

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"D" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**Ms. MADHUMITA ROY, JUDICIAL MEMBER**

<b>Sr. No.</b>	<b>ITA No.</b>	<b>Assessment Year</b>	<b>Name of Appellant</b>	<b>Name of Respondent</b>
1-3.	Nos.426 to 428/Ahd/2023	2010-11 to 2012-13	Vicky Rajesh Jhaveri, 21, Tapovan Society, Nehrunagar, Ambawadi Ahmedabad-380015.  <b>PAN: ADVPJ4127F</b>	The Deputy Commissioner of Income Tax, Central Circle-1(1), Ahmedabad
4-6.	Nos.423 to 425/Ahd/2023	2010-11 to 2012-13	Sagar Rajesh Jhaveri, 21, Tapovan Society, Nehrunagar, Ambawadi Ahmedabad-380015.  <b>PAN: AEYPJ322M</b>	The Deputy Commissioner of Income Tax, Central Circle-1(1), Ahmedabad

Assessee by	:	Shri Deepak R Shah, A.R
Revenue by	:	Shri Atul Pandey, C.I.T DR

सुनवाई की तारीख/**Date of Hearing** : **19/03/2024**  
घोषणा की तारीख /**Date of Pronouncement**: **10/06/2024**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeals have been filed at the instance of the different Assessee against the separate orders of the Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad, arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2010-11 to 2012-13.

2. The only issue raised by the assessee is that ld. CIT-A erred in confirming the order of the AO by sustaining the disallowance of trading loss of Rs. 42,14,344.00 treating the same as bogus loss.

3. The assessee in the present case is an individual and engaged in the business of shares dealing. The brief history of the case is like this that there was a search and seizure operation along with survey operation at the premises of Shri Chandrakant Shah (for short SCS) and his employees and the associates of SCS dated 9<sup>th</sup> April 2013. There were found various documents of incriminating nature marked as "**cash sheet and cheque sheet**" containing the information about the accommodation entries provided by SCS to various parties. SCS used to provide accommodation entries through various intermediaries. He was maintaining 212 companies which were utilised for layering the funds, generating bogus share application money, unsecured loan, long-term capital gain, short term capital gain. The cash and cheque sheets were containing the information of the intermediaries who were engaged in introducing the clients to SCS for providing the accommodation entries to the parties.

3.1 The statements under section 132(4) /133A of the Act of SCS and his employees were recorded wherein they admitted having been engaged in providing accommodation entries to the parties as discussed above.

3.4 The name of the assessee was appearing in the "**cash and cheque sheet**" under various nomenclature which evidences that the assessee was acting as one of the intermediaries in introducing the clients to SCS. Besides the above, a detailed "**accounting sheet**" was also recovered from the premises of SCS containing the name of the assessee with respect to the accommodation entries provided to the client's which evidence that the clients appearing in such sheet was referred by the assessee.

3.5 A simultaneous search was also conducted at the premises of a company namely M/s Prraneta Industries including its director namely Shri Om Prakash Anadilal, the managing director of the company dated 9<sup>th</sup> April 2013. In the statement furnished under section 132(4) of the Act dated 30 May 2013 and 31

3

May 2013, the director Shri Omprakash of M/s Prraneta Industries also admitted having been engaged in providing accommodation entries in the form of share capital and unsecured loan since 1996. As per him, the entire affairs of the company were arranged and managed by Shri Chandrakant Shah.

3.6 It was also found that SCS was also providing the accommodation entries in the script of M/s Prraneta Industries Ltd., M/s Shri Ganesh spinners Ltd and M/s Chandni Textile Engineering Industries Ltd.

3.7 The AO in view of the above opined that the assessee has claimed the trading loss in the script of M/s Prraneta Industries Ltd amounting to Rs. 42,14,344.00 which the AO proposed to be bogus and accordingly sought an explanation from the assessee.

3.8 The assessee in response to such notice made detailed replies which is narrated below:

- i. The list of the counterparties involved in the script of the company M/s Prraneta Industries Ltd, while carrying out the purchase and sale transactions, should have been provided so as to carry out the necessary verification.
- ii. There was no evidence brought on record by the AO alleging that the price and the value of the shares of M/s Prraneat Industries Ltd were managed and controlled by SCS.
- iii. The opportunity of cross-examination of the parties alleged to be engaged in providing accommodation entries to the assessee was not provided.
- iv. The seized materials containing the information that the assessee was acting as intermediary on behalf of SCS for providing bogus entries to the interested the parties were not furnished.

- v. There was no report supplied by the AO either from the BSE or NSE in support of the allegation that M/s Prraneat Industries Ltd were managed and controlled by SCS to generate accommodation entries.
- vi. There has not been brought anything on record whether the AO has conducted any enquiry from the counterparties so as to establish that such company was engaged in providing the accommodation entries and the assessee has booked bogus loss after having collusion with such parties.

3.9 Besides the above the assessee further submitted that all the transactions carried out by him in the script of M/s Prraneta Industries were duly recorded in the books of accounts which evidence that the assessee has incurred trading loss of Rs. 42,14,344.00. All the purchases and sales of the shares were carried out through the banking channel, DMAT A/c, supported by valid contract notes. It was also submitted that the assessee is not aware of the counterparties, which is also not possible to know if such transactions are carried out at the stock exchange platform where the buyers and the sellers do not know each other.

3.10 Likewise, it was also submitted that there was survey operation at the premise of the assessee dated 30-01-2013 but no information of incriminating nature about the bogus loss claimed by the assessee/ exchange of cash between the assessee and the entry provider was found. Thus, it was submitted by the assessee that such loss cannot be treated as bogus as alleged by the AO.

3.11 However, the AO was not satisfied with the contention of the assessee by observing that the seized documents recovered from the premises of SCS, statement of various persons including SCH and his employees, and the director M/s Prraneta Industries establish that M/s Prraneta Industries is controlled and managed by SCS and engaged in providing accommodation entries.

3.12 As per the AO, the trade data of the scripts clearly reflects that the counterparties involved in the purchase and sale of the shares of M/s Prraneta Industries were part of the group of SCS and the assessee.

3.13 The AO also found that there is no need to provide the support and a of cross-examination of the other parties to the assessee as the disallowance of the loss is not based merely on the statements but there are other documents seized during the search and survey operation which have been used against the assessee. As such the excel sheets were recovered containing the information about the transaction of cash payment and receipt of cheques between SCS and the assessee. According to the AO, no prudent businessman will deal in the shares of a company which is based on papers only. Thus, the entire loss claimed by the assessee was manipulated/ bogus and accordingly, the same was disallowed by the AO by adding to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the Ld. CIT-A and besides reiterating the contentions made during the assessment proceedings further submitted that SCS in his statement has not admitted that the transaction carried out in the script of M/s Prraneta Industries by the assessee is bogus. Likewise, there is also no allegation in the statement of SCS which is detrimental to the assessee. Similarly, there is no whisper from the seized documents suggesting that the assessee has acquired/incurred the loss in dispute in connivance/ arrangement with SCS. As per the assessee, SCS has neither any connection nor known to him. The AO has also not brought anything on record establishing any link between the assessee and SCS.

4.1 As per the assessee, whatever transactions of purchases and sales were carried out by him in the script of M/s Prraneta Industries were duly recorded in the books of accounts and matched with the date of the stock exchange. All the

transactions were carried out through the registered stockbrokers which were not connected with SCS.

4.2 The trading in the script of M/s Prraneta Industries at the stock exchange was active till financial year 2018-19 whereas the assessee has entered into the transactions in the financial year 2009-10. Admittedly, the trading in the script of the impugned company at the stock exchange was restricted from 4<sup>th</sup> of January 2019 but on the ground of non-payment of listing fees.

4.3 The assessee has also filed the details of the turnover of the company namely M/s Prraneta Industries for the financial years 2009-10, 2010-11 and 2011-12 to establish that the company is having huge gross receipt and making the payment of the income tax and therefore the same cannot be regarded as a paper company.

5. However, the Ld. CIT-A rejected the contention of the assessee by observing as under:

*It is observed that AO has made addition under Section 68 of the Act for loan taken from various companies which were managed by Mr. Shirish Shah and his group to provide accommodative entries. The above referred addition made by AO is as per provisions of the Act, as discussed herein above, and for the sake of comprehensiveness, nmajor arguments considered while adjudicating the appeal is summarized as under:*

*(i) Mr. Shirish Shah managed and controlled 212 companies which have no real business. Loan taken by Assessee Company was from above referred companies managed by him*

*(ii) During the course of search/survey carried out at the various premises of Mr. Shirish Shah and his companies and various statements recorded during the course of search including statement of Mr. Shirish Shah and various other key persons, as discussed in preceding paras, clearly prove entire modus operandi of providing accommodative entries to various recipients including the appellant. The records of providing accommodation entries were maintained by Shri Shirish Chandrakant Shah in 'Cash Sheet' as well as in various account maintained in the name of intermediaries who had introduced clients to Shri Shirish Chandrakant Shah. On perusal of these sheets and the statement of Shri Shirish Chandrakant Shah and his employees established that the main intermediary through whom clients of Ahmedabad availed accommodation entries from Shri Shirish Chandrakant Shah was Shri Rajesh N. Jhaveri (key person of Rajesh Jhaveri Group). It was also established that in the cash sheets seized from Shri Shirish Chandrakant Shah, entries against the name "rajesh Jhaveri", "n navkar", "R JHAVERI", "RAJESH JHAVERI" and "N NAVKAR (sawaca)" related to Shri Rajesh Jhaveri.*

*(iii) The directors of various companies managed by Mr. Shirish Shah were dummy directors which are accepted to be true by such directors in affidavits filed at various stages including before Investigation Department.*

*(iv) During the course of search at the premises of Mr. Shirish Shah, various incriminating material including cash sheets were found which prove that they have provided various types of accommodative entries against cheques and vice versa. The sample copies of such loose papers are reproduced in preceding para which support the view that Appellant has taken bogus loans from above referred parties. The copies of relevant statements are also reproduced in preceding para which support the contention of AO that the appellant has taken accommodative entries.*

*(v) The entire modus operandi of cash receipt against accommodative entries were explained by Mr. Shirish Shah and Mr. Praveen Jain and such facts are elaborately discussed herein above. It is observed that addition under Section 68 of the Act made in the hands of Mr. Pavan Sanghvi was also confirmed by Hon'ble Ahmedabad ITAT, as discussed herein above. The above referred decision was also upheld by Hon'ble High Court and SLP of Department was dismissed by Hon'ble Supreme Court.*

*(vi) In preceding paras, circumstantial evidences being investigation carried out by SEBI, DGCI, Crime Investigation Department, GST Intel Unit are brought on record which also prove beyond doubt that Mr. Shirish Shah was entry provider and loan received by Appellant from companies managed by him is not genuine.*

*(vii) The appellant has relied upon the confirmation, bank statement, return of income of depositors to substantiate its argument that loan taken by it was genuine. However, this contention of Appellant cannot be accepted for the reason that financial statements of depositors, as discussed herein above clearly prove that such companies have not earned significant income in relevant Assessment Years and which prove beyond doubt that creditworthiness of depositors is in doubt.*

*(viii) Mere transaction made through account payee cheque by the assessee does not make the transaction genuine, as various incriminating materials found during the course of search at the premises of Mr. Shirish Shah prove that such transactions are not genuine, cash was transferred or received against cheque amount and RTGS received in bank account of various companies is layered within his infrastructure and finally paid in the form of one-time or long term/short term capital gains in accommodation entries.*

*(ix) The decision of Hon'ble Madhya Pradesh High Court in the case of Chain House International Pvt. Limited, ratio of such decision cannot be made applicable to present, as in the appellant's case no affidavits or confirmation of Mr. Shirish Shah was filed which proved that transaction related to shares/loan/ICD taken by the appellant is genuine, whereas in case before Hon'ble Madhya Pradesh High Court, all the investor companies and directors have confirmed their transactions against notices us 133(6) of the Act. In the present case during the course of assessment proceedings, the*

*AO had asked to the appellant to produce the directors of the companies from whom transaction related to shares/loan/ICD were made/taken but of directors remained present it is observed that Jurisdictional High Court in the case of Amrapali Fincap Limited (supra) has upheld the Order of Hon'ble Settlement Commission in connection with entries taken from Mr. Shirish Shah and Group*

*(x) A holistic approach is required to be made, test of preponderance of probability has to be applied and while deciding these facts, the evidences discussed herein above against Mr. Shirish Shah cannot be ignored.*

*(xi) Various judicial pronouncements discussed in preceding paras clearly prove that loan/ICD taken by Appellant is non-genuine. The decision referred herein above includes the decision of Jurisdictional High Court in the case of Mr. Pavan Sanghvi, one of the main persons of Mr. Shirish Shah Group, decision of Hon'ble Mumbai ITAT in the case Zodiac Developers wherein loan was taken from Shirish Shah Group*

*(xii) Considering the peculiar facts of the case and direct decision Hon'ble Gujarat High Court in the case of Amrapali Fincap Limited (supra) upholding the Order of Hon'ble Settlement Commission of denying cross examination of Mr. Shirish Shah, mere fact that cross examination was not provided to Assessee would not render the Assessment Order as infructuous order. On the contrary AO has asked to produce the relevant directors of the depositors for verification in assessment Proceedings but none of the directors have remained present. Even Mr. Shirish Shah was not produced before the Assessing Officer to prove that statement given by him during the course or search and admitting that various companies managed by him were bogus is incorrect.*

*24. In view of holistic consideration of all the facts, as discussed herein above, the arguments taken by the appellant are rejected.*

*25. Further, in this regard, it is stated that keeping in view of the detailed findings given in assessment order and para 6 to 24 of this order, it is observed that the evidence found during the search clearly established that Shri Shirish C. Shah had used the platform of BOLT to jack up the price of shares by resorting to synchronized trading to provide accommodation entry of LTCG to his clients against receipt of cash. It is pertinent to mention here that the members of Amrapali Group and others were provided accommodation entries on the share of M/s. Praneta Industries Ltd. These accommodation entries were provided by Shri Shirish C. Shah through Rajesh Jhaveri as and his intermediaries. It was also seen from the trade data of scrips that the name of the appellant appears as counterparty to the trades carried out by members of these group. While providing such accommodation entries, the company controlled by Shri Shirish C. Shah /intermediaries like Rajesh Jhaveri & his group concerns purchase/sell shares of these scrips as part of synchronized trading and incurred share trading loss/share trading profit, in such process. The main person of the group Shri Rajesh N. Jhaveri and other entities/family members were mainly engaged in the business of trading share, securities, derivatives etc. over a period of time and were well experienced in the field Therefore, it is not expected from such a prudent investor/traders like appellant group to purchase the shares of these paper companies in huge quantity and incur loss. Thus, it can be concluded that the purchase and sale of shares of above scrip namely M/s Praneta Industries Ltd. was clearly made as a part of accommodation entry business of Shri Shirish C. Shah*

*25.1 It is further observed from the assessment order that the findings of the search on Shri Shirish C. Shah clearly established that Shri Rajesh N. Jhaveri was one of the key associates of Shri Shirish C. Shah and he had introduced various clients of accommodation entries to Shri Shirish C. Shah. Shri Rajesh N. Jhaveri along with his associates (including appellant) has also helped Shri Shirish C. Shah in keeping the scrip active on the bourses and in synchronized trading, by trading on the script. This facts got strengthened from the fact that the counterparties to the trades of the appellant in the scrip of M/s. Praneta Industries Ltd. were mainly the entities controlled and managed by Shri Shirish C. Shah*

*Since, the Scrip M/s. Prraneta Industries Ltd. was managed and controlled by Shri Shirish Shah and also in view of detailed discussion made in para 6 to 24 of this order, the action of the AO in making disallowance of loss is upheld and hence confirmed. Thus, the ground of appeal no. 1 is dismissed.*

6. Being aggrieved by the order of the Ld. CIT-A, the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 33 along with the Ledger of the investment in shares made in the company namely M/s Prraneta Industries, containing the information about the sale and purchase of the shares along with the profit and loss of each transaction. The copy of ledger is placed on pages 1 to 2 of the paper book.

7.1 The learned AR also filed the ledger copy of the registered stockbrokers along with the contract notes which are placed on pages 2 to 30 of the paper book. As per the learned AR none of the stockbrokers was connected to SCS so as to provide the bogus trading loss to the assessee.

7.2 The learned AR also submitted that the assessee has been dealing in the scripts of multiple companies and therefore it is inappropriate to say that the assessee has taken some arranged transaction so as to book the bogus loss in the books of accounts. The Id. AR in support of his contention drew our attention on pages 31 to 32 of the paper book containing the details of the scripts in which the assessee has dealt in the year under consideration. As per the details provided by the assessee, the gross turnover of the assessee stands at ₹ 93,19,71,306.00. Thus, as per the Id. AR, considering the profile and the background of the assessee, there is no reason for the assessee to enter any bogus transaction.

8. On the contrary, the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the trading loss claimed by the assessee in the script of M/s Prraneta Industries was treated as bogus and manipulated, leading to the disallowance by the AO. The view of the AO was based on certain factors which have been elaborated in the preceding paragraph. Subsequently, the learned CIT (A) upheld the finding of the AO.

9.1 Indeed, the assessee has carried out various transactions of purchases and sales in the script of M/s Prraneta Industries in the year under consideration. As such there was no opening and closing stock of the script in dispute in the financial year before us. Whatever, the assessee has shown purchases for the script i.e. M/s Prraneta Industries were sold out in the year under consideration. In most of the transaction, there was profit shown by the assessee barring few transactions and that too at the fag end of the assessment, the assessee has incurred losses in the short span of time. In other words, the bottom result of the various transaction carried out by the assessee in the script of M/s Prraneta Industries was loss after adjusting the profit amounting to Rs. 42,14,344.00. There were various reasons pointed out by the Revenue for treating such loss as bogus in nature which have been elaborated in the preceding paragraph.

9.2 It is the admitted position that the core business of the assessee was dealing in shares. The assessee during the year under consideration has shown total purchases of different scripts at a value of Rs. 80,78,04,800.00 against the gross sales of ₹ 93,19,71,306.00. The assessee has also shown the closing inventory at ₹ 5,67,62,457.00. Likewise, the assessee has filed the return of income under section 139(1) of the Act declaring an income of Rs. 8,33,83,875.00 before adjusting the set of the brought forward losses. Even assuming but without admitting, the loss in dispute is bogus in nature, yet there was sufficient brought forward losses capable of absorbing impugned loss without inviting any extra tax burden on the assessee. Had the assessee been involved in manipulating the

prices, then there would not have been declared any profit in the script in the given facts and circumstances. Thus, the conduct of the assessee suggests that he was not involved in manipulating the trading in the script of the company.

9.3 In the light of the above stated discussion, it is difficult to register in mind that a person maintaining such a portfolio shall enter any bogus transactions to bring down the profit so as to avoid the tax liability in a situation where he has sufficient brought forward losses. As such, considering the magnitude of the business of the assessee, the loss in dispute is miniscule and no prudent person will enter into such bogus transactions.

9.4 It was alleged by the revenue that the assessee has carried out the transactions in the script of M/s Prraneta Industries in connivance with SCS. The basis for holding so was that it was discovered during the search proceedings at the premises of SCS and M/s Prraneta Industries that the company namely M/s Prraneta Industries is engaged in providing accommodation entries through the involvement of SCS. However, on the contrary we find that all the transactions were carried out by the assessee at the stock exchange through the involvement of registered/ stockbrokers. But the Revenue has not established any link between SCS/ M/s Prraneta Industries viz a viz the registered stockbrokers which in our considered view was necessary for carrying out manipulation in the script in dispute.

9.5 Likewise, we also note that there was nothing on record suggesting that there was any enquiry conducted either by the SEBI or the stock exchange with respect trading in the script of M/s Prraneta Industries. Similarly, there was no complaint filed by any of the party either to the SEBI or the stock exchange about the assessee or brokers or M/s Prraneta Industries that it was involved in the manipulation of the prices of the shares. Similarly, the AO has not conducted an

enquiry from the SEBI or BSE about the company whether it was engaged in the frivolous activities as alleged.

9.6 We also note that in the investigation carried out by the investigation wing of Kolkata/ Mumbai, it was unearthed that there were numerous companies involved generating bogus long-term capital gain, eligible for exemption under section 10(38) of the Act. However, there was no information available on record whether the name of the company i.e. M/s Prraneta Industries was appearing in the investigation carried out by the investigation wing of Kolkata/ Mumbai or any other investigation carried out by the income tax department.

9.7 An alleged scam might have taken place in the trading of the script M/s Prraneta Industries. But it has to be established in each case, by the party alleging so, that this assessee in question was part of this scam. The chain of events and the live link of the assessee's action giving his/her involvement in the scam should be established. 9.8 The allegation implies that cash was paid by the assessee and in return the assessee received STCL, which was set off against income. This allegation that cash had changed hands, has nowhere been pointed out by the revenue. But no such fact has been brought on record even based on circumstantial evidence. There is no dispute raised by the Revenue with respect to the following facts:

- (i) All the evidence of sale and purchase of shares, including contract note are submitted. No fault with these documents has been found.
- (ii) The payments are received through account payee cheques.
- (iii) Transaction of purchase and sale is done through stock exchange.
- (iv) The inflow of shares is reflected in Demat account. Shares are transferred through Demat account. The assessee does not know the buyer.
- (v) There is no evidence that the assessee has paid cash to purchase trading loss.
- (vi) The assessee has no nexus with the company, its directors, or operators. He is not concerned with the activity of broker and has no control over the same.

- (vii) The purchase and sale of shares have been duly recognized by the concerned company. They are also reflected in the balance sheet of the assessee.
  
- (viii) The Opportunity of cross examination is not given.

9.9 In our view, just the modus operandi, generalisation, preponderance of human probabilities cannot be the only basis for rejecting the claim of the assessee. Unless specific evidence is brought on record to prove that the assessee was involved in the collusion with the entry operator/ stockbrokers for such a scam. In the absence of such finding how is it possible to link their wrong doings with the assessee. Further the case laws relied by the AO are with regard to test of human probabilities which may be of greater impact but the same cannot be used blindly without disposing off the evidence forwarded by the assessee especially without bringing any evidence from independent enquiry corroborating the allegation. In holding so we draw support and guidance from the judgment of Hon'ble Delhi High court in case of Pr. CIT vs. Smt. Krishna Devi reported in 126 taxmann.com 80 where it was held as under:

*11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under section 10(38), in a preplanned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income-tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of*

*Respondent's unaccounted money, but he did not dig deeper. Notices issued under sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.*

*12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent.*

9.10 Respectfully following the judgment of Hon'ble Delhi High Court, we hold that in absence of any finding specifically against the assessee in the investigation wing report, the assessee cannot be held to be guilty or linked to the wrong acts of the persons investigated as far as trading loss claimed by the assessee in the scripts of M/s Prraneta Industries. Hence the ground of appeal of the assessee is hereby allowed.

10. In the result, the appeal of the assessee is allowed.

**Coming to the ITA No. 427/AHD/2023 – Asst. Year 2011-12**

15

11. The only issue raised by the assessee is that Id. CIT-A erred in confirming the order of the AO by sustaining the disallowance of trading loss of Rs. 2,44,62,330.00 treating the same as bogus loss.

12. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2011-12 is identical to the issue raised by the assessee in IT(SS)A No. 426/AHD/2023 for the assessment year 2010-11 except the change of the scripts i.e. Chandni Textile Engineering Industries Limited. Therefore, the findings given in IT(SS)A No. 426/AHD/2023 shall also be applicable for the assessment year 2011-12. The appeal of the assessee for the AY 2010-11 has been decided by us vide paragraph No. 9 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2010-11 shall also be applied for the assessment year 2011-12. Hence, the ground of appeal filed by the assessee is hereby allowed.

13. In the result, the appeal of the assessee is allowed.

**Coming to the ITA No. 428/AHD/2023 – Asst. Year 2012-13**

14. The only issue raised by the assessee is that Id. CIT-A erred in confirming the order of the AO by sustaining the disallowance of trading loss of Rs. 10,14,955.00 treating the same as bogus loss.

15. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2012-13 is identical to the issue raised by the assessee in IT(SS)A No. 426/AHD/2023 for the assessment year 2010-11 except the change of the scripts i.e. Chandni Textile Engineering Industries Limited and Shri Ganesh Spinners Ltd. Therefore, the findings given in IT(SS)A No. 426/AHD/2023 shall also be applicable for the assessment year 2012-13. The appeal of the assessee for the AY 2010-11 has been decided by us vide paragraph No. 9 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2010-11 shall also be applied for the

assessment year 2012-13. Hence, the ground of appeal filed by the assessee is hereby allowed.

16. In the result, the appeal of the assessee is allowed.

**Coming to the ITA Nos. 423-424-425/AHD/2023 – Asst. Year 2010-11, 2011-12 and 2012-13 in the case of Shri Sagar Rajesh Jhaveri.**

17. At the outset, we note that the issues raised by the assessee in its ground of appeal for the captioned three appeals are identical to the issue raised by the assessee in IT(SS)A No. 426/AHD/2023 for the assessment year 2010-11 in the case of Shri Vicky Rajesh Jhaveri except the change of the scripts. Therefore, the findings given in IT(SS)A No. 426/AHD/2023 shall also be applicable in the case of present assessee for the assessment years captioned above. The appeal of the assessee for the AY 2010-11 has been decided by us vide paragraph No. 9 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2010-11 shall also be applied for the assessment years captioned above in the case of Shri Sagar Rajesh Jhaveri. Hence, the grounds of appeals filed by the assessee are hereby allowed.

18. In the result, all the appeals of the assessee are allowed.

**19. In the combined results, all the 6 appeals of the different assessee are hereby allowed.**

**Order pronounced in the Court on 10/06/2024 at Ahmedabad.**

**Sd/-**

**Sd/-**

**(MADHUMITA ROY)  
JUDICIAL MEMBER**

**(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 10/06/2024

*Manish*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण /  
DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

1. Date of dictation : 27/05/2024 (Dictated on dragon software by Hon'ble Member)
2. Date on which the typed draft is placed before the Dictating Member /05/2024
3. Date on which the approved draft comes to the Sr.P.S./P.S. - /05/2024
4. Date on which the fair order is placed before the Dictating Member for  
Pronouncement /05/2024
5. Date on which the file goes to the Bench Clerk .. : /05/2024
6. Date on which the file goes to the Head Clerk.....
7. The date on which the file goes to the Assistant Registrar for signature  
on the order.....  
Date of Despatch of the Order.....