

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos. 401 to 403/AHD/2023  
निर्धारण वर्ष/Asstt. Years: (2012-2013 to 2014-2015)  
&  
आयकर अपील सं./ITA Nos. 399 & 400/AHD/2023  
निर्धारण वर्ष/Asstt. Years: (2010-2011 & 2011-12)

Jhaveri Trading and Investment Private Limited, 21, Tapovan Society, Near Manekbaug Jain Temple, Manekbaug, Ambawadi, Ahmedabad-380015.  <b>PAN: AAACJ9256C</b>	Vs.	D.C.I.T, Central Circle-1(1), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Deepak Shah, AR
Revenue by :	Shri Sudhendu Das, CIT.DR

सुनवाई की तारीख / **Date of Hearing** : **04/04/2024**  
घोषणा की तारीख / **Date of Pronouncement**: **13/06/2024**

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned five appeals have been filed at the instance of the assessee against the separate orders of 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 2010-2011 to 2014-15. First, we take **up ITA No. 401/Ahd/2023**, an appeal by the assessee for **AY 2012-13**.

2. The first issue raised by the assessee is that Id. CIT-A erred in confirming the order of the AO by sustaining the addition on account of onetime accommodation entry of Rs. 12,29,45,000.00 treating the same as unexplained cash credit under section 68 of the Act.

3 The assessee in the present case, a private limited company, is engaged in the business of shares dealing/ trading and investment. 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 utilized for layering the funds, generating bogus share application money, unsecured loans, long-term capital gain, short term capital gain. The "**cash and cheque sheets**" contained 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.

3.2 The name of Shri "rajesh jhaveri" a director of the assessee company 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 Shri "rajesh jhaveri" 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.

3.3 Among the entries provided by SCS to the clients referred by Shri Rajesh Jhaveri, it was also found that SCS through his web of companies has also provided one time entry to the Rajesh Jhaveri Group including the assessee and other persons. As such, the assessee was provided one time entry of Rs. 12,29,45,000.00 in the year under consideration. As per the AO, there were excel sheets found during the search at SCS, containing the details of the cash received against the cheque issued to the assessee by the companies controlled and managed by SCS amounting to ₹ 12,29,45,000.00 in the year consideration.

3.4 The directors of the companies which provided one time entry to the assessee have clearly admitted in the statement furnished under section 132(4) of the Act and by way of notarized declaration that they were dummy directors and name lenders. Thus, in view of the above, the AO proposed to treat the sum of ₹ 12,29,45,000.00 received by the assessee as unexplained cash credit under section 68 of the Act vide letter dated 18<sup>th</sup> of March 2015. The assessee was also directed to produce the directors of the companies from whom it has received one time entry discussed above by 23 March 2015. The assessee was also provided with the relevant statements and the documents which was duly acknowledged by the assessee in its submission dated 26<sup>th</sup> of March 2015.

3.5 The assessee in response to such show caused notice submitted that it has received the sum of ₹ 12,29,45,000 from various companies, the breakup of which stand as under:

- |     |  |               |
|-----|--|---------------|
| i.  | Receipt of the inter corporate deposits from 6 parties | ₹ 7,53,45,000 |
| ii. | Receipt of the sale consideration from 3 parties       | ₹ 4,76,00,000 |

3.6 The assessee in support of intercorporate deposits has filed duly confirmed ledgers of the parties along with their addresses and PAN. According to the assessee, these intercorporate deposits were returned through cheque/RTGS to the parties. This fact was also admitted by SCS in his statement dated 13.1.2014. Furthermore, SCS has nowhere in the statement accepted that there was any exchange of cash against the bank entries taken by the assessee.

3.7 As per the assessee, the amount of ₹ 4,76,00,000 represents the sale proceeds which has been offered to tax in the profit and loss account and therefore the same cannot be added under the provisions of section 68 of the Act which will amount to double addition of the same amount.

3.8 The assessee also requested during the assessment proceedings to provide the opportunity of cross examination of SCS, his employees and the directors of the companies from whom the assessee was alleged to have received sale consideration and intercorporate deposits.

3.9 However, the AO disagreed with the contention of the assessee on the reasoning that all the companies from whom the assessee has received the fund either in the form of intercorporate deposits or as sales consideration are paper companies as evident from the documents found during search as well as the statements recorded of various persons as discussed above and therefore the impugned fund represents bogus in nature.

3.10 According to the AO, the addition was not based merely basing on the statements of the parties discussed above but after considering the materials available on record which have been discussed in the preceding paragraph and therefore it was not necessary for affording the opportunity of cross examination to the assessee. As such, the statement supported/ corroborated the evidence found during the search proceedings.

3.11 There were found various documents containing information about the issuance of cheques against the receipt of cash which evidences one time entry taken by the assessee and all these transactions have not been disowned by the assessee. The AO finally, after referring to the statements of Shri SCS and other documentary evidence, concluded that the assessee has shown one time entry in the books of accounts. Thus, the AO made the addition of the same to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the Ld. CIT-A who confirmed the order of the AO by giving detailed finding with the reasons 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 additions made by AO is as per provisions of the Act, as discussed herein above, and for the sake of comprehensiveness, major 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 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 receipt of loan/ICD through account payee cheque by Assessee does not make loan 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 loan/ICD taken by 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 loans/ICD were 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 various pleas in the ground of appeal taken by the appellant are rejected and the action of the AO in making addition of Rs 12,19,45,000/- under Section 68 of the Act is justified and hence confirmed. Thus, the ground of appeal no. 1 is dismissed.*

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

5.1 The learned AR before us filed a paper book running from pages 1 to 133 and reiterated the contentions as made before the authorities below.

5.2 On the other hand, the learned DR vehemently supported the order of the authorities below.

6. We heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that there are two issues arising for our consideration as detailed below:

- i. Whether the sales consideration shown by the assessee can be subject to the addition under section 68 of the Act in the given facts and circumstances.
- ii. Whether the intercorporate deposits accepted by the assessee which were claimed to have been repaid can be made subject to the addition under section 68 of the Act.

6.1 Regarding the sale consideration of ₹ 4,76,00,000, we note that the transaction of sale is possible when there is a purchase. In other words, the transaction of sale cannot be completed until corresponding purchases are there. However, what we find is this that the revenue has treated the sales as unexplained cash credit without disturbing purchases shown in the profit and loss

account. In simple words, the assessee has already shown sales in the profit and loss account, meaning thereby such sale has been offered to tax. Now, the Revenue without reducing the corresponding sales from the profit and loss account, has treated the sales of ₹ 4,76,00,000 as unexplained cash credit under section 68 of the Act. In our considered view, such an act of the Revenue leads to the double addition of the same receipt shown by the assessee which is not desirable under the provisions of law until and unless the provisions warrant so. Thus, we are of the view that the Revenue has taken contradictory stand while framing the assessment which has been upheld subsequently by the learned CIT-A erroneously. Thus, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him.

6.2 Regarding the balance amount of addition of ₹ ₹ 7,53,45,000 under section 68 of the Act, we note that the Revenue has not challenged the submission of the assessee that such borrowing has been repaid to the companies. In this respect, we find support and guidance from the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Rohini builders reported in 256 ITR 360 wherein it was held as under:

*"The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."*

6.3 The above ratio was further followed by the Hon'ble Gujarat High Court in the case of PCIT vs. Ojas Tarmake (P) Ltd reported in 156 taxmann.com 75. The relevant observation of the Hon'ble Court is extracted as under:

*What is evident is that the Tribunal found on facts that the amount of loan received by the assessee was returned to the loan party during the year itself and all transactions were carried out through banking channel. The Tribunal on the decision of Dy. CIT v. Rohini Builders [2003] 127 Taxman 523/[2002] 256 ITR 360 (Guj.), held in favour of the assessee.*

6.4 In view of the above principle laid down by the Hon'ble Jurisdictional High Court, we hold that the genuineness of the transaction in the present case was

proved by the fact that the loan amount was received through banking channel and repaid during the year through banking channel. In view of the above, and respectfully following the judgement of the Hon'ble Gujarat High Court cited above, we hold that no addition is warranted with respect to the loan under section 68 of the Act once the same has been repaid through the banking channel. Hence, we set aside the finding of the Id. CIT-A and direct AO to the addition made by him. Thus, the ground of appeal of the assessee is hereby allowed.

7. The **2<sup>nd</sup> issue** raised by the assessee is that Id. CIT-A erred in disallowing of the loss of ₹ 9,73,389.00 on account of trading of shares in the case of M/s Ganesh Spinners Ltd.

8. The AO during the assessment proceedings found that the company namely Shri Ganesh Spinners Ltd was controlled and managed by SCS and therefore the loss claimed by the assessee in the trading of the scripts of such company amounting to ₹ 9,73,389.00 was bogus in nature. 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.

9. Aggrieved assessee preferred an appeal to the Ld. CIT-A who confirmed the order of the AO.

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

10.1 The learned AR before us 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. All the transactions for the purchase and sales in the impugned scripts were carried out through the banking channel.

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

11. We heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the Tribunal in the group case of the assessee i.e. Vicky Rajesh Jhaveri V/s ITO in ITA No.426/AHD/2013 involving identical facts and circumstances has deleted the disallowance made by the revenue by observing as under:

*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 into 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 imply 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 the 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) 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 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 Praneta Industries. Hence the ground of appeal of the assessee is hereby allowed.*

11.1 In view of the above, we set aside the finding of the land CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

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

**Coming to ITA No. 399/AHD/2023, for the AY 2010-11**

13. The assessee in ground No. 1 has challenged the validity of the proceedings initiated under section 143(3) read with section 147 of the Act.

14. At the outset, the learned counsel for the assessee before us submitted that he has been instructed by the assessee not to press this ground of appeal. Accordingly, we dismiss the same as not pressed.

15. The 2<sup>nd</sup> issue raised by the assessee is that the learned CIT-A erred in disallowing the loss of Rs. 1,41,22,274.00 on account of client code modification.

16. The AO during the assessment proceedings found that the code of the assessee was modified 3239 times while carrying out the share trading

transactions. According to the AO, the assessee has brought in losses of ₹ 1,41,22,274.00 by way of client code modification which was not pertaining to the assessee. Accordingly, the AO disallowed the claim of the loss by adding the same to the total income of the assessee. On appeal, the Id. CIT-A concurred with the view of the AO.

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

17.1 The learned AR before us submitted that the revenue has not doubted on the genuineness of the loss but rejected the claim of the assessee on the reasoning that such loss was belonging /pertaining to other parties. Therefore, the revenue was under the apprehension that such loss might have also been claimed by such other parties. As per the Revenue, such a loss should not be claimed twice by 2 different parties, once by the assessee and the other party to whom this loss belongs to. The Id. AR fairly agreed with the apprehension of the revenue. Accordingly, the Id. AR contended that the matter can be set aside to the AO to verify whether such loss has been claimed by the other parties too, if yes, then the same can be disallowed or otherwise the same should be allowed to the assessee.

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

18. We heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the genuineness of the loss was not doubted by the authorities below, but such loss was rejected on the apprehension that the same belongs to other parties but shifted to the assessee on account of client code modification. As per the revenue, there was the possibility of claiming such loss by the other party too. To our understanding, the apprehension of the revenue is correct but the same can be addressed until necessary verification is

carried out at the level of the AO to find out whether such loss was claimed by the other parties whose code was modified with the code of the assessee. If such loss has not been claimed by the other party, then we can presume that such loss belongs to the assessee and therefore the same should be allowed to the assessee. Accordingly, we set aside the issue to the file of the AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

19. The 3<sup>rd</sup> issue raised by the assessee is that the learned CIT-A erred in confirming the disallowance of the loss of Rs. 14,47,074.00 in the trading of the scripts of M/s Prraneta Industries Limited being bogus in nature.

20. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2010-11 is identical to the issue raised by the assessee in ITA No. 401/AHD/2023 for the assessment year 2012-13 except the change of the scripts i.e. M/s Prraneta Industries Limited. Therefore, the findings given in IT(SS)A No. 401/AHD/2023 shall also be applicable for the assessment year 2010-11. The appeal of the assessee for the AY 2012-13 has been decided by us vide paragraph No. 11 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 2012-13 shall also be applied for the assessment year 2010-11. Hence, the ground of appeal filed by the assessee is hereby allowed.

21. The 4<sup>th</sup> issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO by upholding the addition on account of unexplained cash credit under section 68 of the Act amounting to ₹ 3,51,03,250.00

22. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2010-11 is identical to the issue raised by the assessee in ITA

No. 401/AHD/2023 for the assessment year 2012-13 except the change in the amount and the basis of calculation being peak credit. Therefore, the findings given in IT(SS)A No. 401/AHD/2023 shall also be applicable for the assessment year 2010-11. The appeal of the assessee for the AY 2012-13 has been decided by us vide paragraph No. 6 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 2012-13 shall also be applied for the assessment year 2010-11. Hence, the ground of appeal filed by the assessee is hereby allowed.

23. In the result, the appeal of the assessee is hereby partly allowed for the statistical purposes.

***Coming to ITA No. 400/AHD/2023 for the AY 2011-12***

24. The assessee in ground No. 1 has challenged the validity of the proceedings initiated under section 143(3) read with section 147 of the Act.

25. At the outset, the learned counsel for the assessee before us submitted that he has been instructed by the assessee not to press this ground of appeal. Accordingly, we dismiss the same as not pressed.

26. The 2<sup>nd</sup> issue raised by the assessee is that the learned CIT-A erred in confirming the disallowance of the loss of Rs. 2,25,32,592.00 and Rs. 11,52,628.00 in the trading of the scripts of M/s Chandni Textile Engineering Industries Limited and Shri Ganesh Spinners Ltd. being bogus in nature.

27. 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 ITA No. 401/AHD/2023 for the assessment year 2012-13 except the change of the scripts. Therefore, the findings given in IT(SS)A No. 401/AHD/2023 shall also be

applicable for the assessment year 2011-12. The appeal of the assessee for the AY 2012-13 has been decided by us vide paragraph No. 11 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 2012-13 shall also be applied for the assessment year 2011-12. Hence, the ground of appeal filed by the assessee is hereby allowed.

28. The 3<sup>rd</sup> issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO by upholding the addition on account of unexplained cash credit under section 68 of the Act amounting to ₹ 9,68,37,850.00

29. 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 ITA No. 401/AHD/2023 for the assessment year 2012-13 except the change in the amount and the basis of calculation being peak credit. Therefore, the findings given in IT(SS)A No. 401/AHD/2023 shall also be applicable for the assessment year 2011-12. The appeal of the assessee for the AY 2012-13 has been decided by us vide paragraph No. 6 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 2012-13 shall also be applied for the assessment year 2011-12. Hence, the ground of appeal filed by the assessee is hereby allowed.

30. In the result, the appeal of the assessee is hereby partly allowed.

***Coming to ITA No. 402/AHD/2023 for the AY 2013-14***

31. The 1<sup>st</sup> issue raised by the assessee is that the learned CIT-A erred in confirming the disallowance of the loss of Rs. 46,65,177.00 in the trading of the scripts of M/s Chandni Textile Engineering Industries Limited being bogus in nature.

32. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2013-14 is identical to the issue raised by the assessee in ITA No. 401/AHD/2023 for the assessment year 2012-13 except the change of the scripts. Therefore, the findings given in IT(SS)A No. 401/AHD/2023 shall also be applicable for the assessment year 2013-14. The appeal of the assessee for the AY 2012-13 has been decided by us vide paragraph No. 11 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 2012-13 shall also be applied for the assessment year 2013-14. Hence, the ground of appeal filed by the assessee is hereby allowed.

33. The 2<sup>nd</sup> issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO by upholding the addition on account of unexplained cash credit under section 68 of the Act amounting to ₹ 2,84,90,000.00

34. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2013-14 is identical to the issue raised by the assessee in ITA No. 401/AHD/2023 for the assessment year 2012-13 except the change in the amount and the basis of calculation being peak credit. Therefore, the findings given in IT(SS)A No. 401/AHD/2023 shall also be applicable for the assessment year 2013-14. The appeal of the assessee for the AY 2012-13 has been decided by us vide paragraph No. 6 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 2012-13 shall also be applied for the assessment year 2013-14. Hence, the ground of appeal filed by the assessee is hereby allowed.

35. In the result, the appeal of the assessee is hereby allowed.

***Coming to ITA No. 403/AHD/2023 for the AY 2014-15***

36. The 1<sup>st</sup> issue raised by the assessee is that the learned CIT-A erred in confirming the disallowance of the loss of Rs. 55,72,040.00 in the trading of the scripts of M/s Chandni Textile Engineering Industries Limited being bogus in nature.

37. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 401/AHD/2023 for the assessment year 2012-13 except the change of the scripts. Therefore, the findings given in IT(SS)A No. 401/AHD/2023 shall also be applicable for the assessment year 2014-15. The appeal of the assessee for the AY 2012-13 has been decided by us vide paragraph No. 11 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 2012-13 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby allowed.

38. The 2<sup>nd</sup> issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO by upholding the disallowance on account of bad debts amounting to ₹ 1,49,00,200.00

39. The AO during the assessment proceedings found that the amount written off by the assessee as bad debts relates to the transaction of intercorporate deposits and not the sales. Accordingly, the AO held that the conditions as specified under the provisions of section 36(1)(vii) of the Act have not been complied with and therefore he disallowed the same by adding to the total income of the assessee. On appeal, the Id. CIT-A concurred with the view of the AO.

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

41. The learned AR before us submitted that the assessee has offered the income of ₹ 1,49,00,200.00 in the earlier year and therefore the same should be allowed as deduction under the provisions of section 36(1)(vii) of the Act.

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

43. We heard the rival contentions of both the parties and perused the materials available on record. The controversy in the present case arises whether the amount written off by the assessee for ₹ 1,49,00,200 on account of bad debts, is an allowable deduction under the provisions of section 36(1)(vii) of the Act. In this regard, we have perused the ledger of the party namely M/s RR Industrial Corporation (I) Private Limited for the years from April 2011 to 31<sup>st</sup> of March 2014 placed on pages 60-61 of the paper book. On perusal of the same, it is reflected that there was a sale made by the assessee dated 24 October 2011 amounting to ₹ 3,24,00,000 only. Against such sales the assessee has received amount to the tune of ₹ 1,74,99,800.00 with the outstanding balance of ₹ 1,49,00,200 which was written off by the assessee. From the copy of the ledger discussed above, there remains no ambiguity that the assessee has offered the amount of bad debts as income in the earlier year and therefore the same should be allowed as deduction in view of the judgement of Hon'ble Supreme Court in the case of TRF Ltd versus CIT reported in 323 ITR 397 wherein it was observed that it is not necessary to establish that bad debts has become irrecoverable. For claiming deduction under section 36(1)(vii) of the Act, it is enough if such bad debts are written off in the books of accounts. Hence, we set aside the finding of the Id. CIT-A and direct the AO to delete the addition made by him. Thus, the ground of appeal of the assessee is hereby allowed.

45. In the result, the appeal of the assessee is hereby allowed.

**46. In the combined result appeal of the assessee in ITA No. 401 to 403/Ahd/2023 are allowed, whereas ITA No. 399/Ahd/2023 is partly allowed for statistical purpose and ITA No. 400/Ahd/2023 is partly allowed.**

**Order pronounced in the Court on 13/06/2024 at Ahmedabad.**

**Sd/-**

**Sd/-**

**(T.R SENTHIL KUMAR)  
JUDICIAL MEMBER**

**(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 13/06/2025

*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