

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member  
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 1738/Ahd/2024  
Assessment Year: 2016-17**

Manishkumar Ramlakhan Agrawal A/29, Shreenath Park Society, Opp. Jogeshwari Park Society, C.T.M. Road, Amraiwadi, Ahmedabad Gujarat-380026 <b>PAN: AEQPA1710H (Appellant)</b>	Vs	The ITO, Ward-6(1)(1), Ahmedabad  <b>(Respondent)</b>
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**Assessee Represented: Shri Chetan Agarwal, A.R.  
Revenue Represented: Shri Atul Pandey, Sr.D.R.**

Date of hearing : 22-04-2025  
Date of pronouncement : 25-04-2025

**आदेश/ORDER**

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

This appeal is filed by the Assessee as against the appellate order dated 27.09.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the reassessment order passed under section 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2016-17.

2. Brief facts of the case is that the assessee is an individual, salaried person working is an Executive Director in a Private Limited Company. For the Asst. Year 2016-17, assessee filed his original Return of Income on 30-01-2017 declaring total income of Rs.12,64,960/-. The return was processed u/s. 143(1) and no regular assessment was made. Later the return was reopened by issuing a notice dated 30-03-2021 u/s.148 of the Act on the ground that based on search action u/s. 132 of the Act in the case of Kushal Group Companies, Ahmedabad, it was noticed that the assessee has done suspicious transaction aggregating to Rs.57,50,682/- during the Financial Year 2015-16 which has escaped assessment within the meaning of Section 147 of the Act. Since the assessee has not filed the Return of Income, accordingly, the only requirement is to initiate proceedings u/s. 147 of the Act for the escaped income.

3. In response, the assessee filed a return on 25-05-2021 declaring total income of Rs.12,64,960/-. During the reassessment proceedings, the assessee filed the statement of Long Term Capital Gains, purchase and sale of equity shares of Kushal Ltd. and claimed exemption u/s. 10(38) of the Act of Rs.57,50,682/-. However, the Assessing Officer based on the Investigation Report held that Kushal Group was involved in the price rigging of Shares and sudden price increase in the shares is actually resulted by the market manipulation and have no relevant with either fundamental or technical figures of the company. Further the scrip was found to be traded in a synchronized manner to generate bogus Long Term Capital Gains/Loss. Therefore, the AO added the entire sale

consideration of Rs.62,42,018/- as unexplained money u/s. 69A of the Act and also charged to tax u/s.115BBE of the Act and demanded tax thereon.

4. Aggrieved against the reassessment order, the assessee filed an appeal before Ld. CIT(A) who has confirmed the addition and also upheld the reopening is good in law thereby dismissed the assessee appeal.

5. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Ground of Appeal:

1. Learned CIT(A) erred in law as well as on fact by upholding the addition of Rs. 62,42,018/- u/s. 69A of the Act being genuine sale consideration received as unexplained money and declared as Long Term Capital Gain in return.

2. Learned CIT(A) erred in law as well as on fact upholding the issue of Long Term Capital Gain of Rs. 56,48,229/- u/s. 10(38) of the Act as accommodation entry on sale of shares of Kushal Trade Link treating same as penny stock shares.

3. Learned CIT(A) erred in law as well as on fact in upholding the addition of the entire sales consideration without giving deduction of cost of acquisition.

4. Learned CIT(A) erred in law as well as on fact upholding the re-opening assessment on the basis of invalid, incorrect, insufficient and vague reasons for reopening.

5. Learned CIT(A) erred in law as well as on fact upholding re-opening the assessment of the Appellant u/s. 147 of the Act.

6. Learned CIT(A) erred in law as well as on fact upholding in not providing material gathered behind the back of Appellant and used against him, violating principle of natural justice.

- 7 Learned CIT(A) erred in law as well as on fact upholding in not providing statement of deponent used against Appellant and his cross examination, violating principle of natural justice.
8. Learned CIT(A) erred in law as well as on fact upholding in framing the assessment u/s. 144 of the Act.
9. Learned CIT(A) erred in law as well as on fact upholding in farming the assessment u/s. 147 r.w.s 144B of the Act without issuing valid notice u/s 143(2) of the Act by Ld.JAO.
6. Ld. Counsel Mr. Chetan Agarwal appearing for the assessee submitted the basic reasons recorded for reopening of assessment itself is bad in law. The A.O. has recorded that no Return of Income filed by the assessee which has resulted in reopening of assessment, whereas the assessee filed his original Return of Income on 30-01-2017 and disclosed both Short Term and Long Term Capital Gain and claim of exemption u/s. 10(38) of the Act. Thus, there is no failure on the part of the assessee in disclosing Long Term Capital Gain to the Department and the reopening of assessment beyond four years is invalid in law and the reassessment is liable to be quashed and relied upon two unreported judgements of jurisdictional High Court in the case of Ashishbhai Jashwantbhai Desai HUF vs. ITO and Mumtaz Haji Mohmad Memon vs. ITO.
7. Per contra Sr. DR appearing for the Revenue supported the orders passed by the lower authorities and requested to up hold the addition.
8. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the

assessee. It is undisputed fact that the assessee filed original return of income declaring the LTGC and claim of exemption u/s.10[38] of the Act, since the Ld AO in his opening paragraph of the reassessment order itself admits the above fact. However, in the reasons recorded for reopening of assessment the Ld AO observed as follows:

**“... 4. Basis of forming reason to believe and details of escapement of income:**

It is noticed that the assessee has done suspicious transaction aggregating Rs. 57,50,682/- during the F.Y. 2015-16 pertaining to A.Y. 2016-17 as informed by the DDIT (Inv) Unit-1(1), Ahmedabad which is suspicious transaction and required to be taxed u/s 68 of the Act.

Therefore, I have the reason to believe that income chargeable to tax to the extent of Rs.57,50,682/- has escaped the assessment within the meaning of section 147 of the I.T. Act and it is a fit case to issue notice u/s 148 of the Act.

5. In this case a **return of income was not filed** for the year under consideration, and no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, **the only requirement to initiate proceedings u/s 147** is reason to believe which has been recorded above paragraphs. (2 to 5).

8.1. The reasons recorded by the Ld AO is without application of mind and without verification of his own records, whether the assessee filed the Return of Income or not. Thus the basis of recoding reason to believe of escapement assessment is nothing but the reproduction of the Investigation Wing report of the department and independent application of mind and verification of record by the AO. Further there is no failure on the part of the assessee in declaring the LTGC and claim of exemption u/s.10[38] of the Act in

the original Return of Income filed by the assessee. In the above circumstances the very reopening of assessment itself is invalid in law based on the “borrowed satisfaction” from investigation wing of the department.

9. The Jurisdictional High Court in the case of Ashishbhai Jashwantbhai Desai HUF vs. ITO in R/Special Civil Application No. 1998 of 2022 vide judgment dated 07-01-2025 held as follows:

“8. Considering the submissions made by learned advocates for both the sides and on perusal of the reasons recorded, it appears that the Assessing Officer has failed to give the requisite details in the reasons recorded so as to form a requisite prima-facie belief that income has escaped assessment. The reasons recorded only refer to the information received from the credible sources that the search was carried out in case of Kushal Group and during course of search, incriminating documents were found and seized and on going through the information available on Insight Portal, it was found that the petitioners are one of the beneficiaries of the accommodation entries in form of different types of income like Long Terms Gains/Loss/Short Terms Gains/Loss and also beneficiary of unsecured loans etc., without there being any basis for forming such belief.

9. **Therefore, it is clear that the respondent-Assessing Officer has recorded the reasons only on the basis of the borrowed satisfaction without there being any live-link between the information available on the Insight Portal and the data available on the record of the petitioners-assesses. In such circumstances, the Assessing Officer cannot be said to have formed an independent satisfaction regarding the reasons recorded to re-open the assessment to come to the prim-facie conclusion that there is escapement of income.**

10. In view of the foregoing reasons, the petitions succeed and accordingly, allowed. The impugned notices dated 30th March, 2021 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no orders as to cost.”

9.1. The Jurisdictional High Court also considered incomplete reason recorded in the case of Mumtaz Haji Mohmad Memon vs. ITO in R/Special Civil Application No. 21030 of 2017 vide judgment dated 21-03-2018 and quashed the reassessment notice by observing as follows:

"10. We are conscious that in the present case, the return filed by the assessee was not taken in scrutiny. Nevertheless, in such a case also the requirement that the Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment, would apply. Reference in this respect can be made to the decision of this Court in case of Inductotherm (India) P. Ltd. v. M. Gopalan, Deputy Commissioner of Income Tax reported in [2013] 356 ITR 481 (Guj). Validity of the reasons recorded by the Assessing Officer would therefore be one of the issues.

11. In this context, we have noted that the reasons proceeded on two fundamental grounds. One, that the property in question was sold for a sum of Rs.1,18,95,000/ and two, that the assessee had not filed the return and that therefore his 1/3rd share out of the sale proceeds was not offered to tax. Both these factual grounds are totally incorrect as is now virtually admitted by the Revenue. It is undisputed that the assessee had actually filed the return of income for the said assessment year and income also offered his share of the declared sale consideration to tax as capital gain. The Assessing Officer may have dispute with respect to computation of such capital gain, he cannot simply dispute the fact that the assessee did file the return. Importantly, even the second factual assertion of the Assessing Officer in the reasons recorded is totally incorrect. He has referred to said sum of Rs.1,18,95,000/ as a sale price of the property. The assessee had produced before the Assessing Officer, the sale deed in which, the sale consideration disclosed was Rs.50 lakhs.

12. The Assessing Officer may be correct in pointing out that when the sale consideration as per the sale deed is Rs.50 lakhs but the registering authority has valued the property on the date of sale at Rs.1,18,95,000/ for stamp duty calculation, section 50C of the Act would apply, of course, subject to the riders contained therein. However, this is not the cited reason for reopening the assessment. The reasons cited are that the assessee filed no return and that 1/3<sup>rd</sup> share of the assessee from the actual sale consideration of Rs.1,18,95,000/ therefore, was not brought to tax. These reasons are interconnected and interwoven. In fact, even if these reasons are seen as separate and severable grounds, both being factually

incorrect, Revenue simply cannot hope to salvage the impugned notice. Through the affidavit in reply a faint attempt has been made to entirely shift the center of the reasons to a completely new theory viz. the possible applicability of section 50C of the Act. The reasons recorded nowhere mentioned this possibility. Reasons recorded, in fact, ignored the fact that the sale consideration as per the sale deed was Rs.50 lakhs and that the assessee had by filing the return offered his share of such proceeds by way of capital gain.

13. In the result, impugned notice is quashed. Petition is disposed of.”

10. Respectfully following the above judicial precedents, we have no hesitation in quashing the reassessment notice issued by the Ld AO as invalid in law for not recording independent reason for escapement of income after verification of the facts of the assessee’s case. Consequently, the reassessment order is hereby quashed.

11. In the result, **the appeal filed by the assessee is hereby allowed.**

Order pronounced in the open court on 25-04-2025
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**Sd/-**  
**(NARENDRA PRASAD SINHA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad :**  
**Dated 25/04/2025**

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