

**IN THE INCOME TAX APPELLATE TRIBUNAL 'J' BENCH, MUMBAI
BEFORE SHRI B.R. BASKARAN, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./ I.T.A. No.1957/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2006-07)

Kamla Devi S. Doshi Flat No. 410, Shreepati Castle, 208/210, 10 th Khetwadi Main Road, Mumbai 400004	बनाम/ Vs.	The Income Tax Officer Ward 16(3)(1), Matru Mandir, Nana Chowk Mumbai 400034
स्थायीलेखासं./जी आइ आरसं./ PAN/GIR No.		AFFPD7183M
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

आयकर अपील सं./ I.T.A. No.3018/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2006-07)

Jawantraj Bhutaji Shah, HUF Shop No. 1, Hira Building, 1 st Parsiwada Lane, Mumbai 400 004	बनाम/ Vs.	The Income Tax Officer Ward 19(2)(1), Matru Mandir, Nana Chowk Mumbai 400 034
स्थायीलेखासं./जी आइ आरसं./ PAN/GIR No.		AAGHS4820N
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

आयकर अपील सं./ I.T.A. No.3019/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2006-07)

Rajmal M. Sanghvi Shop No. 1, Hira Building, 1 st Parsiwada Lane, Mumbai 400 004	बनाम/ Vs.	The Income Tax Officer Ward 19(2)(1), Matru Mandir, Nana Chowk Mumbai 400 034
स्थायीलेखासं./जी आइ आरसं./ PAN/GIR No.		AACPS7484A
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Sanjiv M. Shah
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प्रत्यर्थी की ओर से/ Respondent by	:	Shri. Vishwas Mundhe, D.R.
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सुनवाई की तारीख/ Date of Hearing	:	24/02/2017
घोषणा की तारीख / Date of Pronouncement	:	22/05/2017

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeals filed by the aforementioned assesseees are directed against the respective orders passed by the CIT(A)-30, Mumbai, dated 10.12.2014, 27.02.2015 and 27.02.2015, respectively, which in itself are directed against the orders passed by the A.O u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'Act') for A.Y. 2006-07. Since, the issues raised in these appeals are identical, therefore, for the sake of convenience they are clubbed and disposed of by way of a consolidated order. We herein first take up the appeal marked as ITA No. 1957/Mum/2015, wherein the assessee assailing the order of the CIT(A) had raised the following grounds of appeal:-

“Being aggrieved of order passed by the Commissioner of Income Tax (Appeals) 30, Mumbai (hereafter referred as ‘the learned CIT(A)'), appellant prefers this appeal on one or more of the following ground/s which are independent and without prejudice to each other.

- (1) *On the facts and in law, the learned CIT (A) erred in confirming the addition of Long Term Capital Gains of Rs.9,36,164/- earned from sale of shares of Talent Infoways Ltd through Alliance*

Intermediaries & Network Pvt. Ltd as unexplained cash credit u/s 68 on the basis of statement of Shri Mukesh Chokshi without appreciating the fact that the delivery of shares were given from the demat account of appellant and the sale proceeds were realized by account payee cheque.

- (2) *On the facts and in law the learned CIT(A) erred in confirming addition of commission of Rs.46,808/- on the accommodation entry as undisclosed income on assumptions and surmises.*
- (3) *Appellant prays for leave to add, amend or delete any ground/s of appeal on or before the final date of hearing.”*

2. Briefly stated, the facts of the case are that the assessee had filed her return of income on 29.07.2007, declaring total income at Rs.1,25,903/-. That pursuant to search and seizure action conducted under Section 132 of the 'Act' in the case of M/s Mahasagar Securities Pvt. Ltd., Mumbai (MSPL) on 25.11.2009 and subsequent dates, it emerged that MSPL and its related group of 34 odd companies (prominent ones being M/s Alliance Intermediaries & Network Pvt. Ltd., M/s Mihir Agencies Pvt. Ltd., M/s Gold Star Finvest Pvt. Ltd. etc, all run by Shri Mukesh Chokshi and his associates) were engaged in fraudulent billing activities and the business of providing accomodationt entries for speculation profit/loss, short term/long term capital gain/loss, share application money, commodities profit/loss on commodities trading (through MCX) since the past many years.

3. That as per the A.O, from the information gathered pursuant to the search proceedings conducted on MSPL group, it emerged that the assessee was one of such beneficiaries who had obtained bogus entries

towards purchase and sale of shares and securities. It was claimed by the A.O that the information revealed that the assessee had taken accommodation entries as regards the sale consideration of Rs. 9,36,164/- received on the sale of shares of M/s Talent Infoways Ltd., which were sold through M/s. Alliance Intermediaries Network Pvt. Ltd. (a group company of Sh. Mukesh Chokshi). The A.O observed that a long term capital gain (LTCG) amounting to Rs.9,20,021/- on the sale of the aforesaid shares of M/s Talent Infoways Ltd.(supra) was reflected by the assessee in her return of income for the year under consideration.

4. That on the basis of the aforesaid information reassessment proceedings were initiated in the hands of the assessee under Section 147 of the 'Act'. During the course of the assessment proceedings the A.O. in the backdrop of the aforesaid facts called upon the assessee to explain as to why the sale consideration received from the sale of the shares of M/s Talent Infoways Ltd. may not be treated as an unexplained investment, and added to her income under the head 'Income from other sources'. The assessee substantiating the genuineness of the share transactions, therein submitted before the A.O. that she had purchased 10,200 shares of M/s Talent Infoways Limited on 15.04.2004 from MSPL for a consideration of Rs.16,143/-, and placed on record a copy of the contract note evidencing the said transaction. The assessee further explaining the source of the investment of Rs.16,143/- (supra) made by her towards purchase of the shares of M/s Talent Infoways Ltd, therein submitted that the same comprised of a profit of Rs.15,974/- which was earned by her from speculation of shares through MSPL, while for the balance amount of Rs.168/- was paid in cash, for which receipt was received from the aforesaid broker, viz. MSPL. The assessee further placed on record the copy of her account in the books of account of M/s

MSPL, as well as a copy of a letter from M/s Talent Infoways Ltd. in respect of transferring of the 10,200 shares of the company in her name. The aforesaid shares of M/s Talent Infoways Ltd. were thereafter sold by the assessee in September and October, 2005, for a consideration of Rs.9,36,164/-through another broker, viz. M/s. Alliance Intermediateries Network Pvt. Ltd. The assessee in order to support the aforesaid sale transaction, therein placed on record the copies of the contract notes received from M/s. Alliance Intermediateries Network Pvt. Ltd., copy of the bank statement evidencing the receipt of the payments on the sale of the shares, copy of the STT paid statements on sale of shares, copy of the ledger account of the assessee with M/s. Alliance Intermediateries Network Pvt. Ltd., and the copy of the delivery instructions of shares. The assessee in the backdrop of the aforesaid factual matrix submitted that the genuineness of the purchase and sale of the aforesaid 10,200 shares of M/s Talent Infoways Ltd. stood established beyond any scope of doubt, and as such the sale proceeds received on the sale of the same could not be characterized as an unexplained investment in the hands of the assessee.

5. The A.O. however did not find favor with the aforesaid contentions of the assessee, and after deliberating on the statement of Shri Mukesh Chokshi (supra) which was recorded by the department on oath under Section 131 of the 'Act' on 11.12.2009, therein observed that as admitted by Shri Mukesh Chokshi and his employees, the group concerns (including MSPL) were merely providing accommodation entries to their clients, and would received cash from the parties, which thereafter was returned through cheques, after depositing and routing the money through their various agents. The A.O thus acting on the aforesaid statement of Sh. Mukesh Choksi (supra), therein concluded that the

aforesaid concerns were not carrying on any genuine business of purchase and sale of shares, but rather were engaged in the business of issuing bogus bills for providing LTCG/STCG/Speculative profit/loss etc. The A.O further observed that the transactions carried out by the aforesaid group concerns were not done through the stock exchange, but the bills shown by them appeared to be genuine transactions done through the various stock exchanges. The A.O thus on the basis of the aforesaid facts concluded that the sale of 10,200 shares of M/s Talent Infoways Ltd. through M/s. Alliance Intermediaries Network Pvt. Ltd., and the resultant LTCG which was claimed as exempt under Section 10(38) by the assessee, was merely a fall out of an accommodation entry taken by the assessee from the so called share broker for converting her unaccounted funds into accounted funds, by disguising the same as LTCG in the hands of assessee. The A.O thus held the *impugned* sale consideration of Rs.9,36,164/- on the sale of the shares of M/s Talent Infoways Ltd., as the income of the assessee from unexplained and undisclosed sources, which was assessed by him in the hands of the assessee under the head 'Income from other sources'. The A.O thus holding a conviction that the facts of the case clearly revealed beyond any scope of doubt that the assessee had laundered her unaccounted income earned in cash through the bogus share transactions of M/s Talent Infoways Ltd. shown in her account, by availing the services of an accommodation entry provider, therefore held that money must also have been paid as commission in cash by the assessee for availing the said services. The A.O thus on the aforesaid count estimated the commission at 5% of *impugned* sale consideration, and made a further addition of Rs.46,808/- in the hands of the assessee. The A.O thus deliberating on

the aforesaid facts therein finally assessed the income of the assessee at Rs.11,08,880/-.

6. The assessee being aggrieved with the order of the A.O carried the matter in appeal before the CIT(A). That the assessee submitted before the CIT(A) that it had purchased 10,200 shares of M/s Talent Infoways Ltd. on 15.04.2004 through MSPL, which as per her knowledge were share brokers for interconnected Stock exchange of India Limited, broker of NSE and member of ISE securities and services Ltd., and duly registered with SEBI. It was further submitted by the assessee that the purchase transaction of the 10,200 shares of M/s Talent Infoways Ltd. were supported by invoices and contract notes, dated 15.04.2004 in respect of settlement No. 2004071. The assessee further in order to substantiate the genuineness of the aforesaid purchase of shares, therein submitted that the shares of the aforesaid company were transferred in the assessee's name on 29.05.2004, and the share certificates bearing no. 105604 and 105605 for 10,000 shares, and certificate No. 105170 for 200 shares, were transferred in the name of the assessee. The purchase of shares was duly reflected by the assessee in her 'balance sheet' for the immediately preceding year, viz. A.Y. 2005-06, which was enclosed with the return of income. It was submitted before the CIT(A) that the aforesaid shares of M/s Talent Infoways Ltd. were sold for a consideration of Rs.9,36,164/- through M/s. Alliance Intermediaries Network Pvt. Ltd., who were registered shares brokers of National Stock Exchange (NSE). That it was further submitted before the CIT(A) that the 10,200 shares of M/s Talent Infoways Limited were sold after holding the same for a period of one year, therefore the profit on the sale of the same was reflected under the head LTCG. The assessee further disputed the credibility of the general statement of Shri Mukesh Chokshi recorded by

the ADIT, and therein submitted that as in the said statement there was no mention in respect of the assessee, therefore the A.O without placing on record any corroborative material which could go to irrebutably link the assessee with the inferences drawn from the statement of the aforesaid party, had thus erred in concluding that the assessee had merely taken accommodation entries and not carried out any genuine purchase and sale of shares of M/s Talent Infoways Limited.

7. The CIT(A) however not being persuaded to be in agreement with the contentions of the assessee, therein observed that the A.O had brought substantial facts on record to put to rest the claim of the assessee that she had produced any reliable contract notes/demat accounts. The CIT(A) further observing that in the backdrop of the fact that the transactions mentioned in the contract note issued by MSPL to the assessee having been found to be definitely bogus, therefore it stood irrebutably proved that the shares of M/s Talent Infoways Ltd. were credited in the demat account of the assessee for a period of less than 12 months before the sale, therefore no question of any LTCG arising in the hands of the assessee did arise. The CIT(A) further not being impressed by the claim of the assessee that the shares were physically purchased by her on 15.04.2004, therein held that the said purchase transaction in itself was tainted. The CIT(A) after deliberating on the contentions advanced by the assessee to substantiate the genuineness and veracity of the purchase of 10,200 shares of M/s Talent Infoways Ltd., as claimed be the assessee, and pitting the same in the backdrop of the facts as stood emerged from the statement of Shri Mukesh Chokshi, wherein the latter had duly admitted that he was carrying on the business of an accommodation entry provider and no genuine purchase and sale of shares had been carried out his group concerns, as well as had explained

the *modus operandi* of providing accommodation entries to his client, thus concluded that it was proved to the hilt that the aforesaid purchase and sale transactions of the shares of M/s Talent Infoways Ltd. by the assessee, were clearly in the nature of bogus transactions, which remained only on paper. The CIT(A) thus on the basis of his aforesaid observations concluded that the assessee had routed her unaccounted income in the guise of share transactions of M/s Talent Infoways Limited, and thus after testing the contentions of the assessee in the backdrop of the statement of Shri Mukesh Chokshi (supra) recorded on oath on 11.12.2009, therefore rejected the explanations of the assessee and dismissed the appeal.

8. The assessee being aggrieved with the order of the CIT(A) had assailed the same before us. That during the course of the hearing of the appeal the ld. Authorized Representatives (for short A.R.) for the assessee submitted that the fact as regards the purchase of the shares of M/s Talent Infoways Ltd. by the assessee on 15.04.2004 had duly been accepted in the immediately preceding year, i.e. A.Y. 2005-06, therefore in the backdrop of the aforesaid fact it was impermissible for the department to take a contrary view and hold the said purchase transaction as ingenuine during the year under consideration. The ld. A.R. further in order to substantiate the genuineness of the purchase transaction in respect of the aforesaid shares of M/s Talent Infoways Ltd., and to drive home his contention that merely because the broker company through which the assessee had purchased shares of M/s Talent Infoways Ltd., on being found to be involved in providing accommodation entries, the genuine purchase of shares by the assessee could not be summarily rejected, therein relied on the judgment of the **Hon'ble High Court of Jharkhand** in the case of **CIT Vs. Arun Kumar Agrawal and**

Others. (2013) 85 DTR (Jharkhand) 219, wherein the **Hon'ble High court** had observed that the fact of tinted broker may be relevant for suspicion, but it alone necessarily does not lead to conclusion of all transactions of that broker as tinted. The ld. A.R. to buttress his contention that the statement of Shri Mukesh Chokshi (supra) cannot form the sole basis for treating the purchase transactions carried out by the assessee as bogus, therein leading to an addition of the sale consideration as income in the hands of the assessee, relied on the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. S. Khader Khan Son (2013) 352 ITR 480 (SC)**. The ld. A.R. relying on the aforesaid judgments, therein submitted that treating the duly substantiated purchase of shares by the assessee as a bogus transaction on the basis of the unsubstantiated statement of Shri Mukesh Chokshi (supra), could not be sustained and was liable to set aside in the absence of any independent corroborative evidence. The ld. A.R. further to fortify his contention that now when the demat account and the contract notes produced by the assessee during the course of the assessment proceedings clearly revealed the complete details of the transactions, and A.O had not proved the said transaction as bogus, therefore the sale consideration of the shares could not be treated as the unaccounted income of the assessee., therein relied on the judgment of the **Hon'ble High Court Bombay** in the case of **CIT(A)-13 Vs. Shyam R. Pawar (2015) 229 taxman 256 (Bom)**. The ld. A.R. further in his attempt to dislodge the adverse inferences drawn by the lower authorities on the basis of the statement of Shri Mukesh Chokshi (supra) recorded at the back of the assessee, therein relied on the order passed by the **ITAT, Pune Bench** in the case of **Smt. Smita P. Patil Vs. ACIT (2015) 55 Taxman.com 346 (Pune) (Trib)**, wherein it was held that as the assessee

had not been given any opportunity to cross examine the broker, the reliance placed by the A.O on the statement of the said broker for drawing adverse inferences against the assessee, would not be permissible in law. The assessee further submitted that as the shares stood reflected in the 'balance sheet' filed by the assessee along with her return of income for the immediately preceding year, viz. A.Y. 2005-06, therefore the same was in the nature of a *prima facie* evidence that the purchase of shares had been contemporaneously entered into the books of accounts of the assessee, and the said fact could not have been summarily brushed aside by the A.O. The Ld. A.R in support of the aforesaid proposition relied on the order of the **ITAT, Mumbai 'F' bench** in the case of **Mukesh R. Marolia Vs. ACIT Range 15(2) (2006) 6 SOT 247 (Mum)**. The assessee further taking support of the observations arrived at by the Tribunal in the case of **Mukesh R. Marolia (supra)**, wherein it was held that in case of off-market share transactions there was no relevance of seeking details as regards the same from the stock exchange, as the same would be futile for the reason that the stock exchange cannot be expected to give details of transactions entered into between the parties outside their floor, thus submitted that the adverse inferences drawn by the A.O on the said footing in the hands of the assessee thus could not be sustained. It was submitted by the ld. A.R that the aforesaid order of the Tribunal in the case of **Mukesh R. Marolia (supra)** had thereafter been tested by the **Hon'ble High Court of Bombay** in **CIT Vs. Shri Mukesh Ratilal Marolia (ITA 456 of 2007), dated 07.09.2011**), wherein the **Hon'ble High Court** had affirmed the order of the Tribunal and dismissed the appeal filed by the revenue. The Ld. A.R further submitted that the 'SLP' filed by the revenue against the judgment of the Hon'ble High Court in the case of Mukesh Ratilal Marolia

(supra), had thereafter been dismissed by the **Hon'ble Supreme Court** in **CIT Vs. Mukesh R. Marolia (SLP No. 20146/2012; dt. 27.01.2014)**.

9. The ld. A.R. in support of his claim that no adverse inferences in respect of the share transactions of M/s Talent Infoways Limited were liable to be drawn in the hands of the assessee, therein submitted that the statement of Shri Mukesh Chokshi (supra) could not be characterized as anything better than a general statement, and thus in the backdrop of the said factual position, now when the name of the assessee did not appear in any part of the said statement, therefore no adverse inferences drawn by the lower authorities by relying on the same could be sustained. It was further averred by the ld. A.R. that as Shri Mukesh chokshi (supra) was a witness of the department, therefore a very heavy onus was cast upon the department to prove the authenticity of his statement on the basis of concrete and irrebutable material, before dislodging the duly substantiated claim of the assessee. The ld. A.R. in furtherance of his aforesaid contentions therein relied on the order of **ITAT, Mumbai**, in the case of **ACIT Vs. Ramila Pravin Shah (ITA No. 5246/Mum/2013), dated 05.03.2015**. Thus, in the backdrop of the aforesaid facts, it was submitted by the assessee that the statement of Shri Mukesh Chokshi (supra), which was nothing better than a self serving statement, could not be summarily accepted at the very face of it for drawing of adverse inferences in respect of the genuineness of the share transactions carried out by the assessee. Per contra, the ld. Departmental Representative (for short D.R) relied on the orders of the lower authorities. It was submitted by the ld. D.R that on the basis of information received in a FIU alert from New Delhi regarding suspicious transactions, search proceedings were conducted on MSPL and its related group of 34 odd companies by the DDIT (Inv.),Unit-1 (4), Mumbai

on 25.11.2009. It was submitted by the Id. D.R that in the course of the search proceedings it emerged that the key persons running the affairs of the aforesaid companies, viz. Shri Mukesh Chokshi and Shri Jayesh K. Sampat, were engaged in fraudulent billing activities, and were carrying on the business of providing entries for Speculative profit/loss, Short term/Long term capital gain/loss, Share application money, Commodities profit/loss, Commodities trading (through MCX) etc. It was submitted by the Id. D.R that as the facts of the aforesaid laundering of the unaccounted money of various parties by the abovementioned persons unfolded, therein Shri Mukesh Chokshi who was a qualified chartered accountant, admitted in his statement recorded under oath under Section 131 of the Act on 11.12.2009, that he was engaged in the business of providing accommodation entries to various persons, as well as explained the *modus operandi* of his aforesaid business. It was submitted by the Id. D.R. that Shri Mukesh Chokshi after dwelling on the nature of his aforesaid money laundering business, had therein categorically admitted that both the sale and purchase bills issued by him were bogus and based on fudged documents. It was submitted by the Id. D.R that the source of investment towards the purchase of the shares of M/s Talent Infoways Limited, which was projected by the assessee as having been made out of the profit generated by her from the speculative transactions carried out through MSPL, in itself revealed the underlying truth in respect of the genuineness of the purchase transactions. The Id. D.R further submitted that M/s Talent Infoways was a 'Penny stock' company which was listed with Ahmedabad stock exchange. It was further submitted by the Ld. D.R that the purchase price of the share of M/s Talent Infoways Limited, which are claimed to have been purchased by the assessee on 06.04.2004 from MSPL, at the

relevant time varied from Rs.1.50 to Rs.1.60 per share. The aforesaid shares were thereafter sold by the assessee through another tinted company of Shri Mukesh Chokshi group, viz. Alliance Intermediateris and Network Pvt. Ltd., during the period 30.09.2005 to 07.10.2005, for a sale consideration from Rs.91.90 to 92.55 per share. The ld. D.R. dealing with the contention of the assessee that as the purchases of the aforesaid shares of M/s Talent Infoways Ltd. were reflected in the 'balance sheet' which was filed by the assessee along with its return of income for the immediately preceding year, viz; A.Y. 2005-06, therein submitted that most interestingly it was found that the assessee had filed its return of income for both A.Y 2005-06 and A.Y 2006-07 much after expiry of the 'due date' contemplated under Section 139(1) of the Act, from which it could safely be concluded that assessee had sufficient time to fudge the facts in respect of the aforesaid transactions, as per his convenience. The ld. D.R took support of the judgment of the **Hon'ble Supreme Court** in the case of **Sumiti Dayal Vs. CIT (1995) 214 ITR 801 (SC)**, to drive home his contention that in the backdrop of the principle of preponderance of human probability, it could safely and rather inescapably be concluded that the purchase transaction of the aforesaid shares of M/s Talent Infoways Limited carried out by the assessee were sham. The ld. D.R further taking us through the observations of the CIT(A)-III, Ahmedabad, recorded in the case of Shri Vijay K. D. Agrawal and others, dated 25.01.2012, wherein observations in respect of penny stock transactions carried out by the broker under consideration, viz. M/s Alliance Intermediateries Mumbai and MSPL stood recorded, therein referred to different pages of the said appellate order. The ld. D.R. therein invited our attention to the relevant extract of the statement of Shri. Mukesh Chokshi (supra) recorded during the course of search under

Section 132 on 25.11.2009, wherein he had clearly admitted the fact that he was carrying on the business of providing accommodation entries through his group concerns. The ld. D.R further referred to the statement of Shri Jayesh Krishna Raj Sampat (supra) who was the other key person managing the affairs of the aforesaid group concerns. The ld. A.R. on the other hand strongly objected to the admission of the aforesaid order of CIT(A)-III, Ahmedabad, and therein submitted that as the same was in the nature of additional evidence, therefore it could not be looked into at this stage of the appellate proceedings. The ld. A.R in support of his aforesaid contention that the D.R. cannot go beyond the facts recorded in the assessment order, therein relied on the order of the **ITAT, Mumbai 'Special bench'** passed in the case of **ACIT Vs. Prakash I. Shah (2008) 115 ITD 167**, wherein the special bench had held that the departmental representative while arguing the case cannot transgress the limits demarcated by the A.O. in the assessment order. The ld. D.R further submitted that the 'Contract notes' filed by the assessee were absolutely bogus and tailor made. The ld. D.R thus in the backdrop of his aforesaid contentions, therein submitted that the A.O finding the purchase transactions of the shares of M/s Talent Infoways as being bogus, had thus rightly assessed the sale consideration of the aforesaid shares as the income of the assessee from unexplained and undisclosed sources, and had rightly assessed the same as the income of the assessee under the head 'Income from other sources'. The ld. D.R. further averred that now when the fact that the assessee had availed the services of the aforementioned accommodation entry providers, viz. M/s Alliance Intermediaries and Network Pvt. Ltd. and M/s. MSPL, for which services the said entry providers would have charged commission, thus in all fairness had made a further addition of 5% on an estimate basis in

respect of such commission that must have been paid by the assessee to the said companies. The Id. D.R further rebutting the reliance placed by the assessee on the judgment of the **Hon'ble Jharkhand High Court** in the case of **CIT Vs. Arun Kumar (2013) 85 DTR (Jharkhand) 219**, therein submitted that the facts of the said case were distinguishable, as in the said case the shares were held by the assessee for a period of 2 years, unlike the case of the present assessee wherein the *impugned* purchase/sale transactions of the shares had taken place within a short span. The Id. D.R adverting to the issue as to whether cross examination of Sh. Mukesh Chokshi (supra) on whose statement the department had heavily relied for drawing of adverse inferences in the hands of the assessee, and dubbing the purchase transactions of the shares of M/s Talent Infoways Ltd. by the assessee as a sham transaction, therein submitted that as the assessee had at no stage during the course of the proceedings before the lower authorities ever asked for a cross examination of Shri Mukesh Chokshi (supra), therefore no such cross examination was facilitated to the assessee.

10. We have heard the Authorized Representatives for both the parties, perused the orders of the lower authorities and the material produced before us. We have given a thoughtful consideration to the facts of the case and find that Shri Mukesh Choksi (supra) who was the key person managing the affairs of MSPL (supra) and Alliance Intermediaries & Network Pvt. Ltd. (supra), had clearly admitted in his statement recorded under oath during the course of the search & seizure proceedings on 11.12.2009, that he was engaged in the business of providing accommodation entries, and no genuine purchase and sale transactions of shares were carried out by him. We find that Sh. Mukesh Choksi (supra) in reply to Q.No. 2 of his aforesaid statement, had *inter alia* made

a mention of the aforesaid two companies, viz. MSPL and Alliance Intermediaries & Network Ltd., and therein admitted that he was engaged in the business of providing accommodation entries through various companies floated by him, all of which were being run by him from the office at 6th Road, Santacruz (East), Mumbai, as well as demonstrated the *modus operandi* of his said business. The relevant extract of the aforesaid statement of Sh. Mukesh Chokssi (supra), which had been heavily relied upon by the A.O for drawing of adverse inferences as regards the genuineness of the Purchase/Sale transactions of M/s Talent Infoway Ltd, and will have a strong bearing as regards adjudication of the issue under consideration, is reproduced hereunder:-

“Q.No. 2. Kindly state your educational qualifications and the nature of business being carried out by you at Block N. H, Shree Sadashiv CHS Ltd., 6th Road, Santacruz, Mumbai -55.

Ans.2. I am a Chartered accountant by training, having completed my Chartered accountancy in 1978. I am engaged in the business of providing the accommodation entries through various companies floated by me like Mahasagar Securities P. Ltd., Mihir Agencies P. Ltd., Alliance Intermediaries & Network P. Ltd., Gold Star Finvest Pvt. Ltd etc., which all are run by me from the office at 6 Santacruz (East) above. In brief the various businesses activities carried out by my companies are as below:

- i). Speculation Profit adjustment entries.*
- ii). Short term Profit adjustment entries.*
- iii). Long term Capital gains adjustment entries.*
- iv). Share application adjustment entries.”*

11. We find that the lower authorities had placed heavy reliance on the statement of Sh. Mukesh Choksi (supra), wherein the latter had admitted that the aforesaid companies, viz. Mahasagar Securities P. Ltd. and Alliance Intermediaries & Network P. Ltd. were floated by him and were used as facilitator in furtherance of his business of providing accommodation entries. We though are persuaded to be in agreement with the observations of the lower authorities, that in the backdrop of the admission made by Sh. Mukesh Chokshi (supra) in his statement recorded u/s 131, there can be no doubt as regards the state of affairs of his business, but then this leads us to the issue that as to whether such a stand alone statement of the aforesaid person could be used for drawing of adverse inferences as regards the genuineness and veracity of the share transactions carried out by the assessee through him. We are of the considered view that as the name of the assessee was figuring in the list of the persons who had transacted share transactions through the aforesaid companies, viz. Mahasagar Securities P. Ltd. and Alliance Intermediaries & Network P. Ltd., therefore, in the backdrop of the fact that the said respective companies were found to be carrying on the business of providing accommodation entries by the department, therefore the said facts would undoubtedly suffice and be a clinching basis for the A.O to form a bonafide 'belief' that the assessee being a beneficiary, too would have fudged the transactions, therein vesting with him the necessary jurisdiction to initiate reassessment proceedings in the hands of the assessee u/s 147 of the 'Act'. We however are unable to persuade ourselves to subscribe to the view that such information arrived at on the basis of the stand alone statement of the aforesaid person, viz. Sh. Mukesh Chokshi (supra), falling short of any corroborative evidence would however justify drawing of adverse

inferences as regards the genuineness of the share transactions in the hands of the assessee. We though are also not oblivious of the settled position of law, as per which a very heavy onus is cast upon the assessee to substantiate the LTCG on sale of shares, as projected by her in the return of income for the year under consideration. Thus to be brief and explicit, though the reopening of the case of the assessee in the backdrop of the aforesaid factual matrix cannot be faulted with, however such stand alone information, i.e the statement of Sh. Mukesh Chokshi (supra), cannot be allowed to form the sole basis for dislodging the claim of the assessee in respect of the LTCG reflected by her in the return of income for the year under consideration. We would not hesitate to observe that the lower authorities which have hushed through the facts to arrive at a conclusion on the basis of principle of preponderance of human probability, had however absolutely failed to appreciate that the said principle could have been validly applied only on the basis of a considerate view as regards the facts of the case in totality, and not merely on the basis of the stand alone statement of the aforesaid third party, viz. Sh. Mukesh Choksi.

12. We would now in the backdrop of our aforesaid observations test the claim of the assessee in respect of the LTCG on sale of shares as stands reflected in her return of income, after carrying out a conjoint perusal of the facts borne from record. We find that the following material facts and issues militates against the validity of the view arrived at by the A.O in context of the genuineness of the share transactions and the LTCG emerging there from, which factors will have a strong bearing on the adjudication of the issue under consideration, and thus are briefly culled out as under:-

- (i). The lower authorities had chosen to act solely on the basis of the statement of Sh. Mukesh Choksi (supra), for arriving at and thereafter justifying the adverse inferences drawn as regards the share transactions carried out by the assessee through the aforesaid companies, viz. Mahasagar Securities P. Ltd. and Alliance Intermediaries & Network P. Ltd. We are of the considered view, that as observed by us at length hereinabove, though the statement of Sh. Mukesh Choksi (supra) would validly form a basis for reopening the case of the assessee, however such a stand alone statement cannot be permitted to form the sole basis for dislodging the claim of the assessee in respect of LTCG arising from Purchase and sale of shares of M/s Talent Infoways Ltd. carried out by her through the aforesaid companies.
- (ii). That as Sh. Mukesh Choksi (supra) on whose statement heavy reliance was placed by the A.O for dislodging the claim of the assessee, was the witness of the department, therefore a very heavy onus was cast upon the department to have dislodged the aforesaid claim of the assessee on the basis of concrete and irrebutable evidence, and prove to the contrary, which however we find had not been done.
- (iii). That still further we find that a very heavy reliance had been placed by the lower authorities on the statement of Sh. Mukesh Choksi (supra), however we find that neither the latter had raised any allegation in respect of the state of affairs of the assessee, nor any reference of the assessee does figure anywhere in the statement of the aforesaid person.

- (iv). Though the department had placed heavy reliance on the statement of Sh. Mukesh Choksi (supra) for drawing of adverse inferences in the hands of the assessee, but the fact that the said person might have come forth with a self serving statement and had projected wrong facts in order to keep himself in comfort zone and avoid stringent action of different departments, say tax evasion etc., cannot be ruled out.
- (v). That the possibility of the assessee having carried out genuine share transactions through the aforesaid companies, viz. Mahasagar Securities P. Ltd. and Alliance Intermediaries & Network P. Ltd., in the absence of any material proving to the contrary, could not be summarily discarded.
- (vi). That though the aforesaid Sh. Mukesh Choksi (supra) was a witness of the department, and we find that the A.O had acted upon the stand alone statement of the said person, but despite such heavy reliance having been placed by the lower authorities on the aforesaid statement, no Cross examination of the said person had been facilitated to the assessee.
- (vi). That the A.O while observing that the share transactions of the assessee had not been carried out through Stock Exchange, had however failed to appreciate that the same being off-market transactions, thus no adverse inferences on the said count was liable to drawn in the hands of the assessee.
- (vii). That as the assessee had carried out the sale of shares after dematerializing them, therefore the genuineness of the sale transaction cannot be doubted.

13. We further not being oblivious of the fact that the assessee who had claimed generation of income under the 'LTCG' on sale of scrips of M/s Talent Infoway Ltd. in her return of income, thus remained under a statutory obligation to substantiate the said claim. We further find that on the basis of following material which was furnished by the assessee before the lower authorities, it can safely be concluded that the assessee had duly discharged the onus as stood cast upon her to prove the factum of generation of income under head LTCG, as claimed by her in the return of income for the year under consideration:-

- (i). That the assessee had submitted before the lower authorities that she had purchased 10,200 shares of M/s Talent Infoways Limited on 06.04.2004 from MSPL for a consideration of Rs.16,143/-, and to substantiate the said fact had placed on record a copy of the Contract note, dated. 15.04.2004, which therein evidenced the said purchase transaction (Page 9-10 of 'APB')
- (ii). That the assessee explaining the source of the aforesaid investment of Rs.16,143/- (supra) made for purchase of 10,200 shares of M/s Talent Infoways Ltd., had therein submitted that the same comprised of profit of Rs.15,974/ which was generated by her from speculative transactions carried through MSPL, while for the balance amount of Rs.168/- was paid in cash, for which receipt was received from the broker. The assessee had placed on record a copy of the Contract note, dated. 06.04.2004 (Page 11-12 of 'APB'), therein evidencing the aforesaid speculation income, as well as the copy of the aforesaid receipt for Rs. 168/- (Page 14 of 'APB').

- (iii). That the assessee placed on record the copy of her account in the books of account of M/s MSPL, which therein duly corroborated the explanation of the assessee as regards the purchase of the shares of M/s Talent Infoways Ltd., as well as the source thereof. (Page 15 of 'APB').
- (iv). That the assessee had placed on record the copy of the letter from M/s Talent Infoways Ltd., dated. 29.05.2004, therein confirming the transfer of shares bearing Certificate Nos. 105604 (distinctive nos. 0000565001 to 0000570000), Certificate No. 105605 (distinctive nos. 0000585001 to 0000585000) and Certificate Nos. (distinctive nos. 0004420001 to 0004420200) in the name of the assessee. (Page 17 of 'APB').
- (v). That the assessee had placed on record the copy of the Contract notes for sale of shares in the months of September and October, 2005. (Page 18-28 of 'APB').
- (vi). That the assessee had placed on record the copy of the bank statement evidencing receipt of payment for sale of shares. (Page 29 - 31 of 'APB').
- (vii). That the assessee had placed on record the copy of STT paid statements on the shares of M/s Talent Infoways Ltd. (Page 32-34 of 'APB').
- (viii). That the assessee had placed on record the copy of her account in the books of account of M/s Alliance Intermediaries & Network Pvt. Ltd., which therein duly corroborated the explanation of the

assessee as regards the sale of the shares of M/s Talent Infoways Ltd. (Page 35 of 'APB').

- (ix). That the assessee had placed on record the copy of delivery instructions of shares to the depository for dematerialization of the shares. (Page 36 - 39 of 'APB').
- (x). That the assessee had placed on record the copy of her return of income alongwith the computation of income for A.Y. 2005-06, which duly reflected the speculation income of Rs. 15,975/-, as well as revealed the fact as regards purchase of 10,200 shares of M/s Talent Infoways Ltd, alongwith the source of purchase of the same.

14. We have given a thoughtful consideration to the facts of the case and are of the considered view that the assessee had placed on record substantial documentary evidence to substantiate the genuineness and veracity of the purchase and sale of 10,200 shares of M/s Talent Infoways Ltd., viz. copy of the Contract note, dated. 15.04.2004 evidencing the purchase of shares; Copy of the contract note, dated. 06.04.2004 as regards the speculation income, and the copy of the cash receipt for Rs. 168/-; Copy of her account in the books of account of M/s MSPL; Copy of the letter from M/s Talent Infoways Ltd., dated. 29.05.2004, therein confirming the transfer of shares; Copy of the contract notes for sale of shares in the months of September and October, 2005; Copy of the bank statement evidencing receipt of payment for sale of shares; Copy of STT paid statements on the shares of M/s Talent Infoways Ltd ; Copy of its account as appearing in the books of account of M/s Alliance Intermediateries & Network Pvt. Ltd. evidencing

the sale of the shares of M/s Talent Infoways Ltd.; Copy of delivery instructions of shares to the depository for dematerialization of the shares; and Copy of the return of income alongwith the computation of income for A.Y. 2005-06, which revealed the speculation income of Rs. 15,975/-, and the fact of purchase of 10,200 shares of M/s Talent Infoways Ltd, alongwith the source of purchase. We find that the aforesaid substantial documentary evidence placed on record by the assessee, which as a matter of fact supported the entire chain of events of purchase and sale of 10,200 shares of M/s Talent Infoways Ltd. by the assessee, was however never rebutted by the A.O on the basis of any concrete and irrebutable evidence which could go to inescapably disprove the genuineness of the said documents which were brought on record by the assessee We find that the A.O had rather chosen to merely rely on the stand alone statement of Sh. Mukesh Choksi (supra) and taking the same as gospel truth, had therein drawn adverse inferences in the hands of the assessee by merely referring to the said statement of Sh. Mukesh Choksi (supra). We though do not approve of the reliance placed by the A.O on the stand alone statement of Sh. Mukesh Choksi (supra) for drawing of adverse inferences in respect of the share transactions carried out by the assessee during the year under consideration, but rather find that even no cross examination of Sh. Mukesh Choksi (supra), whose statement was so heavily being relied upon by the A.O, was ever provided to the assessee. We find that the failure on the part of the A.O to provide cross examination of the person, relying on whose statement adverse inferences are drawn in the hands of the assessee goes to the very root of the validity of such adverse inferences drawn in the hands of the assessee, had been looked into by the **Hon'ble High Court of Bombay** in the case of : **CIT-13 Vs. M/s Ashish International (ITA No 4299**

of 2009; dated. 22.02.2011), wherein the order of the Tribunal was affirmed by the Hon'ble High Court. We thus in the backdrop of our aforesaid observations, are neither able to persuade ourselves to subscribe to the adverse inferences drawn by the lower authorities in respect of the share transactions of the assessee by referring to the stand alone statement of Sh. Mukesh Choksi, as the same as observed by us hereinabove, suffer from serious infirmities, and as such cannot be summarily accepted, nor are able to dislodge the genuineness of the purchase and sale of shares of the aforesaid 10,200 shares of M/s Talent Infoways Ltd., which we find had been duly substantiated by the assessee on the basis of material made available on record, which we find had not been dislodged by the lower authorities. We thus in the backdrop of the totality of the facts of the case are unable to find ourselves to be in agreement with the view arrived at by the lower authorities. We thus set aside the order of the CIT(A), and delete both of the additions of Rs. 9,36,164/- and Rs. 46,808/- made by the A.O, which thereafter were sustained by the CIT(A). The appeal of the assessee is allowed.

I.T.A. No.3018/Mum/2015

**Jawant Raj Bhutaji Shah, HUF Vs. ITO, Ward 19(2)(1), Mumbai
(A.Y. 2006-07)**

1. We now advert to the appeal marked as ITA No. 3018/Mum/2015 of the aforementioned assessee for A.Y. 2006-07, wherein the assessee challenging the assessment order passed by the CIT(A)-30, had raised the following grounds of appeal:-

“Being aggrieved of order passed by the learned Commissioner of Income Tax (Appeals) 30, Mumbai (hereafter referred as the learned CIT(A)'), appellant prefers this appeal on one or more of the following ground/s which are independent and without prejudice to each other.

- (1) On the facts and in law, the learned CIT(A) erred in confirming the addition on account of sale of shares through Alliance Intermediaries and Network Pvt. Ltd made in the assessment proceedings u/s 143(3) read with section 147 without appreciating the fact that the reopening of assessment was merely on the basis of the information received from the DGIT (Inv), Mumbai and without any material on record to show that the transactions entered into by the appellant were non genuine.*
- (2) On the facts and in law, the learned CIT(A) erred in confirming the addition of Rs.7,15,159/- on account of sale of shares through Alliance Intermediaries and Network Pvt. Ltd and Rs.14,303/- on account of Commission paid to the said broker without appreciating the fact that the shares were actually sold through the registered share brokers, actual delivery of shares were given from the demat account, sate consideration was received by cheque from the broker, STT was paid to the broker as per the invoice issued by them and the purchase of shares in the preceding year was accepted by the learned A.O in the assessment proceedings u/s 143(3) r.w.s. 147.*
- (3) Appellant prays for leave to add, amend or delete any ground/s of appeal on or before the final date of hearing.”*

2. Briefly stated, the facts of the case are that the assessee had filed his return of income on 18.02.2007, declaring total income at Rs.85,628/-. That pursuant to search and seizure action conducted under Section 132 of the ‘Act’ in the case of M/s Mahasagar Securities

Pvt. Ltd., Mumbai (MSPL) on 25.11.2009 and subsequent dates, it emerged that MSPL and its related group of 34 odd companies (prominent ones being M/s Alliance Intermediaries & Network Pvt. Ltd., M/s Mihir Agencies Pvt. Ltd., M/s Gold Star Finvest Pvt. Ltd. etc, all run by Shri Mukesh Chokshi and his associates) were engaged in fraudulent billing activities and the business of providing accommodation entries for speculation profit/loss, short term/long term capital gain/loss, share application money, commodities profit/loss on commodities trading (through MCX) ,since the past many years.

3. That as per the A.O pursuant to information gathered during the search proceedings conducted on MSPL group, it emerged that the assessee was one of such beneficiaries who had obtained bogus entries towards purchase and sale of shares and securities. That the details gathered during the course of search and seizure proceedings, as per the A.O, revealed that the assessee had obtained accommodation entries and had claimed to have received sale consideration of Rs. 7,15,159/- on the sale of shares of M/s Talent Infoways Ltd. made through M/s. Alliance Intermediaries Network Pvt. Ltd., against which long term capital gain (LTCG) amounting to Rs.7,02,906/- stood reflected in his return of income for the year under consideration.

4. That on the basis of the aforesaid information reassessment proceedings were initiated in the hands of the assessee under Section 147 of the Act. During the course of the assessment proceedings the A.O. in the backdrop of the aforesaid facts called upon the assessee to explain as to why the sale proceeds of the shares may not be treated as an unexplained investment, and therein added to her income under the head 'Income from other sources'. The assessee substantiating the

genuineness of the share transactions, therein submitted before the A.O. that he had purchased 7,800 shares of M/s Talent Infoways Limited on 16.04.2004 from MSPL, and placed on record a copy of the contract note evidencing the said transactions. The aforesaid 7,800 shares of M/s Talent Infoways Ltd. were thereafter sold by the assessee on 16.06.2005 and 17.06.2005, for a consideration of Rs.7,15,159/-through another broker, viz. M/s. Alliance Intermediateries Network Pvt. Ltd. The assessee in order to support the aforesaid sale transaction, therein placed on record the copies of the contract notes received from M/s. Alliance Intermediateries Network Pvt. Ltd., copy of the bank statement evidencing the receipt of the payments on the sale of the shares, copy of the STT paid statements of sale of shares and copy of his demat account. The assessee in the backdrop of the aforesaid factual matrix therein submitted that the genuineness of both the purchase and sale of the aforesaid 7,800 shares of M/s Talent Infoways Ltd. stood established beyond any scope of doubt, and as such the sale proceeds received by the assessee could not be characterized as an unexplained investment.

5. The A.O. however did not find favor with the aforesaid contentions of the assessee, and after deliberating on the statement of Shri Mukesh Chokshi (supra) which was recorded by the department under oath under Section 131 of the 'Act' on 11.12.2009, therein observed that as admitted by Shri Mukesh Chokshi and his employees, the group concerns (including MSPL) were merely providing accommodation entries ,thus on the basis of the aforesaid facts therein concluded that the aforesaid concerns were not carrying on any genuine business of purchase and sale of shares, but rather were engaged in the business of issuing bogus bills for providing LTCG/STCG/Speculative profit/loss etc. The A.O further observed that the transactions carried out by the

aforesaid group concerns were not done through the stock exchange, but the bills shown by them appeared to be genuine transactions done through the various stock exchanges. The A.O thus concluded that the assessee had merely taken an entry from the so called share broker for converting her unaccounted funds into accounted funds, and thereafter had disguised the same as LTCG in the return of income. The A.O thus held the *impugned* sale consideration of Rs.7,15,159/- as the income of the assessee from unexplained and undisclosed sources, which thereafter was assessed by him in the hands of the assessee under the head 'Income from other sources'. The A.O thus holding a conviction that the facts of the case clearly revealed beyond any scope of doubt that the assessee had laundered her unaccounted income earned in cash through the bogus purchase/sale of shares of M/s Talent Infoways Ltd. shown in her account, by availing the services of the broker, therefore money must also have been paid as commission in cash for the services so rendered by the said accommodation entry provider, thus estimated the same at 2% of *impugned* sale consideration and made a further addition of Rs.14,303/- on the said count in the hands of the assessee. The A.O thus deliberating on the aforesaid facts therein finally assessed the income of the assessee at Rs.8,15,090/-. The appeal filed by the assessee before the CIT(A) was dismissed.

6. The assessee assailing the order of the CIT(A) had therein carried the matter in appeal before us. That at the very outset it was submitted by the Ld. A.R that the issue involved in the present appeal was identical to that involved in the aforementioned appeal of *Smt. Kamla Devi Doshi vs. ITO, Mumbai*, marked as ITA No. 1957/Mum/2013. The Ld. D.R had not disputed the aforesaid factual position. We have perused the orders of the lower authorities and the material produced before us. We find that

the issue involved in the present appeal is identical to the issue involved in the appeal before us in the case of *Smt. Kamla Devi Doshi (supra)*. Thus in the backdrop of our aforesaid observations, we herein adjudicate the present issue in terms of our order passed while disposing of the 'Grounds of appeal No. 1 to 3' in the appeal of *Smt. Kamla Devi Doshi (supra)*., marked as ITA No. 1957/Mum/2013, and our decision passed in context of the issue under consideration in the said appeal shall in light of our aforesaid observations, apply *mutatis mutandis* in the present appeal also. We thus going by our observations and reasoning adopted while disposing of the aforesaid appeal of *Smt. Kamla Devi Doshi (supra)*., marked as ITA No. 1957/Mum/2013, for A.Y. 2006-07, therein set aside the order of the CIT(A) and delete the addition of Rs.7,15,159/- and Rs. 14,303/- made by the A.O, which thereafter was sustained by the CIT(A). The appeal of the assessee is allowed.

I.T.A. No.3019/Mum/2015

**Rajmal M. Sanghvi Vs. ITO, Ward 19(3)(1), Mumbai
(A.Y. 2006-07)**

1. We now take up the appeal marked as ITA N. 3019/Mum/2015 of the aforementioned assessee for A.Y. 2006-07, wherein the assessee challenging the assessment order passed by the CIT(A)-30, had raised the following grounds of appeal:-

“Being aggrieved of order passed by the learned commissioner of Income Tax (Appeals) 30, Mumbai (hereafter referred as 'the learned CIT(A)'), appellant prefers this appeal on one or more of the following ground/s which are independent and without prejudice to each other.

- (1) *On the facts and in law, the learned CIT(A) erred in confirming the addition on account of sale of shares through Alliance Intermediaries and Network Pvt. Ltd made in the assessment proceedings u/s 143(3) read with section 147 without appreciating the fact that the reopening of assessment was merely on the basis of the information received from the DGIT (Inv), Mumbai and without any material on record to show that the transactions entered into by the appellant were non genuine.*
- (2) *On the facts and in law, the learned CIT(A) erred in confirming the addition of Rs.8,51,170/- on account of sale of shares through Alliance Intermediaries and Network Pvt. Ltd and Rs.17,023/- on account of Commission paid to the said broker without appreciating the fact that the shares were actually sold through the registered share brokers, actual delivery of shares were given from the demat account, sale consideration was received by cheque from the broker, STT was paid to the broker as per the invoice issued by them and the purchase of shares in the preceding year was accepted by the learned A.O in the assessment proceedings u/s 143(3) r.w,s. 147.*
- (3) *Appellant prays for leave to add, amend or delete any ground/s of appeal on or before The final date of hearing.”*

2. Briefly stated, the facts of the case are that the assessee had filed his return of income on 12.03.2007, declaring total income at Rs. 98,625/-. That pursuant to search and seizure action conducted under Section 132 of the 'Act' in the case of M/s Mahasagar Securities Pvt. Ltd., Mumbai (MSPL) on 25.11.2009 and subsequent dates, it emerged that

MSPL and its related group of 34 odd companies (prominent ones being M/s Alliance Intermediaries & Network Pvt. Ltd., M/s Mihir Agencies Pvt. Ltd., M/s Gold Star Finvest Pvt. Ltd. etc, all run by Shri Mukesh Chokshi and his associates) were engaged in fraudulent billing activities and the business of providing accommodation entries for speculation profit/loss, short term/long term capital gain/loss, share application money, commodities profit/loss on commodities trading (through MCX) since the last many years.

3. That as per the A.O, pursuant to information gathered during the course of search proceedings conducted on MSPL group, it emerged that the assessee was one of such beneficiaries who had obtained bogus entries towards purchase and sale of shares and securities. That the details gathered during the course of search and seizure proceedings, as per the A.O, revealed that the assessee had obtained accommodation entries and had claimed to have received sale consideration of Rs. 8,51,170/- on the sale of 9,100 shares of M/s Talent Infoways Ltd., made through M/s. Alliance Intermediaries Network Pvt. Ltd., against which long term capital gain (LTCG) amounting to Rs.8,35,901/- was reflected by him in his return of income for the year under consideration.

4. That on the basis of the aforesaid information, reassessment proceedings were initiated in the hands of the assessee under Section 147 of the Act. During the course of the assessment proceedings the A.O. in the backdrop of the aforesaid facts called upon the assessee to explain as to why the aforesaid sale consideration of the shares may not be treated as an unexplained investment, and added to her income under the head 'Income from other sources'. The assessee substantiating the genuineness of the share transactions, therein submitted before the A.O.

that he had purchased 9,100 shares of M/s Talent Infoways Limited on 15.04.2004 from MSPL and placed on record a copy of the contract note evidencing the said transactions. The aforesaid 9,100 shares of M/s Talent Infoways Ltd. were thereafter sold by the assessee on 09.08.2005 (3,100 shares), 10.08.2005 (2,900 shares) and 11.08.2005 (2,900 shares), for a consideration of Rs.8,51,170/-through another broker, viz. M/s. Alliance Intermediaries Network Pvt. Ltd. The assessee in order to support the aforesaid sale transaction, therein placed on record the copies of the contract notes received from M/s. Alliance Intermediaries Network Pvt. Ltd., copy of the bank statement evidencing the receipt of the payments on the sale of the shares, copy of the STT paid statements of sale of shares and copy of his demat account. The assessee in the backdrop of the aforesaid factual matrix, therein submitted that as the genuineness of both the purchase and sale of the aforesaid 9,100 shares of M/s Talent Infoways Ltd. stood established beyond any scope of doubt, therefore the sale consideration received by the assessee on the said sale of shares could not be characterized as an unexplained investment.

5. The A.O. however did not find favor with the aforesaid contentions of the assessee, and after deliberating on the statement of Shri Mukesh Chokshi (supra) which was recorded by the department under oath under Section 131 of the Act on 11.12.2009, therein observed that as admitted by Shri Mukesh Chokshi and his employees, the group concerns (including MSPL) were merely providing accommodation entries to the clients, thus on the basis of the aforesaid facts concluded that the aforesaid concerns were not carrying on any genuine business of purchase and sale of shares, but rather were engaged in the business of issuing bogus bills for providing LTCG/STCG/Speculative profit/loss. The A.O further observed that the transactions carried out by the

aforesaid group concerns were not done through the stock exchange, but the bills shown by them appeared to be genuine transactions done through the various stock exchanges. The A.O thus concluded that the assessee had merely taken an entry from the so called share broker for converting her unaccounted funds into accounted funds, and disguised the same as LTCG in the hands of assessee. The A.O thus held the *impugned* sale consideration of Rs.8,51,170/- as the income of the assessee from unexplained and undisclosed sources, and assessed the same under the head 'Income from other sources'. The A.O thus holding a conviction that the facts of the case clearly revealed beyond any scope of doubt that the assessee had laundered her unaccounted income earned in cash through the bogus purchase/sale of shares of M/s Talent Infoways Ltd. shown in her account, by availing the services of the broker, therefore money must also have been paid as commission in cash for the services so rendered by the said accommodation entry provider, thus estimating the same at 2% of *impugned* sale consideration, made a further addition of Rs.17,023/- in the hands of the assessee. The A.O thus deliberating on the aforesaid facts, therein finally assessed the income of the assessee at Rs.9,66,620/-. The appeal filed by the assessee before the CIT(A) was dismissed.

6. The assessee assailing the order of the CIT(A) had therein carried the matter in appeal before us. That at the very outset it was submitted by the Ld. A.R that the issue involved in the present appeal was identical to that involved in the aforementioned appeal of *Smt. Kamla Devi Doshi vs. ITO, Mumbai*, marked as ITA No. 1957/Mum/2013. The Ld. D.R had not disputed the aforesaid factual position. We have perused the orders of the lower authorities and the material produced before us. We find that the issue involved in the present appeal is identical to the issue

involved in the appeal before us in the case of *Smt. Kamla Devi Doshi (supra)*. Thus in the backdrop of our aforesaid observations, we herein adjudicate the present issue in terms of our order passed while disposing of the 'Grounds of appeal No. 1 to 3' in the appeal of the assessee for A.Y. 2008-09, marked as ITA No. 1957/Mum/2013, and our decision passed in context of the issue under consideration in the said appeal shall in light of our aforesaid observations, apply *mutatis mutandis* in the present appeal also. We thus going by our observations and reasoning adopted while disposing of the aforesaid appeal of *Smt. Kamla Devi Doshi (supra)*, marked as ITA No. 1957/Mum/2013, for A.Y. 2006-07, therein set aside the order of the CIT(A) and delete the addition of Rs.8,51,170/- and Rs. 17,023/- made by the A.O, which thereafter was sustained by the CIT(A). The appeal of the assessee is allowed.

The aforesaid appeals of the aforementioned assesses, marked as ITA No. 1957/Mum/2013, I.T.A. No.3018/Mum/2015 and I.T.A. No.3019 /Mum/2015, are allowed.

Order pronounced in the open court on 22/05/2017

Sd/-

(B.R. Baskaran)

लेखासदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 22.05.2017

PS Rohit Kumar

Sd/-

(Ravish Sood)

न्यायिकसदस्य / Judicial Member

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/ D.R, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/BY
ORDER, उप/सहायकपंजीकार(Dy./Asstt.Registrar)आयकरअपीलीयअधिकरण, मुंबई/
ITAT, Mumbai