



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “बी” न्यायपीठ, पुणे में ॥  
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE “B” BENCH, PUNE  
BEFORE HON’BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No. 809/PUN/2018**

**निर्धारण वर्ष / Assessment Year : 2014-15**

Mr. Jayesh Vallabh Thakkar, 7, Chopda Estate, Kalanagar, Nashik-422 022 Maharashtra. PAN AAKPT6870D	<b>Vs</b>	The ACIT, Circle-2, Kendriya Rajaswa Bhavan, Gadkari Chowk, Old Agra Road, Nashik.
(Appellant)		(Respondent)

**आयकर अपील सं. / ITA No. 810/PUN/2018**

**निर्धारण वर्ष / Assessment Year : 2014-15**

Mr. Bhavik Jayesh Thakkar, 7, Neelkanth, Behind Kalanagar, Gangapur Road, Nashik-422 022 Maharashtra. PAN AGCPT7925M	<b>Vs</b>	The ITO, Ward-2 (4), Kendriya Rajaswa Bhavan, Gadkari Chowk, Old Agra Road, Nashik.
(Appellant)		(Respondent)

**आयकर अपील सं. / ITA No. 811/PUN/2018**

**निर्धारण वर्ष / Assessment Year : 2014-15**

Smt. Jayshree J. Thakkar, 7, Chopda Estate, Kalanagar Gangapur Road, Nashik-422 022 Maharashtra. PAN AAKPT6871D	<b>Vs</b>	The ITO, Ward-2 (4), Kendriya Rajaswa Bhavan, Gadkari Chowk, Old Agra Road, Nashik.
(Appellant)		(Respondent)

**आयकर अपील सं. / ITA No. 812/PUN/2018**

**निर्धारण वर्ष / Assessment Year : 2014-15**

Ku. Anisha Jayesh Thakkar, 7, Chopda Estate, Kalanagar Nashik-422 022 Maharashtra. PAN AFZPT1110Q	<b>Vs</b>	The ITO, Ward-2 (4), Kendriya Rajaswa Bhavan, Gadkari Chowk, Old Agra Road, Nashik.
(Appellant)		(Respondent)



## द्वारा / Appearances

Assessee by : None

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 10/04/2023

घोषणा की तारीख / Date of Pronouncement : 10/04/2023

## आदेश / ORDER

### **PER G. D. PADMAHSHALI, AM;**

This bunch of four appeals of different assessee's for assessment year [in short 'AY'] 2014-2015 arose against the common order of CIT(A)-2, Nashik in Appeal Nos. NSK/CIT(A)-2/394/16-17, 382/16-17, 380/16-17, 492/16-17 dt. 13/03/2018 which in turn arises out of the separate assessment proceedings completed u/s 143(3) of the Income Tax Act, 1961 [in short 'the Act'] by the Asstt Commissioner of Income Tax, Circle-2, [in short 'AO'] vide order dt. 26/12/2016, 28/12/2016, 27/12/2016 & 28/12/2016 respectively.

2. Since common issues are involved in these four appeals, these are heard together for being disposed-off by this common & consolidated order for the sake of convenience and brevity. Resultantly the adjudication laid in lead case i.e. ITA No. 809/PUN/2018 shall *mutatis-mutandis* apply to remaining three appeals.



3. On a careful perusal of order sheet entries it is noted that, all these appeals are filed on 04/05/2018 and these were listed for hearing on 06/07/2021, 08/11/2021 25/01/2022, and then on 28/06/2022 however on these dates, at the request of assessee's counsel [in short 'AR'] the hearings were adjourned. Subsequently on 30/06/2022 these appeals were heard, however, the appeals were re-fixed for clarification as part-heard vide order sheet entry dt. 23/11/2022 and directed the Registry to fix the appeals for hearing on 19/12/2022 by issuing notice to the parties. In the event of non-prosecution these appeals were re-listed on four different occasions viz; 05/01/2023, 13/02/2023, 20/02/2023, 13/03/2023 against at the request of Ld. AR. However, the appellant did not choose to appear on any of the aforementioned dates of hearing. In the larger interest of justice, these appeals once again re-listed for hearing on 10/04/2023, on this date also none appeared on behalf of the assessee/s nor did any application seeking adjournment found filed.



4. From the above order sheet entries it ostensibly transpires the conduct of the assessee/s that, appellant have no interest in prosecuting their respective appeals anymore and thus delaying the process by non-presence without even seeking adjournments at the cost of central exchequer.

5. In the light of above facts and having regard to rule 19(2) of ITAT Rules, 1963 and following various decisions of Delhi Bench of the Tribunal including that of '*Multiplan India Ltd.*', 38 ITD 320 (Del); Hon'ble Madhya Pradesh High Court decision in the case of '*Estate of Late Tukojirao Holkar vs. CWT*' 223 ITR 480 (MP), and also the decision of Hon'ble Supreme Court in the case of '*CIT vs. B. Bhattachargee & Another*' reported in 118 ITR 461 (SC) wherein their Lordships have held that, '*the appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same*' on this very ground albeit instant appeals can be dismissed as un-admitted. However in the larger interest of justice we proceed to decide these appeals ***ex-parte*** on merits in terms of rule 24 of ITAT Rules.

**Lead Case ITA.No.809/PUN./2018 :**

6. We have noted that, the assessee filed his return of income on 28/03/2015 declaring income of ₹92,93,270/-, wherein the case was subjected to scrutiny through CASS and finally income of the assessee was determined at ₹4,51,28,650/- with an addition of ₹3,41,28,933/- on account of dislodgment of claim of exemption made u/s 10(38) of the Act holding sale of shares fictitious and further disallowance of ₹17,06,447/- towards commission paid for accommodation entries in creating impugned long term capital gains. Aggrieved by the order of 143(3) assessment, the assessee carried the matter in appeal before the Ld. CIT(A), who vide order dated 13/03/2018 following the judicial precedents dismissed the appeal of the assessee. Feeling aggrieved and dissatisfied by the order of the Ld. CIT(A), the assessee is before the Tribunal with following grounds :

***“The following grounds are taken without prejudice to each other—***

***On facts and circumstances of the case and in law,***



- 1. The learned Income Tax Officer, Ward 2(4), Nashik has erred in making aggregate additions of Rs.3,58,35,380/- and the Commissioner of Income Tax (Appeals)-2, Nashik has erred in confirming the same.**
- 2. The learned Income Tax Officer, Ward 2(4), Nashik, has erred in not considering the fact that the Assessee has complied with the provisions of sub section (38) of section 10 and treating long term capital gain as taxable and the Commissioner of Income Tax (Appeals)-2, Nashik has erred in confirming the same.**
- 3. The learned Income Tax Officer, Ward 2(4), Nashik, has erred in making addition of Rs.3,41,28,933/- under section 69 of the Act and the Commissioner of Income Tax(Appeals)-2, Nashik, Nashik has erred in confirming the same.**
- 4. The learned Income Tax Officer, Ward 2(4), Nashik, has erred in making addition of an amount of Rs.17,06,447/- on allegation of commission paid by the assessee and the learned Commissioner of Income Tax(Appeals)-2, Nashik has erred in confirming the same.**
- 5. Additions made without any evidence should be deleted.**
- 6. The assessment order under section 143(3) dated 26/12/2016 passed by the Assessing Officer is bad in law and the Commissioner of Income Tax(Appeals)-2, Nashik has erred in confirming the same.**
- 7. The assessee appeals to grant any relief that may be due to the Assessee under the Income Tax Act, 1961.”**
- 8. The appellant craves leave to add, amend or alter any of the grounds of appeal.”**

7. The grounds raised by the respective assessee/s in balance three appeals are identical except varying sums. For the purpose of succinctness the individual

details of return of income filed, income assessed and additions made are tabulated as under;

Sr	Name of Assessee	Date of Return	Return of Income (Rs.)	Assessed Income (Rs.)	Addition made by Assessing Officer (Rs.) u/s.10(38)	Addition made towards commission paid
2	Bhavik Jayesh Thakkar	14/03/2015	2,47,860	1,69,80,257	1,57,85,280	9,47,117 @ 5%
3	Smt/ Jayshree Jayesh Thakkar	14/03/2015	2,40,080	1,54,74,880	1,43,72,457	8,62,437 @ 6%
4	Ku/ Anisha Jayesh Thakkar	14/03/2015	2,30,580	1,77,11,687	1,64,91,611	9,89,496 @ 6%

8. During the course of hearing, the Ld. DR vehemently argued that the lower tax authorities have dealt the issue flawlessly after considering the facts and circumstance and *modus-operandi* adopted in creating fictitious capital gain, hence the action leaves no room for interference. The Ld. DR further submitted that the order of both the tax authorities are in accordance with law and in consonance with as settled legal propositions as discussed and relied on by them in their respective orders, hence prayed for confirming the order of the Ld. CIT(A).

9. We have heard the submissions of the Ld. DR and carefully perused the case record. We find that, in the instant appeal the assessee has raised two issues i.e.,



addition of ₹3,41,28,933/- made on account of denial of exemption u/s 10(38) of the Act and further addition on account of commission paid in relation thereto for sum of ₹17,06,447/-.

10. At the very outset, we observed that the grounds raised by the assessee in the instant appeal are neither technical nor legal but sheer factual. This is for the precise reason that the assessee applied for purchase 15000 shares @10/- each for total sum of ₹1,50,000/- on 01/03/2012 of Rutron International Limited, which were split in the ratio of 1:10 and then ultimately sold generating surplus of ₹3,41,28,933/- i.e., at price 227 times higher than its purchase price in a gap period of 2 years(approx.). The assessee however not at all been able to adduce any cogent evidences to support the economic or financial justification for the sale price of these shares at this higher rate when the company not even had any reportable financial transaction. The so called purchaser of these shares has not been identified despite efforts of the Ld. AO, hence the fantastic

realisation of sale price is not at all humanly probably, as there is no economic or financial activities cum basis, that a share of little known company would jump 227 times. Therefore, the authorities below made the impugned addition dislodging the claim of 10(38) exemption as bogus or fictitious. With respect to second & consequential addition of ₹17,06,447/- towards commission payment, it is an admitted fact that the assessee had received a total sum of ₹3,41,28,933/- and there is no iota of doubt that such operators/arrangers of such fictitious or fraudulent capital gains must have been remunerated, therefore, addition of ₹17,06,447/- towards commission found added to the income assessed.

11. We also noted that the Ld. CIT(A) confirmed the impugned additions by examining the matter in issue from the perspective of *'Test of human Probability'* in the cases of *'bogus long term capital gain'* from 'penny stocks' placing heavy reliance on decisions of Hon'ble Apex Court in the cases of 'CIT Vs Durga Prasad More' 82 ITR 540 and 'Sumati Dayal Vs CIT' 214 ITR 801.



12. In view of the undisputed facts and discussion paraphrased herein above and concurring with the findings of both the lower tax authorities as well in the absence of any deprecative cogent supporting documents by the assessee to substantiate his claim that he has earned or derived the genuine capital gain on sale of shares which qualifies the exemption u/s 10(38) of the Act beyond any iota-of-doubt and to maintain the judicial consistency, we countenance the action of lower tax authorities in the light of decision of Jurisdictional Hon'ble Bombay High Court in '*Sanjay Bimalchand Jain L/H S. B. Jain Vs PCIT*' (18/2017).

**13. To sum-up, all these appeals of the assessee are DISMISSED.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Monday 10th day of April, 2023.

-S/d -

**S. S. GODARA**  
**JUDICIAL MEMBER**

पुणे / PUNE ; दिनांक / Dated : 01st day of May , 2023.

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

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent

3. The Pr/ CIT -1 (MH-India)

4. The CIT(A)-NFAC, Delhi (India)

5. DR, ITAT, Bench 'B', Pune

6. गार्डफ़ाइल / Guard File

Ashwini

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr/ Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.