

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2228/Mum/2023
(Assessment Year :2012-13)**

Shri Pannalal Hastimal Gulecha 97/101, Manmandir Jewellers, Sheikh Memon Street, Mumbadevi Chamber 3 rd Floor, Shop No.51, Mumbai-400 002	Vs.	The ITO, Ward-23(2)(7), Mumbai Room No.306, 3 rd Floor Earnest House Nariman Point Mumbai – 400 021
PAN/GIR No.AACPG4621P		
(Appellant)	..	(Respondent)

**ITA No.2844/Mum/2023
(Assessment Year :2010-11)**

Smt. Pawanben Pannalal Gulecha Shop No.52, Mumbadevi Chambers, Zaveri Bazar Mumbai – 400 002	Vs.	The ITO, Ward-18(2)(5), Mumbai Room No.306, 3 rd Floor Earnest House Nariman Point Mumbai – 400 021
PAN/GIR No.AEKPG5311G		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajiv Khandelwal
Revenue by	Shri H.M. Bhatt
Date of Hearing	08/02/2024
Date of Pronouncement	19/04/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the assessee against separate impugned orders dated 09/06/2023 in the case of in the case of Shri Pannalal Hastimal Gulecha passed by NFAC, New Delhi for the quantum of assessment passed u/s.143(3) r.w.s.147 for the A.Y.2012-13; and order dated 14/07/2023 in the case of Smt.Pawanben Pannalal Gulecha passed by NFAC, New Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 147 for the A.Y.2010-11.

2. In the case of Shri Pannalal Hastimal Gulecha, the assessee has challenged the addition of Rs.9,47,73,726/- made u/s. 68 of the Act by treating the sale consideration on sale of shares of M/s. Ganesh Spinners Ltd., now known as Yantra Natural Resources Ltd. by treating the claim of long term capital gains being exempt u/s.10(38) to be non-genuine. Similarly, in the case of Pawanben Pannalal Gulecha, assessee has challenged the addition of Rs.1,66,27,310/- on account of treating the long term capital gain on sale of shares of Prraneta Industries Ltd., after rejecting the claim of exemption of long term capital gain u/s.10(38).

3. We will first take up the appeal in the case of Shri Pannalal Hastimal Gulecha.

4. The assessee is an individual engaged in trading of gold ornaments, standard gold, silver and platinum jewellery in the name of M/s. Manmandir Jewellers, as proprietor. The return of income was filed on 20/09/2012 declaring income of Rs.16,67,580/-. The said return was selected for scrutiny and assessment was completed u/s. 143(3) at an income of Rs.36,38,830/- by making addition of estimated gross profit on turnover. The assessee had declared long term capital gain of Rs.8,58,32,977/- on sale of shares of Shri Ganesh Spinners Ltd. which was claimed to be exempt u/s.10(38). Later on information was received from DGIT(Investigation) Ahmadabad that a search and seizure action was conducted in the case of Shri Shirish Chandrakant Shah, wherein it was found that Shri Shirish Chandrakant Shah used to control and operate 212 companies including 16 listed companies who synchronized trades in shares of listed companies to provide long term capital gains entries against receipt of cash from clients. During the investigation, it was found that numbers of beneficiaries have taken bogus entries in LTCG and assessee was has also dealt in one of the scripts. Based on this information, assessment of the assessee was reopened u/s.147 and notice u/s.148 was issued on 25/03/2019. In the re-assessment order, ld. AO has made addition of Rs.9,47,73,726/- by taking the whole sale proceeds of sale of shares as unexplained cash credit by treating the transaction to be bogus.

5. The assessee had purchased 25,00,000 shares of Shri Ganesh Spinners Ltd. on 22/01/2010 at the purchase value of Rs.57,55,000/-. Later on, the face value of Rs.10/- of the share has been split into Rs.1/- and accordingly, assessee had total shares of 2,50,00,000. The said shares entered into Demat account and were held for more than 12 months.

6. In support of the purchase transaction, assessee had filed copy of contract notes from the recognized stock broker, copy of bank statement, copy of Demat account and the copy of balance sheet for the earlier assessment year showing the investment in the said shares. These shares were later on sold between 01/06/2011 to 27/07/2011 at Rs.9,46,32,977/- declaring long term capital gain of Rs.8,58,82,977/-. The said shares were sold online through Bombay Stock Exchange. In support of the transaction of both purchase and sale of shares, assessee had submitted following documents:-

- a. Complete details of bank accounts held by the Appellant.
- b. Details of Long term capital gains on sale of shares.
- c. Copy of allotment of shares.
- d. Demat account.
- e. Copy of contract notes for sale of shares.
- f. Copy of ledger account of the Brokers.
- g. Copy of bank pass book highlighting payment for purchase and sale of shares through banking channel.

7. The ld. AO analysed the financials and listing of price in stock exchange for the few years of Shri Ganesh Spinners, which

has changed its name to M/s. Yantra Natural Resources Ltd, having its registered office at Hyderabad. From the analysis of financials, he observed that there is not much substantial worth to justify increase in share price. The share price of the said company was Rs. 6.61 as on 18/08/2010 and rose to Rs.45.85 on 08/07/2011 and then, thereafter, there was a shortfall from June, 2012. He has also given price chart from 01/04/2011 to 30/03/2023 showing the rise and fall of the shares. From this, he has deduced that it was a penny stock. Thereafter, he has discussed general modus operandi adopted by the entry operators for giving bogus long term entries in such kind of shares.

7.1 One fact which he has mentioned in the assessment order that this scrip has been proved to be penny stock by the SEBI, which has done substantial effort to investigate the persons and found about the manipulation of the price done in this scrip. However, this fact has been found to be incorrect at the time of hearing before us after we have enquired from both the parties, as SEBI has never found such manipulation of price or found to involve providing entries through exit providers. Accordingly, AO has concluded that assessee has made share transaction of Rs.9,47,33,726/- as unexplained money and treated as unexplained investment and taxed the whole proceeds of sale of shares as unexplained investment u/s.68.

8. Ld. CIT (A) has confirmed the addition on same reasoning.

9 Before us, ld. Counsel submitted that the findings and report of the Investigation wing and observation of the ld. AO are general observations without any specific reference to the transaction of the assessee or anything directly adverse against the assessee. These findings are pure hypothesis and have no connection or relation with the assessee or any direct evidence against assessee. Nowhere the Assessing Officer has referred to any information or material or alleged statement recorded by Shri Shirish Chandrakant Shah and has merely quoted the share price for the A.Y. 2011-12 and came to the conclusion that it was a penny stock. Nowhere, ld. AO has brought on record the name of the persons, who are entry operators assessee has dealt with and no evidence has been brought on record against the assessee. The assessee on the contrary has given all the evidences and details of purchase and sale of the transactions and it is a matter of fact that if the shares which have been invested in the earlier year, routed through Demat account and sold online on the bolt of Bombay Stock Exchange, the transaction cannot be said to be bogus. Unless there is direct evidence against the assessee that assessee was part of any beneficiary of accommodation entry. He has also relied upon various judgments of the Tribunal.

10. Ld. DR was directed to produce any investigation carried out on this scrip or order passed by SEBI as mentioned by the ld. AO and whether the SEBI has carried out any investigation or

enquiry and found about any manipulation of digging of the price in stock exchange and whether trading of the scrip was granted by the SEBI at any point of time.

10.1 In response, Ld. DR has filed the papers from the website of the SEBI and informed that shares of Yantra Natural Resources Ltd., (erstwhile Shri Ganesh Spinners Ltd) was last traded at Rs.0.31 and since it has not been paid annual listing fees in violation of SEBI its listing was closed much subsequently. However, he fairly submitted that the report of SEBI was in the case of M/s. Gavit Industries Ltd. wherein name of Shri Ganesh Spinners Ltd., and Shri Shirish Chandrakant Shah has been referred for some loan transaction. Ld. DR then referred to the various observations of the ld. AO and submitted that the price movement of the shares of the company was bell shaped curve which shows that it is a typical penny stock company, only used for providing accommodation entries.

11. However, from the perusal of the report and order of the SEBI in the matter of Gavit Industries Ltd., we find that there is no reference of price rigging or any adverse inference or ban on the trading of the scrip of Ganesh Spinners Ltd. and only certain consequential actions were taken against M/s. Gavit Industries.

12. We have heard the rival submissions and perused the relevant finding given in the impugned order as well as material referred to before us. First of all, it is seen that assessee has been making regular investments in shares which is evident from

the details of investments in shares, which is part of the balance sheet of the assessee placed at page 240. Assessee has dealt in many shares and has been regular investor in many shares and this is not one off dealing in shares. In support of purchase and sale transaction of the shares of Ganesh Spinners Ltd, assessee has filed all the documentary evidences to corroborate the purchase and sale of the shares and that it was also reflected as investment in the year of purchase and sale of shares were made online in Bombay Stock Exchange, through registered stock broker. Both purchase and sales were done through banking channels. The case of the AO is mainly that, since there was abnormal increase in price of shares from Rs. 6.62 to Rs. 45 in a year without much financial backup which leads to suspicion of the bonafide of the transaction and is nothing but a penny stock used for providing accommodation entry.

13. Though the case of the assessee has been reopened based on information received from Investigation wing that a search and seizure action was conducted in the case of Shri Shirish Chandrakant Shah on 09/04/2013 wherein it was found that he was controlling various companies to provide long term capital gain entries. However, nowhere it has been brought on record, whether Shri Shirish Chandrakant Shah was one of the promoter and director of M/s. Ganesh Spinners Ltd and what was the outcome of such investigation or is there any statement or any other material or information which can lead to an inference that all the persons who have dealt in the shares of M/s. Ganesh

Spinners Ltd. were some kind of beneficiaries of accommodation entry of bogus long term capital gain. At least ld. AO should have brought something on record like details of exit providers and whether something has been found that the price was rigged in the stock exchange for providing accommodation entry or there is any reference of the assessee in such investigation. Once assessee has filed the documents for purchase and sale of shares which has already been accepted during the course of original assessment proceedings u/s.143(3), then to dislodge such evidences and the claim having been accepted in scrutiny assessment earlier, then something should be brought on record to corroborate the finding or report of the investigation or some kind of information; like information about exit providers who have specifically confirmed the purchase of shares from stock exchange to facilitate the accommodation entry; or SEBI has found some discrepancy in manipulation of the price in stock exchange; or found some kind of irregularity leading to inference that this scrip was used only for converting unaccounted money to claim long term capital gain; or to facilitate parties in buying and selling of the shares for bogus claim; or there was any ban on the trading of the scrip. There is nothing on record that this company was investigated and found to be indulged in such activities. No direct evidence or material has been brought on record before us to substantiate the allegation made by the AO; or any kind of adverse information has been received from any external sources regarding the clandestine trading of the scrip or

any direct evidence against assessee by the Investigation Wing. If that is not so, then based on documents submitted by the assessee presumption goes in favour of the assessee.

14. Exactly on similar kind of facts, the Hon'ble Bombay High Court in the case of **Indravadan Jain HUF reported in (2023) 156 taxmann.com 605** order dated 12/07/2023, wherein the Hon'ble Court held that where shares were transferred through Demat account and through banking channels, contract notes were issued by the broker and the shares were sold on the stock exchange, there is no reason to treat capital gains as unexplained cash credits. Similarly, Hon'ble Delhi High Court in the case of **Pr. CIT v. Karuna Garg [2023] 457 ITR 591 (Delhi) [ITA no. 477/2022 judgment dated 23-11-2022]** held that mere astronomical increase in the share prices of a company which was not commensurate with the financial parameter of the said company is not a good ground for any kind of adverse inference. Further, Hon'ble Punjab and Haryana High Court in the case of in the case of **Pr. CIT v. Prem Lal Gandhi [2018] 94 taxmann.com 156/401 ITR 253 (Punj. &Har.)**, wherein the Hon'ble Punjab and Haryana High Court held that despite purchases made in cash, the gains arising on sale of shares cannot be treated as sham having regard to the facts and the circumstances of that case. Thus, mere rise of share price cannot be the sole ground for treating the transaction of sale of shares as bogus. There has to be some other material or any other factors brought on record before us to dislodge the claim of the

assessee when the existence of purchase and sale of shares is through stock exchange online. As noted earlier, in this case there is no investigation or enquiry by the SEBI or SEBI has found any discrepancy in the manipulation of the prices. Accordingly, we do not find any sufficient material or information on record to treat the transaction of purchase and sale of shares of assessee as bogus so as to disallow the claim of long term capital gain and examine u/s. 10(38). Accordingly, addition made by the ld. AO is deleted.

15. In the case of **Smt. Pawanben Pannalal Gulecha**, the assessee is an individual deriving income under the heads 'income from house property', 'income from other sources' and 'capital gains', had filed return of income on 16/07/2010 declaring income of Rs.4,34,650/-. The assessee had shown long term capital gain of Rs.1,66,27,310/- on sale of 7,00,000 shares of Prraneta Industries. Besides this, assessee had also shown some long term capital gain in other scrips also which is not in dispute. The ld. AO based on information received from DGIT-Investigation, Mumbai regarding beneficiaries of accommodation entries, on the basis of search conducted by Investigation Wing in the case of Shri Shirish Chandrakant Shah and that assessee was also part of belt in the scrip of Prraneta Industries Ltd. which was treated to be bogus, the case of the assessee was reopened u/s.147 by notice dated 31/03/2016. The ld. AO observed that in the list of companies managed and controlled by

Shri Shirish Chandrakant Shah, it was seen that Prraneta Industries Ltd. on 18/11/2008 and 20/11/2008 on the bolt of BSE through its broker Network Stock Broking Ltd. The payments for purchase of shares were made by account payee cheque in the month of November 2008 drawn on Bank of India. These shares were credited to Demat account on 21/01/2009; and were duly reflected in the balance sheet of the assessee. In support of the purchase of shares, assessee had filed copy of contract note evidencing the purchase from Network Stock Broking Ltd, copy of bank statements of Bank of India, copy of Demat account and copy of balance sheet. Thereafter, assessee sold these 7,00,000 shares in the months between December 2009 to February 2010 through Network Stock Broking Ltd on Bolt of BSE and the sale proceeds for the shares were received through banking channels. In support, assessee filed copy of contract note, bank statement, etc.

16. However, the ld. AO discarded all the documents and held that the price movement of these scrips shows that assessee had paid only Rs.13,31,486/- and within the span of 13-15 months assessee received consideration of Rs.1,86,20,779/- which is almost 13.98 times and against any human probability. After analyzing balance sheet of Prraneta Industries Ltd, he observed that its revenue from operation which was Rs.4.16 Crores as on 31/03/2010 had reached to Rs.264.54 Crores as on 31/03/2011. Despite such huge revenue from operations the profits were not commensurate with such phenomenal rise in the

turnover. Further, this company did not have sufficient fixed assets and expenses of all employees are also very low. From this, he deduced that there is no reason for a prudent person to buy the shares of Prraneta Industries Ltd as long term investment in the year 2008. Base on this perception, he has held that shares were penny stocks which were manipulated by some operators to provide accommodation entry. Thereafter, he has quoted some general modus operandi and was relied upon certain decisions, accordingly, he has traded the entire addition amounting to Rs.1,66,27,310/- which has been added. The Id. CIT(A) too has confirmed the addition after quoting the entire assessment order holding that there is no reason to interfere in the order of the Id. AO.

17. After hearing both the parties and on perusal of the material referred to before us, we find that, here in this case also there is no material or information that SEBI has found any manipulation for rigging of prices in the shares of Prraneta Industries Ltd or has ever banned the trading. Apart from that, even the Investigation report and information which has been referred by the Id. AO in his order, there is nothing concrete which has been mentioned except for stating that Investigation report points out that the companies which were controlled by Shri Shirish Chandrakant Shah were only for providing accommodation entries. However, nowhere it has been brought on record that Shri Shirish Chandrakant Shah was promoter and director of this company and the company was only for

providing accommodation entry or was part of any rigging or manipulation of prices or there is any information regarding exchange providers who had assisted the sellers like purchasing scrips. Our finding given in the aforesaid appeal as above and the reasons given to delete the addition in case of assessee's family will apply *mutatis mutandis* for this appeal also. Accordingly, the addition made by the ld. AO is on similar grounds is directed to be deleted.

18. In the result, both the appeals of the assessee are allowed on merits.

Order pronounced on 19th April, 2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 19/04/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai