our support from the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries versus CCE reported in (2015) 62 Taxmann.com 3, wherein Hon'ble court observed as under:

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority."

16. The Ld. AR also relied upon the judgment of Hon'ble High Court in the case of PCIT vs. Smt. Krishna Devi [2021] 126 taxmann.com 80 (Delhi), in which Hon'ble Delhi High Court held that if there was no dispute that shares of said companies were purchased by assessee online and payments were made through banking channel and shares were dematerialized and sales were routed from demat

account and consideration was received through banking channels, then the Ld. AO could not make addition only on assumption and conjecture by treating impugned LTCG as bogus. The relevant para no. 12 is reproduced as under:

“ 12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion, however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on Suman Poddar case (supra) and Sumati Dayal case (supra) is of no assistance. Upon examining the judgment of Suman Poddar case (supra) at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the TAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of Sumati Dayal (supra) too turns on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.”

17. The Hon'ble Delhi High Court in the case of Principal of Commissioner of Income Tax-12 vs. Smt. Krishna Devi [2021] 126 taxmann.com 80 (Delhi), distinguished the case laws Suman Poddar

vs. ITO and Sumati Dayal vs. CIT, on which the Ld. DR relied upon.

The relevant para no. 12 is as under:

“ 12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion, however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of the Investigation Wing. Lastly, reliance placed by the Revenue on Suman Poddar case (supra) and Sumati Dayal case (supra) is of no assistance. Upon examining the judgment of Suman Poddar case (supra) at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of Sumati Dayal (supra) too turns on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.”

18. The Ld. AR relied upon in the case of Mrs. Neeta Bothra vs. Income-tax Officer [2022] 137 taxmann.com 463 (Chennai-Trib.), the relevant para no. 13 is reproduced as under:

“ 13. In this case, there is no dispute with regard to fact that assessee has filed relevant documents including contract note issued by stock broker, as per which purchase and sale of shares were through online. The assessee has paid consideration for purchase of shares by cheque and had received consideration for sale of shares by cheque. The Assessing Officer has not made any adverse comments on the

evidences filed by the assessee, but he has disbelieved documents filed by the assessee for simple reason that broker was kept under watch list by the SEBI for fraudulent and unfair trade practices relating to Securities Market Regulations, 1995. We find that basis on which the Assessing Officer has concluded his finding to hold the assessee is a beneficiary of bogus long term capital gain is not supported by any corroborative evidences. No doubt, broker may be kept under watch list for some fraudulent activities, but whether the assessee is part of that fraudulent activity or not has to be seen. Moreover, there is no evidence on record to show that assessee was part of the organized racket of rigging price of shares in the market. The findings of the Assessing Officer is purely based on suspicious and surmise manner. Therefore, we are of the considered view that unless the Assessing Officer brings certain evidences to support his finding that the assessee is also involved in rigging share price to get undue benefit of exemption u/s.10(38) of the Income-tax Act, 1961, the transactions of sale and purchase of shares through recognized stock exchange cannot be treated as unexplained cash credit u/s.68 of the Act. In this case, the Assessing Officer has predominantly went on the basis of theory of human behavior and preponderance of probabilities for the reason that the assessee was never involved in purchase and sale of shares, but has done isolated transaction of purchase and sale of a particular company. The said finding of the AO is contrary to facts, because, the assessee was a regular investor in shares which is evident from Demat account furnished before us, as per which along with this script, the assessee had purchased and sold number of other scripts.”

19. The Ld. AR relied upon the order of Co-ordinate Bench of ITAT in the case of Swati Luthra vs. Income Tax Officer, Ward-51(5), New Delhi, [2020] 115 taxmann.com 167 (Delhi Trib.), the relevant para no. 15 is reproduced as under:

“ 15. On going through the aforesaid judgment, we find that no question of law was formulated by Hon'ble High Court of Delhi in the said case and there is only dismissal of appeal in limine and the Hon'ble High Court found that the issue involved is a question of fact as held by Hon'ble Apex Court in

Kunhayyammed v. State of Kerala [2000] 113 Taxman 470/245 ITR 360 and also in CIT v. Rashtradoot (IIUF) (supra). Even on merits and facts, the said judgment in the case of Udit Kalra (supra) is distinguishable as in that case the scrips of the company were delisted on stock exchange, whereas, in the instant case, the interim order of SEBI in the cases of M/s. Esteem Bio and M/s. Turbotech have been cooled down by subsequent order of SEBI placed by assesseees in its paper book. Thus, the case of Udit Kalra v. ITO relied by ld. DR is clearly distinguishable on facts and is not applicable to the facts of assessee. Thus, we hold that the case of assessee is factually and materially distinguishable from the facts of the case of Udit Kulra (supra) so relied by ld. DR.”

20. By following the above binding judicial precedent and emerging fact situation, we find material substance in the submissions advanced on behalf of the assessee / appellant and have thoughtful consideration that addition in question deserves to be deleted by allowing the appeal.

21. Consequently, the appeal of the assessee is hereby allowed as indicated above.

Order pronounced in the Open Court on 27.03.2025

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 27/03/2025.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

1.	Date of dictation of Tribunal order	26.03.25
2.	Date on which the typed draft Tribunal Order is placed before the Dictating Member	27.03.25
3.	Date on which the typed draft Tribunal order is placed before the other Member	
4.	Date on which the approved draft Tribunal order comes to the Sr. PS/PS	
5.	Date on which the fair Tribunal order is placed before the Dictating Member for pronouncement	
6.	Date on which the signed order comes back to the Sr.PS/PS	
7.	Date on which the final Tribunal order is uploaded by the Sr.PS/PS on official website	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal order	
9.	Date of killing off the disposed of files on the judisis Portal of ITAT by the Bench Clerks	
10.	Date on which the file goes to the Supervisor (Judicial)	
11.	The date on which the file goes to the Assistant Registrar for endorsement of the order	
12.	Date of Despatch of the order	