



आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं./ I.T.A. No.7648/Mum/2019
 (निर्धारण वर्ष / Assessment Year: 2014-15)

Dipesh Ramesh Vardhan 101, Commerce House 140 Nagindas Master Road Fort, Mumbai.	बनाम/ Vs.	DCIT-Central Circle-2(2) Room No.806, 8th Floor Pratishtha Bhavan M.K. Road, Mumbai- 400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ADNPV-5835-V		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकर □ पील सं./ I.T.A. No.7662/Mum/2019
 (निर्धारण वर्ष / Assessment Year: 2014-15)

Ramesh Babulal Vardhan 101, Commerce House 140 Nagindas Master Road Fort, Mumbai.	बनाम/ Vs.	DCIT-Central Circle-2(2) Room No.806, 8th Floor Pratishtha Bhavan M.K. Road, Mumbai- 400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAAPV-5350-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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3. आयकर अपील सं./ I.T.A. No.7651/Mum/2019
 (निर्धारण वर्ष / Assessment Year: 2014-15)

Manju Ramesh Vardhan 101, Commerce House 140 Nagindas Master Road Fort, Mumbai.	बनाम/ Vs.	DCIT-Central Circle-2(2) Room No.806, 8th Floor Pratishtha Bhavan M.K. Road, Mumbai- 400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAGPV-0698-H		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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4. आयकर □ पील सं./ I.T.A. No.7650/Mum/2019
 (निर्धारण वर्ष / Assessment Year: 2014-15)

Vishal Ramesh Vardhan 101, Commerce House 140 Nagindas Master Road Fort, Mumbai.	बनाम/ Vs.	DCIT-Central Circle-2(2) Room No.806, 8th Floor Pratishtha Bhavan M.K. Road, Mumbai- 400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AFKPV-4975-J		



(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
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5. आयकर □ पील सं./ I.T.A. No.7649/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Rajesh Babulal Vardhan 101, Commerce House 140 Nagindas Master Road Fort, Mumbai.	बनाम/ Vs.	DCIT-Central Circle-2(2) Room No.806, 8th Floor Pratishtha Bhavan M.K. Road, Mumbai- 400 020.
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. AAAPV-5351-P		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Vimal Punamiya-Ld.AR
Revenue by	:	Shri Jayant Jhaveri-Ld. CIT-DR & Shri Udool Raj Singh-Ld. Sr. DR

Date of final Hearing	:	31/07/2020
Date of Pronouncement	:	11 /08/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by 5 different assessee contest separate orders of learned first appellate authority. Since the issues were identical and stem from same set of facts, the appeals were heard together and are now being disposed-off by way of this consolidated order for the sake of convenience and brevity. It is admitted position that adjudication in any of the appeals would equally apply to all the other appeals also.

2. We have carefully heard the arguments advanced by both the representatives during the course of hearing as well as during clarification. We have perused relevant material on record including the documents placed in the paper-book. We have also deliberated on various judicial pronouncements as cited by both the representatives during the course of hearing. The written submissions have duly been considered. Our adjudication to the captioned appeals would be as given



in succeeding paragraphs. ITA No.7648/Mum/2019 of Shri Dipesh Ramesh Vardhan is taken as the lead case.

ITA No.7648/Mum/2019 for A.Y. 2014-15: Shri Dipesh Ramesh Vardhan

3.1 This appeal assails the the order of Ld. Commissioner of Income-Tax (Appeals)-48, Mumbai, [in short referred to as 'CIT(A)'], dated 31/10/2019 on following grounds of appeal.

1. Addition as Unaccounted/Unexplained Income of Rs.2,99,76,550/- by treating the Long Term Capital Gain as Manipulated Transaction and further adding 2% thereon as commission by just relying upon third party statement without establishing any connection of the appellant with the said third party and completely disregarding the direct documentary evidences submitted by the Appellant and even no incriminating documents/materials were found during the course of Search Action/Proceedings.

(a) On the facts and the circumstances of the case and in law, the learned Assessing Officer has erred in law and facts in treating the Long-Term Capital Gain as Manipulated Transactions and further adding 2% thereon as commission expenses and added an amount of Rs. 2,99,76,550/- to total income under section 68 of the Income Tax Act 1961 even though no incriminating documents and/or material of alleged cash paid to the alleged accommodation entry provider/share operator were found during the course of search action/proceedings. The learned Assessing Officer has just acted mechanically relying upon third party statement and reference made by the Investigation Wing without taking cognizance of and completely disregarding the direct documentary evidences submitted by the Appellant during the assessment proceeding pertaining which were sufficient enough to establish the genuineness of the transactions. The learned Assessing Officer has erred in relying upon the irrelevant material seized in the case of some person named as Mr. Vipul Bhatt and his statement with whom the Appellant has no connection whatsoever and the learned Assessing Officer did not establish any connection of the appellant with the said Mr. Vipul Bhatt. The learned Assessing Officer rejected the claim of the Appellant just because the Appellant did not produce the party i.e. the Company without appreciating that the Appellant is not obliged under any law to produce any of the Company as the shares were sold at the online platform of the stock exchange and not to the company.

(b) The learned CIT (Appeal) has erred in upholding the action of the AO in making addition of Rs. 2,99,76,550/- under section 68 of the Income Tax Act, being the Long Term Capital Gain and further adding 2% thereon as commission expenses on the sale of shares of a listed company through recognized stock exchange even when the identity and nature of the source of the said capital gain were explained and proved.

(c) The learned Assessing Officer/CIT (Appeal) erred in law and facts in passing the assessment orders solely on the basis of assumption, presumptions, surmises and conjectures without any cogent material or evidence. The reason given are wrong,



contrary to the facts of the case and against the provisions of law, hence it is illegal and contrary to the principal of natural justice.

In view of the forgoing laws and facts, the addition made is unwarranted and not justified and it is therefore, prayed that the same be deleted.”

As evident, the assessee is aggrieved by confirmation of certain additions as unexplained / unaccounted income and also by confirmation of estimated additions of commission against these transactions. To resolve the controversy, it would be imperative to delve into correct factual matrix of the case as brought on record by Ld. AO in quantum assessment order and as adjudicated by Ld. CIT(A) in the impugned order.

3.2 Briefly stated the assessee being resident individual is stated to be director and partner in the *Vardhman Group* of Companies and firms which carries on the business as Builders & Developers, granting of loans & advances and investment activities. The assessee earned Salary income in the form of director's remuneration from group companies and interest income on loans during the year which has duly been reflected in the return of income. The assessee also earned exempt income in the form of Long-Term Capital Gains (LTCG), Share of profit from partnership firms, interest on PPF & dividends etc. The sole subject matter of the appeal is certain addition on account of Long-Term Capital Gains earned by the assessee during the year. The assessee reflected LTCG of Rs.293.88 Lacs on certain shares transactions which were claimed to be exempt u/s 10(38). The Ld. AO as well as Ld. first appellate authority has denied the same and hence, this appeal.

3.3 The record would show that an assessment was framed for year under consideration u/s 143(3) r.w.s. 153A of the Act on 21/12/2016 wherein the income of the assessee was determined at Rs.303.50 Lacs



after certain additions of unexplained income as against returned income of Rs.3.74 Lacs filed by the assessee on 25/09/2014. The LTCG earned by the assessee was treated as its unaccounted income and Ld.AO had estimated commission income against these transactions @2%.

3.4 The said assessment stem from search operations u/s 132 as carried out by the department at various residential and business premises of assessee group on 05/11/2014. During the course of search at the residence of the assessee, excess jewellery worth Rs.3.30 lacs was found which was offered to tax in statement u/s. 132(4). Consequently, notices u/s 153A & 143(2) were issued as per due process of law.

3.5 During assessment proceedings, it transpired that various family members of the group reflected LTCG aggregating in all to Rs.3235.98 Lacs and claimed the same to be exempt u/s 10(38). The assessee-wise detail, in this respect has been tabulated in para 4.1 of the quantum assessment order. Accordingly, the assessee was asked to explain the genuineness of the aforesaid LTCG. The amount of LTCG reflected by the assessee was Rs.293.88 Lacs.

3.6 It transpired that the assessee made investment in the shape of 62,500 Equity Shares of an entity namely Santoshima Tradelink Ltd. (STL) during the month of September, 2011. The face value of the share was Rs.10/- per share with premium of Rs.10/- per share and accordingly, the assessee paid a sum of Rs.12.50 Lacs to acquire the same. The shares were duly allotted in due course and the shares certificates were received in physical form and the shares were ultimately dematerialized in assessee's account during March, 2012.



3.7 Meanwhile, M/s STL got amalgamated with another entity namely M/s Sunrise Asian Ltd. (SAL) pursuant to a scheme of amalgamation u/s 391 to 394 which was duly approved by Hon'ble Bombay High Court. As per the scheme of amalgamation, share swap ratio was fixed as 1:1 and accordingly, the shares of STL were swapped with the shares of SAL which were credited in assessee's demat account during the month of June, 2013. M/s SAL was a public limited company and its shares were listed on Bombay Stock Exchange as Group 'A' shares signifying that the shares were highly traded having highest degree of liquidity.

3.8 The assessee sold these shares through online platform (BOLT) provided by recognized stock exchange and delivered the shares in demat form to the clearing house and received sale consideration through its stock-broker in the month of March, 2014. The sale consideration was received through banking channels. Since the investment was held for more than 1 year and the sale transactions were undertaken through recognised stock exchange on which Securities Transactions Tax (STT) was paid, the assessee apparently fulfilled the conditions laid down in Sec. 10(38) and accordingly claimed exemption of the gain. The LTCG earned on these transactions was worked out to be Rs.293.88 Lacs.

3.9 However, to verify the transactions, summons u/s 131 were issued at the address of M/s SAL which remained un-responded to. It transpired that a search action was conducted at various places of one Shri Vipul Bhat on 05/02/2016 wherein it was revealed that Shri Vipul Bhat was controlling M/s SAL and was engaged in rigging the share price of M/s SAL. Based on outcome of search proceedings, an opinion was formed



that M/s SAL was merely a paper company engaged in providing accommodation entries to various beneficiaries. This search was subsequent to search conducted on the assessee on 05/11/2014. In the said background, the transactions carried out by the assessee was subjected to scrutiny during assessment proceedings.

3.10 In defence of genuineness of stated transactions, the assessee furnished copies of purchase and sales contract notes. The copies of financial statements of M/s STL for FYs 2009-10 & 2010-11, on the basis of which the decision to make the investment was taken by the assessee, was also placed on record. The assessee also submitted month-wise data of trading volume and price range of shares of M/s SAL for more than 2 years i.e. from the month of Jan 2013 to July 2015. During the aforesaid period, the price range was continuously shown to be in the range of Rs.360-600 per share and the trading volumes were shown to be in the range of 5 Lacs to 25 Lacs shares per month. The price range was stated to be in the same range for 15 months after the period of sale of shares by the assessee. Therefore, the allegations of rigging or manipulation of shares were refuted. The assessee denied having known Shri Vipul Bhat and submitted that it had no privy of contract with the buyers of the shares since the shares were sold through recognised stock exchange in online mode. In the above background, the assessee denied the allegations of Ld. AO *qua* rigging / manipulation of share prices of M/s SAL.

3.11 However, it was noted that there was survey action u/s 133A on 04/02/2016 in case of M/s SAL. During survey, the statement of Shri Kalpesh Manahar Jani (Director of M/s SAL) was recorded wherein the



said person denied having any link with M/s SAL but submitted that Shri Vipul Bhat appointed him as a director of M/s SAL. The survey on the premises of M/s SAL revealed that given address was dummy office and it was a paper company.

It was also noted that various entities controlled by Shri Vipul Bhat acted as exit providers to the beneficiaries of the scrips. Two of these entities were M/s Sampada Chemicals Ltd. & M/s Shipra Fabrics Pvt. Ltd.

The director of M/s Sampada Chemicals Ltd. namely Shri Kaushik Balubhai Madhwani, during survey proceeding, denied having any link with entity M/s Sampada Chemicals Ltd. Similarly, the director of M/s Shipra Fabrics Pvt. Ltd. denied having any knowledge about the said entity and submitted that this entity was being operated by Shri Vipul Vidur Bhatt.

Shri Vipul Vidur Bhat accepted under oath that he was involved in providing accommodation entries against commission. He admitted to have manipulated the share prices of M/s SAL for providing accommodation entries of LTCG.

3.12 The survey action led to issuance of search warrant u/s 132 on 05/02/2016 in the name of Shri Vipul Vidur Bhat and his various entities including M/s SAL. During search operations, statement of Shri Vipul Vidur Bhat was recorded u/s 132(4) wherein he admitted to have indulged in providing accommodation entries to beneficiaries against commission.

3.13 To verify the genuineness of the transactions of various assessee of Vardhan Group, trading data was collected from Stock Exchange. The details of buyer who purchased the shares of Vardhan Group were



tabulated in para 4.5 of the quantum assessment order. From the said analysis, a conclusion was drawn that the shares were purchased by various concerns of Shri Vipul Bhat only. It was also noted that there was circular trading within the group entities of Shri Vipul Bhat which helped in manipulating the prices of M/s SAL.

3.14 Finally, applying the principle of human probability in terms of decision of Hon'ble Supreme Court in **Sumati Dayal 214 ITR 801**, these transactions were termed as manipulated transaction done by the assessee in connivance with Shri Vipul Bhat to evade the taxes on unaccounted income. In order to obtain such transactions, a commission would usually be paid. The same was estimated @2%. The action of Ld. AO resulted into an addition of Rs.299.76 Lacs in the hands of the assessee.

3.15 In para-4 of the quantum assessment order, it was noted that the search was conducted on the assessee on 05/11/2014. The return of income for AY 2014-15 was already filed by that date. However, the time limit for issuance of notice u/s 143(2) had not expired. As a matter of fact, the return of income for AY 2014-15 was selected for scrutiny through CASS for the purpose of examination of exempt LTCG. Therefore, the assessee's contention that there was no incriminating material found during the course of search operations and therefore no addition based on material other than incriminating material would be justified, could not be accepted. Accordingly, the assessment was framed against the assessee.

4.1 Before Ld. CIT(A), the assessee assailed the addition by way of elaborate written submissions which have already been extracted in



para-4 of the impugned order. The assessee vehemently controverted the findings of Ld. AO by submitting that in the list of purchase of shares, as tabulated by Ld. AO, there were independent buyers too. The assessee denied having known Shri Vipul Bhat and denied having entered into any transactions with any of his entities. It was reiterated that the shares were sold at the online platform of the stock exchange through share broker. The assessee or the share broker would have no control over the bidder / buyers of the shares in the online platform. The assessee submitted that it had no dealing or control over M/s SAL and therefore, he was not obligated under law to produce any such party. In fact, it was onus of Ld. AO to provide cross-examination of the said party whom he was trying to link assessee with. On the other hand, the assessee discharged his onus to prove the genuineness of the transactions by providing all the relevant direct documentary evidences. The Ld. AO heavily relied upon the findings of investigation wing without carrying out any independent investigation of his own. Nothing was brought on record which would establish that the assessee was beneficiary of alleged accommodation entries provided by the so-called Shri Vipul Bhat. No corroborative evidences to support the findings of Ld. AO were brought on record. The documentary evidences submitted by the assessee were neither verified nor examined. Further, no contrary and conclusive evidences were brought on record to dispute the said documentary evidences furnished by the assessee.

4.2 The attention was drawn to the fact that sale transactions took place through recognized stock exchange and statutory Securities Transaction Tax (STT) was paid on sale transactions. In the online



platform, the identity of the seller as well as purchaser would not be known. The shares were delivered in demat form through clearing mechanism of the stock exchange. Therefore, unless any link is established, the assessee could not be held to be part of the group indulging into rigging shares prices of the scrips. The sale proceeds were realised through banking channels. There was no evidence of any cash exchange. The findings as well as conclusion of Ld.AO were based on mere suspicion, surmises and hearsay as against settled proposition of law that suspicion howsoever strong could not partake the character of legal evidence. The entire case of Ld.AO was based on mere presumption that the assessee ploughed back its own unaccounted money in the form of bogus LTCG. The presumption needs to be corroborated by some evidence to establish the same. For the said proposition, reliance was placed on catena of judicial pronouncements of Hon'ble High Courts as well Tribunal which has already been enumerated in the impugned order.

4.3 The assessee also raised a plea of violation of principle of natural justice by submitting that the statement of Shri Vipul Bhat was never confronted to the assessee and no opportunity to cross-examine the said person was ever provided to the assessee. More so, Shri Vipul Bhat did not state as to how he was connected with the assessee. In the absence of any such admission, the statement would have no evidentiary value. For aforesaid submissions, reliance was placed, *inter-alia*, on the decision of Hon'ble Supreme Court in **Andaman Timer Industries Ltd. (Civil Appeal No. 4228 of 2006)** & the decision of **Kishanchand Chellaram V/s CIT (125 ITR 713)**.



4.4 The assessee also raised a plea that in the absence of any incriminating material found during the course of search operations, the additions would not be sustainable. However, this plea was rejected by Ld.CIT(A) which has already been enumerated by us in preceding para 3.15. Similar plea has been raised before us by Ld. AR. However, we are completely in agreement with the stand of Ld. CIT(A) in this regard and therefore, reject this plea.

4.5 The Ld. CIT(A), in the background of judicial decision on circumstantial surrounding evidences, noted that entire network of documents was manipulated and created by Shri Vipul Bhat and his associates with the sole purpose of providing bogus LTCG to various beneficiaries including the assessee and his family members. The same would be evident from statement of Shri Vipul Bhat u/s 132(4) on 04/02/2016 & 09/02/2016 during the course of search proceedings. The relevant portion of the same has been extracted in the impugned order. Based on said statement, it was concluded that director of M/s SAL was a dummy director and Shri Vipul Bhat was the actual controller of said entity. The steep rise in the prices of shares were manipulated and controlled / managed by Shri Vipul Bhat and his associates. The exit providers to the assessee were manipulated and controlled by Shri Vipul Bhat and his associates. The statement of concerned persons of exit provider entities was also noted in para-7 of the impugned order whereupon a conclusion was drawn that the persons controlling these entities were invariably persons of very small means. Their identity was used by Shri Vipul Bhat to create bogus companies. These persons were not aware about the share transactions. As per the statement of Shri



Vipul Bhat, one Shri Sandeep Maroo was the intermediary who introduced Vardhan family to him and the said group is a beneficiary of Long-Term Capital Gains.

4.6 The family members of Vardhan group, during search proceedings on the group, stated that entire dealings were done by Shri Ramesh Vardhan whose statement was recorded on 12/05/2016. Shri Ramesh Vardhan, in reply to question no. 64, submitted that trading in Shares of M/s SAL was genuine transactions thorough stock exchange following all process and legal procedures. The statement of Shri Vipul Bhat was confronted to the assessee in question no.65. However, Shri Ramesh Vardhan denied being aware of the facts stated therein and reiterated that shares were sold through brokers and payments were received through banking channels.

4.7 The Ld. CIT(A), at para-9.2 of the impugned order, observed that the shares were acquired offline and large number of shares were allotted as bonus / preferential shares. Such offline purchase of shares on which abnormal LTCGs from the penny stock companies has been declared, would be a strong indicator of bogus nature of entire transactions.

4.8 Finally, the plethora of documentary evidences submitted by the assessee in support of the transactions were termed as self-serving documents and the action of Ld.AO, in making the additions, was confirmed.

Aggrieved, the assessee is under further appeal before us.

5. The Ld. Authorized Representative for Assessee (AR), reiterating the submission made before Ld. CIT(A), vehemently assailed the



impugned order. *Au Contraire*, Ltd. CIT-DR supported the findings of lower authorities and pleaded for confirmation of impugned order.

6. We have carefully heard the rival submissions and perused relevant material on record. So far as the factual matrix is concerned, there is no substantial dispute regarding the same. The perusal of record would reveal that the assessee purchased certain shares of an entity namely M/s STL as early as September, 2011. The shares were converted into demat form in assessee's account during the month of March, 2012. The transactions took place through banking channels. The investments were duly reflected by the assessee in financial statements of respective years. The copies of financial statements of M/s STL for FYs 2009-10 & 2010-11 which led to investment by the assessee in that entity was also furnished during the course of assessment proceedings. Subsequently, M/s STL got merged with another entity viz. M/s SAL pursuant to scheme of amalgamation u/s 391 to 394 of The Companies Act, 1956. The Scheme was duly approved by Hon'ble Bombay High Court vide order dated 22/03/2013, a copy of which is on record. Consequently, the shares of M/s STL held by the assessee got swapped with the shares of M/s SAL and new shares were allotted to the assessee during June, 2013 pursuant to the approved scheme of amalgamation. M/s SAL is stated to be listed public company Group 'A' shares signifying high trades with high liquidity. The assessee has sold these shares through its stock broker namely *M/s Unique Stockbro Private Limited* in online platform of the recognised stock exchange during the month of March, 2014. The selling price was in the range of Rs.489/- to Rs.491/- per share. The transactions took place



through online mechanism after complying with all the formalities and procedure including payment of STT. The delivery of the shares was through clearing mechanism of the stock exchange and sale consideration was received through banking channels. The transactions are duly evidenced by contract notes, demat statements, bank statements and other documentary evidences. The key person of assessee group, in his statement, maintained the position that trading transactions were genuine transactions carried out through stock exchange following all process and legal procedures. The assessee also filed trading volume data and price range of the scrip for a period of more than 2 years i.e. from Jan, 2013 to July, 2015. The shares reflected healthy trading volume and the price range reflected therein was in the range of Rs.360/- to Rs.600/- per share. The price range was stated to be in the same range for 15 months after the period of sale of shares by the assessee, which has not been disputed by the revenue. On the basis of all these facts, it could be gathered that the assessee had duly discharged the onus casted upon him to prove the genuineness of the stated transactions and the onus had shifted on revenue to rebut the same.

7. As against the assessee's position, the primary material to make additions in the hands of assessee is the statement of Shri Vipul Bhat and the outcome of search proceedings on his associated entities including M/s SAL. However, there is nothing on record to establish vital link between the assessee group and Shri Vipul Bhat or any of his group entities. The assessee, all along, denied having known Shri Vipul Bhat or any of his group entities. However, nothing has been brought on record



to controvert the same and establish the link between Shri Vipul Bhat and the assessee. The opportunity to cross-examine Shri Vipul Bhat was never provided to the assessee which is contrary to the decision of Hon'ble Supreme Court in **M/s Andaman Timber Industries V/s CCE (CA No.4228 of 2006)** wherein it was held that not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statement of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounts to violation of principal of natural justice because of which the assessee was adversely affected. The whole basis of making the addition is third party statement without there being any tangible material. It is trite law that additions merely on the basis of suspicious, conjectures or surmises could not be sustained in the eyes of law as held by Hon'ble Supreme Court in **Omar Salay Mohamed Sait V/s CIT (1959 37 ITR 151)**. The suspicion however strong could not partake the character of legal evidence as held by Hon'ble Supreme Court in **Umacharan Shaw & Bros. V/s CIT (1959 37 ITR 271)**. Therefore, we find that onus as casted upon revenue to corroborate the impugned additions by controverting the documentary evidences furnished by the assessee and by bringing on record, any cogent material to sustain those additions, could not be discharged by the revenue. The allegation of price rigging / manipulation has been levied without establishing the vital link between the assessee and various entities of Shri Vipul Bhat. We find that the whole basis of making additions is third party statement and no opportunity of cross-examination has been provided to the assessee to confront the said party. As against this, the assessee's



position that the transactions were genuine and duly supported by various documentary evidences, could not be disturbed by the revenue.

8. The allegations of Ld.AO that the assessee was part of the group which indulged in rigging or manipulation of prices of shares in connivance with Shri Vipul Bhat is not backed by any independent material. Firstly, there is nothing on record which establishes the fact that the assessee was acquainted with Shri Vipul Bhat or any of his entities and secondly, the onus casted upon assessee to prove the genuineness of the transactions was already discharged by the assessee. Shri Vipul Bhat, in his statement, stated that one Shri Sandeep Maroo acted as intermediary who introduced Vardhan family to him. However, no further investigations have been carried out to establish this vital link between the assessee and Shri Vipul Bhat. We do not find any independent investigations by Ld. AO to bring on record any tangible material to corroborate the same. There are no evident or even allegation of any cash exchange between the assessee and group entities of Shri Vipul Bhat. This is further evidenced by the fact that no substantial incriminating material / wealth of that magnitude has been found during the course of search operations on assessee which would corroborate such presumption and prove that the transactions were sham transactions, in any manner.

9. The fact that the assessee could not produce the concerned person of M/s SAL was rightly controverted by submitting that the aforesaid entity was not under the control of the assessee and the assessee was under no obligation to do so. The existence of M/s SAL is beyond doubt since it was a listed corporate entity and secondly, it was



subject matter of scheme of amalgamation u/s 391 to 394. The scheme of amalgamation was duly been approved by Hon'ble Bombay High Court. Therefore, the existence of the said entity could not be doubted, in any manner.

10. The above conclusion is further fortified by the fact that in share sale transactions through online mode, the identity of the buyer of the shares would not be known to the assessee. Therefore, the adverse conclusion drawn by Ld. AO merely on the basis of the fact that the buyer of the shares were group entities of Shri Vipul Bhat, could not be sustained. The fact that there were independent buyers also would rebut the same and weaken the conclusion drawn by Ld. AO.

11. The Ld. AR has relied on plethora of judicial pronouncements in support of various submissions, which we have duly considered. These decisions would only support the conclusions drawn by us that once the assessee has discharged the onus of proving the genuineness of the transactions, the onus would shift on the revenue to dislodge assessee's claim and bring on record contrary evidences to rebut the same. Until and unless this exercise is carried out, the additions could not be sustained in the eyes of law.

12. To enumerate the few, the Hon'ble Bombay High Court in **CIT V/s Shyam S.Pawar (54 Taxmann.com 108 10/12/2014)** declined to admit revenue's appeal since the revenue failed to carry forward the inquiry to discharge this basic onus. The co-ordinate bench of this Tribunal in **Mukesh R.Marolia V/s Addl. CIT (6 SOT 247 15/12/2005)** held that personal knowledge and excitement on events should not lead the Assessing Officer to a state of affairs where salient evidences are over-



looked. When every transaction has been accounted, documented and supported, it would be very difficult to brush aside the contentions of the assessee that he had purchased shares and had sold shares and ultimately purchased a flat utilizing the sale proceeds of those shares and therefore, the co-ordinate bench chose to delete the impugned additions. We find that this decision was firstly been approved by Hon'ble Bombay High Court vide ITA No. 456 of 2007 on 07/09/2011 and thereafter, special leave petition against the said decision has been dismissed by Hon'ble Supreme Court vide SLP No. 20146 of 2012 dated 27/01/2014 which is reported as 88 CCH 0027 SCC.

The SMC Bench of Tribunal in **Anraj Hiralal Shah (HUF) V/s ITO (ITA No. 4514/Mum/2018 dated 16/07/2019)** held that in the absence of any evidence to implicate the assessee or to prove that the transactions were bogus, the Long-Term Capital Gains declared by the assessee could not be doubted with. This case was dealing with gains earned by the assessee on sale of same scrip i.e. M/s Sunrise Asian Ltd.

13. Therefore, considering the entirety of facts and circumstances, we are not inclined to accept the stand of Ld.CIT(A) in sustaining the impugned additions in the hands of the assessee. Resultantly, the addition on account of alleged *Long-Term Capital Gains* as well as estimated commission against the same, stands deleted. The grounds of appeal, to that extent, stand allowed.

14. The grounds relating to levy of interest as well as initiation of penalty, being consequential in nature, would not require any specific adjudication on our part. Finally, the appeal stands partly allowed in terms of our above order.



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15. It is an admitted position that facts are pari-materia the same in all these appeals. The assessment was framed in the hands of various assessee, in similar manner, wherein Long-Term Capital Gains earned by all the four assessee were treated as unexplained income and added to their income with further addition of estimated commission income of 2%. The impugned orders are on similar lines. The assessee is before us with identical grounds of appeal. Therefore, our findings, conclusion as well as adjudication as for ITA No.7648/Mum/2019 shall *mutatis-mutandis* apply to all these appeals as well. Resultantly, all these appeals stand partly allowed, in similar manner.

Conclusion

16. All the appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 11th August, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11/08/2020

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File



आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.