

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
" A " BENCH, AHMEDABAD

BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 452/AHD/2018

निर्धारण वर्ष/Asstt. Year: 2014-2015

Shri JigneshRamjibhai Patel, Plot no.1182/ A/1, Sir Pattani Road, Opp. State Bank of India, Ghogha Circle, Bhavnagar-364001. PAN: AJTPP4619C	बनामVs .	The Income Tax Officer, Ward 1(2), Ahmedabad.
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आयकर अपील सं./ITA No. 453/AHD/2018

निर्धारण वर्ष/Asstt. Year: 2014-2015

Smt. ShitalSanjaybhai Patel, Plot no.1182/ A/1, Sir Pattani Road, Opp. State Bank of India, Ghogha Circle, Bhavnagar-364001. PAN: BFUPP0358C	बनामVs .	The Income Tax Officer, Ward 1(5), Ahmedabad.
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आयकर अपील सं./ITA No. 454/AHD/2018

निर्धारण वर्ष/Asstt. Year: 2014-2015

Shri SanjaybhaiRamjibhai Patel, Plot no.1182/ A/1, Sir Pattani Road, Opp. State Bank of India, Ghogha Circle, Bhavnagar-364001. PAN: AFAPJ3380H	बनामVs .	The Income Tax Officer, Ward 1(5), Ahmedabad.
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(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)
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Assessee by	:	Shri TusharHemani, Sr. Advocate with Shri Parimalsinh B Parmar
Revenue by	:	Shri B.P Srivastava, Sr. DR

सुनवाई की तारीख/Date of Hearing :01/05/2025
घोषणा की तारीख /Date of Pronouncement: 03/06/2025

आदेश/ORDER

PER SUCHITRA KAMBLE, JM:

The captioned three appeal have been filed at the instance of the different Assessee against the separate orders of even dated 26.12.2017 passed by Learned Commissioner of Income Tax(Appeal)-6, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15. Since the issues raised in these three appeal are identical, we are extracting the ground of appeal raised in ITA No.131/Ahd/2024 for the purpose of adjudication. The decision in the said appeal will applicable to other two appeals also.

ITA No.452/Ahd/2018 for AY 2014-15

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

Each ground of appeal is separate and without prejudice to each other

1 The Learned Commissioner Of Income Tax (Appeals) - VI erred in law and on facts in passing appeal order without adjudicating and thus overlooking the ground of appeal regarding non affording the opportunity of cross examination of Mr. Anil Agrawal on whose statement addition was made which go to the root of valid assessment...

2 The Learned Commissioner Of Income Tax (Appeals) - VI erred in law and on facts in confirming Long Term Capital Gain of Rs. 2,23,95,400/-earned on sale of listed shares sold on BSE stock exchange as unexplained cash credit u/s 68 of the Act.

3 *The Learned Commissioner Of Income Tax (Appeals) - VI erred in law and on facts in confirming that the appellant has failed to prove that the Long Term Capital Gain earned on sale of Shares is exempt u/s 10(38) of the IT Act, 1961.*

4 *The Learned Commissioner Of Income Tax (Appeals) - VI erred in law and on facts in confirming that the assessee has failed to explain the nature and source of Rs. 2,23,95,400/- and confirming the same as income u/s 68 of the Act.*

5 *The Learned Commissioner Of Income Tax (Appeals) - VI erred in law and on facts in passing appeal order disregarding the honorable Supreme Court decision in the case of Andaman Timber Industries (2015) 281 CTR 214 (SC, KishanchandChellaram v. CIT [1980] 125 ITR 713 (SC) and the decision of jurisdictional Gujarat High Court in the case of LATE LAXMANBHAI S. PATEL vs. COMMISSIONER OF INCOME TAX (2010) 327 ITR 290.*

6. *The Learned Commissioner Of Income Tax (Appeals) - VI erred in law and on facts in passing appeal order wrongly relying on the decision of honorable Supreme Court in the case of SumtiDaya vs. CIT (1995) 80 TAXMANN 89 (SC) as the facts in that case was quite different from the case of appellant.*

7. *The Learned Commissioner Of Income Tax (Appeals) - VI erred in law and on facts in confirming the initiating the penalty proceeding u/s 271(1) of Act.*

8. *The submissions made by the appellant before the Ld Assessing Officer/CIT(A)-VI has not properly appreciated leading to erroneous conclusion*

9. *The order passed by the LdCIT(A)-VI is bad in law and against the facts of the case and judicial pronouncement.*

10. *The appellant crave and reserve his right to add, to modify, to alter and/or to withdraw any or all grounds of appeals.*

3. The assessee filed return of income on 31.01.2015, declaring total income at Rs.2,45,750/- and agricultural income of Rs.1,56,940/- and Long term capital gain(LTCG) amounting to Rs.2,23,95,400/-. The said return was processed u/s.143(1) of the Act. The case of the assessee was selected for scrutiny and notice u/s.143(2) of the Act was issued on 24.09.2015 and duly served upon the assessee. Subsequently, notice u/s.142(1) of the Act was issued and served upon the assessee. The Authorized Representative of the assessee attended assessment proceedings and furnished the details. The AO observed that the assessee has earned extra ordinary Long term capital

gain of Rs.2,23,95,400/- by dealing with scripts namely M/s.Comfort Fincap Ltd. The shares of M/s.Comfort Fincap Ltd. were purchased on 15.03.2011 and that time M/s. Comfort Fincap Ltd. was previously known as Parasnath Textile Limited and was not listed on BSE and NSE till 25.03.2013 and assessee has purchased 75,000/- shares of Parasnath Textile Limited at Rs.18 (face value of Rs.10) on 14.03.2011. On 25.03.2013 the shares of the company M/s.Comfort Fincap Ltd. was listed on BSE at the rate of Rs.387/-. During the questionnaire asked to the assessee it was found that the assessee has purchased only the shares of M/s.Comfort Fincap Ltd. during the said Financial Year. The assessee submitted before the AO that the payment was made in March 2011 through banking channel and the shares were dematerialized in August 2011. The shares was listed at Rs.387/- and went up to Rs.450/- in May 2013. Since there was no upward movement in long time the assessee sold the shares in December 2013 and January 2014, thereby claiming the Long term capital gain. After taking cognizance of assessee's reply and details, the AO observed that the assessee purchased 75,000 shares of the said company for consideration of Rs.13,50,000/- about which no specific or vital information was available in the public domain and thus it was pre-arranged to provide accommodation entry. The AO further observed that in the instant price of M/s.Comfort Fincap Ltd. the price rose for a certain period of time and reached as higher as Rs.448/- per share when the company itself is not constantly active or engaged in any business ventures. The AO has also cited the investigation conducted by the SEBI in respect of M/s.ComfortFincap Ltd. and M/s. Comfort Securities Ltd. The AO therefore, made addition of Rs.2,23,95,000/- thereby disallowing the claim of LTCG in respect of sale of script of M/s. Comfort Securities Ltd. and added the same u/s.68 of the Income-tax Act 1961.

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

5. The Ld.AR submitted that the assessee has claimed exemption of Rs.2,23,95,400/- u/s.10(38) of the Act in respect of LTCG. The Ld.AR further submitted that the assessee has purchases shares through off market transaction and subsequently the shares were credited to Demat account. The shares were held for more than one year (33 months) and sold on the floor of recognized stock exchange. The Ld. AR further submitted that the Security Transaction Tax (STT) was duly paid. The assessee was not aware about the final buyer and therefore the assessee was not at all involve in the manipulation of the price difference as it is a mere incidental benefit gained by the assessee due to the rise in price of said scrip. The Ld.AR submitted that the assessee has furnished before the AO, the details of dematerialization request form, letter with respect to allotment of shares, shares certificate, ledger of Parasnath Textile Ltd., bank statement, IPO documents of the scrip in question, Demat holding statement. The Ld.AR further submitted that assuming without admitting that scrip in question was used by accommodation entry providers for providing entries in the form of bogus LTCG, then also LTCG earned by the assessee cannot be treated as bogus as there was no evidence to prove that there was any live nexus between the assessee and entry provider or company in question or its directors. There is nothing on record to even remotely demonstrate that assessee has paid any cash to the buyer, broker or any other entry provider for taking entry in form of LTCG. The Ld.AR further submitted that the AO has taxed only LTCG which implies that the AO has allowed deduction of cost of acquisition from the total sale consideration of shares. The Ld.AR further submitted that suspension of trading in scrip vide order dated

19.12.2014 by SEBI which is subsequent to the transaction conducted by the assessee for the Assessment Year 2014-15 and Financial Year 2013-14. The Ld. AR submitted that when the assessee sold the scrip, at that time, the transaction in said scrip was very much permissible in the floor of stock exchange. Investigation report of the SEBI as well as the statement were not given to the assessee and therefore the AO as well as Ld.CIT(A) was not right in disallowing the claim of LTCG. The Ld.AR relied upon the following decisions:

- i. AlpaUdaykumar Shah Vs. ITO-ITA 391/Ahd/2018
- ii. Sanjau P Mehta Vs. DCIT-ITA No.509/Ahd/2018
- iii. Sejalben N. Vora and others -ITA No.329-331/Ahd/2018
- iv. PCIT Vs. Smt. Krishna Devi-(2021) 431 ITR 361 (Del)
- v. CIT Vs. Smt. Sumitra Devi-(2014) 229 Taxmann 67 (Rajasthan)
- vi. CIT Vs. UditNarain Agarwal-(2013) 213 Taxmann 178 (Allahabad)
- vii. CIT Vs. Anurudh N. Agarwal-(2013) 219 Taxman 126 (Allahabad)
- viii. Kishinchand Chellarram 125 ITR 713 (SC)
- ix. PCIT Vs. Chartered Speed P. Ltd. -Tax Appeal No.126 & 126 of 2015.
- x. Andaman Timber Industries Vs. CCE-(2015) 62 taxmann.com 3(SC)

6. The Ld.DR submitted that the AO as well as Ld.CIT(A) has rightly disallowed the LTCG, as the assessee has not given details as to how the assessee acquired the knowledge while purchasing the said shares offline when the said company was not engaged in any business activity per se as mentioned in para 2.1 of the Assessment Order (show-cause notice dated 06.12.2016). The Ld.DR relied upon the Assessment Order and order of the Ld.CIT(A).

7. We have heard both the parties and perused the material available on record. From the perusal of details of offline purchase of the scrip of M/s Comfort Fincap Ltd., it can be seen that the dematerialization of the said scrip was in January, 2011. The payment was made through banking channel. The shares were held for more than one year (33 months) and sold on the floor of recognized stock exchange. It is an undisputed fact that the Security Transaction Tax (STT) was duly paid. The details of dematerialization request form, letter with respect to allotment of shares, shares certificate, ledger of Parasnath Textile Ltd., bank statement, IPO documents of the scrip in question, Demat holding statement. The Assessing Officer has not at all pointed out as to how the assessee was involve in the manipulation of the price difference at the time of purchase as well as at the time of sale of the said scrip. The contention of the Ld. AR appears to be correct that it is a mere incidental benefit gained by the assessee due to the rise in price of said script. Therefore, the Assessing Officer as well as the CIT(A) was not correct in treating the same as bogus transaction under Section 68 of the Act. Thus, the appeal of the assessee being ITA No.452/Ahd/2018 for AY 2014-15 is allowed.

8. As regard to ITA No.453/Ahd/2018 and No.454/Ahd.2018 though the assessee's are different but the scrip and the modus operandi of the purchase and trading of the said scrip are identical to that of ITA No.452/Ahd/2018. Hence, these two appeals are also allowed.

9. In the combined results, all the three appeals filed by the different assessee's are allowed.

Order pronounced in the Open Court on 3rd June, 2025 at Ahmedabad.

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

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 03/06/2025 *Manish, Sr. PS*

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)-(NFAC)
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