

IN THE INCOME-TAX APPELLATE TRIBUNAL "B" BENCH,  
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 4303/MUM/2024  
(निर्धारण वर्ष / Assessment Year :2017-18)

ITO-25(3)(1), Mumbai Room No. 253, G-Block, Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400051	v/s. बनाम	Nikunj Ambalal Patel (HUF) Flat No. 16, 2 <sup>nd</sup> Floor, Sherry House, Gunbow Street, Fort, Mumbai-400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAGHN4892R		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

प्रति आपत्ति सं./ CO No. 16/MUM/2025  
(Arising out of ITA No. 4303/Mum/2024)  
(निर्धारण वर्ष / Assessment Year :2017-18)

Nikunj Ambalal Patel (HUF) Flat No. 16, 2 <sup>nd</sup> Floor, Sherry House, Gunbow Street, Fort, Mumbai- 400001	v/s. बनाम	ITO-25(3)(1), Mumbai Room No. 221, Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAGHN4892R		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Satyaprakash Singh
राजस्व की ओर से /Revenue by:	Ms. Rampriya Raghavan

सुनवाई की तारीख / Date of Hearing	19.03.2025
घोषणा की तारीख/Date of Pronouncement	22.04.2025

### आदेश / ORDER

#### PER RENU JAUHRI [A.M.] :-

The appeal filed by the revenue and the cross-objection filed by the assessee are against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] dated 26.06.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2017-18.

2. The revenue has raised the following grounds of appeal:

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition made by the Assessing Officer, without appreciating that the purchase and sale of shares of "M/s Kushal Group" is a predetermined action of the assessee for bringing the unaccounted money into the books of account?"*

*2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the additions made by the AO without appreciating the decision of Hon'ble Supreme Court in the case of Sumati Dayal vs CIT (1995) 214 ITR 801, wherein it was held that the tax authorities are entitled to look into the surrounding circumstances to find out the realities and the matter has to be considered by applying test of human probabilities?"*

3. The assessee has also raised the following grounds of appeal:

*"Ground No.1:*

*The Learned A.O. erred in making addition on grounds not forming part of the notice under section 148 of the Income-tax Act, 1961 read with section 147, even though he did not make any addition on the reason in respect of which he had reason to believe that income has escaped assessment and which formed the basis of a notice under section 148.*

*The Learned A.O. erred in not considering that it is not open to the Assessing Officer to assess or reassess independently any other income, which does not form the subject-matter of the notice where no addition on the reason in respect of which he had reason to believe that income has escaped assessment and which formed the basis of a notice under section 148."*



4. Brief facts of the case are that the assessee filed its return declaring income of Rs. 1,12,280/- which was processed u/s 143(1)(a) of the Act on 30.10.2017. Subsequently, the case was reopened in view of the information received from the Investigation Wing, Mumbai, as per which during a search action conducted on Kushal Group, it was found that the group had indulged in providing bogus long/short-term capital gain/loss to various entities. It was further noticed that the assessee was one of the beneficiaries who had accepted accommodation entries and shown capital gain to the tune of Rs. 1,33,43,215/- during the year under consideration. Accordingly, a notice u/s 148 was issued to the assessee on 31.07.2022 following the directions of the Hon'ble Supreme Court in the case of *Union of India v/s Ashish Agarwal*. The assessee furnished return declaring same income in response to the notice u/s 148. After giving due opportunity to the assessee, Ld. AO completed the assessment u/s 147 r.w.s. 144B of the Act vide order dated 30.05.2023 after making addition of Rs. 15,73,20,963/- being the purchase price of the shares which was treated as unexplained expenditure u/s 69C of the Act.

5. Aggrieved with the order of Ld. AO, the assessee preferred an appeal before Ld. CIT(A). After considering the submissions of the assessee, Ld. CIT(A) has deleted the addition with the following observations:

*5.13 On going through the facts of the case, assessment order and submissions made by the appellant following things are noticed.*

*"All the purchases and sales have been made through stock broker Shah investment Ltd. and through recognised stock exchange Bombay Stock Exchange.*



*Appellant received differential amount of profit through banking channel only.*

*Purchase of sales of 3,00,000 shares of Kushal group was done within a span of 10 days and profit on sale of those shares of Rs. 1,33,44,000 has been shown in regular return of income by the appellant. No exemption u/s. 10(38) or set off short term capital loss against any income was claimed.*

*On the date of purchase of 3,00,000 shares of Kushal group by the appellant, total trade volume of Kushal shares was 38,39,707 shares and total trade value was 200.40 Cr. Therefore, it cannot be said that the appellant has done any manipulation.*

*No cogent evidence has brought on record by the AO to prove that the transactions are not genuine and appellant is a beneficiary of accommodation entry more particularly when the appellant has not claimed profit of Rs. 1,33,43,215 derived from such transactions as exemption u/s. 10(38) and also, not set off short term capital loss against any income. Rather, he has offered the profit earned from such transaction of Rs. 1,33,43,215 as his regular income. Thereafter the question any tax evasion or manipulation of scrip does not arise.*

*In the case of appellant period of holding of Kushal shares is between 2 to 10 days only during which no much price variation or abnormal rise/fall was noticed.*

*In the Assessment order, it is mentioned that "As per the Investigation Report, Kushal Group of Members have been found involved in manipulating securities capital market to help their beneficiaries to convert their ill-gotten gains into tax exempt bogus LTCG. During the Investigation Period, price of the script of Kushal Group increased from Rs. 22.95 to Rs. 153/-registering an increase of Rs. 130.05 (566.67%)" but here the fact is that the appellant has not claimed any LTCG or short-term capital to be set off against any Income. Further, the AO could not bring any material on record which establishes that the transactions shown by the appellant is not natural but arranged one.*

*AO could not establish that the appellant is either operator or accused of converting black money into white. Mere saying that the appellant is beneficiary in the whole process does not suffice the purpose particularly when the appellant has not derived any benefit out of those transaction and shown profit earned from such transactions as his regular income.*

*AO has not brought on record any evidence which suggest that cash has been exchanged except making general discussion about modus operandi which does not applied in the case of appellant at all as appellant has not claimed any Long-Term Capital Gain or set off short term capital loss against any income.*

*The appellant has been able to demonstrate with supporting proof that his broker Shah Investors Home Ltd. has done trade on behalf of him on credit as he was enjoying good relationship with broker much before the trade in Kushal shares. It was a practice that broker make a trade on behalf of client and settle the account later in a week. In fact, in the case of appellant the broker had charged interest of Rs. 6471 for late payment/settlement. After selling the scrip of Kushal the broker has directly transfer the net receivables in the account of appellant on 09.01.2017.*

*There was no cash involve in the transaction as nothing has brought on record by the AO in this regard.*



*There is no mention of appellant in the order of SEBI wherein SEBI has penalised few people for malpractices in shares of Kushal Ltd. to make unlawful gains.”*

6. Aggrieved with the order of Ld. CIT(A), the revenue is in appeal before the Tribunal. The assessee has also filed cross-objections challenging the basis and validity of notice issued u/s 148 of the Act.

7. Before us, Ld. AR has submitted that the assessee's name is not mentioned in any order of the Securities and Exchange Board of India (SEBI) with regard to malpractices in the trading of shares of Kushal Group. The entire case of Ld. AO is based on the presumption that the purchase price has been paid in cash as there is no entry related to this transaction in the bank account of the assessee. It has been clarified by Ld. AR that, as per the prevalent practice, since the shares were disposed of within a week, no payment was made to the broker at the time of purchase. Ld. AR has also pointed out that on earlier occasions also, the assessee had traded shares through the same broker in the same manner. Supporting documentary evidence in this regard has also been furnished.

8. On the other hand, Ld. DR has controverted the submissions of the Ld. AR by pointing out that the practice of settlement within T+3 days is not applicable in this case as the 'buy date' shown in the documents is 27.12.2016, whereas the sales in 3 tranches have been made subsequently in the first week of January 2017. Ld. DR has vehemently argued that since the assessee is not able to establish the payment of the purchase price through the banking



channels, the amount has rightly been added by the AO u/s 69C of the Act as unexplained expenditure.

9. We have heard the rival submissions and perused the material placed before us. Admittedly, the assessee has been filing its return showing business income from share trading. It was stated by the assessee that the buying and selling of the securities had been made through the recognised stock exchange and via approved stock market brokers. Moreover, the assessee has not claimed any exemption u/s 10(38) of the Act since the buying and selling of shares is a business activity and not an investment activity in its case. The assessee had purchased 3,00,000 shares of Kushal Group on 02.01.2017 for Rs. 15,73,20,963/- and sold the same in three lots of one lakh each on 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> January, 2017. Total sale value after deducting STT etc., worked out to Rs. 17,01,75,132/-. The assessee received payment through banking channels from the broker, M/s. Shah Investor Home Ltd., of Rs. 1,50,00,000/- on account of profit made from these transactions. The assessee has furnished a copy of the ledger account of the broker to establish the genuineness of this transaction. However, Ld. AO did not accept the explanation furnished by the assessee and held that no payment for purchasing the impugned shares had been made through the banking channels and rejected the assessee's claim regarding settlements of transactions by receiving profit amount of Rs. 1,33,43,215/- from the broker through RTGS. After considering the explanation of the assessee and



supporting documentary evidences, Ld. CIT(A) came to the conclusion that the addition made u/s 69C by the Ld. AO for the purchase of shares of Kushal Group is without any basis.

10. After considering the arguments of the Ld. AR and the detailed findings of Ld. CIT(A) reproduced in Para 5 above, we are of the view that Ld. CIT(A) has deleted the addition after duly considering the relevant facts and evidences. Accordingly, we do not find any reason to interfere with his order. The appeal of the revenue is, therefore, dismissed. As the matter has been decided on merits, the legal grounds raised by the assessee vide cross-objection are rendered academic in nature, and hence, not being adjudicated upon.

11. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 22.04.2025.

**Sd/-**

**SANDEEP GOSAIN**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 22.04.2025

अनिकेत सिंह राजपूत/ स्टेनो

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai



5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

