



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT**  
**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No.333/RJT/2024

**Assessment Year: (2015-16)**  
**(Hybrid Hearing)**

Pritiben Jagdishbhai Mehta White house, Amin marg, Rajkot - 360003	<b>Vs.</b>	The Pr. Commissioner of Income Tax – 1, Aaykar bhawan, race course ring road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>ACLPM4450F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**Appellant by** : Shri Vipul Dattani, Ld. A.R.  
**Respondent by** : Shri Sanjay Pungalia, Ld. CIT(DR)

**Date of Hearing** : Heard on 26/11/2024 and Re-fixed for Clarification  
on 03.07.2025

**Date of Pronouncement** : 01/09/2025

**आदेश / ORDER**

**Per, Dr. A. L. Saini, AM:**

By way of this appeal, the assessee has challenged the correctness of the order dated 30.03.2024 passed by the Learned Principal Commissioner of Income-tax (in short "Ld PCIT") under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2015-16.

2. Solitary grievance of the assessee in this appeal is that order passed by the learned PCIT is bad in law, as the assessment order framed by the assessing



officer under section 147 r.w.s. 144B of the Act, is neither erroneous or prejudicial to the interest of the revenue.

3. When this appeal was called out for hearing, learned Counsel for the assessee invited our attention to the order dated 31.07.2024, passed by the Division Bench of this Tribunal in assessee's own brother's case in ITA No.398/RJT/2023 for the Assessment Year 2015-16, whereby the issue of same scrip( share) has been discussed and order of Id.PCIT under section 263 of the Act was quashed, based on the same facts and circumstances, and assessee's brother appeal was allowed by this Tribunal. Learned counsel for the assessee submitted that the present appeal is squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

4. Learned Departmental Representative relied upon the orders of the authorities below.

5. We have heard both the parties and noted that at the outset, Ld. Counsel for the assessee submitted that the issue raised by the Ld. PCIT has squarely covered by the judgement of the division Bench of ITAT, Rajkot, in the case of assessee's brother, Ashok T. Jobanputra in ITA No. 398/Rjt/2023, Assessment year 2015-16, vide order dated 31.07.2024. Therefore, we see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in assessee's own brother case, having same scrip( Share), vide order dated 31.07.2024. In this order, the Tribunal has inter alia observed as follows:

*"13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that the assessee has submitted the following documents and evidences, before the Bench, which were also submitted before the lower authorities viz: (i) Purchase bills issued by the Bhushit Trading Pvt. Ltd. (vide Pb.1), (ii) Bank statements reflecting the payment made for the purchase of*



*the shares (vide Pb.2 to 3), (iii) Cheque given by the assessee to the broker for purchase of the shares (vide Pb.4 to 5), (iv) Transfer Certificate dated 29.11.2013 and Physical certificate shares where in endorsement of transfer of shares in the name of the assessee on 29.11.2013 (vide Pb.6 to 10), (v) Copy of Dematerialization request Form along with Dmat request set up acknowledgement (vide Pb.11 to 12), (vi) Notice dated 08.08.2014 issued by BSE about change in the name of the company from Parag Shilpa Investments Ltd to PS IT Infrastructure & Services Limited (vide Pb.13), (vii) Notice dated 25.08.2014, issued by BSE about sub-division of the shares from one share into 10 shares (vide Pb.14 to 15), (viii) Bank statement reflecting receipts from sale of shares (vide Pb.16 to 17), (ix) Global report (vide Pb.18), (x) Statement of transactions from period 01.01.2015 to 31.03.2015 (vide Pb.19). We have examined the above documents and evidences relating to facts, and noted that by submitting the above Palathra documents and evidences, the assessee has proved the genuineness of the transaction, therefore, assessing officer ought not to have made the addition in the hands of the assessee. The assessing officer, in assessment order, nowhere stated that above documents and evidences, are bogus and not genuine. We note that the whole exercise is to be based on facts and it is the duty of the assessing officer to marshal all the facts and come to a logical conclusion about the documents submitted by the assessee, for that we rely on the Judgment of Hon'ble Supreme Court in case of **Sreelekha Bannerjee (491 ITR 122)**, wherein it was held that “..... before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...”*

*14. We note that assessee purchased 40,000 shares of PS IT Infrastructure & Services Limited on 24.07.2013 from the Bhushit Trading Private Limited, for the sum of Rs.16,00,000/-. The assessee produced before us following supporting documents for purchases, viz: (i) The copy of Purchase bill issued by the thinks Trading Pvt. Ltd (pb-1) (ii) The bank statements reflecting the payment made for the purchase of the shares (Pb page no. 2 to 3), (iii) The cheque given by the assessee to the broker for purchase of the shares (Pb page no. 4 to 5), (iv) Transfer Certificate dated 29.11.2013 (Pb page no. 6), (v) Physical certificate shares where in endorsement of transfer of shares in the name of the assessee on 29.11.2013 (Pb page no.7 to 10). Thereafter, the requisition was made by the assessee for conversion of shares in Demat form from physical form. The request for dematerialization of shares by ANS Private limited was made dated 21.01.2014. The copy of Dematerialization request form along with Demat request setup acknowledgement is placed at paper book page no. 11 to 12. The subsequent Change in the Name of company and sub-division of the shares along with documentary evidences, such as notice dated 08.08.2014 issued by BSE about change in the name of the company from Parag Shilpa Investments Ltd. to PS IT Infrastructure & Services Limited vide paper book page no. 13 to 12. The notice dated 25.08.2014 issued by BSE about sub-division of the shares from one share into 10 shares is placed in paper book page no. 14 to 15.*

*15. The assessee has sold the shares of PS IT infrastructure & Services Limited during Financial year (FY).2014-15 relevant to AY.2015-16 and the transactions carried out by the assessee through Prudent Broking Services Pvt. Ltd. who is SEBI registered Stockbroker. The details of the transactions are follows:*



Sr. No.	Sale Date	Share sold Qty	Sales Amount	Purchase Date	Purchase Cost	Gain	Period of Holding (Months)	Bank Statement Reflecting Receipts Attached
1.	21.02.2015	21000	18,01,968	24.07.2013	84,000	17,17,968	19	Page no. <u>16</u> to <u>16</u>
2.	24.02.2015	27000	23,16,978	24.07.2013	1,08,000	22,08,978	19	Page no. <u>16</u> to <u>16</u>
3.	04.03.2015	15000	13,00,563	24.07.2013	60,000	12,40,563	19	Page no. <u>16</u> to <u>16</u>
4.	05.03.2015	34000	29,83,065	24.07.2013	1,36,000	28,47,065	19	Page no. <u>16</u> to <u>16</u>
5.	10.03.2015	27000	28,73,438	24.07.2013	1,28,000	27,45,438	20	Page no. <u>16</u> to <u>16</u>
6.	11.03.2015	32000	24,13,699	24.07.2013	1,08,000	23,05,699	20	Page no. <u>17</u> to <u>17</u>
7.	13.03.2015	23000	20,07,978	24.07.2013	92,000	19,15,978	20	Page no. <u>17</u> to <u>17</u>
8.	14.03.2015	20000	17,22,454	24.07.2013	80,000	16,42,454	20	Page no. <u>17</u> to <u>17</u>
9.	17.03.2015	11000	9,34,575	24.07.2013	44,000	8,90,575	20	Page no. <u>17</u> to <u>17</u>
10.	18.03.2015	24000	19,69,708	24.07.2013	96,000	18,73,708	20	Page no. <u>17</u> to <u>17</u>
11.	24.03.2015	65000	50,35,144	24.07.2013	2,60,000	47,75,144	20	Page no. <u>17</u> to <u>17</u>
12.	26.03.2015	68000	51,16,616	24.07.2013	2,72,000	48,44,616	20	Page no. <u>17</u> to <u>17</u>
13.	27.03.2015	33000	23,59,733	24.07.2013	1,32,000	22,27,733	20	Page no. <u>17</u> to <u>17</u>
4,00,000 shares (40,000 shares sub-divided into 10 shares per share i.e. 4,00,000 shares)			3,28,35,919		16,00,000	3,12,35,919		

➤ **The details of other charges paid during the sale of shares is as follows:**

Security Transactions Tax	Rs. 32,948/-
Service Tax	Rs. 8,277/-
Other	Rs. 1,137/-
<b>Total</b>	<b>Rs. 42,362/-</b>

**\*the other charges are Evident from the Global Report attached herewith from page no. 18 to 18.**

16. From the above purchase and sale transactions, it is vivid that assessee's purchase and sale, both are genuine and supported by genuine evidences, noted above. From all the above evidences placed on the record, such as purchase consideration by paying an account payee cheque, supported by bill of purchase, entry in the register of shareholder endorsed on the share certificate, the said shares were dematerialized by following the prescribed procedure and the same is with SEBI authorized broker, the share were duly reflected in the demat account and same are sold with the SEBI authorized broker after payment of security transaction tax, it clearly establish that the shares were held by the assessee for the period more than one year and there is no adverse remark by the assessing officer regarding the purchase or the sale transaction entered into by the assessee. Not only that the brokers involved were not examined and there is no adverse finding in the assessment order. Therefore, we find that assessee has discharged his onus casted based on the provision of law and have proved the genuineness of the transaction and the requirements stated



*under the Act to claim the capital gain, as exempt Long Term Capital Gain under section 10(38) of the Act. The assessing officer, nowhere, in the assessment order, stated that these documentary evidences, submitted by the assessee, are bogus.*

*17. We note that there are three conditions to claim exemption u/s 10(38) of the Act viz: (i) Shares were purchased via Account Payee Cheque-For that the copy of bank statements reflecting the purchase amount along with the copy of cheque is placed on records, (ii) Shares were held in demat account for more than 12 months - The request form for dematerialization of shares has been submitted vide request form dated 21.01.2014, which is evident from the copy of Acknowledgement and the average period of holding of shares is 20 months (purchased on 24.07.2013 & initial sale on 21.02.2015) out of which the shares are held for almost 13 months in demat account and (iii) Shares were sold through recognized stock exchange after payment of Security Transaction Tax - The Security Transaction Tax has been paid by assessee which is evident from the copy of global report. Thus, the above-mentioned facts have been duly complied with by the assessee and thus, the assessee is entitled to claim exemption u/s 10(38) of the Act.*

*18. We note that on the identical facts, the Hon'ble, jurisdictional Gujarat High Court in the case of **PCTT v. ChampalaGopiram Agarwal**, R/TAX APPEAL No.366 of 2023, 25.07.2023 held as follows:*

*“The High Court held that the Tribunal found that assessee had discharged the initial burden cast upon it under provisions of section 68. Shares of companies were purchased online, payments were made through banking channels, and shares were dematerialized. Additionally, the shares were transferred from the dematerialized account and received consideration through legitimate banking channels. Assessing officer did not have any independent source or evidence to show an agreement between the assessee and any other party to convert unaccounted money by taking the fictitious loss. The decision of assessing officer was unsupported by any material on record, and the finding was purely on an assumption basis. Thus, no substantial question of law arose from the order of the Tribunal, and the same was to be upheld.”*

*19. We note that in the following decisions, of various Co-ordinate Benches, of ITAT, wherein the same script is involved, as that of the assessee under consideration, and addition made by the assessing officer, were deleted:*

*(i) **Abhishek Doshi vs CIT(A)**, ITA No.3122/Mum/2022, date 31.05.2023*

*(ii) **BhadreshMansukhlalDodhia vs ACIT**, ITA No.5544/Mum/2018, dated 06.01.2021*

*(iii) **PradipkumarHarakchand Doshi vs ITO**, ITA No.2229/Mum/2023, dated 15.03.2024*



(iv) **Yogesh P. Thakkar vs. DCIT, ITA No.1605/Mum/2021, dated 03.02.2023**

(v) **Varsha Dudheria vs. DCIT, ITA Nos. 507 to 510/Bang/2022**

*We find that in the case of Nilesh Agarwal HUF Deepak Kumar Agarwal HUF vs. Income Tax Officer, ITA No. 222 & 223/JP/2020, Dated 09-02-2021, the Coordinate Bench of ITAT, Jaipur passed the order stating that Assessee was still holding 4,13,500 shares of M/s. Kailash Auto in his Demat account. Assessing officer had treated the transaction of sale of shares as bogus being accommodation entry but had not doubted holding of shares by assessee to the tune of 4,13,500 shares in the Demat account of the assessee. Once the assessee had produced all the supporting evidences which included purchase bill, bank statement showing payment of purchase consideration, Demat account, holding of shares in the Demat account, sale of shares through Stock Exchange which were also reflected in Demat account of assessee and receipt of sale consideration in bank account of assessee as it was evident from the bank account, statement of the assessee, then in the absence of any contrary material or evidence brought on record by assessing officer transaction of purchase and sale of the shares in question could not be held as bogus merely on the basis of investigation carried out by department in some other cases where some persons were found indulged in providing accommodation entry. Assessing officer in the entire assessment order had not referred to single documentary evidence which could be said to be incriminating material against the assessee to show that assessee had availed of accommodation entry of bogus long-term capital gain.*

*20. The Hon`ble, jurisdictional Gujarat High Court in the case of Mamta Rajivkumar Agarwal, Tax Appeal No.408 of 2023, dated 11.09.2023 held that there was no evidence available on record suggesting that the assessee or his broker was involved in rigging up of the price of the script of M/s Shree Nath Commercial & Finance Ltd. The assessee had acted in good faith. The Tribunal, therefore, correctly held that the Assessing Officer had acted only on assumption which was misconceived. The Hon`ble, jurisdictional Gujarat High Court in the recent case of Shri Ambalal Chimanlal Patel, vide Tax Appeal No.260 of 2024, dated 15.04.2024 held that both the appellate authorities, that is, "CIT(A) and ITAT" have taken into consideration the notice of contract memo placed on record by the respondent assessee with regard to the purchase and sale of shares and it is also found by the appellant that the respondent was holding shares of other fifteen companies and it has continued to hold the shares over three years and therefore, sale of the shares cannot be said to be bogus merely on the basis of suspicion on account of the fact that the substantial quantum of capital gain and has been earned by the assessee on account of trading in respect of the said shares. Merely because trading in the shares of the said company was suspended on the Stock Exchange, in absence of any material brought on record to suggest that purchase and sales of said shares was bogus, the Assessing Officer was not justified in absence of any material to support his finding that there has been collusion or connivance between the broker and the assessee for the introduction of his own unaccounted money, resulting into a bogus transaction.*



21. We find that Ld. CIT-DR for the Revenue heavily relied on the judgement of Hon'ble High Court of Calcutta in the case of **PCIT vs. Swati Bajaj, 139 taxmann.com 352 (Cal)** and stated that the transaction involved in the assessee's case are purely penny stock and bogus transactions, therefore addition made by the AO should be sustained. We note that the judgment in the case of Swati Bajaj (supra) delivered by the Hon'ble High Court of Calcutta applicable to the state of West Bengal and not to the State of Gujarat wherein assessee's appeal is being adjudicated by the Tribunal in Gujarat. The Tribunal functioning in Gujarat state has to follow the decision of jurisdictional High Court of Gujarat, as mandated by the judicial discipline. Hence, we note that that judgments of Hon'ble Gujarat High Court are binding judgments, on the Tribunal situated in Gujarat, as it is the judgment of Hon'ble jurisdictional High Court. At this juncture, it is useful to refer to the judgment of Hon'ble High Court of Bombay in the case of **CIT v. Thana Electricity Supply Ltd. (1994) 206 ITR 727 (Bom.)** wherein after considering various judgments of Supreme Court laid down the following propositions with regard to binding precedent. The relevant findings of the Hon'ble Court are reproduced below:

*“17. From the foregoing discussion, the following propositions emerge :*

*(a) The law declared by the Supreme Court being binding on all Courts in India, the decisions of the Supreme Court are binding on all Courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.*

*(b) The decisions of the High Court are binding on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.*

*(c) The position in regard to binding nature of the decisions of a High Court on different Benches of the same Court, may be summed up as follows :*

*(i) A Single Judge of a High Court is bound by the decision of another Single Judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question [see Food Corporation of India vs. Yadav Engineer & Contractor AIR 1982 SC 1302].*

*(ii) A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs with another Division Bench of the same High Court, it should refer the case to a larger Bench.*



*Where there are conflicting decisions of Courts of co-ordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decisions.*

***(d) The decision of one High Court is neither binding precedent for another High Court nor for Courts or Tribunals outside its own territorial jurisdiction .It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories in which the Court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only a persuasive effect. By no amount of stretching of the doctrine of stare decisis judgments of one High Court can be given the status of a binding precedent so far as other High Courts or Courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate Courts or Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all Courts in the country by virtue of Art. 141 of the Constitution.”***

22. *Therefore, from the above judgment of Hon`ble High Court of Bombay in the case of Thana Electricity Supply Ltd(supra) it is abundantly clear that decision of a High Court will have the force of binding precedent only in the State or territories in which the Court has jurisdiction. Hence, we note that Judgment of Hon`ble Calcutta High Court in the case of Swati Bajaj and others(supra) should not be applicable to the assessee as it is outside the territorial jurisdiction of Gujarat. However, the Judgment of Hon`ble Jurisdictional High Court of Gujarat referred in our order, (supra) should be applicable to the assessee`s case, as these are the judgments of Jurisdictional High Court. As we have noted that Hon`ble Gujarat High Court in the recent cases viz: (i) CIT vs. Mamta Rajivkumar Agarwal, TA No.408 of 2023, dated 11.09.2023, (ii) PCIT vs Ambalal Chimmanlal Patel, TA No.260 of 2024, dated 15.04.2024 and (iii) PCIT vs Champalal Gopiram Agarwal (supra)wherein the Hon`ble Gujarat High Court has deleted the addition on account of penny stock holding that assessee has submitted required documents and evidences, therefore the Tribunal situated in Gujarat State has to follow the decision of the Hon`ble Gujarat High Court as mandated by judicial discipline.*

23. *We find that assessing officer failed to bring on the record any documentary evidence describing involvement of the assessee in any such wrong doings, or all the alleged scam, as referred by the assessing officer in the assessment order. Not a single statement of a person refers the name of the assessee nor any evidence showing the name of the assessee is confronted to the assessee to establish the contention of the revenue. Thus, lower authority failed to bring any proof / evidence/ connection regarding involvement of any cash trail activity*



*which subsequently proves that assessee transformed his unaccounted money. Besides, assessing officer, failed to provide the opportunity of cross examination regarding details reported on AIMS module of ITBA portal, whether the information was reported based on any Investigation Wing Report / Statement of any person reported by Income Tax Department. However, no such information was shared with assessee. Hence in absence of providing opportunity of cross examination, the order passed is bad in law, for that reliance can be placed on the judgement of Hon'ble Supreme Court in the case of M/S Andaman Timber Industries vs. Commissioner of Central Excise in Civil Appeal No. 4228 of 2006. Therefore, based on these facts and circumstances, we allow the appeal of the assessee."*

6. We find that in the case of assessee's brother, Ashok T. Jobanputra, the same issue was involved and there is same scrip and same issue is involved in assessee's case under consideration. That is, identical and similar facts are there in assessee's case. Moreover, the facts narrated in assessee case are similar to his brother's case Ashok T. Jobanputra. As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in assessee's own brother's case, Ashok T. Jobanputra (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). We find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the binding judgment of the Coordinate Bench in assessee's own brother's case Ashok T. Jobanputra (supra), we quash the order of Id.PCIT.

7. In the result, appeal filed by the assessee is allowed.

**Order pronounced in the open court on 01-09-2025.**

**Sd/-**

**(DINESH MOHAN SINHA)  
JUDICIAL MEMBER**

Rajkot

दिनांक/ Date: 01/09/2025

**Copy of the Order forwarded to**

1. The Assessee

**Sd/-**

**(Dr. A. L. SAINI)  
ACCOUNTANT MEMBER**

True Copy



2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot