

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

BEFORE SHRI/ST.R. SENTHIL KUMAR, JUDICIAL MEMBER  
AND  
NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA No.626/Ahd/2024  
Asst.Year :2014-2015

Rachana Sanjay Shah 72, Tapovan Society Nr. Manekbaug Hall Ambawadi Ahmedabad 380015. PAN : AMDPS 6571 P	Vs	The Pr.CIT-1 Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
Assessee by :	Shri S.N. Divatia, AR and Shri Samir Vora, A
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 08/08/2024

घोषणा की तारीख /Date of Pronouncement: 06/11/2024

**आदेश/O R D E R**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:**

This appeal is filed by the assessee as against the order dated 16.3.2024 passed by the Pr.Commissioner of Income-Tax-1, Ahmedabad under section 263 of the Income Tax Act, 1961 ("the Act" for short) arising out of the reassessment order passed under section 147 of the Act relating to the Asst.Year 2014-15.

2. Brief facts of the case is that the assessee is an individual and derives income from partnership firm M/s.Shah Interior INC, interest and dividend income. For the Asst.Year 2014-15, the assessee filed her original return on 29.7.2024 declaring total income of Rs.9,46,031/- and filed the Revised return declaring total

income of Rs.11,13,232/-. Later, the AO initiated re-assessment proceedings by issuing notice under section 148 dated 30.3.2021 on the ground that as per the information received from DDIT (Inv.), Unit-5(1), New Delhi that M/s. Looks Health Services Ltd. ("LHSL" for short) was a penny stock company, which has used its beneficiaries to have long term capital gain by fabricated trading activity and thereby generating fictitious profit/loss, and even by manipulating the price of the scrip. The AO observed that the assessee was one of the beneficiaries indulged in sham transaction of Rs.92,12,772/-. In response to the notice, the assessee requested to treat the revised return as in response to the above notice and raised objections on the reopening of the assessment. However, in response to the notice under section 142(1) dated 25.11.2021, the assessee asked to furnish the details relating to the sale of shares viz. "LHSL" amounting to Rs.92,12,772/-. In response to the notice, the assessee filed a detailed reply as follows:

**You will appreciate that I had acquired shares in Private placement allotment having one of the terms of allotment that the shares will remain in lock in period of 1 year from the date of allotment & I have made payment through account payee cheque for the purchase of shares. The**

payment was made vide chq. No. 118287 drawn on HDFC Bank Ltd, Ambawadi Branch, Ahmedabad on 02-02-2012, which is evident from the evidences in the form of bank statement of HDFC Bank showing payment of Rs. 2,50,000 made for the purchase of shares.

Hence, I have acquired shares of Looks Health Service Ltd through proper channel by payment made from bank account and shares held in d-mat form since after their acquisition. I also enclose the copy of Deamt Statement showing the said shares under Lock-in period vide Demat A/c with Innovate Securitoes Pvt Ltd.

Summary statement showing the period of investment held and selling dates after Lock-in period ;

<b>Looks Health Services Ltd</b>								
Date	Purchase Qty.	Rate Rs.	Purchase Cost Rs.	Sell Qty.	Rate Rs.	Selling Price Rs.	Cl. Qty.	LTCG
02/02/2012	25,000	10	2,50,000		-	-	25,000	
14/06/2013				9,600	277.14	26,60,499	15,400	25,64,499
15/10/2013				12,800	378.71	48,47,508	2,600	47,19,508
23/12/2013				2,400	433.52	10,40,453	200	10,16,453
			<b>2,50,000</b>	<b>24,800</b>		<b>85,48,460</b>		<b>83,00,460</b>
<b>MCX India Ltd</b>								
07/03/2012	8	1,032	8,256				8	
29/01/2014				8	501.73	4,014	-	4,242
<b>Coal India Ltd</b>								
02/11/2010	200	233	46,550				200	
29/01/2014				200	250.87	50,173	-	3,623
<b>HK Fine Chem</b>								
01/01/2013	10,000	41.48	4,14,753				10,000	
26/02/2014				10,000	104.00	10,39,967	-	6,25,214
			<b>7,19,559</b>			<b>96,42,614</b>		<b>89,25,055</b>

Further in respect of total transaction of wrong conclusion of Ld. A.O. for sale of shares of Looks Health Services Ltd for Rs. 92,12,772/- I would like to state that, from the above you table you will appreciate that I had made transaction of Rs. 85,48,460 only for sell of 24,800 shares of Looks Health Services Ltd. against so called transactions as alleged by Ld. AO for Rs. 92,12,772. Further the said shares had been purchased by me in the month of February 2012. The company had come with IPO ( Initial Public Offer) after 3 months on 12-05-2012 and as per terms of the IPO as per guidelines of SEBI, the shares purchased by me were under lock- in period of one year from the date of IPO so that I was not in position to sell it off immediately after the IPO. I had been able to sell the said shares after end of lock-in period after 1 year and same shares were sold on different dates after a span of more than 1 and half year time period.

You will also appreciate that these shares were sold on different dates with different selling price on live terminal on the floor of the stock exchange making STT payment on sale of shares. Further, as against the allegation of Ld.AO and Investigation wing " *As per the information ,the Looks Health Services Ltd is a penny stock company, which has been used by beneficiaries (sellers of shares) to launder money in the grab*

*of long term capital gains while claiming tax exemption under section 10(38) of the IT Act. As per the information ,the assessee is the beneficiaries/member of the syndicate. The DDIT further reported that large scale manipulation of trades and trading activity has taken place in the scrip. This has led to the generation of fictitious profit and loss derived by various traders which were not genuine and were predetermined .It can also be stated that the trades were carried out between a set of very few persons which were responsible for trade matching and placing huge orders which were matched against the corresponding counter orders immediately after the orders are placed. Even the price of the scrip was manipulated by the traders by manipulating closing price of the scrip on a particular trading day. This is important as closing price directly influences the opening price of the next trading day. This also is necessary to artificially jack up the price of the scrip so that it can be raised up to certain level and the shares are sold to predetermined parties thereby earning bogus long term capital gains which is exempt from capital gains tax u/s 10(38) of the Income Tax Act,1961. Reverse modus operandi is adopted in order to provide entry of bogus short term capital loss. As per the information , the assessee has indulged in this sham transection and has made total sale during the year of Rs.92,12,772/-."*

In the above connection, I would like to clarify that the shares held by me were sold as per Standard Operating Procedure (SOP) and rules framed by SEBI, wherein the shares were required to be sold Online on Live Terminal by paying STT and the information of the Buyer is not known to the seller, not only this the shares sold are transferred through issue of Demat Slip to the Depository Participant (DP ) and the DP transfers the shares to the buyer through the Share Broker, where the said shares are purchased. Hence the statement and allegation that " trades were carried out between a set of very few persons which were responsible for trade matching and placing huge

*orders which were matched against the corresponding counter orders immediately after the orders are placed.*" is baseless and without any logic. And more over, the seller is not knowing who is buyer and this whole system of sales and purchase of shares have been approved by SEBI, This means that system approved for carrying on transactions of purchase and sale of shares is bogus and sham in its own.

In support of the above, I herewith enclose following for your kind reference.

a) Copy of Share Application form for allotment of 25000 shares. EXHIBIT - 2

b) Copy of Bank Statement showing payment made for allotment of shares.

EXHIBIT - 3

c) Copy of Demat Account showing the shares credited in Lock in mode.

EXHIBIT - 4

d) Transaction Statement showing movement of shares on sell of shares.

EXHIBIT - 5 }

12. With respect to details of transaction of shares as required in Para 5 of your notice I herewith enclose the details as under ;

Date of Purchase of Shares	No. of shares purchased	Premium on each share purchased	Sale Consideration received on sale Rs.	Mode of receipt	Amount of Capital Gain on Sale Rs.
02/02/2012	25,000	0			
14/06/2013			26,60,499	By Chq	25,64,499
15/10/2013			48,47,508	By Chq.	47,19,508
23/12/2013			10,40,453	By Chq.	10,16,453
<b>Total</b>	<b>25,000</b>		<b>85,48,460</b>		<b>83,00,460</b>

Out of total purchase of 25,000 shares of Looks Health Services Ltd., I could sell only 24,800 shares in the market through live terminal on the floor of the recognised stock exchange of BSE and still 200 shares were remained unsold. If this was the bogus or sham transaction, then I would have sold all the shares in one hit instead of selling different quantity on different dates with different rates. I also enclose the copy of ledger account in the books of INNOVATE SECS. PVT. LTD for your kind reference showing different dates of transactions. **“EXHIBIT – 7 “**

3. Based on the above reply, and comparing with the return of income filed by the assessee, the AO accepted the returned income of Rs.11,13,230/-. On perusal of the above reassessment order, the ld.Pr.CIT found that the assessee had earned bogus long term capital gain of Rs.92,12,772/- by manipulating trading of penny stock, whereas the AO without making any verification accepted the returned income including bogus transaction, thereby reassessment

order is erroneous and prejudicial to the interest of Revenue, and also short levy of tax of Rs.56,36,558/-. Therefore, a show cause notice dated 9.2.2024 was issued, as to why not revise reassessment order passed by the AO.

3.1 In response, the assessee vide a letter dated 19.2.2024 filed reply explaining that the AO during the assessment proceedings has elaborately considered the reply filed by the assessee and on the basis of copies of DEMAT account, contract note, transaction statement showing movement of shares, copy of the share application money for allotment of 25,000 shares of "LHSL", copy of bank statement showing payment made for allotment of shares, copy of sale of shares, sales bills with security transaction taxes made to recognized stock exchanges viz. BSE. On perusal of the same, Id.AO accepted the returned income and passed the assessment order. Further, the assessee sold 24,800 shares as against the purchase of 25,000 shares) on three dates and still 200 shares were retained by the assessee. If the allegations of the department that the sale of shares being bogus or sham transaction, the assessee would have sold shares at one hit, instead of selling in different quantities at different dates with different rates. This allegation made by the Revenue is baseless and the sale consideration received by the assessee is Rs.85,48,460/- and not Rs.92,12,772/- as alleged by the department.

3.2 The above reply was considered by the Id.Pr.CIT, who however found that the AO has not made required inquiry, and thereby set aside the reassessment order to the file of the AO with a direction to pass fresh assessment order in accordance with law, after duly

examining the facts and after providing reasonable opportunity of hearing to the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the Tribunal raising the following grounds:

*“1.1 The Order U/s.263 passed on 16-03-2024 by Pr.CIT.Ahmedabad-1, A'bad (for short Pr. CIT) for AY 2014-15 holding that the order of assessment u/s 147 rws 144B passed on 21.03.2022 by AO accepting the LTCG on sale of shares of Looks Health Services Ltd. (short 'LHSL') was genuine and the appellant was entitled to exemption u/s 10(38) of the Act was erroneous and prejudicial to the interest of the revenue is wholly illegal, unlawful and against the principles of natural justice.*

*2.1 The Id. Pr.CIT has grievously erred in law and or on facts in holding that the order of assessment u/s 147 rws 144B passed on 21.03.2022 by AO accepting the LTCG on sale of shares of Looks Health Services Ltd. (short 'LHSL') Rs. 92,12,772/- as genuine and the appellant was entitled to exemption u/s 10(38) of the Act was erroneous and prejudicial to the interest of the revenue. 2.2 That the in the facts and circumstances of the Id. Pr. CIT ought not to have invoked the powers of revision u/s 263 and thereby holding that LTCG on sale of shares of Looks Health Services Ltd. (short 'LHSL') of Rs. 92,12,772/- was not genuine and the appellant was not entitled to exemption u/s 10(38) of the Act.*

*3.1 The Id. NFAC has grievously erred in law and or on facts in holding that the provision of Explanation-2 to sec.263 was attracted in the facts of the case.*

*3.2 That the in the facts and circumstances of the Id. Pr. CIT ought not to have directed AO to pass a fresh order of fresh assessment order in respect of LTCG on sale of shares of LHSL claimed exempt u/s 10(38) of the Act as per the observations made in the impugned order by him.*

5. Shri S.N. Divetia, the ld.counsel for the assessee submitted that the revision order passed by the ld.Pr.CIT is against the provisions of law. The Revenue reopened the assessment on identical information with the sale of “LHSL” shares on the ground of being a penny stock company. Whereas, the reassessment proceedings, it was clearly brought out that the above transaction of sale of shares are genuine activity carried out by the assessee. Thus, the ld.AO carried out necessary inquiries with regard to the

purchase and sale of these scrips which is reflected in the reply filed by the assessee vide his letter dated 29.11.2021. In view of these facts, it is abundantly clear that the after examining the information received by the AO, he adopted one of the views, and if the Id.Pr.CIT did not agree with that of the view of the AO, then it could not be treated as an erroneous order and prejudicial to the interest of the Revenue, as held by the Hon'ble Supreme Court in the cases of Malabar Industries Ltd. Vs. CIT, and Max India Ltd., Gujarat High Court decision in the case of CIT Vs. ArvindJewellers and Sunbeam Auto Ltd of Delhi High Court. Further, co-ordinate Bench of the Tribunal in the case of KavithJayeshkumar Vs. PCIT, in ITA No.54/Ahd/2021 order dated 28.4.2022 and in the case of VarunNaginbhai Patel Vs. DCIT, in ITA No.417/Ahd/2019 order dated 8.12.2023 on the very same scrip viz. "LHSL" in the revision proceedings, which were quashed by the Co-ordinate Bench. Thus, the Id.counsel for the assessee pleaded that the revision proceeding is liable to be quashed and the re-assessment order passed by the AO is to be sustained.

6. Per contra, the Id.CIT-DR, Shri Sudhendu Das appearing for the Revenue supported the order passed by the Id.Pr.CIT, and also stated that the AO while passing the re-assessment order was simply accepted the revised return filed by the assessee without making any verification from his end, which is an erroneous order and liable for revision under section 263 of the Act. He accordingly prayed for dismissal of the appeal of the assessee.

7. We have given our thoughtful consideration, and perused the material available on record including the paper book and case laws compilation. It is seen from the reassessment proceedings, the Id.AO

vide his notice dated 25.11.2021 called for various information relating to the transaction with “LHSL” shares. The assessee made a detailed reply by furnishing the annual accounts, copies of share application, copy of bank statement, DEMAT account, contract notes and transaction statement showing movement of shares. The AO also noticed the sale of shares to the extent of Rs.85,48,460/- and not Rs.92,12,772/-, as per the information received by him from DDIT(Inv.).

7.1 On careful consideration of the above documents, the AO accepted the returned income declared by the assessee, thereby not making any addition on sale of “LHSL” shares. We find that the coordinate Bench of this Tribunal in the case of Kavita Jayeshkumar (supra) has quashed the revision order passed by the Id.Pr.CIT by observing as follows:

*“9.10 ..... The Pr. CIT initiated 263 proceedings on the ground that the AO has passed order in a hurried manner without making proper enquiring and verification. It is not the case of the Pr. CIT that the Ld. AO did not apply his mind to the issue on hand or he had omitted to make enquiries altogether or had taken a view which was not legally plausible in the instant facts. In the instant set of facts, the Ld. AO had made detailed enquiries vide notice dated 11-12-2018 and Ld. AO vide reply dated 12-12-2018 submitted that the transaction of purchase and sale of shares were duly supported by contract notes, demat account and payments were made through banking channel, assessee produced details of share-holders, details of revenue earned by the company over the years and gave a detailed rationale for investment in shares of M/s Looks Health Care services Ltd. After consideration of material placed on record, Ld. AO allowed claim of exemption on sale of shares of M/s Looks Health Care services Ltd. u/s 10(38) of the Act. Now on the issue that the Ld. AO passed a cryptic order and did not discuss in detail regarding assessee's claim of the allowability of exemption u/s 10(38) of the Act on sale of shares of M/s Looks Health Care services Ltd, in our view it is a well settled position of law that if from the assessment records, it is evident that the Ld. AO has made due enquiries in response to which assessee has filed detailed submissions, then even if the assessment order does not discuss all aspects in detail with regards to claim of the assessee, it cannot be held that the order is erroneous and prejudicial to the interests of the Revenue. The above proposition has been upheld in the case of CIT v. Reliance Communication 69 taxmann.com 109 (Bombay), Smt. Anupama Bharat Gupta v. ITO in ITA 1685/Ahd/ 2018, Goyal Private Family Specific Trust [1988] 171 ITR 698, CIT v.*

*Mahendra Kumar Bansal [2008] 297 ITR 99 (All.) (para 10) etc. We thus find no error in the order of Ld. AO so as to justify initiation of 263 proceedings by the Ld. Pr. CIT. The Ground of appeal raised by the assessee is thus allowed.*

8. Similarly, in the case of VarunNagainbhai Patel (supra), the Co-ordinate Bench deleted the addition made by the AO by observing as follows:

*“12. We have heard rival contentions of both the parties and perused the materials available on record. In the case on hand, the short-term capital loss claimed by the assessee on sale of shares of M/s Looks Health Services Ltd was held as bogus by the AO and subsequently by the learned CIT(A) for the reason elaborated in the previous paragraph. The facts are without ambiguity. The purchases and sales of M/s Looks Health Services Ltd were carried out on the platform of Bombay Stock exchange. However, the lower authority treated the transaction carried out by the assessee as sham transaction. The entire thrust of the revenue authority is based on certain general facts like the company M/s Looks Health Services Ltd was not financially viable in which general public should show interest. The price of the scrip was unusually skyrocketed without any financial or economic basis and unusually decreased. The scrip in that period were traded in bulk and most people who indulged in bulk trading were from Ahmedabad city only. Based on these general observations, the AO concluded that the price of shares M/s Looks Health Services Ltd rigged up to provide bogus LTCG/ STCL to beneficiaries. The AO in its order has stated nowhere that any enquiry or investigation was carried out with any concerned authority or income tax department regarding rigging up of the price of M/s Looks Health Services Ltd or by the assessee's broker. The AO predominantly proceeded to hold the price of the shares was rigged up merely on analysis of trade data of impugned scrip and financial strength of the company. Thus, the AO based on sweeping observation held that the assessee entered a prearranged transaction to set off the long-term capital gain earned by him during the year. As such, there is no information or finding based on corroborative material available with the AO that the price of impugned scrip was rigged up or the assessee along with his broker have rigged up the price or prearranged the transaction. The AO and learned CIT(A) also emphasizes the principles of surrounding circumstantial evidence. In this regard we are of the considered opinion the principle of surrounding circumstantial evidence is also not as strong to draw adverse inference against the assessee especially considering the fact that the transaction of purchases and sales were made on the BSE platform where seller and buyer do not know each other, and transaction entered on the basis of current market scenario. Further it is pertinent to mentioned that the assessee during the year under consideration has earned LTCG of Rs. 2,46,90,000/- whereas claimed setoff of STCL of Rs. 1,78,23,848/- only, had the assessee prearranged the transaction to set off the gain then he might have setoff entire capital gain. It is also pertinent to mention that the assessee during the year entered into share trading on short term basis in 48 different scrips and he incurred losses as well as earned profit which were not doubted. At this juncture, we find it necessary to refer to the*

*judgment of the Hon'ble Delhi High court in the case of PCIT vs. Krishna Devi reported 126 taxmann.com 80. In the case of Krishna Devi (supra) the AO predominantly based on financial and trade analysis of scrip held that modus operandi is similar to penny stock and disallowed the LTCG claimed by the assessee on the basis of modus operandi, parameters of human probability etc. The Hon'ble Bench of Delhi High court decided the issue in favour of the assessee. The relevant observation of the Hon'ble High Court reads 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 VarunNaginbhai Patel Vs. DCIT 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.*

*13. Thus, in view of the above discussion and respectfully following the judgment of Hon'ble Delhi High Court in identical facts and circumstances in case of PCIT vs Krishna Devi, we hereby set-aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed."*

9. Respectfully following the above judicial pronouncements, we have no hesitation in quashing the revision order passed by the ld.Pr.CIT, and therefore, we allow the grounds of appeal raised by the assessee.

10. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the Court on 6<sup>th</sup> November, 2024 at Ahmedabad.**

**Sd/-**  
**(NARENDRA PRASAD SINHA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

Ahmedabad, dated 06/11/2024

*vk\**

आदेश की प्रतिलिपि अग्रेषित/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 , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad