

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member  
And Shri Makarand V. Mahadeokar , Accountant Member**

**ITA No. 10/Ahd/2024  
Assessment Year 2011-12**

Shri Sagar Jhaveri, 21, Tapovan Society, Nehrunagar, Manekbaug, Ambawadi, Ahmedabad PAN: AEYPJ3222M (Appellant)	Vs	Dy. CIT, Central Circle-1(1) Ahmedabad (Respondent)
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**ITA Nos. 11 & 12/Ahd/2024  
Assessment Year 2011-12 & 2012-13**

Shri Vicky Rajeshbhai Jhaveri, 21, Tapovan Society, Nehrunagar, Manekbaug, Ambawadi, Ahmedabad PAN: ADVPJ4127F (Appellant)	Vs	Dy. CIT, Central Circle-1(1) Ahmedabad (Respondent)
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**ITA No. 13/Ahd/2024  
Assessment Year 2012-13**

Aarav Financial Services Pvt. Ltd., 21, Tapovan Society, Nehrunagar, Manekbaug, Ambawadi, Ahmedabad PAN: AAGCA5277L (Appellant)	Vs	Dy. CIT, Central Circle-1(1) Ahmedabad (Respondent)
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**Assessee by: Shri Deepak R. Shah, A.R.**  
**Revenue by: Shri Prateek Sharma, Sr. D.R.**

Date of hearing : 08-10-2024  
Date of pronouncement : 22-10-2024

**आदेश/ORDER**

**PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-**

These four appeals are filed against the orders dated 24-07-2023, 11-09-2023 & 12-09-2023 passed by ld. CIT(A) for assessment year 2011-12 to 2012-13.

**Firstly, we are taking up ITA No. 10/Ahd/2024 (Sagar Rajesh Jhaveri)**

2. The grounds of appeal are as under:-

*“(I) Assessment order is bad in law and invalid, the same being based on change of opinion and having been passed without consideration of the objections/submissions filed disputing the validity of notice u/s.145 and reassessment proceedings pursuant thereto,*

1. *The ld. CIT(A) has failed to appreciate that the AO had erred in law and on facts in reopening the assessment and consequentially passing the assessment order despite the fact the same is based on change of opinion, is bad in law and without jurisdiction since the assessment had been reopened not only for the second time but is also based on borrowed satisfaction and on reasons which are based on general and vague material and information received from a third party*

*and not on the basis of case specific material/evidence found in case of the appellant, the ld. CIT(A) ought to held the reassessment order as bad in law and void-ab-initio.*

2. *The ld. CIT(A) has erred in not appreciating the fact that the order passed by the AO disposing of the objections filed by the appellant company suffers from factual and legal infirmities and the observations therein are merely a repetition of observations in reasons recorded and the AO has not dealt with and/or controverted the basic and factual objections raised on merits of the issue and legal contentions raised by the appellant and hence it cannot be termed as a speaking order as envisaged by the Hon'ble Supreme Court in the case of GKN Driveshaft. Hence the re-assessment proceedings u/s 147 of the Act and impugned addition both are bad in law and requires to be quashed.*

3. *The ld. CIT(A) further failed to appreciate the fact that the reassessment order passed by the AO was invalid and bad in law in as much as the facts and figures mentioned in the reasons recorded for reopening are incorrect and contrary to facts and since the transaction in question having been duly recorded in books of account.*

4. *The ld. CIT(A) has erred in not considering the fact that the appellant had furnished complete details regarding the share transactions of the company viz. Radhe Developers (India) Ltd. during the course of earlier reassessment proceedings and hence the reopening of assessment for second time merely on the basis of some information received from a third party to the effect that the company viz Radhe Developers (India) Ltd. is a penny stock company based on irrelevant analysis is nothing but mere change of opinion on borrowed satisfaction, which is not permissible in law and thus impugned reassessment order requires to be quashed as void-ab-initio.*

5. *The ld. CIT(A) has erred in not considering copy of material or evidences relied upon including statements recorded as referred to and relied upon in the reasons recorded, along with an opportunity of cross examination of such persons for initiating the proceedings u/s 147 of the Act by issuing the notice u/s.148 of the Act.*

6. *The Id. CIT(A) ought to have appreciated that there is no failure on part of the appellant company to disclose fully and truly all material facts necessary for his assessment.*

*In view of the above, the appellant company submits that both i.e. notice issued u/s 148 of the Act as well as the impugned assessment order passed in pursuance of the said notice requires to be quashed.*

*[II] Addition on account of disallowance of loss in trading of shares of Radhe Developers India Ltd. - Rs. 2,94,763/-*

*1. The Id. CIT(A) has erred in law and on facts in confirming the addition of Rs. 2,94,753/- on account of disallowance of loss in trading of shares of Radhe Developers India Ltd. merely on surmises and conjectures based on various allegations/observations which are not only contrary to facts of the case but are highly irrelevant as well as HYPOTHETICAL based on technical study and analysis which is further based on surmises, presumptions and assumptions.*

*2. The Id. CIT(A) has erred in not considering and appreciating the fact that the trading in shares of Radhe Developers India Ltd, and the resultant loss is genuine and has been carried out on screen based faceless digital platform Le, on a terminal in normal course of trading activity, through BSE/NSE and registered stock brokers, receipts/payments are through banking channels, shares are duly reflected in demat account, purchase and sale is at prevailing market rates and the STT and other Govt. levies on sale of shares have been duly paid. Thus, in absence of any contrary evidence brought on record by the AD to disprove the comprehensive evidences filed, the impugned addition of Rs.2,94,763/- ought to have been deleted.*

*3. The appellant states that since it is not the case of the AO that the said alleged bogus transactions have been carried out in connivance with BSE and registered brokers and keeping in view the fact that BSE has also not treated the transactions in the said companies as bogus or sham and having also not classified them as penny stock companies, the impugned addition being based on mere surmises and conjectures, the id. CIT(A) ought to have held the same as wholly unjustified and bad in law.*

*4. The Id. CIT(A) has grievously erred in ignoring the fact that in assessment orders passed u/s.143(3) of the Act in earlier and subsequent years, including the assessment order passed by the earlier AO u/s.143(3) of the Act, the trading in shares of Radhe Developers India Ltd. and the resultant profit/loss has been accepted and no addition has been made.*

*5. The Id. CIT(A) has grievously erred in not appreciating the fact that the reopening of the assessment by the AO is on different stands to the convenience of the department as evident from the reasons recorded in case of various members of the appellant's family/group concerns. The AO in some cases have disallowed only the net loss incurred in trading of shares of Radhe Developers India Ltd, and other companies while while allowing profit earned from the same companies and in some cases have disallowed and added the entire purchase/sale value of shares of Radhe Developers India Ltd. or other companies on identical facts and though all such companies were treated/alleged to be penny stock companies. The appellant states that such contradictory and fluctuating stands in different cases itself speaks of the manner in which the additions have been made and thus the*

*impugned addition of Rs.2,94,763/- in the instant case requires to be deleted on this ground itself.*

*In view of the above, the addition of Rs.2,94,763/- being loss incurred in trading of shares of Radhe Developers Ltd. is required to be deleted.*

*The appellant craves leave to add, amend, alter, modify or delete any of the above grounds and to submit additional grounds at the time of hearing of the appeal.”*

3. There is a delay of 54 days in filing the present appeal for which the assessee has filed the application for condonation of delay thereby explaining the delay being on the part of whose mother was seriously ill and then hospitalized and ultimately succumbed to the illness because of which the assessee could not file the appeal within the statutory time. The reason given by the assessee for delay is justifiable and hence the delay is condoned. Now, coming to the facts of the case, in this case, the original return of income was finalized on 30-07-2021 through electric mode declaring income of Rs. 41,27,580/-. Return was duly processed u/s. 143(1) of the Act. The case was reopened on 25-03-2015 u/s. 147 of the Act which was finalized on 18-10-2016 thereby assessing the income at Rs. 1,52,50,170/-. Thereafter, the case was again reopened u/s. 147 of the Act after due approval of the Pr. CIT and notice u/s. 148 of the Act was issued on 29-03-2018 which was duly served upon the assessee. In response to the said notice, the assessee filed his return of income on 23-04-2018 thereby declaring income same as original. The assessee vide letter dated 08-05-2018 sought reasons recorded for reopening the assessment which was provided to the assessee vide letter dated 10-05-2018. Thereafter, notice u/s. 143(2) was issued on 10-05-2018 and served upon the assessee by speed post. Notice u/s. 142(1) r.w.s. 129 of the Act along with the detailed

questionnaire was issued to the assessee on 06-09-2018. The assessee has not responded and therefore final assessment was given to the assessee vide notice u/s. 142(1) of the Act dated 25-10-2018. In response to the same, the assessee filed his objections based on reasons recorded for reopening furnished vide letter dated 28-11-2018. The show cause notice was issued to the assessee and the assessee was requested to furnish explanation by 14-12-2018. The assessee was intimated through this show cause notice as to why the loss of Rs. 2,94,763/- should not be disallowed and added to the total income for assessment year 2011-12. In response to the said show cause notice, the assessee made submissions vide letter dated 14-12-2018 in which he mentioned that his objections dated 28-11-2018 filed against the reasons for issue of notice u/s 148 should be treated as compliance to the above mentioned show cause notice. The Assessing Officer observed that the assessee has not taken a new plea and that objections were duly disposed of by the Assessing Officer. The Assessing Officer further relied upon the various decisions and after taking the cognizance of the assessee's facts held that the loss of Rs. 2,94,763/- accrued from the scrip name M/s Radhe Developer India Ltd is disallowed and added the same to the total income of the assessee.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The ld. A.R. submitted that the assessment order is bad in law as the same being based on change of opinion having been passed without consideration of the objections/submissions filed wherein the assessee has

disputed the validity of the notice u/s. 148 and the reassessment proceedings pursuant thereto. The Id. A.R. submitted that the CIT(A) failed to appreciate that the Assessing Officer has not rightly responded the assessment and consequential passing the assessment order when the same is based on change of opinion as the original assessment was on the very same issue itself finalized. In fact, the second reopening is based on borrowed satisfaction and on the reasons which are based on general and vague material and information received from a third party and not on the basis of case specific material/evidence found in case of the assessee. Thus, the CIT(A) ought to have held that the re-assessment was bad in law and ab-initio. The Id. A.R. further submitted that the CIT(A) ignored that fact the order passed by the Assessing Officer disposing objections filed by the assessee company suffers from factual and legal infirmity and the observations therein are merely a repetition of observations in reasons recorded and the Assessing Officer has not dealt with/and or prevented the basic and factual objections raised on merits of the issue and legal contentions raised by the assessee and hence it cannot be termed as speaking order as envisaged by the Hon'ble Apex Court in case of GKN Driveshaft (India) Ltd. vs. UOI 259 ITR 19. Hence, the re-assessment proceedings u/s. 147 of the Act and impugned addition both are bad in law and requires to be quashed. The Id. A.R. further submitted that re-assessment order passed by the Assessing Officer was invalid and bad in law as the facts and figures mentioned in the reasons recorded for reopening are incorrect and contrary to the facts and since the transactions in question having been duly recorded in books of accounts. The assessee had furnished complete details regarding the share transactions of the company wise in M/s. Radhe Developers Ltd.

during the course of assessment and in earlier re-assessment proceedings and hence the reopening of assessment for second time merely on the basis of some information received from a third party to the effect that the company i.e. M/s. Radhe Developers Ltd. is a penny stock being based on irrelevant analysis is nothing but mere change of opinion of borrowed satisfaction, which is not permissible in law. Thus, the impugned re-assessment order requires to be quashed ab-initio. The ld. A.R. submitted that the Assessing Officer fails to furnish the copy of material or evidence relied upon including the statements recorded as referred to and relied upon in the reasons recorded, along with an opportunity of cross-examination of such persons for initiating the proceedings u/s. 147 of the Act for issuing the notice u/s. 148 of the Act. There is no failure on the part of the assessee to disclose fully and truly all material facts necessary for first assessment. As relates to the merit of the case, addition on account of disallowance of loss in trade of shares of M/s. Radhe Developers Ltd. of Rs. 2,94,763/-, the ld. A.R. submitted that the same is merely on the basis of surmises and conjectures based on various allegations/observations which are only contrary to the facts of the case are highly irrelevant as also hypothetical based on technical status and analysis which is further based on surmises and presumptions and assumptions. The ld. A.R. further submitted that the trading in M/s. Radhe Developers Ltd. and the resultant loss is genuine and has been carried out on screen based faceless digital platform i.e. on terminal in normal course of trading activity through BSE/NSE and registered broker receipts/payments are through banking channel, shares are duly reflected in demat account, purchase and sell is at threshold market rate and the securities transactions taxes (STT) and other government levies on sale of

shares have been duly paid. Thus, in the absence of any contrary evidence brought on record by the Assessing Officer to disagree the comprehensive evidence filed by the then Assessing Officer ought to have been deleted. The Id. A.R. further submitted that since it is not case of the Assessing Officer that the said bogus transactions have been carried out in connivance with BSE and registered brokers and keeping in view that the fact BSE has also not treated the transactions in the said companies as bogus or sham company also not classified then as stock company, the impugned addition being based on screen surmises and conjectures, the CIT(A) has held that the same has wholly unjustified and bad in law. The Id. A.R. further submitted that in assessment orders passed u/s. 143(3) of the Act in earlier and subsequent years, including assessment order passed by the earlier Assessing Officer u/s. 143(3) of the Act the trade in shares of M/s. Radhe Developers Ltd. and the resultant profit/loss has been accepted and no addition has been made. The Id. A.R. further submitted that the Assessing Officer in some cases have disallowed only the net loss incurred in trade of shares of M/s. Radhe Developers Ltd. and other companies while allowing profit earned from the same companies and in some cases have disallowed and added the entire purchase/sale value of shares of M/s. Radhe Developers Ltd. or other companies on identical facts and though of such companies were treated to be being stock companies. The Id. A.R. further submitted that such contrary and fluctuations stands in different case itself speaks of the manner in which the addition have been made and thus the impugned addition of Rs. 2,94,763/- in the instant case requires to be deleted on this count itself. The Id. A.R. relied upon the following decisions:-

- i) NDTV 271 taxman 1 (SC)

- ii) Calcutta Discount 41 ITR 191 (SC)
- iii) Bombay Stock Exchange 365 ITR 181 (Bom HC)
- iv) Parshuram Potteries 106 ITR 1 (SC)

The ld. A.R. in respect of ground no. 1 related to reopening u/s. 147 relied upon the decision of NDTV 271 taxman 1 (SC), Calcutta Discount 41 ITR 191 (SC), Bombay Stock Exchange 365 ITR 181 Bom HC, Parshuram Potteries 106 ITR S (SC) as relates to merits of the case regarding disallowance of share trade loss of Rs. 2,94,763/- in the share of M/s. Radhe Developers Ltd, the ld. A.R. relied upon the decision of Ahmedabad Tribunal in case of Suprinit Tradeinvest, Mallikargun Tradeinvest, Vicky & Sagar Jhaveri (Ahd ITAT).

6 The ld. D.R. submitted that as regards the issue of reopening u/s. 147 in the assessment order, the Assessing Officer noted that the information was received from investigation wing, Ahmedabad that the assessee has booked tax loss trade in shares of M/s. Radhe Developers Ltd.. As per the report, SEBI had directed the stock exchanges to suspension that trading in the security of the companies which specified anyone of the following parameters:

- (i) Non existence at the registered office
- (ii) Preferential allotment with spurt in price in during lock in period and spurt in volume post lock in period
- (iii) Companies having weak financials and the price rise in such companies is not supported by the financials.

M/s. Radhe Developers Ltd. was found to have weak financial however price of the security rose so does volume of trade. Therefore, the BSE has

suspended the trading in securities of the companies M/s. Radhe Developers Ltd. on 27-08-2015 as per guidelines issued by the SEBI. Further on receipt of the trade data from BSE detailed analysis of scrip M/s. Radhe Developers Ltd. was carried by the investigation wing which included volume vs. trade analysis delivery based volume vs. traded volume, time difference analysis, ratio of order count and trade count etc. The detailed analysis was part of the reasons recorded by the Assessing Officer and is mentioned para of the reasons recorded. The ld. D.R. further submitted that the Assessing Officer carried out analysis of financial position of the company in the four years corresponding to the financial year in which the trade has been carried out the increase in the public domain on the website of Bombay Stock Exchange were examined. It was found M/s. Radhe Developers Ltd. has never reported net profit from financial year 2009-10 to 2012-13. The earning per share (EPS) has been negative in all the four years under perusal. The above figures clearly indicate that there is no commercial logic for the share price of a company having poor financials and no earning potential to rise from Rs. 1.10 to Rs. 28.80. Further, it was also observed that M/s. Radhe Developers Ltd. regularly changes its address which is not possible in normal circumstances and it shows that the company is trying to avoid disclosing correct address details. In view of the same, it is established from this M/s. Radhe Developers Ltd. is a share which floated in a market at close group and its price was also controlled by it. The share was being used to book artificial loss and gains to various beneficiaries. The balance sheet of the company was also not strong. Thus was just a shell company used as tool by a particular group floated in the market to carry out artificial price variations. From analysis of data received from BSE, it was found that

the scrutinized trading were made, fluctuation in share price of company was not supported by financials of the company. On analysis the information, the Assessing Officer drew independent satisfaction that the income has escaped assessment in case of the assessee. Further, the assessee has not fully and truly disclosed the material facts necessary for his assessment for the year under consideration. Further, the Assessing Officer has discussed the applicability of the provisions of section 147/151(1) of the Act in para 9-11 of his reason for reopening of assessment u/s. 148. The ld. D.R. further pointed out that the grounds challenging issuance of notice u/s. 148 was also taken before the ld. CIT(A) which was dealt in detail by the appellate authority. The CIT(A) relied upon the decision of Hon'ble Gujarat High Court in case of Nishant Vilas Kumar Parekh (2011) 129 taxmann.com 119 (Guj) and also Vilas Vrajlal Parekh HUF 129 taxmann.com 68 (2021), Bhanuben Mansukhlal Khimashia 128 taxmann.com 229 (2021), Sameer Gulabchand Shah HUF 131 taxmann.com 42 (2021). The ld. D.R. further submitted that regarding disallowance of share trade loss in the share of M/s. Radhe Developers Ltd. the Assessing Officer dealt with this situation in details in his assessment order in para 2.2 to 2.9 of his assessment order. The Assessing Officer carried out analysis of trade data reasons recorded for issuance of notice u/s. 148 which is established that the assessee was involved in synchronized trade to book bogus loss.

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that as regards reopening the case was first reopened on 25-03-2015 which was finalized on 18-10-2016 wherein the disallowance of the share trade loss of Chandani Textile

Industries Ltd. has been taken into consideration by the Assessing Officer at that particular time but has not dealt with the scrip of Shri Radhe Developers Ltd. and therefore though the disallowance of loss in trade of share of particular companies were reopened in the earlier proceedings u/s. 147. The issue of scrip related to Shri Radhe Developers Ltd. has not been discussed or taken up which requires to be looked into after receiving the SEBI report as well as the investigation report. Thus, the reopening cannot be stated merely a change of opinion but it was based on the prima facie investigation report along with the reasons independently recorded by the Assessing Officer in respect of scrip M/s. Radhe Developers Ltd. and the trading of the said shares by the assessee while incurring losses in those shares. Therefore, reopening per se is valid. It appears that the assessee harping on the issue of shares and trading in shares was discussed in the earlier reopening but the issue of independent scrip besides Chandani Textile Industries Ltd. and Praneta Industries Ltd run separate trading shares than the trading in scrip M/s. Radhe Developers Ltd.. Thus, reopening in this particular case cannot be held as change of opinion and the reopening u/s. 147 is valid. The contention of the Id. A.R. that the objections filed by the assessee company suffers from factual and legal infirmities also cannot be tenable as the Assessing Officer has given the independent finding in respect of trading in shares particularly that of M/s. Radhe Developers Ltd. Therefore, the decision of Hon'ble Apex Court in case of NDTV (supra) is not applicable in assessee's case as though the assessee has disclosed the trading, it has not specifically given the details such as bifurcation of the scrip trading in respect of M/s. Radhe Developers Ltd. at the earlier reopening stage. Thus, the reopening is valid. As regards relates to the

contention that prosecution in question was duly recorded in books of account cannot be the sole criteria for quashing the reopening as the reopening u/s. 147 is invoked in respect of investigation report as well as the independent finding/reasons given by the Assessing Officer in respect of escapement of income as per Assessing Officer's belief. The contention of the ld. A.R. is that he was not given cross-examination of the persons whose statement was recorded and relied upon is also does not stand as the Assessing Officer issued the notice u/s. 148 and initiated proceedings u/s. 147 and given independent findings which was not wholly and solely based on the statements. The decisions of Hon'ble Supreme Court in case of ND TV, Calcutta Discount as well as Parshuram Potteries and Bombay Stock Exchange (supra) will not be relevant in assessee's case as the reopening u/s. 147 was on the issue of trading in scrip of M/s. Radhe Developers India Ltd. which is more specific centric and cannot be said that the reopening was just a second opinion or afterthought of the Assessing Officer. Thus, the Assessing Officer is justified in reopening the assessment. Thus, ground no. I (1-6) is dismissed.

8. As regards merits of the case, i.e. ground no. II (1-5), after perusal of the records and the assessment order, it appears that the Assessing Officer at the threshold has not disputed the purchase of the shares/scrip of M/s. Radhe Developers Ltd.. The Assessing Officer has also not disputed the fact that the assessee is in the business of trading of shares. From the perusal of the para 2.2 of the assessment order wherein the Assessing Officer has extracted the show cause notice and observed that the assessee has treated M/s. Radhe Developers Ltd. which does not convince credential and the

trading was between March, 2012 to December, 2012 and March, 2013 to December, 2013 as well as March, 2014 to December, 2014. But the assessment order before us shows very small portion of period of March, 2012 which falls in assessment year 2011-12. The Assessing Officer has not co-related with the trading as well as the price fluctuation of M/s. Radhe Developers Ltd. as any connection with the assessee's synchronised manner of trading and the link which establishes the assessee's involvement in the fluctuation of the price has not been categorically mentioned in the assessment order. The CIT(A) has also not given any independent finding after verifying that whether there is an actual synchronised trading between the assessee and that of company scrip i.e. M/s. Radhe Developers Ltd. which has a variation/fluctuation in its pricing at the time of purchase as well as at the time of sale. The details given by the assessee before us was also before the CIT(A) as well as before the Assessing Officer. From the perusal of these orders, it can be seen that the Assessing Officer as well as CIT(A) has not given any detailed finding as to whether the assessee has actively involved in the price manipulation during the assessment year 2011-12. The SEBI report as well as the suspension of the Bombay Stock Exchange is in the year 2015 giving the details of 2012. The involvement of assessee's transaction has not been specifically pointed out either in the assessment order or in the order of the CIT(A). Thus, on merit the disallowance made by the Assessing Officer does not sustain. Thus, ground no. 2 is allowed.

9. In the result, ITA No. 10/Ahd/2024 is partly allowed.

**Now coming to the ITA No. 11/Ahd/2024 (Vicky Rajesh Jhaveri)**

10. The grounds of appeal are as under:-

*“[1] Assessment order is bad in law and invalid, the same being based on change of opinion and having been passed without consideration of the objections/submissions filed disputing the validity of notice u/s. 148 and reassessment proceedings pursuant thereto.*

*1. The Id. CIT(A) has failed to appreciate that the AO had erred in law and on facts in reopening the assessment and consequentially passing the assessment order despite the fact the same is based on change of opinion, is bad in law and without jurisdiction since the assessment had been reopened not only for the second time but is also based on borrowed satisfaction and on reasons which are based on general and vague material and information received from a third party and not on the basis of case specific material/ evidence found in case of the appellant, the Id. CIT(A) ought to held the reassessment order as bad in law and void-ab-initio.*

*2. The Id. CIT(A) has erred in not appreciating the fact that the order dated 11/12/2018 passed by the AO disposing of the objections filed by the appellant company suffers from factual and legal infirmities and the observations therein are merely a repetition of observations in reasons recorded and the AO has not dealt with and/or controverted the basic and factual objections raised on merits of the issue and legal contentions raised by the appellant and hence it cannot be termed as a speaking order as envisaged by the Hon'ble Supreme Court in the case of GKN Driveshaft. Hence the re-assessment proceedings u/s 147 of the Act and impugned addition both are bad in law and requires to be quashed.*

*3. The Id. CIT(A) further failed to appreciate the fact that the reassessment order passed by the AO was invalid and bad in law in as much as the facts and figures mentioned in the reasons recorded for reopening are incorrect and contrary to facts and since the transaction in question having been duly recorded in books of account.*

*4. The Id. CIT(A) has erred in not considering the fact that the appellant had furnished complete details regarding the share transactions of the company viz. Radhe Developers (India) Ltd. during the course of earlier reassessment proceedings and hence the reopening of assessment for second time merely on the basis of some information received from a third party to the effect that the*

*company viz. Radhe Developers (India) Ltd. is a penny stock company based on irrelevant analysis is nothing but mere change of opinion on borrowed satisfaction, which is not permissible in law and thus impugned reassessment order requires to be quashed as void-ab-initio*

*5. The Id. CIT(A) has erred in not considering the fact that the AO had failed to furnish the copy of material or evidences relied upon including statements recorded as referred to and relied upon in the reasons recorded, along with an opportunity of cross examination of such persons for initiating the proceedings u/s. 147 of the Act by issuing the notice u/s 148 of the Act.*

*6. The Id. CIT(A) ought to have appreciated that there is no failure on part of the appellant company to disclose fully and truly all material facts necessary for his assessment.*

*In view of the above, the appellant company submits that both the notice issued u/s 148 of the Act as well as the impugned assessment order passed in pursuance of the said notice requires to be quashed.*

*[III] Addition on account of disallowance of loss in trading of shares of Radhe Developers India Ltd. - Rs.4,24,999/-*

*1. The Id. CIT(A) has erred in law and on facts in confirming the addition of Rs.4,24,999/- on account of disallowance of loss in trading of shares of Radhe Developers India Ltd. merely on surmises and conjectures based on various allegations/observations which are not only contrary to facts of the case but are highly irrelevant as well as HYPOTHETICAL based on technical study and analysis which is further based on surmises, presumptions and assumptions.*

*2. The Id. CIT(A) has erred in not considering and appreciating the fact that the trading in shares of Radhe Developers India Ltd. and the resultant loss is genuine and has been carried out on screen based faceless digital platform i.e. on a terminal in normal course of trading activity, through BSE/NSE and registered stock brokers, receipts/payments are through banking channels, shares are duly reflected in demat account, purchase and sale is at prevailing market rates and the STT and other Govt. levies on sale of shares have been duly paid. Thus, in absence of any contrary evidence brought on record by the AD to disprove the comprehensive*

*evidences filed, the impugned addition of Rs 4,24,999/- ought to have been deleted.*

3. *The appellant states that since it is not the case of the AO that the said alleged bogus transactions have been carried out in connivance with BSE and registered brokers and keeping in view the fact that BSE has also not treated the transactions in the said companies as bogus or sham and having also not classified them as penny stock companies, the impugned addition being based on mere surmises and conjectures, the Id. CIT(A) ought to have held the same as wholly unjustified and bad in law.*

4. *The Id. CIT(A) has grievously erred in ignoring the fact that in assessment orders passed u/s.143(3) of the Act in earlier and subsequent years, including the assessment order passed by the earlier AO u/s.143(3) of the Act, the trading in shares of Radhe Developers India Ltd. and the resultant profit/loss has been accepted and no addition has been made.*

5. *The Id. CIT(A) has grievously erred in not appreciating the fact that the reopening of the assessment by the AO is on different stands to the convenience of the department as evident from the reasons recorded in case of various members of the appellant's family/group concerns. The AO in some cases have disallowed only the net loss incurred in trading of shares of Radhe Developers India Ltd, and other companies while while allowing profit earned from the same companies and in some cases have disallowed and added the entire purchase/sale value of shares of Radhe Developers India Ltd. or other companies on identical facts and though all such companies were treated/alleged to be penny stock companies. The appellant states that such contradictory and fluctuating stands in different cases itself speaks of the manner in which the additions have been made and thus the impugned addition of Rs.4,24,999/- in the instant case requires to be deleted on this ground itself.*

*In view of the above, the addition of Rs.4,24,999/- being loss incurred in trading of shares of Radhe Developers Ltd. is required to be deleted.*

*The appellant craves leave to add, amend, alter, modify or delete any of the above grounds and to submit additional grounds at the time of hearing of the appeal.”*

11. There is a delay of 54 days in filing the present appeal for which the assessee has filed the condonation of delay stating the reasons as stated in ITA No. 10/Ahd/2024 and the delay is condoned. Though the factual aspects are almost identical, still the facts of the case is that the original return of income was filed on 30-07-2021 declaring income of Rs. 63,17,600/-. The return was duly processed u/s. 143(1) of the Act, 1961. The case was reopened on 25-03-2025 u/s. 147 of the Act which was finalized on 19-10-2016 thereby assessing the income at Rs. 3,49,96,787/-. Thereafter, the case was again reopened u/s. 147 of the Act after due approval of Pr. CIT and a notice u/s. 148 of the Act issued on 29-03-2018 which was duly served upon the assessee. In response to the said notice, the assessee e-filed his return of income on 25-04-2018 thereby declaring his income same as original return dated 30-07-2011. The assessee filed letter dated 08-05-2018 sought reasons recorded for reopening, the assessment which was provided to the assessee on 10-05-2018. Thereafter, notice u/s. 143(2) of the Act was issued on 10-05-2018 and served to the assessee. The assessee has not responded and thereafter due to change of Assessing Officer, the notice u/s. 142(1) r.w.s. 129 of the Act along with questionnaire was issued to the assessee on 25-10-2018. In response to the same, the assessee filed his objections based on reasons recorded for reopening. The objections of the assessee were duly disposed of vide letter dated 18-12-2018. A show cause notice was issued to the assessee thereby calling upon the assessee in respect of the transaction related to the sale of 39,9060 shares of M/s. Radhe Developers India Ltd. for Rs. 1,02,95,405.21 which was purchased for Rs. 1,10,55,003/-. The assessee made submissions dated 14-12-2018 and after taking cognizance of the same, the Assessing Officer made addition of Rs. 4,24,999/- from the trade

scrip M/s. Radhe Developers India Ltd. and disallowed the claim of exempted long term capital gain. Being aggrieved by assessment order, the assessee filed appeal before CIT(A) which was dismissed.

12. The Id A.R. submitted that the facts are identical to that of A.Y. 2011-12 of Sagar Zaveri and the legal points are same as that of Sagar Zaveri ITA No. 10/Ahd/2024. The Id. D.R. also submitted that the factual matrix is identical to that of ITA No. 10/Ahd/2024 of Sagar Jhaveri.

13. We have heard both the parties and perused all the relevant materials available on record. The legal aspects is identical to that of the case of Shri Sagar Jhaveri and hence the finding given in the said assessee's case is applicable in the present case assessee's case as well and the decisions of Hon'ble Supreme Court in case of ND TV, Calcutta Discount as well as Parshuram Potteries and Bombay Stock Exchange (supra) will not be relevant in assessee's case as the reopening u/s. 147 was on the issue of trading in scrip of M/s. Radhe Developers India Ltd. which is more specific centric and cannot be said that the reopening was just a second opinion or afterthought of the Assessing Officer. Thus, ground no. I (1 to 6) is dismissed. Second ground II (1 to 6) here also the Assessing Officer has not doubted the purchase and even not demonstrated whether the assessee was actively involved in price manipulation of the scrip of M/s. Radhe Developers (India) Ltd. There is no nexus pointed out by the Assessing Officer in the assessment order as well as by the CIT(A) in the order. Thus, ITA No. 11/Ahd/2014 is partly allowed.

**Now coming to the ITA No. 12/Ahd/2024 (Vicky Rajesh Jhaveri)**

14. The grounds of appeal are as under:-

*“(I)Assessment order is bad in law and invalid, the same being based on change of opinion and having been passed without consideration of the objections/submissions filed disputing the validity of notice u/s.148 and reassessment proceedings pursuant thereto.*

*1 The ld. CIT(A) has failed to appreciate that the AO had erred in law and on facts in reopening the assessment and consequentially passing the assessment order despite the fact the same is based on change of opinion, is bad in law and without jurisdiction since the assessment had been reopened on the basis of borrowed satisfaction and on reasons which are based on general and vague material and information received from a third party and not on the basis of case specific material/evidence found in case of the appellant, the Id. CIT(A) ought to held the reassessment order as bad in law and void-ab-initio.*

*2 The ld. CIT(A) has erred in not appreciating the fact that the order passed by the AO disposing of the objections filed by the appellant company suffers from factual and legal infirmities and the observations therein are merely a repetition of observations in reasons recorded and the AO has not dealt with and/or controverted the basic and factual objections raised on merits of the issue and legal contentions raised by the appellant and hence it cannot be termed as a speaking order as envisaged by the Hon'ble Supreme Court in the case of GKN Driveshaft. Hence the re-assessment proceedings u/s 147 of the Act and impugned addition both are bad in law and requires to be quashed.*

*3. The ld. CIT(A) further failed to appreciate the fact that the reassessment order passed by the AO was invalid and bad in law in as much as the facts and figures mentioned in the reasons recorded for reopening are incorrect and contrary to facts and since the transaction in question having been duly recorded in books of account.*

*4. The ld. CIT(A) has erred in not considering the fact that the appellant had furnished complete details regarding the share transactions of the company viz. Gujarat Meditech Ltd. during the course of earlier reassessment proceedings and hence the reopening of assessment merely on the basis of some information received from a third party to the effect that the company viz. Gujarat Meditech Ltd. is a penny stock company based on irrelevant analysis is nothing but mere change of opinion on borrowed satisfaction, which is not permissible in law and thus impugned reassessment order requires to be quashed as void-ab-initio.*

*5.The ld. CIT(A) has erred in not considering the fact that the AO had failed to furnish the copy of material or evidences relied upon including statements recorded as referred to and relied upon in the reasons recorded, along with an*

*opportunity of cross examination of such persons for initiating the proceedings u/s 147 of the Act by issuing the notice u/s. 148 of the Act.*

*6.The ld. CIT(A) ought to have appreciated that there is no failure on part of the appellant company to disclose fully and truly all material facts necessary for his assessment.*

*In view of the above, the appellant company submits that both notice u/s 148 of the Act as well as the impugned assessment order passed in pursuance of the said notice requires to be quashed.*

*[II] Addition on account of disallowance of purchase consideration of shares Gujarat Meditech Ltd. - Rs. 50,73,595/*

*1. The ld. CIT(A) has grievously erred in law and on facts in confirming the addition of Rs.50,73,695) made by the AD being the purchase value of shares of Gujarat Meditech Ltd, merely on surmises and conjectures as well as without verification of facts by mechanically relying upon the various findings, allegations and observations in the Information received from a third party. In view of facts, submission and evidences fled and more particularly the fact that the appellant is engaged in the business of trading in shares the impugned addition of Rs.50,73,695-requires to be deleted.*

*2. The ld. CIT(A) has erred in not considering and appreciating the fact that the trading in shares of Gujarat Meditech Ltd. and the resultant profit/loss is genuine and has been carried out on screen based faceless digital platform Le, on a terminal in normal course of trading activity, through BSE/NSE and registered stock brokers, receipts/payments are through banking channels, shares are duly reflected in demat account, purchase and sale is at prevailing market rates and the STT and other Govt. levies on sale of shares have been duly paid. Thus, in absence of any contrary evidence brought on record by the AD to disprove the comprehensive evidences filed, the impugned addition of Rs.50,73,695/- ought to have been deleted.*

*3. The appellant states that since it is not the case of the AO that the said alleged bogus transactions have been carried out in connivance with BSE and registered brokers and keeping in view the fact that BSE has also not treated the transactions in the said companies as bogus or sham and having also not classified them as penny stock companies, the impugned addition being based on mere surmises and conjectures is wholly unjustified and bad in law.*

*4.The Id. CIT(A) has grievously erred in ignoring the fact that in assessment orders passed u/s.143(3) of the Act in earlier and subsequent years, including the assessment order passed by the earlier AO u/s.143(3) of the Act, the trading in shares of Gujarat Meditech Ltd. and the resultant profit/loss has been accepted*

*and no addition has been made. Thus, absence of change in facts, no addition is warranted on identical facts.*

*5.The Id. CIT(A) has grievously erred in not considering the fact that the AO has reopened assessment on different stands to the convenience of the department in the reasons recorded in case of various members of the appellant's family/group concerns. The AO while disallowing only the net loss incurred in shares of Gujarat Meditech Ltd. in case of other assesseees of the family/group has disallowed the entire purchase value of shares of Gujarat Meditech Ltd. on identical facts in case of the appellant. The impugned addition of Rs.50,73,695/- thus requires to be deleted on this ground itself.*

*6. The Id. CIT(A) has further erred in not appreciating that the fact that the AO has taken contradictory stands in as much as accepting the profit in trading of shares of various companies while disallowing the loss in trading of shares of same/other companies though all such companies were treated/alleged to be penny stock companies. Such an approach is wholly unjustified and bad in law*

*7 The Id. CIT(A) has also erred in not considering the fact that the AO has failed to provide the complete details/material/evidences including the information/data collected from BSE, evidence in support of approval obtained u/s.151 of the Act as well as statements recorded, if any, along with an opportunity of their cross examination as referred to and relied upon in the reasons recorded and the assessment order for making the impugned addition of Rs.50,73,695/-.*

*In view of the above, the addition of Rs.50,73,695/- being the purchase value of shares of Gujarat Meditech Ltd. is required to be deleted.*

*[III] Notional Addition on account of commission allegedly paid on purchase consideration of shares of Gujarat Meditech Ltd. amounting to Rs.50.73.695/- 0.25%- Rs.12,684/-*

*1.The Id. CIT(A) has grievously erred in law and on facts in confirming addition of Rs.12,604 made by the AO being commission allegedly paid on purchase consideration of shares of Gujarat Meditech Ltd. amounting to Rs.50,73,695/- (wrongly stated to be loss in the assessment order] merely on surmises, conjectures and assumptions. In view of facts and elaborate contentions raised in Ground of Appeal No. II hereinabove, since the addition self being on wrong premises and assumptions and liable to be deleted, the corresponding addition of notional commission allegedly paid also requires to be deleted.*

*2. The Id. CIT(A) has erred in not appreciating that the AD has taken different stands on the said issue since no such addition on account of entire purchase value of shares traded is made in case of other family/group assesses on identical*

*facts. The impugned addition thus even otherwise requires to be deleted on the basis of stand of the AD in other cases on identical facts.*

*The appellant craves leave to add, amend, alter, modify or delete any of the above grounds and to submit additional grounds at the time of hearing of the appeal.”*

15. In this case, the original return of income for A.Y. 2012-13 was filed by the assessee on 09-08-2012 declaring income at Rs. 1,98,880/-. Further, the scrutiny assessment u/s. 143(3) of the Act has been completed on 31-03-2014 wherein the income of the assessee was assessed at Rs. 10,32,730/-. The case of the assessee was reopened u/s. 147 of the Act and notice u/s. 148 of the Act was issued on 31-03-2019. Subsequently, notice u/s. 143(2) of the Act dated 14-09-2019 and notice u/s. 142(1) of the Act dated 15-10-2019 along with questionnaire was issued to the assessee. In response to the notice u/s. 148 of the Act dated 31-03-2019, the assessee filed return of income on 17-04-2019 declaring total income at Rs. 1,98,880/-. Copy of reasons recorded for reopening of the assessment for assessment year 2012-13 was provided to the assessee on 03-05-2019 and the assessee filed objections dated 16-11-2019 which was disposed of vide order dated 17-12-2019. The Assessing Officer observed that the assessee is engaged in the business of trading of shares, securities, derivatives and commodities. The Assessing Officer further observed that there was an information received from DDIT, Inv. Ahmedabad regarding reports of BSE trade data, seized and impounded material and statements of various persons and after examining the same, it was concluded that scrip of Meditech Ltd. and Veronica Production Ltd. are amongst vague companies involved in providing accommodation entries to various beneficiaries. The modus operandi of providing accommodation entries in respect of providing bogus

gain/loss is that desirous benefit approach of the main person namely Jignesh Shah through mediators or in some directly for obtaining profit. The Assessing Officer observed that the said Shri Jignesh Shah admitted in his statement on oath u/s. 131 that he had facility of accommodation entry for long term capital gains through Sanjay Shah and Tushar Shah. The Assessing Officer observed that the assessee has entered into transactions with Gujarat Meditate Ltd. which is a penny stock having no definite activity and assessee has been beneficiary of accommodation entries from transaction of shares. After taking cognizance of the details, the Assessing Officer observed that the total trade volume in shares of Gujarat Meditate Ltd. on 05-11-2011 and 06-1-2011 was 1,21,000 and 96000 respectively. The Assessing Officer issued show cause notice dated 07-11-2019 calling upon the sale of share of Gujarat Meditech whether should be considered an arranged transaction to bogus loss or not. The assessee filed its reply/submissions and after taking into consideration the same, the Assessing Officer made addition of Rs. 50,73,695/- in respect of assessee's claim of loss relating to transactions of sale of scrip i.e. Gujarat Meditate Ltd. and claiming loss. The Assessing Officer also made addition of Rs. 12684/- being the commission paid by the assessee @ 0.25% of the loss of Rs. 50,73,695/-. Being aggrieved by the assessment order, the assessee filed appeal before CIT(A) which was dismissed.

16. The ld. A.R. submitted that there is a delay of 55 days in filing the present appeal for which the assessee has filed the detailed application thereby stating the reasons. After going through the same it appears that the

reason explained by the assessee for delay in filing the appeal before the Tribunal appears to be genuine. Hence, the delay is condoned.

17. The ld. A.R further submitted that as regards ground no. 1 (1 to 5), the same is identical to that of the assessee's case for assessment year 2011-12 and case of Shri Sagar Jhaveri.

18. The ld. D.R. submitted that the issue is identical to that of the case of Sagar Jhaveri and assessee's case for assessment year 2011-12

19. We have heard the parties and perused all the relevant materials available on record. The main contentions of the assessee for ground no. 1 is related to the reopening/reassessment proceedings are merely based on change of opinion, objections were not disposed of properly, the transaction in question was duly reflected in books of accounts and details regarding the share transactions were also given by the assessee during the assessment proceedings. Hence, the Ld. A.R. submitted that the assessee was not given opportunity of cross-examination of the persons whose statement was relied upon by the Assessing Officer. In the present case, the reopening was categorically on the issue of transactions in the scrip of Gujarat Meditech Ltd. and the Assessing Officer has given an independent reasoning as well as taking cognizance of the investigation report and is not solely relying upon the statement or on the report. The reasoning given herein above in case of Sagar Jhaveri is applicable in present case as well. Hence, the ground no. 1 (1-6) is dismissed.

20. As regards the merits of the case, relating to addition on account of disallowance of purchase consideration of shares of Gujarat Meditech Ltd. the same is based on surmises and conjectures as mentioned by the Id. A.R. The Id. A.R. further submitted that in this case, there was a search in the premises of the entry operator and in fact the Assessing Officer ignored the fact that the trading in shares of Gujarat Meditech Ltd. resultant profit/loss is genuine and has been carried out on screen based faceless etc. platform through BSE/NSE and with registered stock broker and the assessee has paid security transaction tax (STT) while purchasing and selling the said shares. The assessment order passed by the earlier Assessing Officer in earlier and subsequent years u/s. 143(3), the trading in shares of Gujarat Meditech Pvt. Ltd. and result profit/loss has been accepted by the Department.

21. The Id. D.R. submitted that the purchase was disallowed in the present case and in fact the purchase was doubted by the Assessing Officer. The assessee has not demonstrated the difference of second in the buy order time, sale order time in these particular shares. The Id. D.R. filed the following written submission:-

*“1. As noted by the Assessing Officer in his assessment order the information was received from Investigation wing, Ahmedabad that search action w/s 132 was conducted in the case of Shri Jignesh Shah, an accommodation entry provider of Ahmedabad it was found during investigation that Shri Jignesh Shah is managing and controlling multiple companies and concerns which are not carrying out any business activity.*

*2. These concerns are involved into activity of providing accommodation entries of various kinds such as unsecured loans, share premium, bogus losses etc. The concerns were found to be non exist at their address. The directors of companies/persons in whose names concerns are registered admitted by way of filing affidavit that the companies concerns are not carrying out genuine business activity and engaged into providing accommodation entries through Jignesh Shah Based on reference to various script in the seized and impounded material,*

*statements of various persons, BSE trade data and order data analysis it has been concluded that the group provided accommodation entry of bogus Itcg through trading in 15 odd penny scrip the scrip of Gujarat Meditech Limited is amongst the web companies involved in whole racket.*

*3. It was noticed that during the year under consideration the assessee has entered into transactions with Gujarat Meditech Limited which is a penny stock company having no genuine business activity.*

*4 The findings and evidences gathered during enquiry clearly indicate that the assessee has been a beneficiary from transaction of shares of Gujarat Meditech United. On analysing the information the assessing officer drew independent satisfaction that the income has escaped assessment in case of the assessee, further the assessee has not fully and truly disclosed the material facts necessary for his assessment for the year under consideration.*

*5 Further the assessing officer has discussed the applicability of the provisions of section 147 /151 of the case in para 8-10 of his reason for reopening assessment under section 148.*

*6. It may also be noted that the ground Challenging issuance of notice under section 148 was also taken by the assesee before CIT (Appeals) which was dealt in detail by the learned appellate authority.*

*7 Reliance was placed on the decision of Honourable Jurisdictional High Court of Gujarat in the case of Mehrunisa Mohammed Fazal Maniyar Vs Income Tax Officer (2021) 127 taxmam.com 547 (Gujarat) dated 21 20 21 Wherein the Honourable High Court upheld the reopening related to transaction made with bogus concern of Shri Jignesh Shah. The head note of the order is as under:*

*Section 68 read with section 148 of the income-tax Act 1961 Cash credit (Bogus sale of shares) Assessment year 2012-13 Assessee filed his return of income showing exemption of long term capital gain on sale of shares of certain amount Same was accepted without scrutiny and an assessment order was passed An information was received from DDIT (Investigation) that during search conducted upon one JS it was found that he was director in several companies which were actually shell companies not in existence and were engaged in providing bogus accommodation entries regarding long term capital gain on sale of shares and assessee had also sold shares of such company held by and impugned exemption long term capital gain claimed by it was bogus. On basis of same Assessing Officer had issued a reopening notice against assessee it was noted that subsequent information on basis of which Assessing Officer acquired reasons to believe that income chargeable to tax had escaped assessment on account of omission of assessee to make a full and true disclosure of primary facts was relevant reliable and specific it was not at all vague or non specific it was not*

*a case of mere change of opinion or drawing of a different inference from same facts as were earlier available but Assessing Officer was acting on fresh formaton, Further since transaction itself on basis of subsequent information was found to be a bogus transaction, mere disclosure of that transaction at time of original assessment proceedings could not be said to be disclosure of true and full facts Whether, on facts, impugned reopening notice issued against assessee was justified Held, yes (Paras 12,14 and 16) [In favour of revenue]."*

*8 Reliance is also placed on the following decisions of the Hon'ble Jurisdictional High Courts, which are as under:*

*(i) The decision of the Hon'ble Jurisdictional High Court of Gujarat in the case of Anderson Biomed (P.) Ltd. vs. Assistant Commissioner of Income-tax, Circle 1(1)(1) 2021] 129 taxmann.com 135 (Gujarat) dated 31.07.2021 related to transaction with bogus concern of Shi Jignesh Shah.*

*(ii) The decision of the Hon'ble Jurisdictional High Court of Gujarat in the case of Bharatkumar Kalubhai Ghadiya v Assistant Commissioner of Income-tax, Central Circle 2(3), Gujarat (2021) 129 taxmann.com 306 (Gujarat) dated 19.08.2021 related to transaction with bogus concern of Shri Jignesh Shah and Shn Sanjay Shah.*

*(iii) The decision of the Hon'ble Jurisdictional High Court of Gujarat in the case of Zaveri & Company (P) Ltd. vs. Deputy Commissioner of Income-tax [2021] 133 taxmann.com 397 (Gujarat) dated 05.07.2021 related to transaction with bogus concern of Shri Jignesh Shah and Shri Sanjay Shah.*

*Disallowance of share trading loss in the shares of Gujarat Meditech Limited:*

*1 The Assessing officer has dealt with this issue in detail in his Assessment Order in para No 4 to 6 of his order. The AO has mentioned in detail the analysis of trade data which established that the assessee was involved in synchronized trading to book bogus loss*

*2. The AO also analysed the time of placement of orders by buyers and seller parties which revealed that in some cases there was difference of seconds in the buy order time and sell order time*

*3. Here it is also important to note that the total trade volume in shares of Gujarat Meditech on 5/11/2011 and 6/11/2011 was 121000 and 96000 respectively Out of the total volume disproportionately large share has been purchased by these companies that is most of the shares sold by the assessee and his Associates were purchased by entities controlled by a single person.*

4. It is pertinent to mention here that in case of Penny scrips which is being controlled by entry providers, general public or a person with any financial acumen does not make trade or invest shares since these companies have no financial backing to support their Cyclic rise and fall of price. In this case also it is seen that majority of transactions on date of sale of shares were carried by the assessee and his Associates. It may also be noted that the AR of the SSC argued that in few instances sale order was made 4 hours prior to buy order time however as mentioned above General public does not make trade in these shares therefore sale order can be placed at any time since no one but entities arranged by entry provider will make buy order. Further it is seen from time data analysis that in the case purchasing entity bought shares within a span of 2 minutes by placing around 20 orders.

5. Further the financials of the purchaser companies were also analysed from their ITR Med From the same it is seen that both the companies were having huge losses in their books and the act of investment in shares of a company having poor fundamentals is against the prudent behaviour of an investor/business entity. Thus it was established that the assessee has traded in shares of penny scrip to book bogus loss. Even the SEBI has passed adverse orders against this company. There are selected group of clients making high trade volume in last 30 minutes indicates close price of the scrip was manipulated to move in a particular direction. Further analysis of time difference leads to finding that large volume and trades occurred in very small time window which indicated synchronised trading.

6. Thus it was conclusively ascertained that the transactions made by the assessee in shares of Gujarat meditech Limited were arranged transaction to generate bogus loss.”

22. We have heard both the parties and perused all the relevant materials available on record. From the perusal of the assessment order, the Assessing Officer has given the details related to the purchase of shares and analyse the trade data along with the selling of the shares. But the Assessing Officer has not co-related as to how the assessee with the scrip company has manipulated the transaction though there is an observation that out of total volume disproportionate loss share has been purchased by one company at the time of selling but the Assessing Officer has not co-related or has given any independent finding as to how the sales scrip was not purchased as per

the norms of the BSE/NSE and the guidelines of SEBI. Thus, ground no. II (1-7) is allowed. As regards the ground no. 3, the same becomes infructuous as it is on the notional addition on account of commission allegedly paid of purchase consideration of shares of Gujarat Meditate Ltd., amounting to Rs. 12,684/- which is 0.25% of Rs. 50,73,975/-. Hence, ground no. III is allowed.

23. Thus, ITA No. 12/Ahd/2024 is partly allowed.

**Now coming to the ITA No. 13/Ahd/2024 (Aarav Financial Ltd.)**

24. The grounds of appeal are as under:

*“[1] Assessment order is bad in lace and invalid, the same being based on change of opinion and having been passed without consideration of the objections/submissions filed disputing the validity of notice u/s. 148 and reassessment proceedings pursuant thereto.*

*1.The Id. CIT(A) has failed to appreciate that the And reopening the assessment and consequently passing the assert order the same is bad in law and without jurisdiction so the assessment had been reopened not only on the basis of borrowed satisfaction but general and vague material and Information received from a third party and not on the basis of case specific material/evidence found in case of the appellant seated and since there is no escapement of income at all defined in section 147 of the Act which is a condition precedent for issuing notice u/s.148 of the Act, the CIT(A) ought to held the reassessment order as bad in law and void-ab-initio.*

*2. The ld. CIT(A) grievously erred in not considering the fact that the AO has not disposed off the elaborate objections disputing the validity of notice u/s. 148 and reassessment proceedings pursuant thereto based on the reasons recorded. That since the AO has failed to dispose of the objections filed by the appellant by passing a speaking order, which he was mandatory bound to do so prior to proceeding with the case on merit as held by various courts of law,*

*the re-assessment in dispute requires to be quashed as void-ab-initio on this ground itself.*

*3.The Id. CTA) further failed to appreciate the fact that the re-assessment order passed by the AO was invalid and bad in law in as much as the facts and figures mentioned in the reasons recorded for reopening are incorrect and contrary to facts and since the transaction in question having been duly recorded in books of account.*

*4.The Id. CITA) has erred in not considering the fact the Assessing Officer has failed to furnish the copy of material or evidences relied upon including statements recorded as referred to and relied upon in the reasons recorded along with an opportunity of cross examination of such persons for initiating the proceedings u/s. 147 of the Act by issuing the notice u/s. 148 of the Act*

*5. The Id. CITA) ought to have appreciated that there is no failure on part of the appellant company to disclose fully and truly all material facts necessary for his assessment.*

*In view of the above, the appellant company submits that both i.e. notice u/s. 148 of the Act as well as the impugned assessment order passed in pursuance of the said notice requires to be quashed.*

*II Addition on account of disallowance of loss in trading of shares of Gujarat Meditech Ltd. Rs. 25,86,440/-*

*1. The Id. CIT(A) has grievously erred in law and on facts in confirming the addition of Rs.25,86,440/- made by the AO being loss incurred in trading of shares of the Gujarat Meditech Ltd. merely on surmises and conjectures as well as ignoring the details and comprehensive evidences available/filed in support of genuineness of the transactions resulting in trading loss/profit by chance on the findings, allegations and observations in the information received from third party. In view of facts, submission and evidences filed and available on the roughed of Rs.25,86,440/- requires to be deleted.*

*2. The Id. CIT(A) has erred in not considering and appreciating the fact that the trading in shares of Gujarat Meditech Ltd. and the resultant loss is genuine and has been carried out on screen based faceless digital platform Le, on a terminal in normal course of trading activity, through BSE/NSE and registered stock brokers,*

*receipts/payments are through banking channels, shares are duly reflected in demat account, purchase and sale is at prevailing market rates and the STT and other Govt. levies on sale of shares have been duly paid. Thus, income of any contrary evidence brought on record by the AO to disprove the comprehensive evidence filed, the impugned addition of Rs 25,86,440/- ought to have been deleted.*

*3. The appellant states that since it is not the case of the AO that the said alleged bogus transactions have been carried out in connivance with BSE and registered brokers and keeping in view the fact that BSE has also not treated the transactions in the said companies as bogus or sham and having also not classified them as penny stock companies the impugned addition being based on mere surmises and conjectures, the ld. CIT(A) to have held the same as wholly unjustified and bad in law.*

*4. The ld. CIT(A) has grievously erred in ignoring the fact that in assessment orders passed u/s.143(3) of the Act in earlier and subsequent years, including the assessment order passed by the earlier AO u/s.143(3) of the Act, the trading in shares of Gujarat Meditech Ltd. and the resultant profit/loss has been accepted and no addition has been made.*

*5. The Id. CIT(A) has grievously erred in not appreciating the fact that the reopening of the assessment by the AO is on different stands to the convenience of the department as evident from the reasons recorded in case of various members of the appellant's family/group concerns. The AO in some cases have disallowed only the net loss incurred in trading of shares of Gujarat Meditech Ltd. and other companies while allowing profit earned from the same companies and in some cases have disallowed and added the entire purchase/sale value of shares of Gujarat Meditech Ltd. or other companies on identical facts and though all such companies were treated/alleged to be penny stock companies. The appellant states that such contradictory and fluctuating stands in different cases itself speaks of the manner in which the additions have been made and thus the impugned addition of Rs.25,86,440/- in the instant case requires to be deleted on this ground itself.*

*In view of the above, the addition of Rs.25,86,440/- being loss incurred in trading of shares of Gujarat Meditech Ltd. is required to be deleted.*

*[III] Addition on account of commission allegedly paid on purchase consideration of shares of Gujarat Meditech Ltd. amounting to Rs.25,86,440/- 0.25% - Rs.6,466/-*

*1 The Id. CIT(A) has erred in law and on facts in confirming the notional/estimated addition of Rs.6,466/- made by the AO being commission allegedly paid on loss of Rs.25,86,440/- obtained in trading in shares of Gujarat Meditech Ltd. entirely on surmises, conjectures and assumptions. In view of facts and elaborate contentions raised in Ground of Appeal No. II hereinabove, since the addition itself being on wrong premises and assumptions and liable to be deleted, the corresponding addition of notional commission allegedly paid also requires to be deleted.*

*2. The Id. CIT(A) ought to have considered the fact that no such addition is made in case of other family/group assesses' on identical facts and hence in absence of change in facts, the impugned addition deserved to be deleted on the basis of AO's stand in other cases of the group entities on identical facts.*

*The appellant craves leave to add, amend, alter, modify or delete any of the above grounds and to submit additional grounds at the time of hearing of the appeal.”*

25. The Id. A.R. submitted that this is identical to Shri Sagar Jhaveri and the pleadings, therefore, are identical for this assessee's case as well. The factual matrices of the Aarav Financials Pvt. Ltd. is that the original return of income for A.Y. 2012-13 was filed by the assessee on 29-09-2012 declaring income at Rs. 65,96,960/-. Scrutiny assessment u/s. 143(3) was completed on 31-01-2015 wherein the income of the assessee was assessed at Rs. 65,96,960/-. The case was reopened u/s. 147 of Act and notice u/s. 148 of the Act was issued to the assessee on 30-03-2019. Subsequently, notice u/s. 143(2) dated 14-09-2019 was issued to the

assessee. In response to the notice u/s. 148 of the Act dated 31-03-2019. The assessee filed return of income on 26-04-2019 declaring total income at Rs. 65,96,960/-. Copy of reasons recorded for reopening of the assessment for A.Y. 2012-13 was provided to the assessee on 03-05-2019 and objections to the said reasons were filed by the assessee on 15-11-2019 and 22-11-2019 which was duly disposed of vide order dated 24-12-2019. Notice u/s. 274 r.w.s. 271(1)(b) of the Act dated 09-10-2019 was issued to the assessee as the assessee has not complied with notice u/s. 143(2) dated 14-09-2019. In this case, the assessee entered into transactions with Gujarat Meditech Ltd. which is a penny stock company as observed by the A.O. The Assessing Officer made addition of Rs. 25,66,440/- towards transactions related to the scrip Gujarat Meditech Ltd. and disallowed the loss. The Assessing Officer also made addition of Rs. 6466/- being the commission paid by the assessee @ 0.25% of the loss of Rs. 25,86,440/-. The ld. A.R. submitted that this case is identical to that of Vicky Rajesh Jhaveri (ITA 12/Ahd/2024).

26. The ld. D.R. also submitted that this case is identical to that of ITA No. 12/Ahd/2024.

27. We have heard both the parties and perused all the materials available on record. The legal ground i.e. ground no. 1 (1-5) is identical to that of Sagar Jhaveri and hence the same is dismissed. As regards ground no. 2 (1-

5), the same is identical to the case of Vicky Rajesh Jhaveri (ITA No. 12/Ahd/2024) and no distinguishable facts were pointed out by the Id. D.R. and hence ground no. II (1-5) is allowed. As regards ground no. III, the same is also identical to that of ITA No. 12/Ahd/2024 i.e. Vicky Rajesh Jhaveri, hence the same is allowed.

28. Thus, ITA No. 13/Ahd/2024 is partly allowed.

29. In the result, all the four appeals of respective assesseees are partly allowed.

Order pronounced in the open court on 22-10-2024

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 22/10/2024**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद