

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT RENU JAUHRI , ACCOUNTANT MEMBER**

**ITA No.5447/Mum/2024  
(Assessment Year :2011-12)**

Shri Paresh Harji Ramani 101, Building No.10 Jagruti CHS Vithal Nagar Mulund West Mumbai – 400 080	Vs.	Income Tax Officer- 29(2)(5) Mumbai
<b>PAN/GIR No.ALOPR7431H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Nishit Gandhi
Revenue by	Shri Mahesh Pamnani
<b>Date of Hearing</b>	<b>06/01/2025</b>
<b>Date of Pronouncement</b>	<b>07/01/2025</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 15/12/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) r.w.s. 147 for the A.Y.2011-12.

2. At the outset, the appeal filed by the assessee is time barred by 248 days.

3. In the grounds of appeal assessee has challenged the *exparte* order passed by the Id. CIT(A) and also the addition of Rs.78,88,940/- made u/s.69 of the Act in respect of purchase of shares of Aarya Global Shares and Securities Ltd.

4. Before us following reasons for delay and the entire facts and background of the case in the submission / application has been made:-

*"1. The Appellant (the Applicant herein) is an individual having a small time business of street vending. He is a member of the Kshatriya Kachchi Rajput Samaj, Mumbai.*

*2 The Kshatriya Kachchi Rajput Samaj, registered vide registration No. F8 422, dated 13.08.1983, GBB S.D 482 dated 30.07.1983 and compromise of the members being individuals of the Kshatriya Rajput Community.*

*3. However, later in about 2018, the applicant's case was reopened under section 147/148 of the act. However, the applicant was totally unaware of such reassessment. It needs mention that the Applicant is also one of the many victims of the Stock rigging scam done by one Mr. Navin Rathod and his associates on the members of Kshatriya Kachi Rajput Samaj, Mumbai. The Applicant's credentials were also fraudulently used in order to give effect to the said scam. In this regard, the applicant along with the other members of the said Samaj, filed various complaints to various authorities, including the police authorities, the economic offences wing, the Chief Commissioner of Income Tax, Mumbai, etc. In fact, the scam has also been taken note of by various media and also the Honorable High Court of Bombay while rejecting the bail application of the perpetrator/kingpin, Mr. Navin Rathod. A copy of the application filed before the Principal Chief Commissioner of Income Tax, Mumbai alongwith other all the relevant documents is annexed hereto and marked as Exhibit "A". However, no real action has been taken on the same.*

4. Pursuant to the said initiation of reassessment, the Assessing Officer passed an order under section 143 (3) r.w.s. 147 of the Act, making an addition in respect of purchase of shares from the stock exchange. The said re-assessment was attended to by Mr. Navin Rathod and his associates, keeping the assessee in the dark. In the said re-assessment proceeding, it has even been wrongly stated that the Appellant is an exit provider. Further, the Appellant was always given evasive answers by Mr. Navin Rathod and his associates when asked about the notices issued by Income Tax Department. The said re-assessment order in fact raised exorbitant demands of about Rs. 50 lakhs on a return of Rs. 2 Lakhs filed by the Assessee [the Applicant herein]. Pursuant to the said demand, the Applicant's bank account was attached. It was only then that the Applicant felt that there's something suspicious and confronted Mr. Navin Rathod on the same. In response, the Applicant was again deceitfully convinced by Mr. Navin Rathod that he will take care of the said demand. He also stated that an appeal is already lodged with the CIT(A) against the re-assessment order and he would take care of it.

5. Thereafter, the Applicant, believing the words of Mr. Navin Rathod, assumed that he would take care of everything including the demand and the appeal. That is why, nothing was heard from the CIT(A) for a period of about 3 to 4 years by the Applicant. In the meanwhile, the Applicant filed complaints stating as to how his credentials were fraudulently used to effect a scam by Mr. Navin Rathod and as to how the entire assessment made on him is incorrect and invalid since there is no income earned by the applicant. In any case, the transactions of purchase of shares were not undertaken by him, but by Mr. Navin Rathod. A copy of the Complaints filed before various authorities and order dated 12.06.2019 of Honorable High Court of Bombay rejecting the anticipatory Bail Application is annexed hereto and marked as Exhibit B & C Respectively.

6. In the meantime, the appeal got transferred to National faceless appeal Centre. As a result, the applicant could not keep a track of the online notices issued. Therefore, the said notices remain to be responded to. However, without considering the submissions made by the appellant pointing out that none of the transactions

*are his, the learner. CIT appeals passed the order, confirming the additions made by the AO.*

*7 The said order, it appears, was also sent on email but remained to be checked by the Applicant. It was only around last week of January 2024, that the applicant checked his email and downloaded the said order. However, since he is not educated, he could not gauge / understand the seriousness of the matter. On receiving the said order, somewhere in the second week of March, 2024 the applicant met Chartered Accountant, Mr. Bhavesh Savla, who is also residing at Mulund, and showed him the said order. The said CA, in turn advised him to consult a Tax Counsel / litigation expert in the matter.*

*8. Thereafter, in June / July 2024, the Applicant met a Tax Counsel. On considering the overall facts, it was advised that an appeal should be filed against the order of the CIT(A). However, the Applicant did not have the necessary means to file the appeal. On 17th October, 2024, the Applicant's filing fees was paid taking some help from outsider.*

*Thereafter, an appeal came to be filed on 18.10.2024. As a result, the appeal is filed before this Honorable Tribunal with a delay of 248 days computed from the date of the order.*

*9. The delay has been caused for reasons beyond the control of the Assessee (the Applicant herein) and in any case was not caused due to any deliberate negligence but purely due to lack of knowledge and unavailability of means to litigate. Therefore, in the interest of justice, it is prayed that the delay in filing the appeal be condoned for the following reasons:*

*That the delay be condoned in the interest of substantial justice since the same is neither willful nor with a malafide intent and for reasons beyond the control of the Appellant.*

*(1) No prejudice will be caused to the Respondent if the delay is condoned as the matter is to be finally disposed off on merits. On the other hand, the Applicant will be greatly prejudiced by the loss of an effective remedy available under the statute against the*

*order of the CIT (A) permanently shutting the door to redress his grievances before this final fact finding authority.*

*(iii) The Applicant submits that if the delay is not condoned grave & irreparable damage will be caused to it.*

*(iv) The Applicant submits that, even on merits, the Applicant has got a fairly good case to succeed.*

5. Looking to the aforesaid facts and circumstances of the case that assessee is a small time street vendor and was not aware of faceless procedure and National Faceless Appeal, because the appeal was filed physically which was later on transferred to NFAC and assessee could not keep track of the online notices issued as he was not an educated person. Under these facts, the delay of 244 days is condoned.

6. Coming to the facts of the case, it is seen that assessee is small street vendor and was not filing his return of income and his case was reopened u/s.147 by issuance of notice u/s.148 dated 31/03/2018 for the A.Y.2011-12. It appears that reopening was done on the basis of certain information from DDIT-8(2), Mumbai that assessee had entered into transaction of purchase of penny stock namely, Aarya Global Shares and Securities Ltd., during the previous F.Y. 2010-11, i.e., A.Y. 2011-12. As per the information sought from Bombay Stock Exchange, assessee had purchased 3,26,395 shares for a consideration of Rs.78,88,940/- which remained with the assessee. As per the assessment order assessee did not given any response to summons issued to him, however, ld. AO has reproduced one affidavit purported to be signed by the assessee wherein, he has

stated that one, Mr. Deepak Rathod and one Mr. Bhavesh Makwana who were working with one CA Mr. Rakesh Doshi had told the assessee that he will get some commission if he opens the share and Demat account through them and allow / authorise CA Mr. Rakesh Doshi to do the trading in shares in his name. He further stated that neither he had any financial capacity to buy the shares nor ability to procure funds from outside to purchase the shares, because he was an uneducated and has no means to arrange such huge funds as a street vendor. The entire case of the assessee appears that he was duped or misguided by these persons who had opened Demat account and had purchased certain shares. In the assessment order, Id. AO also noted the statement on oath of Shri Deepak Rathod in the case of Paresh Harji Ramani for A.Y.2011-12. The statement has been reproduced alongwith affidavit of Shri Deepak Rathod in the assessment order from pages 7-13. From the perusal of the statements, it is seen that Shri Deepak Rathod has admitted that he was working in the office of Shri Rakesh Doshi receiving salary in cash of Rs.15,000/- per month and he was made Director in the some of the companies and then he was removed from the job in November 2016 and since then he was unemployed and he was running a rickshaw earning Rs.200 to 300 per day. He also admitted that he has opened 85 bank accounts with various banks and Demat accounts and trading accounts with various brokers for all the persons. He has also given the details of various banks and the *modus operandi*. He has clearly stated that he was doing all these transactions as per

directions given by Shri Rakesh Doshi and Shri Kumar Lodaya. Further, in his affidavit he has given the list of beneficiaries on whose behalf he has deposited funds in the same bank account for the purchase of shares. Despite noting all these facts, ld. AO instead of enquiring as to what had happened in the case of the real perpetrators and the persons behind who had used /misused the Demat account / bank account of the assessee and several others for purchase of shares. Without carrying out any inquiry or ascertaining the correct facts or whether assessee had any capacity to invest so much amount in shares when he himself noted that there were other perpetrators who were using the names and identities of these poor persons, AO had added the entire amount of Rs.87,38,778/- made in the investment of shares of 3,34,234/- of M/s. Aarya Global Shares and Securities Ltd.

7. The ld. CIT(A) in his *exparte* order has confirmed the order of the ld. AO because none of the notices sent through e-mail / ITBA portal was received by the assessee or the assessee was not aware of such notices.

8. Now before us, ld. Counsel submitted that the real person behind carrying all these activities was Shri Navin Devji Rathod who had used the names of several persons who were mostly illiterates and has opened the bank account in their name under some false promise of commission to them and he has conducted various transactions including purchase of shares through dubious entities and persons. Against such person, FIR was also

filed. **He also filed before us copy of judgment and order dated 12/02/2019 of Hon'ble Bombay High Court in the case of Navin Devji Rathod vs. State of Maharashtra in Anticipatory Bail Application No.1220 of 2019.** In this judgment, the bail application of Navin Devji Rathod was rejected and the entire *modus operandi* and the manner in which this person had utilized the bank accounts of innocent people including assessee for his dubious and manipulative transactions of purchases of shares etc., For the sake of ready reference, the relevant order of the Hon'ble High Court is reproduced hereunder wherein the Hon'ble High Court has rejected the Anticipatory Bail stating that the particular person was the master mind and beneficiary of the fraud to the tune of Rs.100 Crores who has opened 130 accounts which are under investigation.

*"5. Perused the papers. The complainant - Jitesh Makwana is the President of 'Shree Kshatriya Kutchi Rajput Samaj', Mumbai ((hereinafter referred to as 'Samaj'), of which the applicant was the Secretary. According to the complainant in 2010, the applicant conducted one meeting of the community and told them that due to paucity of funds, they were unable to do any work for the development of the community. He stated that he had one scheme in his mind for increasing the funds of the community. The applicant disclosed in the said meeting that he would open a bank account in the name of each member of the community for one year and that he will use that account for his tax consultancy business and that he would deposit Rs.5,000/- per person in the account of the community- 'Samaj'. After getting permission from the members of the Samaj, the applicant along with his brother - Deepak and other relatives of the applicant opened bank accounts of about 130 people of the community, by using their PAN cards 4/8 919-aba.1220.2019.doc and other documents.*

According to the prosecution, the applicant had gone to the house of the members and got their signatures on blank bank account forms and after opening accounts in different banks, the applicant and co-accused collected, signed cheque books from each member of the Samaj. It is pertinent to note that while opening the accounts, the applicant had not given the mobile numbers of the members of the Samaj. It appears, that trusting the applicant, none of the members of the community enquired about any transaction done by the applicant and the other co-accused, as the applicant had told them that he was going to use the accounts for his business of Tax Consultancy. It appears that after one year, when the complainant and the other members of the Samaj made enquiries with the applicant, they were told by the applicant that he had closed all the accounts and accordingly took their signatures on bank papers to close the said accounts. As noted earlier, trusting the applicant, none of the members of the Samaj enquired about the accounts, whether or not the said accounts opened in their names were closed permanently or not. As is reflected from the statements, neither the complainant, nor any member of the Samaj were in possession of the pass book, ATM Card or any other documents pertaining to the account opened in the bank on their behalf, by the 5/8 919-aba.1220.2019.doc applicant. It appears that in September 2018, some of the members of the Samaj, received Income Tax notices on their residential addresses by post, pursuant to which, they enquired with the applicant about these notices. It is stated that the applicant gathered all the notices from the members and disclosed to them that he will take care of the said notices. Pursuant to the assurance given by the applicant, the members and the complainant ignored all the notices received from the Income Tax Department. It appears that again the Income Tax Department sent notices to the members of the society, which notices were again collected by co-accused Ketan Parmar and Bhavesh, at the behest of the applicant. Again in December, 2018, the Income Tax Officers visited the complainant and other members residence and informed that large transactions had been done from their accounts and that Income Tax has not been paid nor has any reply been filed to the notices issued by the Income Tax Department. It appears that when the complainant and the members of the Samaj asked the applicant of the same, the applicant assured that he would take care of the notices and that

*the members need not worry about the same. It appears that in 2018, the applicant called the complainant and other members of the Samaj and stated that Deepak Rathod and Bhavesh Makwana had taken the responsibility of 6/8 919-aba.1220.2019.doc all the transactions that had happened in their accounts and that they had taken the responsibility of the notices which the members had got from the Income Tax Department. The applicant is also alleged to have told the complainant and the other members of the Samaj that he was going to file an appeal before the Income Tax Department and that he had prepared some affidavits and that the same was required to be signed by every member of the Samaj. Trusting the applicant, the complainant and the members signed the affidavits, without reading the contents, which are annexed as Exhibits B1 to B13 to the application. A perusal of the said affidavits, which are annexed as B1 to B13 shows that most of the affiants are illiterate and that the affidavits are in English. It appears that after the affidavits were taken by the applicant, again Income Tax notices were received by them. It is at this time, that the complainant and the members of the Samaj suspected that the applicant had cheated them, pursuant thereto, they made enquiries with the bank and the Income Tax Department, where they learnt that their bank accounts were closed within one year of opening i.e. in 2011 and also learnt that huge amounts of transactions were done during the period 2010 to 2011 from the bank accounts of all the members and that Income Tax had not been paid for those transactions. The members as well as the complainant learnt that the applicant had also opened Demat Accounts with their bank accounts and that different mobile numbers were given whilst opening those accounts (not of the members). It appears that due to huge transactions in the complainant's mother's account viz. Kasturi Makwana, she received an Income Tax notice to pay an amount of Rs.55 lakhs. The complainant's brother - Shankar Makwana also received an Income Tax notice to pay Rs.2.5 lakhs. It appears that total amount involved is about Rs.100 crores. A perusal of the statements of the members of the Samaj show that the applicant is the master mind, who had induced the complainant and members of the Samaj to open bank accounts in their names after taking their signatures. The said accounts were utilized by the applicant and his family members for doing various transactions. It also appears from the statements of witnesses that their signatures*

*were taken by the applicant on affidavits and that they were not aware of the contents of the affidavits and had signed on them, at the behest of the applicant.*

*6. Considering the role of the applicant, custody of the applicant is necessary to unearth the scam.*

*7. Hence, the application for pre-arrest bail is rejected and disposed of as such.*

*8. It is made clear that the observations made herein are prima facie for deciding the aforesaid application.”*

9. Thus, it has been submitted that once these facts are there on record and ld. AO himself has noted that all these transactions were done by Shri. Navin Devji Rathod through Shri Deepak Rathod, then without finding out as to what had happened in the inquiries or in the case of Shri Navin Devji Rathod and others, ld. AO cannot simply make the addition in the hands of the present assessee when admittedly, he had no source of income and is a poor street vendor.

10. Since all these facts needs to be properly examined and inquiry has to be done to find out as to what had happened in the case of Shri Navin Devji Rathod against whom FIR was filed and Hon'ble High Court has made these observations; and whether there were some other persons behind this cheating and misguiding various people including assessee who was part of some Shree Kshatriya Kachchi Rajput Samaj, Mumbai. Without finding out what had happened in these cases and without any inquiry, no adverse inference can be drawn in the hands of the assessee. Accordingly, the entire issue is set aside to the file of the ld. JAO to find out the correct facts and carryout inquiry and

find out why these additions and adverse inferences are not being drawn in the case of the real perpetrators and the person behind, i.e., Shri Navin Devji Rathod and others. Accordingly, both assessment order and CIT(A) order are set aside and matter is remanded back to the ld. AO.

**11. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 7<sup>th</sup> January,2025.

**Sd/-**  
**(RENU JAUHRI)**  
**ACCOUNTANT MEMBER**  
Mumbai; Dated 07/01/2025  
KARUNA, *sr.ps*

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**