

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “C” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. No: 2248/AHD/2013  
(Assessment Year: 2003-04)**

<b>Shri Rakeshbhai K. Rajput, 2/40, Gaganvihar Apartments, Nr. Bhavsar Hostel, Nava Vadaj, Ahmedabad</b>	<b>V/S</b>	<b>Income Tax Officer, Ward-7 (3), Ahmedabad</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AJRPR4160N**

**Appellant by : Shri Tushar P. Hemani, AR  
Respondent by : Shri S. K. Dev, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 08 -03-2019  
Date of Pronouncement : 30 -04-2019

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-XIV, Ahmedabad dated 18.06.2013 pertaining to A.Y. 2003-04 and following grounds have been taken:

1. *The learned CIT(A) has erred both in law and on the facts of the case in dismissing the appellant's ground of appeal challenging the validity of notice issued u/s 148 of the Act as regards re-opening the assessment. On the facts and circumstances of the case, learned CIT(A) ought to have held that notice u/s 148 of the Act and the consequential re-assessment proceedings are invalid. The same be held so now.*

2. *The learned CIT(A) has erred in law and on facts of the case in dismissing the ground challenging the act of framing the assessment without issuance of statutory notice u/s 143(2) of the Act.*

3. *The learned CIT(A) has erred in law and on facts of the case in confirming the addition made u/s 69 to the extent of Rs.2,28,600/-.*

4. *The learned CIT(A) has erred in law and on facts of the case in confirming the addition of Rs.4,09,637/- being short term capital gain on alleged transfer of shares in Khyati Multimedia.*

5. *Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

6. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s 234AB C of the Act.*

7. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s 271(l)(c) of the Act.*

2. Ground No. 1 to 3 are not pressed by the Id. A.R. Now effective ground remaining with regard to confirming addition of Rs. 4,09,637/- being short term capital gain on alleged transfer of shares in Khyati Multimedia.

3. Facts of the case are as emanated from the assessment order:

"On verification of the D-MAT statement, it is noticed that the assessee has sold transferred 1,27,182 equity shares of Khyati Multimedia Equity on various dates relevant to the A. Y. 2003-04 and earned short term capital gains of Rs. 4,09,637/- which is calculated at market rate three days prior to date of transfer in D-MAT statement because transaction takes place normally three days prior to the date of transfer in D-MAT statement. The detailed calculation is as under:-

The assessee has sold 127182 equity shares of Khyati Multimedia Equity till 10<sup>th</sup> February 2003 and earned Short term capital gains of Rs. 4,09,636,90/- (Rates adopted are three days prior to entry in D-mate Statement at lowest market price of the day at BSE).

Date	Transaction No.	Name of Broker / depository	No. of shares	Rate	Amount
19/09/2002	6040852	H Nhyalchand Financial Services Pvt. Ltd 1 0000473	4500	7.55	33,975.00
27/09/2002	6051819	HDFC Bank Ltd /1721826	500	5.40	2,700.00
21/10/2002	6074807	H Nhyalchand Financial Services Pvt. Ltd./ 10001269	115100	4.35	500,685.00
23/10/2002	6078568	U Nhyalchand Financial Sendees Pvt. Ltd. / 10001269	32	4.75	152.00
31/12/2002	6168984	H Nhyalchand Financial Services Pvt. Ltd. /1 00004 73	350	14.75	5,162.50
13/01/2003	6191 7 76	C M Parklight Invt. Pvt. L.LiL /Rolling Market lot / 0203198	500	12.45	6,225.00
21/01/2003	6206136	H Nhyalchand Financial Services Pvt. Ltd. /1 00004 73	1000	14.95	14,950.00
30/01/2003	6223096	C M Parklight Invt. Pvt. Ltd. /Rolling Market lot / 02032 11	100	14.75	1,475.00

07/02/2003	6236257	Pravin RatilalaSHSTK /1 01 21 01 3	2000	14.30	28,600.00
10/02/2003	6238691	H        Nhyalchand Financial Services Pvt. Ltd. /1 00094 73	3100	14.40	44,640.00
		Total sales value	127182		638,564.50
		Total Acquisition cost as per unexplained investment	127182	1.80	228927.60
		Short term capital gains			409636.90

The assessee has not furnished any details regarding the Short Term Capital Gain of Rs. 4,09,637/- not attended my office. Under the circumstances, I have no other option but to add the amount as undisclosed Short Term Capital gain earned by the assessed during A. Y. 2003-04.”

4. Thereafter, assessee preferred first statutory appeal before the Id. CIT(A) who dismissed the appeal of the assessee.
5. Now appellant has come before us.
6. We have gone through the relevant record and impugned order. It is a case where assessee has sold 1,27,182 equity shares of Khyati Multimedia on various dates during the year under consideration and accordingly Id. A.O. adopted market rate of impugned share on three days prior to date of sale and determined short term capital gain. But assessee could not submit any evidence either before the Id. CIT(A) or before us to controvert the finding of the Id. A.O. He has not filed any evidence in its support of his case before the lower authorities in order to prove that case of Revenue is illegal or unjustified.

7. Considering the above fact, we do not find any merit and the appeal of the assessee therefore, same is dismissed.

8. In the result, appeal filed by the Assessee is dismissed.

Order pronounced in Open Court on	30- 04- 2019
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Sd/-

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**      **True Copy**  
Ahmedabad: Dated      30/04/2019

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad