

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.168/SRT/2025

Assessment Years: 2019-20

(Hybrid hearing)

Depesh Vishnu Agarwal A-301, Surya Plaza, U.M. Road, Surat-395 007	बनाम/ Vs.	Income Tax Officer, Ward- 1(2),(1), Surat ( <i>old ward- 1(2)(6), Surat</i> ) Aaykar Bhavan, Majura Gate, Surat- 395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AISPA2948 P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपील सं./ITA No.122/SRT/2025

Assessment Year: 2019-20

Income Tax Officer, Ward- 1(2),(1), Surat ( <i>old ward- 1(2)(6), Surat</i> ) Aaykar Bhavan, Majura Gate, Surat- 395 001	बनाम/ Vs.	Depesh Vishnu Agarwal A-301, Surya Plaza, U.M. Road, Surat-395 007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AISPA 2948 P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by	Shri Manish Malpani, CA
राजस्व की ओर से /Revenue by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of Hearing	30/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	27/10/2025

**आदेश / O R D E R**

**PER BIJAYANANDA PRUSETH, AM:**

These cross-appeals by the assessee and revenue emanate from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 02.01.2025 by the National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) [in short, 'CIT(A)'] for the Assessment Year (AY) 2019-20,

which in turn arose out of assessment order passed by Assessing Officer (in short, 'AO') u/s 147 r.w.s 144B of the Act on 12.02.2024. With the consent of both parties, both appeals were heard together and a common order is passed for the sake of convenience and brevity.

2. Grounds of appeal raised by the assessee in ITA No.168/Srt/2025 for AY 2019-20 are as under:

*“(1) That on the facts and in the circumstances of the case as well as in law, the Id. CIT(A), NFAC, Delhi [CIT(A)] has erred in upholding the validity of the notice issued u/s 148A(b) of the I.T. Act, 1961 (the Act); the order passed u/s 148A(d) of the Act and the notice issued u/s 148 of the Act, all issued by the JAO, which are without jurisdiction and without authority of law in view of provisions of S.151A r.w.s.144B of the Act and thereby erred in upholding the validity of the proceeding carried out u/s 148A/148/147 of the Act and consequent assessment order passed u/s 147 r.w.s.144B of the Act, which are invalid and bad in law ab initio. Appellant prays for quashing the same.*

*(2) That on the facts and in the circumstances of the case as well as in law, the Id. CIT(A) has erred in dismissing the appeal of the appellant on the ground of challenging the validity of the order passed u/s 149A(d) and consequent notice issued u/s 148 of the Act which are wrong, unjustified and bad in law and consequently whole of the proceeding u/s 147/148/148A of the Act and the assessment order passed u/s 147 r.w.s. 144B of the Act are invalid, unjustified and bad in law. Appellant prays for quashing the same.*

*(3) Without prejudice to above grounds of appeal, that on the facts and in the circumstances of the case as well as in law, the Id. CIT(A) has erred in disallowing genuine and bona fide short term capital loss (STCL) and long term capital loss (LTCL) totalling to Rs.1,15,37,991/- (**correct figures are STCL Rs.91,78,253/- and LTCL Rs.21,42,111/-**) suffered by appellant in the transactions of purchase/sale in shares of Kushal Ltd. done on the platform of stock exchange and duly proved by sufficient evidences./ Appellant prays for directing to allow carry forward of these bona fide losses for which appellant is entitled in law.”*

3. Grounds of appeal raised by the revenue in ITA No.122/Srt/2025 for AY 2019-20 are as under:

*“i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs.1,15,37,991/- on account of unexplained investment ignoring the facts that these transactions are sham transactions fabricated through bogus paper concerns of M/s Kushal Limited which were engaged in providing accommodation entries.*

*ii. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the AO has rightly made addition of Rs.1,15,37,991/- by invoking provisions of section 69 of the Act as for taking accommodating entry of the artificial LTCL/STCL generated through the transaction in penny stock of M/s Kushal Ltd. the assessee has paid equivalent amount of unaccounted cash.*

*iii. On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition made of commission of Rs.3,46,140/- u/s 69C of the Act purportedly incurred by the assessee toward payment to brokers who allegedly entered into the share transactions at the behest of the assessee overlooking the fact that the entire transactions were stage managed with the object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Loss/Short Term Capital Loss for taking benefit of the same.*

*iv. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire addition ignoring the fact that bogus LTCL/STCL shown in the books of assessee from paper companies which were specifically formed to provide accommodation entries and the assessee re-routed its unaccounted income through the purchase transactions made from these paper companies to hide the true income of the assessee for the year under consideration.*

*v. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in allowing the claim ignoring the judicial pronouncement by the Hon’ble Supreme Court in the case of McDowell vs. CTO wherein it was held that “colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious method. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.”*

*vi. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Office.*

*vii. It is, therefore, prayed that the order of the Ld.CIT(A) may kindly be set aside that of the Assessing Officer be restored.*

*viii. The appellant craves leave to add, alter, amend and/or withdraw any ground of appeal either before or during the course of the hearing of the appeal.”*

**ITA No.168/SRT/2025 (AY 2019-20):**

4. Facts of the case in brief are that assessee filed his return of income for AY 2019-20 on 30.03.2019 declaring total income of Nil and loss of Rs.1,17,71,435/-. Thereafter information was received from CBDT through Insight Portal that a search and seizure operation was conducted u/s 132 of the Act in case of Kushal Group of Ahmedabad on 05.02.2019 wherein incriminating evidences were found and seized revealing that the group is engaged providing accommodation entries in the form of bogus LTCG/LTCL and STCG/STGL. It was found that the assessee has traded in penny scripe of M/s Kushal Ltd. and booked loss of Rs.1,15,37,991/-. Accordingly, show cause notice u/s 148A(b) was issued on 04.03.2023 and order u/s 148A(d) of the Act was passed on 28.03.2023. Notice u/s 148 was issued on 28.03.2023. In response to the notice u/s 148, assessee declared the same income. After examination of details, AO concluded that the assessee had admitted having transacted in the said shares. However, assessee denied that he indulged any of manipulated transaction and he had done genuine transactions. The AO concluded that the transactions of Rs.1,15,37,991/- remained unexplained and added the same u/s 69 of the Act. He also added Rs.3,46,140/- being commission paid to the entry provider u/s 69C of the Act.

4.1 Aggrieved by the addition made by AO, assessee filed appeal before CIT(A). The assessee filed written submission which is reproduced at pages 5 to 17 of the appellate order. The same was forwarded to AO calling for remand report. Remand report of the AO is at pages 18 to 26 of the appellate order. The comment of the assessee to the remand report, is at pages 27 to 32 of the

appellate order. The assessee had challenged notice u/s 148 issued by the Jurisdictional Assessing Officer (JAO), by relying on the decision of Hon'ble Bombay High Court in cases of Hexaware Technologies Ltd. vs. ACIT (2024) 162 taxmann.com 225 (Bom) and Kankanala Ravinder Reddy vs. ITO (2023) 156 taxmann.com 178 (Telengana). However, the CIT(A) dismissed the ground by relying on the decisions of Hon'ble Delhi High Court in case of Abhishek Jain vs. ITO (2018) 405 ITR 1 (Del), Subash Chander vs. CIT (2008) 167 Taxman 307 (P&H) and Adarsh Developers vs. DCIT (2024) 158 taxmann.com 81 (Kar). The CIT(A) held that the assessee cannot challenge issue of jurisdiction after expiry of one month from service of the notice. He also relied on the decision of Hon'ble Supreme Court in case of DCIT (Exemptions) vs. Kalinga Institute of Industrial Technology (2023) 152 taxmann.com 434 (SC). The CIT(A) also did not accept the decision of Hon'ble Bombay High Court Hexaware Technologies Pvt. Ld. (supra) and Kankanala Ravinder Reddy (supra) regarding incorrect assumption of jurisdiction by JAO, by stating that these decisions were overruled by Hon'ble Delhi High Court in case of TKS Builders vs. ITO in WP(C) 1968/2023. Accordingly, the grounds of assessee were dismissed.

4.2 Regarding the addition of Rs.1,15,37,991/- u/s 69 of the Act, the CIT(A) observed that instead of disallowing the loss, the AO has inadvertently added the said amount u/s 69 of the Act. He observed that it is a curable mistake u/s 292B of the Act and directed AO to disallow the bogus loss. The CIT(A), however, deleted the addition of Rs.3,46,140/- u/s 69C of the Act in absence of any

evidence in support of the said expenditure. Aggrieved by the order of CIT(A), both assessee and revenue have filed cross-appeal before the Tribunal.

5. Since the jurisdictional issue is raised by the appellant, we shall first take up appellant's appeal in ITA No.168/SRT/2025. In ground Nos. 1 and 2, the appellant has challenged the order of AO in upholding the validity of notice issued u/s 148A(b) of the Act and the order passed u/s 148A(d) of the Act which were issued by the JAO. The Ld. AR has filed a paper book containing the written submission before the CIT(A), notice issued u/s 148 by JAO and notice u/s 143(2) issued by FAO, purchase contract and sale contract notes, ledger account statement, Demat account statement etc. The Ld. AR also relied on the decisions in cases of Hexaware Technologies Ltd. (supra) and ITO vs. Guru Nanak Khalsa Sr. Sec. School SLP (Civil) Diary No.(S).17586/2025(SC). The Ld. AR submitted that he is reiterating the submission made before the CIT(A).

6. On the other hand, Ld. CIT-DR for the revenue relied on the order of CIT(A) on the issue of re-opening the assessment.

7. We have heard both the parties and perused the materials available on record. We have also deliberated the case law relied on by both the parties. We find that the appellant had not challenged the issue of notice u/s 148A(b), order u/s 148A(d) and notice u/s 148 of the Act issued by the JAO on 04.03.2023, 28.03.2023 and 28.03.2023 respectively. The appellant had not challenged the issue of the above notices before the AO. He challenged them only before the CIT(A) when appeal was filed by him on 23.02.2024. It is, therefore, clear that the

jurisdictional issue and challenged to the notices were raised for the first time much after the statutory period of one month from the issue of the notices. The CIT(A) has rightly referred to provisions of section 124(3) of the Act which disentitles a person to call in question the jurisdiction of an AO after the expiry of one month from the date on which he was served with the notice. The Hon'ble Delhi High Court in case of Abhishek Jain (supra), Hon'ble Punjab and Haryana High Court in case of Subash Chander (supra) and Hon'ble Karnataka High Court in case of Adarsh Developers (supra) have held that the appellant cannot challenge issue of jurisdiction after expiry of one month from the date on which the notice was served. The Hon'ble Supreme Court in case of Kalinga Institute of Industrial Technology (supra) has held that where High Court set aside notice issued u/s 143(2) in case of assessee on ground that jurisdictional office had not adjudicated upon returns as jurisdiction had been changed after returns were filed, since records revealed that assessee had participated pursuant to notice issued u/s 142(1) and had not questioned jurisdiction of Assessing Office, in such case order of High Court could not be sustained. The facts of the present case are similar to the facts of the cases decided supra. Hence, the ground Nos. 1 and 2 of the assessee are liable to be dismissed.

7.1 Be that as it may, we also find that the Hon'ble Delhi High Court in case of Yukti Export vs. ITO, WP(C) No.15024/2025, dated 26.09.2025, after considering various decisions including the decision of Hexaware Technologies Ltd. (supra), relied upon by the Id. AR, has held that both the JAO and FAO would have

concurrent jurisdiction to initiate proceedings for re-assessment. The Hon'ble High Court has also discussed about the dismissal of SLP by the Hon'ble Supreme Court in cases of Prakash Pandurang Patil vs. ITO, [2024: BHC-AS:32759-DB] (Bombay HC) and Deepanjan Roy vs. ADIT (IT), [WP No. 25753 of 2024] (Telangana HC) and observed that the Hon'ble Supreme Court while dismissing the appeal, had only stated that it did not find any merit in SLP, without giving any detailed reasons. After relying on a number of decisions by the Hon'ble Supreme Court on the issue of dismissal *in limine*, i.e., Fuljit Kaut vs. State of Punjab and Ors., (2010) 11 SCC 455, State of Orissa & Anr. Vs. Dharendra Sundar Das & Ors., (2019) 6 SCC 270, Khoday Distrilleries Ltd. & Others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., (2019) 4 SCC 376, the Hon'ble High Court held that the Hon'ble Supreme Court has only dismissed the SLP without dealing with the issue. Therefore, it re-affirmed its decision in case of TKS Builders Pvt. Ltd. vs. ITO, 167 taxmann.com 759, wherein it was held that both JAO and FAO would have concurrent jurisdiction to initiate proceedings for re-assessment.

7.2 Hence, respectfully following the decision of Hon'ble Supreme Court in case of Kalinga Institute of Industrial Technology (supra) and the decisions of Hon'ble High Courts cited supra, we find no infirmity in the order of CIT(A). Accordingly, the grounds are dismissed.

8. Ground No.3 is disallowance of STCL of Rs.91,78,253/- and LTCL of Rs.21,42,111/- (total Rs.1,15,37,991/-) by the CIT(A). In the assessment order, the

AO had disallowed Rs.1,15,37,991/- u/s 69 of the Act which pertains to unexplained investment. The Ld. AR has relied on the submission made by assessee before the CIT(A). He had given the contract notes for purchase and sale, ledger account and other details before the AO as well as CIT(A). He submitted that it was a genuine loss suffered by the assessee from purchase and re-sale of shares of Kushal Trading Ltd.

8.1 On the other hand, Ld. CIT-DR has relied on the order AO. He submitted that the AO has rightly observed that SEBI has clearly observed that these companies were found to be violating various norms and were involved in fraudulent trade despite being traded on the recognized Stock Exchange. In the show cause notice, he has mentioned that the assessee had routed unaccounted money through the use of the share transaction of Kushal Trading Ltd., which is penny stock listed in Bombay Stock Exchange. Hence, he added the said sum u/s 69 of the Act.

9. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the both the parties. We find that the appellant had claimed loss of Rs.1,15,37,991/- in the transaction of the scrip M/s Kushal Trade Ltd. There was a search u/s 132 of the Act in case of Kushal group of Ahmedabad where various incriminating seized papers and evidence were found. The CIT(A) has forwarded the additional evidence filed by the assessee to the AO and called for remand report. The report of the AO was forwarded to the appellant for rejoinder. The rejoinder of the

appellant was received by the CIT(A). All these submission and replies have been reproduced by the CIT(A) in appellate order. He has concluded that the Securities and Exchange Board of India (SEBI) has already given its report that these companies indulged in unfair trade practices. The SEBI is the apex regulatory body of India's securities market with the role of protecting the investors, promoting market development and regulating the market. It prohibits unfair trade practices, curbs price rigging and prevents insider trading. It also enforces a code of conduct for the market participants. The order of the AO and CIT(A) is based on the report of SEBI, which has not been controverted by the Id. AR. Therefore, the manipulated loss returned by the appellant was liable to be disallowed. We do not find any infirmity in the order of CIT(A). The Ld. AR has not been able to controvert the finding of the CIT(A). He has simply relied on the submissions made before the CIT(A), which were duly rejected by the CIT(A). Since a loss in trading of penny stock was claimed by the appellant and no bogus exempt LTCG u/s 10(38) of the Act was shown in the return of income, he has rightly directed the AO to disallow the impugned loss of Rs.1,15,37,991/-. The order of CIT(A) is, accordingly, confirmed. This ground of assessee's appeal is dismissed.

10. In the result, appeal of assessee is dismissed.

**ITA No.122/SRT/2025 (AY 2019-20):**

11. The revenue has taken up eight grounds of appeal, wherein the decision of CIT(A) has been challenged for deleting the addition made u/s 69 of the Act

and also for deleting the commission expense of Rs.3,46,140/- u/s 69C of the Act. Ground No.1 and 2 are regarding unexplained investment u/s 69 of Rs.1,15,37,991/-. The Ld. CIT-DR has relied on the order of AO. On the other hand, Ld. AR supported the ground raised in appellant's appeal and relied on the submission made before the CIT(A).

12. We have heard both the parties and perused the materials available on record. There is no dispute regarding the fact that the appellant has declared income of Rs. Nil and claimed loss of Rs.1,15,37,991/-. He had never shown any exempt LTCG in his return. Since the loss pertained to a penny stock, the CIT(A) has rightly disallowed the loss. The question of unexplained investment u/s 69 would not arise in such case because (i) the source of investment was not called in question and (ii) the explanation obtained from the appellant on such issue was found not to be satisfactory. Therefore, there is no infirmity in the order of CIT(A), which we confirm. Resultantly, the ground Nos. 1 and 2 are dismissed.

13. Ground No.3 is unexplained commission of Rs.3,46,140/-. The CIT-DR has relied on the order of AO. On the other hand, Ld. AR relied on the order of CIT(A).

14. We have heard both the parties and perused the materials available on record. The CIT(A) deleted the addition because no evidence for payment of unexplained commission expenditure has been brought on record by the AO. In absence of any explanation or evidence to rebut such finding of CIT(A), we do not find any reason to interfere with the order of CIT(A). Hence, the ground is dismissed.

15. The revenue has raised a ground that CIT(A) ignored the decision of Hon'ble Supreme Court in case of McDowell (supra). The Ld. CIT-DR has not made any submission in this regard during hearing before us. Hence, there is no need to adjudicate this ground.

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

17. In combine result, both appeals of assessee and revenue are dismissed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 27/10/2025 in the open court.

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**  
सूरत /Surat  
दिनांक/ Date: 27/10/2025  
Dkp Outsourcing Sr.P.S\*

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- **अपीलार्थी/ The Appellant**
- **प्रत्यर्थी/ The Respondent**
- **आयकर आयुक्त/ CIT**
- **आयकर आयुक्त (अपील)/ The CIT(A)**
- **विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT**
- **गार्ड फाईल/ Guard File**

By order/आदेश से,

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सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत