

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.2396/DEL/2019
(Assessment Year: 2014-15)**

Pulin Investments (P) Ltd.,
98, Netaji Subhash Marg, Daryaganj,
New Delhi – 110 002.

vs.

DCIT, Circle 20 (1),
New Delhi.

(PAN :AADCP2350G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Kapoor, Advocate
Shri Sumit Lal Chandani, Advocate
Ms. Ananya Kapoor, Advocate
Shri Shivam Yadav, Advocate

REVENUE BY : Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing : 08.04.2026

Date of Pronouncement : 06.07.2026

ORDER

PER S.RIFAUR RAHMAN,AM:

1. The assessee has filed appeal against the order of the Ld. Commissioner of Income-tax (Appeals)-38, Delhi ["Ld. CIT(A)", for short] dated 31.12.2018 for the Assessment Year 2014-15 raising following grounds of appeal :-

“1 That the assessment order passed under section 143(3) of the Act and also additions / disallowance made therein are illegal, bad in law, without jurisdiction and void ab initio. The Ld. CIT(A) has grossly erred in upholding the action of AO in assessing the total

income of the assessee at Rs.1,92,98,900/- as against the returned loss of Rs.50,68,618/-.

2 That the Ld. CIT(A) has grossly Rs.79,06,035/- erred in upholding the action of the AO in making an addition of Rs.2,43,67,499/- under section 68 of the Income Tax Act 1961 ("the Act") on account of sale of shares listed on BSE and holding the same to be unexplained cash credit instead of the Short Term capital Loss as declared by the assessee. Hence, the addition made on this account is liable to be deleted 1 quashed.

3 That without prejudice to the above the Ld. CIT(A) while confirming the action of the AO has erred in law and on facts in disallowing the loss of Rs.2,43,67,499/- whereas the claim of loss by assessee in respect of said shares is much less in the assessment year under consideration.

4. That the AO/CIT(A) has failed to appreciate that the provision of section 68 of the Income tax act does not apply to the facts of the case of the assessee. Hence the addition made u/s 68 and charging of tax under section 115BBE on the additions made does not have any legal leg to stand.

5. That the Ld. CIT(A) has grossly erred in upholding the action of the AO as the AO' has failed to bring on record any relevant and germane material to prove that the said transactions were nothing but an accommodation entry. Hence, the addition made is liable to be deleted.

6. That In view of facts and circumstances of the case the AO has grossly erred in relying on report of Directorate of Investigation Kolkata, without appreciating the fact that admissions about bogus transactions have been made therein by third parties which have no connection/nexus to the transactions entered into by the assessee. Hence, the addition made on such information received, and upheld by the CIT(A) is liable to be deleted.

7. That the AO/CIT(A) has failed to appreciate the fact that all the transactions of sales and purchases have been made through banking channels, SIT has been paid and shares on which trade has been made are listed on recognized stock exchange. Hence, the

additions made therein are illegal, bad in law and liable to be deleted / quashed.

8. That the Ld. CIT(A) while admitting the additional evidence filed by assessee under Rule 46A has failed to appreciate that the claim of the assessee is genuine and not taken into consideration the documents and evidences produced to prove the claim of the assessee. The addition made therein is liable to be deleted/ quashed.

9. That without prejudice, the Ld. CIT(A) has grossly erred upholding the action of AO and not confronting the assessee with the evidences/statements based on which the AO has made the addition.

10. That in view of the facts and circumstances of the case the addition made is liable to be deleted as no opportunity has been given to cross examine the third parties on whose statement reliance has been placed by the AO. Hence, the order passed is against the principles of natural justice and bad in law.

11. That the additions/disallowances made are based on surmises and conjectures and cannot be justified by any material on record. The additions/disallowances made are unjust, arbitrary, against the principles of natural justice and are also highly excessive.

12. That the Ld. CIT(A) has grossly erred in upholding the action of AO of charging of interest under section 234A, 234B and 234C which is illegal, bad in law and without jurisdiction. The said interest is wrongly charged and is wrongly worked out and is also highly excessive.

13. That the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the addition made. “

2. Brief facts of the case are, the assessee, M/s Pulin Investments Private Limited, is a company incorporated under the provisions of the Companies Act, 1956(presently, The Companies Act 2013) and is engaged in the business of investment in shares and securities. The objects of the Assessee include purchasing, underwriting, investing in, acquiring, holding and dealing in shares, stocks, debentures and other securities. For the Assessment Year under consideration, the Assessee filed its return of income declaring loss of Rs.50,68,618/-. During the relevant previous year, the Assessee had mostly sold shares of listed companies through recognized stock exchanges, and all transactions were routed through regular banking channels. The purchase and sale of shares were duly reflected in the books of account of the Assessee which have duly been audited and were supported by contract notes, Demat statements, broker ledger accounts and bank statements.
3. During the course of assessment proceedings, the Assessing Officer (AO) relied upon certain information received from the Investigation Wing alleging that certain listed companies were being used for providing accommodation entries in nature to create artificial capital gains and losses. AO came to the above conclusion solely on the basis of investigation report and hence, he concluded that the loss claimed by the Assessee from trading in certain listed shares were not genuine and

consequently made an addition of Rs. 2,43,67,499/- under section 68 of the Act vide assessment order dated 29.12.2016 passed under sec 143(3). Being aggrieved by the aforesaid assessment order, the Assessee preferred an appeal before the Id. Commissioner of Income-tax (Appeals). The Id. CIT(A), while disposing of the appeal vide order dated 31.12.2018, upheld the action of the Assessing Officer. However, it is relevant to note that the Assessing Officer had made the addition under section 68 of the Act, whereas the Id. CIT(A), while dealing with Ground No. 5 raised by the Assessee, proceeded to sustain the addition under section 69B of the Act.

4. At the time of hearing, Id. AR of the assessee submitted that the entire case of the Revenue proceeds on a fundamentally erroneous premise that the assessee entered into artificial transactions with the sole object of generating an accommodation loss. However, once the complete factual matrix is appreciated, the very foundation of the impugned addition collapses. He submitted that the Revenue has not disputed the purchase of shares, the source of acquisition, the dematerialization of the shares, the payment through banking channels, the sale through recognized stock exchanges, the receipt of sale consideration through banking channels, the audited books of account or the genuineness of the documentary evidence. Having accepted every constituent fact of the transaction, the

Revenue seeks to reject only its commercial outcome, namely the business loss. Such selective acceptance of facts coupled with rejection of the legal consequence is wholly impermissible in law.

5. Further Id. AR submitted that the Revenue has viewed only three scrips in isolation whereas the evidence on record conclusively establishes that the Assessee had acquired shares of thirteen listed companies under one indivisible commercial arrangement pursuant to a tripartite Memorandum of Understanding involving M/s Transparent Shares & Securities Pvt. Ltd. and M/s SMC Global Securities Ltd. The acquisition was occasioned by the financial distress of the transferor and represented a negotiated commercial settlement whereby the entire basket of shares was transferred at approximately ten percent below the prevailing market price. He submitted that the transaction was contemporaneously documented, duly intimated to the Bombay Stock Exchange, reflected in the Demat account of the Assessee and supported by accounting entries in the books of all concerned parties. Neither the Assessing Officer nor the Id CIT(A.) has disputed this acquisition. Once the composite transaction itself is accepted, there exists no legal basis to artificially segregate three scrips and disregard only the resultant loss arising therefrom.
6. Id. AR submitted that the conduct of the assessee further demolishes the Revenue's allegation of a pre-arranged accommodation entry.

Immediately upon acquisition, the assessee placed the shares for sale through the recognized stock exchange mechanism. Part of the shares forming part of the very same basket were sold during Assessment Year 2013-14 while the remaining shares were sold during the year under consideration. This immediate disposal completely negates any allegation of artificial holding, circular trading or price manipulation. The shares were treated as trading stock from inception and were sold in the ordinary course of business.

7. He submitted that the Revenue's approach also suffers from patent inconsistency and out of the very same basket acquisition, several transactions have been accepted by the Department. He further submitted that the purchase transaction has been accepted and also the source of investment has been accepted. The demat credit has been accepted. Part of the sale transactions in the immediately preceding year have also been accepted. Yet, without any distinguishing feature, the Assessing Officer has isolated only three scripts and treated the resultant loss as bogus. Such selective rejection of one part of an indivisible transaction violates settled principles governing appreciation of evidence. Once a composite transaction is accepted, the burden lies heavily upon the Revenue to establish, through cogent independent material, why only a particular

portion deserves to be discarded. No such evidence has been brought on record.

8. Ld. AR further submitted that the documentary evidence produced by the Assessee has remained completely uncontroverted. The purchase and sale transactions are supported by contract notes, broker ledger accounts, settlement statements, demat statements, bank statements, audited books of account and computation of income. He submitted that the shares were credited into the Assessee's demat account before being sold through recognized stock exchanges after payment of Securities Transaction Tax. He submitted that these documents originate from independent statutory and regulatory authorities and regulated intermediaries functioning under the supervision of SEBI and the stock exchanges and the Assessing Officer has neither found any defect therein nor conducted any enquiry from the brokers, depository participants, stock exchanges or the parties involved in the original transaction. Suspicion, however strong, cannot substitute legal proof, particularly where every contemporaneous document supports the genuineness of the transaction.
9. He further submitted that equally significant is the complete absence of any evidence connecting the assessee with any alleged entry operator, broker, promoter or price manipulator. He submitted that no statement relied upon by the Investigation Wing implicates the assessee and no

evidence demonstrates movement of unaccounted cash and also no material establishes any prior arrangement between the assessee and any alleged operator. He submitted that no enquiry has been conducted from M/s Transparent Shares & Securities Pvt. Ltd., M/s SMC Global Securities Ltd., the brokers or the depository participants despite their identity being fully available. He further submitted that the entire addition, therefore, rests solely upon a generalized investigation report. It is now well settled that such reports may at best trigger an enquiry but cannot themselves constitute substantive evidence against a particular assessee in the absence of an independent investigation establishing a live nexus between the assessee and the alleged accommodation entry.

10. Ld. AR submitted that the Revenue's allegation is further contradicted by its own factual findings. The assessee has earned profit in respect of transactions relating to M/s ESSAR India Ltd. during the relevant year. Thus, one of the very scripts alleged to have been utilized for creating artificial loss has in fact yielded taxable profits. This completely demolishes the theory that the transactions were structured only for generating artificial losses. He submitted that likewise, the assessee has specifically demonstrated that the name of M/s Dhenu Buildcon India Ltd. does not even appear in the investigation material relied upon by the Department. The Assessing Officer has therefore travelled beyond the

material available on record and has proceeded purely on assumptions and presumptions.

11. He submitted that the addition is independently liable to be deleted because the very charging provisions invoked by the Revenue are inapplicable. He submitted that Section 68 contemplates an unexplained credit found in the books of account. In the present case, there exists no unexplained credit whatsoever and the sale proceeds are fully explained by corresponding sales of shares admittedly held in the demat account and sold through recognized stock exchanges. The alleged loss represents a commercial depletion of funds and not an unexplained accretion thereto. Therefore, the basic jurisdictional condition for invoking section 68 is completely absent. unexplained cash credit under section 68.
12. Ld. AR further submitted that The learned CIT(A) has attempted to sustain the addition under section 69B by invoking his coterminous powers. Such an approach is equally untenable. Section 69B presupposes the existence of an investment whose actual cost exceeds the amount recorded in the books of account. The Assessing Officer has never alleged that the Assessee paid any amount over and above the recorded purchase consideration. No unexplained investment, excess consideration, cash payment or understatement of purchase price has ever been alleged or established. The shares stood fully recorded in the books

of account, their source stood explained, and they were acquired during the immediately preceding previous year. He accordingly submitted that consequently, the essential statutory ingredients of section 69B are wholly absent. Coterminous powers cannot be exercised to substitute one deeming fiction with another when the jurisdictional conditions of the substituted provision are themselves not satisfied.

13. He submitted that Revenue has also ignored the principle of consistency. He submitted that the very same basket transaction had already resulted in sale of certain shares during Assessment Year 2013-14, and the corresponding loss stood accepted by the Department. Once the acquisition and partial disposal under the same transaction have attained acceptance, the Revenue cannot arbitrarily treat the balance sale in the succeeding year as fictitious without bringing fresh incriminating material. At the very least, the amount of loss already accepted in the earlier assessment year cannot again be subjected to tax in the present year, as that would result in patent duplication.
14. Ultimately, he submitted that the Revenue has failed to discharge the burden cast upon it. He submitted that it has neither disproved the documentary evidence produced by the assessee nor established any connection between the assessee and any alleged accommodation entry provider. It has not demonstrated circulation of unaccounted funds, cash

trail, manipulation of demat records, fabrication of contract notes or falsity of banking transactions. The entire addition is founded upon suspicion, conjecture and generalized investigation material. It is trite law that suspicion, however grave, cannot replace legal evidence.

15. Accordingly, he pleaded that in these circumstances, the impugned addition has no factual foundation, no statutory basis and no evidentiary support. The assessment order and the appellate order proceed upon assumptions rather than proof, ignore overwhelming contemporaneous documentary evidence, invoke inapplicable deeming provisions and violate the principles of natural justice. The addition therefore deserves to be deleted in toto. Without prejudice, even assuming any part of the Revenue's case survives, the amount pertaining to the earlier assessment year, already accepted by the Department, cannot once again be brought to tax.
16. On the other hand, ld. DR of the Revenue brought to our notice page 5 of the assessment order and submitted that the relevant shares were purchased offline. He further brought to our notice detailed findings of Ld CIT(A) and AO and relied on the factual report on record. With regard to cross examination, he brought to our notice page 14 of First Appellate Order and heavily relied on the detailed findings of Ld CIT(A).

17. Considered the rival submissions and material available on record. We observed that according to the appellate authority, the provision invoked by the Assessing Officer was itself not applicable to the facts of the case. We further observed that the entire foundation of the impugned addition proceeds with a fundamentally erroneous appreciation of facts. The Revenue authorities have examined three scrips in isolation, namely M/s Dhenu Buildcon India Ltd., M/s ESSAR (India) Ltd. and M/s Shree Nath Commercial & Finance Ltd., while completely ignoring the larger commercial transaction and documents filed during assessment proceedings out of which these shares were acquired. We observed that the impugned transactions cannot be viewed independently of the overall arrangement and must necessarily be appreciated in their correct factual context.
18. We observed that the shares in question were acquired in composite En-Bloc acquisition of thirteen companies, not purchased by the Assessee through isolated or independent transactions. Rather, the same formed part of a single composite commercial acquisition involving shares of thirteen listed companies and the background of this acquisition assumes significance and has been completely overlooked by both the lower authorities.

19. We further observed that M/s Transparent Shares & Securities Pvt. Ltd. was a trading member operating through M/s SMC Global Securities Ltd., which acted as its Professional Clearing Member (PCM) with the Stock Exchanges on their behalf. In the course of its business operations, M/s SMC Global Securities Ltd. stood as guarantor on behalf of M/s Transparent Shares & Securities Pvt. Ltd. before the Stock Exchanges. As security for such obligations, shares of thirteen listed companies were deposited with M/s SMC Global Securities Ltd. as collateral security. Subsequently, M/s Transparent Shares & Securities Pvt. Ltd. suffered substantial financial losses and became liable to discharge certain obligations towards M/s SMC Global Securities Ltd. As a consequence, for settlement thereof, a commercial decision was taken to transfer the entire basket of shares held as collateral and a tripartite MOU between the parties was signed. It was in these circumstances that the Assessee acquired shares of all thirteen companies through a single en-bloc transaction.
20. We also observed that the Assessee purchased the entire basket of thirteen companies on 15.03.2013 at a negotiated price representing approximately 10% discount to the prevailing market quotation available on the Bombay Stock Exchange. The acquisition was thus based upon a commercially negotiated arrangement arising out of the financial distress

of the transferor and was not a transaction restricted to any particular scrip. The transfer was duly confirmed by M/s Transparent Shares & Securities Pvt. Ltd. through contemporaneous documentation. The complete list of thirteen companies acquired by the Assessee forms part of the Paper Book. Necessary accounting entries were simultaneously passed by the transferor, the Assessee and M/s SMC Global Securities Ltd. thereby evidencing the genuineness of the transaction. It is further pertinent to note that on 18.03.2013 M/s Transparent Shares & Securities Pvt. Ltd. formally intimated the Bombay Stock Exchange regarding the transfer of the shares in favour of the Assessee. We observed that pursuant thereto, the shares were transferred and credited to the Demat account of the Assessee. Thus, the transfer was not only documented between the parties but was also reported to the Stock Exchange and reflected in the Demat records maintained by independent depositories.

21. We further observed that the aforesaid facts clearly establish that the acquisition of shares by the Assessee was genuine, transparent and supported by independent documentary evidence. Significantly, neither the Assessing Officer nor the Id. CIT(A) has disputed the purchase of shares by the Assessee. Hence, the factum of acquisition, transfer of shares, dematerialization and recording of transactions in the books of account stands accepted.

22. Further, we observed that immediately upon acquisition of the shares, the Assessee, acting in the normal course of its business activities, placed orders for sale of the shares on the stock exchange platform. Part of the shares acquired through the aforesaid basket transaction were sold during the immediately preceding Assessment Year and the balance shares were sold during the year under consideration. This fact also finds support from the remand proceedings and the documents placed on record. It is also material to note that the acquisition was not followed by any artificial holding pattern or delayed exit so as to suggest any pre-arranged accommodation entry. We observed that the Assessee had placed the shares for sale immediately after acquisition and part of the shares were sold up to 31.03.2013 itself, while the balance was sold thereafter in the ordinary course of market operations and the Assessing Officer himself records that the shares were purchased in March and sold up to August. Thus, the allegation that the Assessee acquired shares as part of any manipulated penny-stock arrangement is contrary to the actual conduct of the Assessee, which shows that the shares were treated as trading/business stock and were put to sale from the very beginning.
23. We further observed that most importantly, out of the very same basket of thirteen companies, transactions relating to several companies and even part of the shares sold in the preceding year have been accepted by the

Revenue and the purchase transaction itself has never been disputed; also, the source of investment has not been disputed; the transfer of shares has not been disputed; the Demat credit has not been disputed; and the banking trail has not been disputed. Yet, out of the thirteen companies acquired under one indivisible commercial arrangement, the Assessing Officer has selectively picked three companies and proceeded to disregard the resultant loss. Such an approach is inherently arbitrary and contrary to settled principles of appreciation of evidence. Once the acquisition of the entire basket transaction is accepted and part of the subsequent sales arising therefrom are also accepted, there must exist cogent and independent material before the Revenue can isolate three companies and treat only those transactions as non-genuine.

24. Further we find that no such material has been brought on record in the present case and the loss suffered by the Assessee arose because the market value of certain shares declined subsequent to their acquisition. We also observed that the Assessee had purchased the shares at a negotiated discount at the prevailing market rate and thereafter sold the same through recognized stock exchange mechanisms and the movement of market prices after acquisition was entirely beyond the control of the Assessee. A genuine commercial loss arising from adverse market conditions cannot be converted into unexplained income merely on the

basis of suspicion or generalized allegations contained in an investigation report. In the absence of any evidence demonstrating that the Assessee was connected with any alleged operator, broker, entry provider or price manipulator, and in the absence of any material showing movement of unaccounted cash or circulation of funds, the action of the Assessing Officer in disregarding the loss solely with respect to three companies out of a basket acquisition of thirteen companies is wholly unjustified, arbitrary and unsustainable in law.

25. We further observed that the entire purchase and sale transaction undertaken by the Assessee is duly supported by contemporaneous and independent documentary evidence and the Assessee had furnished before the Assessing Officer the complete scrip-wise and date-wise details of purchase and sale of shares, computation of gain/loss, broker settlement bills, contract notes, ledger accounts of brokers, demat account statements, bank statements and other supporting records. These documents establish the complete chain of transactions from acquisition of shares, holding thereof in dematerialized form, sale through recognized stock exchange mechanism and receipt/payment through banking channels.
26. We also observed that the shares were sold through recognized stock exchange platform and the transactions suffered applicable Securities

Transaction Tax and the transactions were carried out through regular market mechanism wherein the identity of the counter party is neither known nor controlled by the Assessee. Therefore, in absence of any material showing collusion, the sale transaction cannot be treated as bogus merely because the scrip was viewed with suspicion by the Investigation Wing.

27. We observed that all payments relating to purchase and all receipts relating to sale were routed through normal banking channels and the Assessee had filed bank statements along with narrations of debit and credit entries for the year ended 31.03.2014 and also no adverse inference has been drawn from the bank statements. The Assessing Officer has not alleged that any cash was deposited by the Assessee before issuing cheques, nor has he shown that the sale consideration received through banking channels were withdrawn in cash and was routed back to any person in cash or otherwise.
28. Further we observed that the Demat account of the Assessee conclusively establishes that the shares were actually held by the Assessee. Once the shares stood credited in the Demat account and were thereafter debited upon sale through the stock exchange, the factum of ownership and transfer stands proved through records maintained by independent depository participants. We also observed that the Assessing Officer has

not doubted the demat transaction statement, nor has he held that the demat entries are fabricated or manipulated. The Assessing Officer has also failed to point out any defect in the contract notes, broker ledgers, settlement bills or bank statements filed by the Assessee. These documents are not self-serving documents prepared by the Assessee alone; rather, they are third-party records generated by regulated intermediaries functioning under the framework of SEBI and recognised stock exchanges. In absence of any enquiry from such intermediaries or any finding that the documents are false, the same could not have been brushed aside.

29. We observed that the companies whose shares were dealt with by the Assessee were existing companies and the Assessee had also placed on record the details of the said companies obtained from the Registrar of Companies. The Assessing Officer has not brought any material to establish that the companies were non-existent, fictitious or incapable of being traded on the stock exchange. The mere fact that certain companies may have been referred to in an Investigation Wing report cannot automatically render every transaction in such shares non-genuine.
30. We observed that the Assessing Officer has also not alleged that the Assessee was connected with the management of M/s Dhenu Buildcon India Ltd., M/s ESSAR India Ltd. or M/s Shree Nath Commercial

&Finance Ltd. There is no allegation that the Assessee was a promoter, director, entry operator, price manipulator or beneficiary of any pre-arranged scheme. The Assessee had no role in price movement of the shares and was in no position to influence the market price on the stock exchange.

31. We observed that the Assessee has been penalized merely on the basis of suspicion arising from a general investigation report. Such an approach is contrary to settled law. Information received from the Investigation Wing may constitute a starting point for enquiry, but it cannot, by itself, substitute the statutory duty of the Assessing Officer to conduct an independent enquiry in the case of the assessee. The Assessing Officer was required to examine the documents, confront the Assessee with specific adverse material and establish a live nexus between the Assessee and the alleged accommodation entry operation. This has admittedly not been done.
32. We further observed that the Assessing Officer has not rejected the books of account of the Assessee and he has not recorded any finding that the books are unreliable also has not invoked any provision to disregard the regular accounts. Once the books of account, bank records, demat statements and broker records are not found defective, the transaction

recorded therein cannot be selectively rejected merely because the resultant computation shows a loss.

33. The entire addition therefore rests on conjectures and not on evidence. The Revenue has accepted the documentary trail but rejected the commercial result of the transaction. Such selective acceptance is impermissible. If the purchase, demat holding, sale through stock exchange and bank receipts are accepted, the loss flowing from such transaction cannot be treated as unexplained income without disproving the underlying documents.
34. We observed that it is a vital fact that the Assessee has purchased shares of all thirteen companies en-bloc on 15.03.2013 at a discount of approximately 10% from the prevailing BSE market rate. Immediately thereafter, the Assessee has placed orders for sale of the shares on the stock exchange platform. Thus, the sale of shares was not an afterthought or a device created during the year under consideration. The intention to sell the shares existed from the date of acquisition itself. Part of the shares forming part of the same basket transaction were sold in the immediately preceding assessment year, i.e. A.Y. 2013-14, and the resultant loss stood accepted by the Revenue. The market value of the unsold shares as on 31.03.2013 was taken in the books of account. Therefore, the Revenue

has already accepted the acquisition and part disposal of the very same basket of shares in the preceding year.

35. Further we observed that once the purchase of the entire basket and part sale in the earlier year have been accepted, the Revenue cannot, in the subsequent year, treat the balance sale arising out of the same acquisition as bogus without bringing fresh and specific material against the Assessee. The principle of consistency, though not overriding the law, applies with full force where the facts, parties, documents and nature of transaction remain the same. The action of the Assessing Officer in accepting one part of the transaction and rejecting another part is internally inconsistent. The shares of thirteen companies were purchased together. They were acquired under the same commercial arrangement. They were held in the same demat account. They were sold through the same market mechanism. There is no factual basis to divide the transaction and treat only three scrips as non-genuine.
36. Further, we observed that to the extent the loss of Rs. 70,49,780/- relates to A.Y. 2013-14 and stood allowed in that year, the same could not have been added again in the year under consideration. Such addition results in duplication and artificially inflates the income of the Assessee. Without prejudice to the primary submission that the entire addition is

unsustainable, the amount pertaining to the earlier year deserves to be excluded in any event.

37. We observed that the transaction in the scrip of M/s ESSAR India Ltd. has already been examined by the Coordinate Bench of the ITAT, Kolkata Bench in the case of Jagmohan Aggarwal and Arun Kumar Maheshwari (part of CLC). In both cases, the Tribunal held in favour of the assessee after considering the documentary evidence relating to purchase, demat holding, sale through stock exchange and banking channels. The significance of these decisions is that the very same scrip, namely M/s ESSAR India Ltd., was alleged by the Department to be suspicious. However, the Tribunal did not accept the Revenue's general allegation and held that where the transaction is supported by contract notes, demat statements, banking records and STT payment, the claim cannot be rejected merely because the scrip appears in a suspicious list.
38. In fact, the allegation qua ESSAR India Ltd. is self-defeating. The record shows that the Assessee had earned profit on sale of shares of ESSAR India Ltd. during the year under consideration. Therefore, the Revenue's case that the entire transaction was structured for booking artificial loss is factually incorrect. If one of the very scrips alleged to be suspicious has resulted in profit, the transaction cannot be painted as a colourable device for creating artificial loss.

39. In the present case, in our view, the Assessee has a strong point. The Assessee has not dealt with the said scrip as an isolated investment. The shares of ESSAR India Ltd. formed part of an en-bloc acquisition of thirteen companies under a commercial arrangement. Therefore, the allegation of pre-arranged accommodation entry is even less sustainable. It is also relevant that, for the year under consideration, the Assessee has earned gain from the sale of shares of M/s ESSAR India Ltd. Therefore, the Revenue's attempt to paint the entire transaction as a colorable loss transaction is factually misconceived.
40. Without prejudice, we observed that the name of M/s Dhenu Buildcon India Ltd. does not appear in the relevant investigation material relied upon for treating the transaction as suspicious. If the very company is not part of the list of companies allegedly involved in circular trading, sham transaction, price rigging or price manipulation, there was no basis for the Assessing Officer to treat the transaction in that scrip as bogus. The Assessing Officer cannot extend the scope of a general report beyond what it contains. If the scrip itself is not identified in the relied upon report, the addition in respect of that scrip is based on no material whatsoever and deserves to be deleted outright.
41. The transactions under consideration were routed through recognized brokers and regulated stock exchange mechanism. The brokers were

identifiable and available for verification. However, the Assessing Officer did not examine the broker, did not call for information from the stock exchange, did not verify the transaction from the depository participant and did not conduct any enquiry from M/s SMC Global Securities Ltd. or M/s Transparent Shares & Securities Pvt. Ltd. to disprove the Assessee's explanation. This failure is fatal to the addition. When the Assessee had furnished all primary evidence, the burden shifted to the Assessing Officer to bring contrary material on record. The Assessing Officer could not reject the evidence merely on the basis of suspicion. Suspicion, however strong, cannot take the place of proof. The Revenue has also not brought any SEBI order or stock exchange communication specifically implicating the Assessee, its broker or the transaction concerned. In absence of such material, a genuine stock exchange transaction cannot be converted into an accommodation entry merely on the basis of general market intelligence.

42. We further observed that the impugned addition is also liable to be deleted on the ground of violation of principles of natural justice. The Assessing Officer has relied upon statements and material allegedly collected by the Investigation Wing. However, the Assessee was not supplied copies of all such statements and material. The Assessee was also not granted an opportunity to cross-examine the persons whose

statements were relied upon. The Assessee had specifically requested that the evidence, if any, regarding alleged exchange of cash against cheque payments or receipts be supplied. The Assessee also sought opportunity to cross-examine the persons whose statements were being used against it. Despite such specific request, the material was not furnished and cross-examination was denied. The entire addition is based on third-party statements and general investigation findings. No statement directly names or implicates the Assessee. No statement establishes that the Assessee paid cash or received accommodation entries. In such circumstances, reliance on such material behind the back of the Assessee is legally impermissible.

43. We also observed that the failure of the Assessing Officer to conduct enquiries is particularly fatal in the present case because all relevant parties were identifiable and verifiable. M/s Transparent Shares & Securities Pvt. Ltd., M/s SMC Global Securities Ltd., the concerned brokers, depository participants and the stock exchange were all available for verification. The very foundation of the Assessee's explanation was the collateral arrangement and en-bloc transfer of thirteen companies' shares. If the Assessing Officer doubted this explanation, he was required to examine these parties and disprove the documentary trail. Having

failed to do so, he could not reject the explanation merely by relying on general investigation material.

44. The Hon'ble Supreme Court in *Andaman Timber Industries vs, Commissioner of Central Excise, Kolkata-II* (2015, 62 taxmann.com 3 SC), has held that denial of cross-examination when statements are relied upon against the assessee amounts to serious violation of principles of natural justice and vitiates the order. The said principle squarely applies to the present case. The Id. CIT(A) also erred in observing that there was no obligation to allow cross-examination. Once the Revenue relies upon third-party statements as adverse material, cross-examination is not a matter of discretion but a necessary requirement of fairness. Without cross-examination, such statements cannot be used as evidence against the Assessee. Therefore, the assessment order as well as the appellate order stand vitiated because adverse material was used against the Assessee without supply of such material and without granting effective opportunity of rebuttal.
45. We observed that the Assessing Officer made the addition under section 68 of the Act. The invocation of section 68 is fundamentally misconceived. Section 68 applies where any sum is found credited in the books of the assessee and the assessee fails to explain the nature and source thereof. In the present case, there is no unexplained cash credit.

The entries in the books represent recorded share transactions supported by purchase details, Demat records, sale through stock exchange and banking trail. The sale proceeds received by the Assessee through banking channels cannot be treated as unexplained cash credit when the corresponding shares were actually held in demat account and debited upon sale. The nature of the receipt is fully explained. The source of the receipt is also explained, namely, sale of shares through stock exchange. Therefore, the statutory conditions of section 68 are absent.

46. This issue is now directly covered in favour of the Assessee by the decision of the Coordinate Bench in Marut Nandan & Co. v. ITO, Ward-1, Hisar, ITA No. 4751/Del/2024. In the said case also, the addition was made under section 68 of the Act in respect of alleged bogus loss arising from transactions in listed shares. The coordinate bench, after considering the nature of the transaction, held that where the assessee has actually incurred business loss on transactions in shares listed on the stock exchange and such transactions have been routed through SEBI registered stock brokers, the said loss cannot, by any stretch of imagination, fall within the expression “unexplained cash credits”. The Tribunal specifically held that the loss resulted in an outgo and depletion of funds and therefore represented a debit transaction rather than a credit

transaction. On this reasoning, it was held that addition under section 68 was impermissible in law at the threshold.

47. We further observed that the Assessee has suffered a business/trading loss on sale of shares which were duly held in Demat account and sold through recognised stock exchange mechanism. The loss, if any, has resulted in reduction of the Assessee's funds and not in any unexplained credit in its books. Therefore, the very jurisdictional condition for invoking section 68 is absent.
48. Reliance is further placed on the decision of the Coordinate Bench in *Shree Ganesh Commodity Brokers v. ITO, Ward-1, Hissar*, ITA Nos. 5015 & 5016/Del/2024. In the said case also, the assessee had traded in several distinct scrips through stock exchanges, the transactions were routed through demat accounts and were recorded in the audited books of account. The Tribunal held that where the alleged loss had not been credited in the books of account and had actually resulted in an outgo and depletion of funds, such business loss could not be treated as unexplained cash credit under section 68 of the Act. Following *Marut Nandan & Co.*, the addition made under section 68 was deleted even on merits.
49. In the present case also, the Revenue has not identified any credit entry in the books of accounts which remains unexplained. The sale proceeds received by the Assessee are fully explained by the corresponding sale of

shares held in demat account. The resultant loss is only a commercial result of genuine trading transactions and cannot be converted into an unexplained cash credit. Therefore, following the aforesaid binding principles laid down by the Coordinate Benches, the addition made under section 68 deserves to be deleted at the threshold itself.

50. We further observed that the Id. CIT(A) has erred in sustaining the addition under section 69B of the Act. The Assessing Officer had made the addition under section 68 of the Act by alleging that the loss claimed by the Assessee from trading in shares was not genuine. The case of the Assessing Officer was not that the Assessee had made any unexplained investment or that any amount over and above the recorded purchase consideration had been paid by the Assessee. However, the Id. CIT(A), while dealing with ground 5, has proceeded to hold that wrong quoting of a section is not fatal and, by invoking his coterminous powers, has confirmed the addition under section 69B of the Act. The said approach is wholly unsustainable. That, Section 69B applies only where the assessee has made investments or is found to be owner of bullion, jewellery or other valuable articles, and the Assessing Officer finds that the amount expended on such investment exceeds the amount recorded in the books of account. Thus, for invoking section 69B, there must be a clear finding that the assessee has made an investment which is either not fully

recorded or is recorded at a value lower than the actual amount expended.

In the present case, no such finding exists either in the assessment order or in the appellate order.

51. We are of the opinion that the entire case of the Assessing Officer, as recorded in the assessment order, is that the Assessee was allegedly beneficiary of bogus short-term capital loss/business loss in the shares of M/s Dhenu Buildcon India Ltd., M/s ESSAR (India) Ltd. and M/s Shree Nath Commercial & Finance Ltd. The Assessing Officer has not alleged that the Assessee paid any amount over and above the recorded purchase price of the shares. On the contrary, the Assessing Officer has himself recorded the purchase price of the shares and has proceeded to dispute only the genuineness of the loss arising on subsequent sale. Therefore, the dispute is not regarding unexplained investment but regarding allowability/genuineness of loss.
52. We further observed that the investment in the shares was duly recorded in the regular books of account of the Assessee and the source of purchase was also explained. The shares were credited in the Demat account of the Assessee and thereafter sold through the stock exchange mechanism. The purchase consideration was paid through banking channels, and the sale proceeds were received through banking channels. There is no allegation of any cash payment, on-money payment,

unrecorded investment, excess consideration or suppressed purchase price. In absence of such allegations and in our view, section 69B cannot be invoked.

53. Further we are of the opinion that the Id. CIT(A) has failed to appreciate that an addition made under one deeming provision cannot be sustained under another deeming provision merely by observing that wrong quoting of a section is not fatal. It is true that mere wrong mention of a provision may not invalidate an order where the power otherwise exists and the factual ingredients of the correct provision are satisfied. However, in the present case, the mandatory ingredients of section 69B are completely absent. The defect is not a mere wrong mention of section; the defect goes to the very foundation of the addition. The Id. CIT(A) has also failed to appreciate that section 69B cannot be used as a residuary provision to sustain an addition whenever section 68 is found inapplicable. Section 69B has a specific statutory field. It deals with unexplained or understated investment. It does not deal with alleged bogus trading loss. The Revenue cannot convert a dispute relating to business loss on sale of shares into an addition for unexplained investment without bringing any material to show that the Assessee had made investment outside the books or had paid excess consideration.

54. It is also material to note that the shares were acquired in the immediately preceding previous year relevant to A.Y. 2013-14 and not during the year under consideration. The present year is the year in which the balance shares were sold, and the resultant loss was claimed. Therefore, even assuming without admitting that there was any issue regarding the purchase or investment in shares, the same could not have been brought to tax under section 69B in the year under consideration, particularly when the purchase stood recorded in the books and has duly been accepted by the department in previous assessment year and the demat credit had already taken place.
55. We further observed that the Id. CIT(A)'s reliance on coterminous powers is also misplaced. Coterminous powers permit the CIT(A) to examine the matter within the framework of law, but such powers do not authorize sustaining an addition under a deeming provision whose basic statutory conditions are not fulfilled. Before confirming an addition under section 69B, the Id. CIT(A) was required to record a finding that the Assessee had expended an amount on investment which exceeded the amount recorded in the books. No such finding has been recorded. Therefore, the addition cannot be sustained under section 69B. There is no unexplained investment, no excess investment, no unrecorded payment and no finding that the amount expended on purchase of shares

exceeded the amount recorded in the books. The ld. CIT(A) has merely substituted section 68 with section 69B without satisfying the statutory requirements of section 69B. The addition, therefore, lacks statutory foundation and accordingly we are inclined delete the same.

56. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 6TH day of July, 2026

**SD/-
(SUDHIR KUMAR)
JUDICIAL MEMBER**

**SD/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 06.07.2026
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**