

IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

**BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER**

I.T.A No.56 /Jodh/2024
(Assessment Year: 2014-15)

Ashok Panwar, HUF 29, Mudit Mansion, Opp. Shastrinagar Police Station, Pal Road, Jodhpur-342 003 PAN : AAFHA8117H	vs	Asst. Commissioner of Income-tax Central Circle-3, Jodhpur, Rajasthan
APPELLANT		RESPONDENT

I.T.A No.315/Jodh/2023
(Assessment Year: 2015-16)

Ashok Panwar 29, Mudit Mansion, Opp. Shastrinagar Police Station, Pal Road, Jodhpur-342 003 PAN : AGTPP9276G	vs	ACIT, Circle-3, Jodhpur Rajasthan.
APPELLANT		RESPONDENT

Present for Assessee	Shri Amit Kothari, CA
Present for Revenue	Shri Brij Lal Meena, Addl CIT-DR

Date of hearing	19/08/2025
Date of pronouncement	22/08/2025

ORDER

Per Bench:

Both the appeals of the two different assessees filed against the orders of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)] passed under section 250 of the Income-tax Act, 1961 [for brevity, the "Act"] for the Assessment Years 2014-15 & 2015-16, date of orders 20/12/2023 and 17/07/2023, respectively. The impugned orders emanated from the order of the Ld.Assistant Commissioner of Income-tax, Circle-3, Jodhpur [for brevity, the "Ld. AO"] passed under section 143(3) of the Act, date of orders for A.Y. 2014-15 on 22/12/2016 and for A.Y. 2015-16 22/12/2017.

2. Both the appeals have same nature of facts and a common issue. Therefore, both the appeals were heard together and are disposed of by this consolidated order. **ITA No.315/Jodh/2023** for A.Y. 2015-16 is taken as lead case.

ITA No.315/Jodh/2023

3. The brief facts of the case are that the assessee filed the return declaring total income at Rs.33,61,890/-. The case was selected for scrutiny through CASS. The notices under section 143(2) and 142(1) of the Act were issued. In the return of income, the assessee has claimed the long-term capital gain (LTCG) as exempt under section 10(38) of the Act on sale of shares of M/s Parag Shilpa Investments Ltd (in short, 'scrip'). The assessee purchased 2800 shares on 09/03/2012 for Rs.2,80,000/-. The said scrip was sold in the financial year 2014-15 for Rs.,1,58,67,077/- through the broker, Shri Suresh Rathi. The assessee claimed exemption of the LTCG of Rs.1,55,87,077/- u/s 10(38) of the Act. The Ld.AO has treated the entire transaction as bogus and, therefore, he

added back the total sale price of Rs.1,58,67,077/- under section 68 of the Act to the total income of the assessee. The Ld.AO also calculated the commission amount to Rs. 6,55,255/- and total amount comes to Rs.1,65,22,302/-. The Assessing Officer further added Rs.8,08,458/- related to 145(3) of the Act on account of increase of net profit from 2.76% to 8% on the bogus expenses. The aggrieved assessee filed appeal before the Ld. CIT(A). The Ld.CIT(A) upheld the impugned assessment order, after considering the merit of the case. Being aggrieved, assessee filed an appeal before us.

4. The Ld.AR argued and filed a paper book containing **pages 1 to 62** which is kept on record. The Ld.AR in argument stated that during the assessment proceedings and appeal proceedings, the assessee submitted all the relevant documents by a letter dated 19/06/2017 which was filed before the Ld.AO and during the appellate proceedings, the assessee submitted the submission on-line which is annexed at **APB pages 1 to 26**.The Ld.AR further stated that the assessee submitted –

(1) copy of bank account; broker transfer forms **APB page 35 to 37**;

(2) account statement of investment in shares and brokers account **APB pages 38 to 39**;

(3) broker note for sale of shares during the year from Suresh Rathi Securities Pvt Ltd **APB pages 40 to 56**.

The assessee purchased shares through banking channel on 09/03/2012 and the said scrip was sold in F.Y.2014-15 related to impugned assessment year.

5. Related to submission before the Ld.CIT(A), the Ld.AR invited our attention in appeal order, paragraph 2 which is extracted below:-

"5. The appeal is not maintainable on merit too. I find that the decision of the AO, in denying claim of benefit u/s 10(38) of the Act and treating the amount of Rs. 1,65,22,302/- as unexplained cash credit u/s 68 of the Act on the basis of facts brought on record by him through investigation, is squarely covered in favour of the Revenue by the decision of the Hon'ble Calcutta High Court in the case of Nand Kishore Agarwalla [2022] 143 taxmann.com 402 wherein, the decision in the case of Swati Bajaj [2022] 139 taxmann.com 352 has been followed. I also find support from the ratio of the decision of the Hon'ble Delhi High Court in the case of Vikash Jain [2023] 146 taxmann.com 210. Accordingly, addition of Rs.1,65,22,307/- u/s 68 of the Act is hereby confirmed. Unreported and unexplained expenditure in cash of Rs. 9,35,225/- towards commission for obtaining such bogus long term capital gain, which the AO has added u/s 69C is also confirmed for the same reasons. Addition of Rs. 8,08,458/- to cover up and for certain identified defects in the books of account admitted in course of assessment by the Ld. A.R represented the case, is also hereby confirmed in absence of non-compliance and rebuttal."

Further, all these documents are duly filed before the Ld.AO in response to his showcause notice issued to the assessee. But the Ld.AO added back the entire sale proceedings under section 68 of the Act and calculated commission @6% as payment of brokerage on the total sale proceeds which comes to Rs.1,65,22,302/-. The observation of the Ld.AO at paragraph 10 of the assessment order on pages 25 & 26 are extracted below:-

achieve the predetermined objectives.

"10. Show cause notice and reply of the assessee

10.1 In view of the details presented as above, the assessee was given a show cause notice in which he was required to explain as to why on the basis of the evidences presented to him, the Long Term Capital Gain shown by him should not be treated as bogus and why it should not be treated as cash credit u/s 68 of IT Act, 1961 representing undisclosed income. He was also asked to explain as to why commission @ 6% of the LTCG, which is found to be typical of the transactions of providing arranged capital gains, should not be added u/s 69C of IT Act, 1961.

The assessee, vide letter dated 20.12.2017 has submitted his final reply.

10.2 The crux of the reply given by the assessee was as follows:

(i) The shares were purchased by the assessee by making payment through account payee cheques which are duly reflected in the bank passbooks.

(ii) Payment of sale of shares were received through account payee cheques and duly reflected in the bank account of the assessee.

(iii) STT was duly charged by the share broker which is reflected in the bills received from the broker copy.

(iv) The sale of shares has been made through the standard mechanism of the working of stock exchange

(v) The assessee is a genuine investor and has sold shares through the mechanism of the stock exchange.

(vi) The assessee has defended his lack of knowledge of share market by saying that share markets work on hindsight and luck. Many experts of share market lose whole of their fortune in the market and novices earn a lot. Instincts and luck play a major part in the working of the share market.

3 In his reply the assessee had also claimed that since purchase and sale transactions were through banking channels and therefore verifiable, the capital gain earned on the sale should be considered as genuine. The assessee has mainly contended that since purchase was made through banking channels, it was a genuine transaction. Secondly, sale was made online after paying STT at the prevalent market rates, therefore sale transactions were also genuine. The contention of the assessee was examined. It is not the case of this office whether purchase of shares through preferential placement did actually took place or shares were sold on the exchange at the prevalent market rates after paying STT or not. What this office has come to conclude on the basis of above analysis, documentary evidences, circumstantial evidences, human conduct and preponderance of probabilities is that what is apparent in this case is not real, that these financial transactions were sham ones and that this entire edifice was only a colorable device used to evade tax.

10.4 The assessee has mentioned a judgment of Hon'ble High court of Rajasthan in the case of commissioner of income tax-1 Jaipur vs Shri pooja Agarwal, Jaipur. However facts of that case are different to assessee's case and as such that judgment will not be applicable in this case. In the case mentioned the high court have observed that main issue involved was regarding short term capital gain which does not exactly fall under the category of accommodation entries as it is taxable income. However assessee has claimed long term capital gain which is tax exempt and has been used as a tool to evade taxes and reroute unaccounted income in the books of account."

The Ld.AR argued that none of the documents of the assessee was rejected by the Ld.AO as well as by the Ld.CIT(A). The entire assessment was made on assumption basis but there is no separate investigation was carried out by the Ld.AO only to rely upon the investigation report of the Investigation Wing of the department. He further argued that the assessee never involved in any price rigging related to these transactions and the scrip was never banned by the SEBI. The Ld.AR respectfully relied on the order of the co-ordinate bench of ITAT, Mumbai Bench "A" in case of **Abhishek Doshi vs ACIT in ITA No.3122/Mum/2022**, date of pronouncement **31/05/2023** and in the case of **Pradeep Kumar Harakchand Doshi vs ITO in ITA 2229/Mum/2023**, date of pronouncement **15/03/2024** where the co-ordinate benches has considered the alleged scrip and held as not a bogus transactions and the assessee has not involved in any price rigging. So in any case, the said transactions cannot be stated as a bogus transaction for gaining LTCG. The Ld.AR further respectfully relied on the judgments of the Hon'ble Apex Court in the case of **PCIT vs Damodar Jajoo (2024) 462 ITR 166 (SC)** wherein it was held that –

"Income-Tax-Exemption-Long-Term Capital Gains - Purchase and Sale of Shares - Additions made on basis of information from investigation directorate that assessee beneficiary of accommodation entries provided by penny stock companies - tribunal on consideration of period of holding of shares recording

finding that long-term capital gains earned not significant amount and assessee had not taken accommodation entries – high court holding no question of law arose in view of finding of facts by tribunal - Supreme court - special leave petition dismissed -Income tax Act. 1961, ss. 10(38), 147, 148.”

6. The Ld.DR argued and stated that the entire transactions made by the assessee is bogus and the Investigation Wing of the department has already investigated the issue and treated the transactions as a bogus LTCG. But the Ld.DR was unable to show the assessee's involvement in price rigging or any cash trail in relation to this report made by the Investigation Wing.

7. We have heard the rival submissions and perused the material available on record. On careful examination of the records, it is observed that the assessee had entered into transactions in the impugned scrip through the Bombay Stock Exchange (BSE). The delivery of shares was duly received in the demat account, and the purchase and sale transactions were carried out entirely through banking channels.

However, the Ld. AO, in the impugned assessment order, treated the entire transaction as bogus/tainted. We find that the Ld. AO has failed to bring on record any material to establish that the assessee was involved in price manipulation, rigging, or that the assessee's name appeared in any cash trail.

Further, upon careful consideration of the orders of the coordinate benches in **Abhishek Doshi** (supra) and **Pradeep Kumar Harakchand Doshi** (supra), we find that the Tribunal has already held that the transactions in the said scrip cannot be regarded as bogus. The addition made by the Ld. AO is thus based purely on surmises and conjectures. It is also noted that none of the

documentary evidence relating to the assessee's transactions was rejected by the Ld. AO before branding the same as bogus.

In our considered view, reliance is placed on the decision of the Hon'ble Supreme Court in **Damodar Jajoo** (supra) and the decisions of the coordinate benches of the Tribunal cited (supra). Respectfully following the said precedents, we hold that the orders of the revenue authorities cannot be sustained. Accordingly, the addition made under sections 68 and 69C of the Act amounting to Rs.1,65,23,302/- is deleted.

Grounds No. 1 and 2 of the assessee's appeal are allowed.

8. Coming to Ground No. 3, it is noted that the addition of Rs. 8,08,458/- was made on account of alleged non-submission of bills relating to purchases of material, wages, repairs and maintenance, and other small expenses. The Ld. AO, invoking section 145(3) of the Act, enhanced the net profit rate from 2.76% to 8% (subject to depreciation), thereby making the addition of Rs.8,08,458/- to cover possible leakage of revenue.

However, we note that the Ld. AO did not reject the assessee's books of account, nor did he find any defect or discrepancy in the method of maintenance of books. The assessee has consistently followed the same system of accounting year after year, and the same has been accepted by the Department in earlier years. The doctrine of consistency, therefore, requires that the same treatment be continued unless there are material changes in facts or law.

9. We are of the view that the application of section 145(3) in the present case is improper and unjustified. Consequently, the addition of Rs.8,08,458/- is directed to be deleted.

Ground No. 3 of the assessee's appeal is allowed.

10. **Grounds 4 & 5** are consequential in nature, so they are dismissed.

11. Ground 6 is general in nature and does not require adjudication.

ITA 56/Jodh/2024

12. Related to grounds 1 & 2 in ITA No.315/Jodh/2023, we have taken the view in favour of the assessee and the same issue is covered in ITA 56/Jodh/2024 also; the decision taken therein (ITA No.315/Jodh/2023) is applicable *mutatis mutandis* to this appeal also.

The appeal of the assessee is allowed.

13. In the result, both the appeals of the assesses **ITA No. 315/Jodh/2023 & ITA No. 56/Jodh/2024** are allowed.

Order pronounced in the open court on 22nd August, 2025

Sd/-

(DR.MITHA LAL MEENA)
ACCOUNTANT MEMBER

Jodhpur, Dt : 22nd August, 2025

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Jodhpur
5. गार्डफाइल/Guard file.

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

BY ORDER,

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(Asstt. Registrar), ITAT, Jodhpur