

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

Sl. No.	ITA Nos.	A.Y.	Name of the Appellant	Respondent
1.	340/PUN/2018	2014-15	Mukesh Popatlal Gada, Shah Khandelwal Jain & Associates, Level 3, Riverside Business Bay, Next to RTO Office, Wellesley Road, Pune-411001 PAN No.ADXPS2128R	ITO, Ward-2(1), Pune.
2.	341/PUN/2018	2014-15	Kishor Gada HUF, Shah Khandelwal Jain & Associates, Level 3, Riverside Business Bay, Next to RTO Office, Wellesley Road, Pune-411001 PAN No.AAGHK1918M	ITO, Ward-2(1), Pune.
3.	342/PUN/2018	2014-15	Popatlal Hirji Shah, Shah Khandelwal Jain & Associates, Level 3, Riverside Business Bay, Next to RTO Office, Wellesley Road, Pune-411001 PAN No.ADXPS2205D	ITO, Ward-2(1), Pune.
4.	343/PUN/2018	2014-15	Veluben Popatlal Shah, Shah Khandelwal Jain & Associates, Level 3, Riverside Business Bay, Next to RTO Office, Wellesley Road, Pune-411001 PAN No.AMOPS3743A	ITO, Ward-2(1), Pune.

अपीलार्थी की ओर से / Appellant by : Shri Rajiv Thakkar
प्रत्यर्थी की ओर से / Respondent by : Shri M. K. Verma

सुनवाई की तारीख / Date of Hearing : 11.02.2019	घोषणा की तारीख / Date of Pronouncement: 11.02.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are **four** appeals under consideration. All these appeals relate to the same family and they are filed with common grounds of appeal for the assessment year 2014-15. Since the facts and issues involved in these

four appeals are common, therefore, all these four appeals were heard together and are disposed of by this composite order.

2. The solitary issue raised by the assessee in all the four appeals relate to the addition on account of **Penny Stocks** involving the shares of “Conart Traders Ltd.”. These are off-market transactions and however the payments were made through the banking channels. The assessee purchased the shares from M/s P. Saji Textiles Ltd.. The said company stand renamed as M/s Akai Asian Ltd. which is finally got amalgamated with M/s Sunrise Asian Ltd.. The shares of M/s Akai Asian Ltd. are listed in Bombay Stock Exchange. All these developments happened in the years 2012 to 2013. The share value went up substantially and it is to the benefit of the assessee. Assessee sold these shares and the gains were claimed exempt. Considering the Penny Stocks and off-market nature of the transactions, the Assessing Officer made addition at Rs.31,52,754/- in the case of Kishor Popatlal Gada and the contents of para 19.2 of the assessment order is relevant in this regard. Similarly, the additions made by the Assessing Officer in other three cases are as under :-

<i>Sl.No.</i>	<i>Name</i>	<i>Addition</i>
1.	<i>Mukesh Popatlal Gada (ITA No.340/PUN/2018)</i>	<i>Rs.31,58,984/-</i>
2.	<i>Popatlal Hirji Shah (ITA No.342/PUN/2018)</i>	<i>Rs.31,88,889/-</i>
3.	<i>Veluben Popatlal Shah (ITA No.343/PUN/2018)</i>	<i>Rs.31,87,173/-</i>

3. During the first appellate proceedings, the CIT(A) confirmed the same and dismissed the appeal of the assessee. The contents of para 5.3.11 are relevant in this regard and the same are extracted hereunder :-

“5.3.11 Thus it is held that :-

- i) A paper work was camouflaged by the assessee with the help of entry providers.*
- ii) Off-market transactions were carried out by the assessee in collusion with entry providers. The transactions were given the colour of*

- genuine transaction but fact remains that only paper work was done in lieu of cash and there was no actual gain/transaction.*
- iii) *In the light of the material gathered by the investigation wing about the modus operandi followed by the entry providers, the reliance of the appellant on the fact that the money was sent through banking channels loses all forces.*
 - iv) *In analysing a transaction, it is not necessary that the documents should be construed from the purely legal aspect. It is open to the A.O. not merely to look at the documents but to consider the surrounding circumstances so as to conclude what is the real character of the transaction. In that context, the income-tax authorities are entitled to decide as to whether a transaction is illusory or a device or a ruse. For that purpose they can penetrate the veil covering such transaction and ascertain the truth. It is what A.O. has done in this case.*
 - v) *A.O. has established that it was a case where ingenuity was expended to avoid tax-payment by producing documents that may seem convincing prima-facie. But, behind the smoke-screen true state of affairs were hidden and A.O. was successful in unearthing it.*
 - vi) *Considering the overall circumstances, the apparent was not real in the case of the appellant.”*

4. Aggrieved with the above conclusion of the Assessing Officer and the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal :-

- “1. On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that the Hon’ble CIT(A) erred in confirming the addition made by the Learned Assessing Officer (‘Ld. AO’) for Rs.31,52,754/- under section 68 of the Income Tax Act, 1961 on account of unexplained cash credit being long term capital gain claimed as exempt income u/s 10(38) by the appellant. The addition so made to the income of the appellant be deleted. The appellant be granted just and proper relief in this respect.*
- 2. The appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing.”*

5. Similar grounds raised by the assessee in other three appeals also.

6. At the outset, ld. Counsel filed a written submission in support of the ground extracted above and claims of the assessee. The ld. AR submitted that the facts relating to the addition on account of Penny Stocks in this case are different from the cases relied on by the Assessing Officer/CIT(A). Bringing our attention to the recent judgment of the Hon’ble Delhi High Court in the case of Pr.CIT vs. NDR Promoters Pvt. Ltd. vide ITA 49/2018, order dated 17.01.2019, in particular, the contents of para 13 of the said judgement of the High Court (supra), the ld. Counsel submitted that the

facts are distinguishable and different. Referring to the other decision of Pune Bench of the Tribunal in the case of Rajkumar B. Agarwal vs. DCIT vide ITA Nos.1648 & 1649/PUN/2015, order dated 04.01.2019, he again submitted that the facts are different.

7. On the other hand, ld. DR for the Revenue submitted that, in the case of Penny Stocks addition, the nature of share transaction needs to be appreciated. Ld. DR relied heavily on the decision of Mumbai Benches of the Tribunal in the case of ITO vs. Shamim M. Bharwani vide ITA No.4906/Mum/2011, order dated 27.03.2015 and the judgement of the Hon'ble Delhi High Court in the case of NDR Promoters Pvt. Ltd. (supra).

8. On hearing both the sides, I perused the facts of the case, orders of the Assessing Officer and the CIT(A) and the judgements cited above in this regard. It is an undisputed fact that the share involved are Penny Stocks and the documentation is otherwise complete. Further, I also perused the judgement of the Hon'ble Delhi High Court in the case of NDR Promoters Pvt. Ltd. (supra) and find the contents of para 13 and 14 of the said order are relevant in this regard. For the sake of completeness, the said para 13 and 14 are extracted hereunder :-

*“13. In view of the aforesaid factual position, we have no hesitation in holding that the **transactions in question were clearly sham and make-believe with excellent paper work to camouflage their bogus nature.** Accordingly, the **order passed by the Tribunal is clearly superficial** and adopts a perfunctory approach and ignores evidence and material referred to in the assessment order. The **reasoning given is contrary to human probabilities**, for in the normal course of conduct, no one will take investment of such huge amounts without being concerned about the return and safety of such investment.*

14. Accordingly, the appeal is allowed. The substantial question of law framed above is accordingly answered in favour of the appellant-revenue and against the respondent-assessee. There would be no order as to costs.”

9. Considering all the facts of the case and the judgements cited above in force, I am of the opinion the matter should be remanded to the file of

the CIT(A) for examining the facts of the said cases and consider the submission of the ld. AR for the assessee. There is need for finding of fact on (i) shares nature of the transactions; (ii) make-believe nature of paper work; (iii) Camouflage the bogus nature; and, (iv) the relevance of human probabilities etc. Thus, ld. AR mentioned that all the judgements are distinguishable on facts. CIT(A) needs to compare the facts of all these cases under consideration and others if any. Hence, the issue is required to be remanded to the file of the CIT(A). With these directions, the CIT(A) is directed to pass a speaking order after granting a reasonable opportunity of being heard to the assessees. Accordingly, the grounds in all the appeals of the respective assessees are allowed for statistical purposes.

10. In the result, all the four appeals of the respective assessees are allowed for statistical purposes.

Order pronounced on this 11th day of February, 2019.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 11th February, 2019.
Sujeet

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-3, Pune;
4. The Pr.CCIT, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune