



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
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. 196/RJT/2025
(निर्धारणवर्ष/Assessment Year: (2012-13))

Nishant Parekh – Legak Heir of Mina Parekh 322, Madhav Square, Opp. Avantika Complex, Limda Lane Road, Jamnagar – 361001	Vs.	Income Tax Officer, wd – 1(3), Aayakar Bhavan, Jamnagar – 361001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AANPP9471F		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

Assessee by : Shri Sagar Shah, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 08/10/2025
Date of Pronouncement : 13/10/2025

ORDER

Per, Dr. Arjun Lal Saini, A.M.:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2012-13, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 26.02.2025, which in turn arises out of an order passed by the Assessing Officer u/s 147 of the Act, on 20.09.2021.



2. Although, this appeal filed by the Assessee, for Assessment Year 2012-13, contains multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the Assessee. We find that most of the grounds raised by the Assessee, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of the Assessee. With this background, we summarize and concise the grounds raised by the Assessee, as follows:

(i) The order passed by the Ld. Fassing officer as well as order passed by National Faceless Appeal Centre under Section 250 is bad in law as well as on facts as the order passed by the Ld. Fassing officer as well as order passed by National Faceless Appeal Centre under Section 250 has not proved his onus unlike assessee who already proved his onus that claim of exempt Long Term Capital Gain u/s. 10(38) is backed by third party evidence (bills, invoices, contract note, D-mate, STT paid, purchase share through banking channel) and after fulfilment of all the conditions laid down under the provision of section 10(38), moreover, the script “Tuni Textile Ltd” is covered in favour of assessee by the decision of ITAT-Rajkot”

(ii) The order passed by the Ld. Fassing officer as well as order passed by National Faceless Appeal Centre under Section 250 is bad in law as well as on the facts as it has erred in making additions under Sections 69 of the Income Tax Act, 1961, amounting to 27,50,000/- and alleging unexplained investments and unexplained money, respectively without considering the fact that the assessee duly furnished documentary evidence from the third party including bank statements and confirmation from the loan party, substantiating the sources of the investments made for the purchase of immovable property (shop). The assessee has verifiable and lawful sources for the investments, which stand fully explained as received from M/s Parekh Brothers. Proprietary concern of the husband's firm which can be evident from the contra ledger and bank statement.

3. Now we shall adjudicate the above, summarised and concise grounds of the assessee, one by one, as follows:

4. So far, above summarised and concise ground No.1 is concerned, the script “Tuni Textile Ltd” is covered in favour of assessee by the decision of ITAT-Rajkot, when this appeal was called out for hearing, Learned Counsel for the assessee invited our attention to the order dated 18.10.2024, passed by the Division Bench of this Tribunal in the case of Shah Parag Gulabchand in ITA No.272/RJT/2023 for the



Assessment Year 2013-14, order dated 31.07.2024 whereby the issue relating to Long term capital gain, in respect of a script of Tuni Textile, has been discussed and adjudicated in favour of assessee. 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.

5. Learned Departmental Representative nevertheless relied upon the orders of the authorities below.

6. 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 the case of Shah Parag Gulabchand in ITA No.272/RJT/2023 for the Assessment Year 2013-14, order dated 31.07.2024 (supra). In this order, the Tribunal has inter alia observed as follows:

“11. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. We note that assessee purchased 8,500 shares of Tuni Textile on 04.08.2010 from the M/s Sharukh N Tara for the sum of Rs. 1,65,048.36/-, the details are given below:

<i>Particulars</i>	<i>Amount</i>
<i>Share Purchase Amount</i>	<i>1,57,250/-</i>
<i>Security Transaction Tax</i>	<i>20.56/-</i>
<i>Shares Transaction Expense</i>	<i>7777.80</i>
<i>Total</i>	<i>1,65,048.36/-</i>

The assessee submitted copy of contract note received from M/s Sharukh N. Tara, vide paper book page no.14 to 15.Immediately after purchasing the shares a request letter regarding demat account details was duly sent to assessee by the Broker M/s. Sharukh N. Tara which is placed at paper book page no. 16.The assessee, also submitted Balance Sheet along with the Schedule of Investments for the financial year 2009-2010 wherein the Investment in shares of KGN is evident. The assessee has also explained, the source of purchase stating that it is from, income generated from sale proceed of various shares sold on 14.07.2010, 20.07.2010, 26.07.2010, 30.07.2010 (Evident from the sale contact notes and ledger account of M/s. Sharukh N. Tara enclosed at paper page no.19 to 27, and such sale of shares are already taxed in the relevant Assessment Year i.e. 2011-12, vide ITR and Computation of Income at paper book page no.28 to 30. Out of the sale proceeds, the shares of Tuni Textiles were purchased which is also evident from the contra ledger



account of the Broker attached. Therefore, we note that assessee has explained the source of purchase of shares in a satisfactory manner.

12. The assessee held the shares for more than 12 months of the period which is evident through the below mentioned table.

Script Name	Purchase Date	Sale Date	Period of Holding in Months
KGN	15.04.08	04.02.13	58
Tuni textile	04.08.10	15.05.12	21
Tuni textile	04.08.10	16.05.12	21
Tuni textile	04.08.10	28.05.12	22
Tuni textile	04.08.10	04.06.12	22
Tuni textile	04.08.10	05.06.12	22

The assessee has sold the shares of Tuni Textiles & KGN during F.Y. 2012-13 and the transactions carried out by the assessee through ANS Private Limited who is SEBI registered Stockbroker. The details of the transactions are as follows:

Sr. No.	Particular of script	Sale date	Sale Amt. (Rs.)	Purchase date	Purchase Amt. (Rs.)	Index cost of acquisition	Capital gain
			(i)		(ii)	(iii)	(iv)=(i-iii)
1.	KGN	04.02.13	2,18,105	15.04.08	5,000	7,320	2,10,785
	Total (A)		2,18,105		5,000	7,320	2,10,785
2.	Tuni textile	15.05.12	22,09,000	04.08.10	46,250	55,422	21,53,578
3.	Tuni textile	16.05.12	29,77,040	04.08.10	62,900	75,374	29,01,666
4.	Tuni textile	28.05.12	10,17,900	04.08.10	18,500	22,169	9,95,731
5.	Tuni textile	04.06.12	13,86,750	04.08.10	23,125	27,711	13,59,039
6.	Tuni textile	05.06.12	3,93,505	04.08.10	6,475	7,759	3,85,746
	Total (B)		79,48,195		1,57,250	1,88,435	77,95,760
	Sum of 2-6 above						



Grand Total (A+B)	82,02,300	1,62,250	1,95,755	80,06,545
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➤ **The details of other charges paid during the sale of shares is as follows:**

Security Transactions Tax	Rs. 10,030/-
Service Tax	Rs. 4,950.14/-
Share Transaction Expense	Rs. 798.42/-
Stamp Duty	Rs. 798.42/-
Total	Rs. 16,577/-

*the other charges are Evident from the Contract Note & Ledger attached herewith from page no. 32 to 37.

We find that assessee submitted a copy of Contract Note & Ledger, which is placed at paper book page no.32 to 37. A copy of bank statements reflecting the Sale of Shares i.e. Receipts as mentioned in the above table are attached from page nos. 38 to 40 of the assessee's paper book. The assessee held shares of KGN and Tuni Textiles and sold the same shares which is evident from the copy of Transaction Statement from period 01.04.2012 to 31.03.2013, vide paper book page no.41 to 43. We find that assessee has submitted above Plethora documents and evidences to support the purchase and sale transaction, however, we note that assessing officer has not refuted or discredited these evidences and documents. The assessing officer does not mention why he is not accepting these evidences. On the contrary, the assessing officer has just brushed aside these evidences without even a word on why they are not acceptable. It is a well settled Law that when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside based on surmises.

13. Thus, the above-mentioned facts have been duly complied with in case of the assessee and thus, the assessee can duly claim exemption u/s 10(38) of the Act. The Hon'ble Gujarat High Court in the case of PCIT v. Champalal Gopiram Agarwal, R/TAXAPPEAL NO, 366 OF 2023 JULY25,2023, 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. The 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. We note that the assessee submitted the following documents and evidences, before the assessing officer viz: (i) copy of contract note received from M/s Sharukh N. Tara (vide Pb. 14 to 15), (ii) Request letter regarding demat account details (vide Pb. 16), (iii) balance sheet along with the Schedule of Investments for the financial



year 2009 to 2010 (vide Pb. 17 to 18), (iv) Sale contract notes and ledger account of M/s Sharukh N. Tara of Shares – Source of purchase (vide Pb. 19 to 27), (v) ITR and computation of income of AY.2011-12 (vide PB. 28 to 30), (vi) Notice dated 07.04.2011 issued by BSE about subdivision of the shares from one share into 10 shares (vide Pb. 32 to 37), (vii) Contract note & ledger reflecting sale of shares (vide Pb. 32 to 37), (viii) Bank statements reflecting sale of shares (vide Pb. 38 to 40) and (ix) transaction statement from period 01.04.2012 to 31.03.2013 (vide Pb. 83 to 99). We note that by submitting the above documents and evidences, the assessee has proved that the transaction was done through the banking channel and that satisfied the condition mentioned in section 10(38) of the Act, moreover the period of holding is also 22 months. The Learned Counsel also submitted that in assessee's case no action has been taken by the Stock Exchange Board of India (SEBI) and there is no investigation report of the SEBI.

14. We note that Hon`ble Jurisdictional High Court of Gujarat in the case of Jagat Pravinbhai Sarabhai, [2022] 142 taxmann.com 247, held that where Assessing Officer noted that assessee had indulged in scrip of shell company and had claimed long term capital gain on sale of shares and made addition under section 68 holding that entire transaction was bogus and in the nature of penny stock, however, since genuineness of investment in shares by assessee was substantiated by him by producing copy of transaction statement for period from 1-6- 2001 to 1-10-2010 and shares were retained for more than ten years and were sold after such long time, hence investment was not bogus therefore it cannot be treated that investment was made in penny stock. The findings of the Hon`ble Court is reproduced below:

"2. As submitted by learned senior advocate Mr. M.R. Bhatt for M.R.Bhatt and Co., the assessee revenue proposes the following substantial questions of law, which according to the submission requires examination.

"Whether on the facts and circumstances of the case and in law, the decision of Appellate Tribunal is ex facie perverse because the Appellate tribunal deleted the addition of Rs. 2,10,474/- made on account of bogus long term capital gain, without appreciating the entire gamut of fact that the assessee transacted in penny stock namely M/s. Devika Proteins Ltd. thus earning bogus Long term Capital Gain and claiming it to be exempt under section 10(38) of the Income-tax Act?"

3. The assessee filed the return of income for the assessment year 2011-12 on 29-3-2012 declaring his total income Rs. 3,11,490/-. Subsequently the assessment was reopened as information was received that assessee has indulged into script of shell company and had claimed long term capital gain on sale of shares of Devika Proteins Limited to the tune of Rs. 2,10,474/- and that the amount was claimed as exemption under section 10(38) of the Income-tax Act, 1961 (hereafter referred to as 'the Act')

3.1 The Assessing Officer made addition of the said amount. The entire transaction was treated as bogus and in the nature of penny stock. By adding Rs. 2,10,474/- under section 68 of the Act, total income was assessed at Rs. 5,21,964/-.

3.2 In appeal by the assessee before the Commissioner of Income-tax (Appeals), the issue was re-examined. According to the appellate authority the assessee assessee had furnished evidence to show that the shares were brought as genuine investment which was long back



in the year 2000-01. As the shares were in the nature of old investment, they could not be treated as penny stock by any stretch of imagination.

4. The Income-tax Appellate Tribunal further examined the question in appeal preferred by the revenue and confirmed the view of the appellate authority noticing that the shares were purchased in the year 2001 and they were sold after long time in the year 2010-11.

5. The genuineness of investment in the shares by the assessee was substantiated by him by producing copy of transaction statement for the period from 1-6-2001 to 1-10-2010. The investment was made in the year 2000-01. The shares were retained for more than ten years and were sold after such long time. These circumstances suggested that the investment was not bogus or investment made in penny stock. The shares were purchased in order to invest and not for the purpose of earning exempted income by frequent trading in short span.

6. The finding recorded by the appellate authority and confirmed by the appellate tribunal is based on material before them. They are in the realm of findings of fact. No error could be noticed in the findings and conclusion that the investment was longstanding and genuine and was not penny stock on the basis of which the capital gain was wrongly claimed.

6.1 On the facts of case, no question of law much less substantial question of law arises.

7. Resultantly, appeal is dismissed”.

15. We note that Judgment of Hon`ble Calcutta High Court in the case of Swati Bajaj and others(supra), referred by learned DR for the revenue, should not be applicable to the assessee, as it is outside the territorial jurisdiction of Gujarat. However, the Judgments of Hon`ble Jurisdictional High Court of Gujarat are applicable to the assess under consideration. The Judicial discipline demands that once an order has been passed by the jurisdictional High Court, on a particular issue, lower authorities are duty bound to act in accordance with the same.

*16. 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 assessee 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. We note that there is no infirmity in the order passed by the CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

7. As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in the case of Shah Parag Gulabchand in ITA No.272/RJT/2023 for the Assessment Year 2013-14, order dated 31.07.2024 (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 we allow summarised and concise ground No.1.

8. In the result, summarised and concise ground No.1, raised by the assessee is allowed.

9. Coming to summarised and concise ground No.2 raised by the assessee, which relates to additions under Sections 69 of the Income Tax Act, 1961, amounting to 27,50,000/-. The brief facts qua the issue are that an addition of Rs. 27,50,000/- as unexplained investment in shop, was proposed by the assessing officer, therefore, assessing officer issued a notice to the assessee to explain the investment in Shop. In response, the assessee has submitted all the documents and evidences pertaining to investment and explain the facts and the source of the amount invested, vide submission dated 17.09.2021, before the assessing officer. However, assessing officer has not considered the documents and submissions of the assessee. It is seen from the impugned assessment order that the Assessing Officer specifically asked the assessee to substantiate the source of investments by filing response before



12/09/2021 in the show-cause notice issued and in response, the assessee has furnished the submission along with documentary evidence in support of her claim. However, assessing officer, rejected the contention of the assessee and made addition to the tune of Rs. 27,50,000/-, to the total income of the assessee.

10. Aggrieved, by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A) who has confirmed the action of the assessing officer. Therefore, assessee is in appeal before us.

11. 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. Learned Counsel for the assessee argued that assessing officer has made addition in spite of all the fact explaining the source of the amount invested and placed on record vide submission dated 17.09.2021, whereas the assessment order dated 20.09.2021 is not dealing with the facts and evidences placed on record. In response to the notice of the assessing officer, the assessee has furnished the submission along with documentary evidence in support of her claim. The assessing officer, did not consider the documents and evidences of the assessee in right perspective, therefore, learned Counsel argued that addition made by the assessing officer may be deleted. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

12. We note that during the assessment proceedings, with regard to investments made for purchase of immovable property being shop, the assessee was asked to substantiate the same with supporting documentary evidence. The burden to explain



the nature and source of investments was on the assessee, who, has discharged his burden to the satisfaction of the assessing officer. The assessee had provided to the assessing officer, the relevant documents and evidences, regarding source of investments with supporting evidences. During the course of appellate proceedings, also the assessee has stated that the investment in immovable property was made from the amount borrowed from Parekh Brothers, a proprietary concern of Husband of the assessee, bearing PAN AELPP2557A on 10.06.2011, vide cheque. No.834327. The assessee further stated that his contention is duly supported by the copy of the bank statement of syndicate bank placed on record. The assessee has submitted that the amount of Rs.27,50,000/- is paid to Madhav Developers on 25.06.2011 vide cheque no.526379 and claimed that the source of the amount invested in immovable property is amount borrowed from the firm of assessee's Husband's firm-Parekh Brothers, as evident from the documentary evidences. In view of the above, the assessee has explained the source of investment and source of source is also explained which is already reflected in the records and transaction are already done from the regular and disclosed bank account therefore, the same cannot considered as unexplained. We note that assessing officer had passed the order without considering the explanation by the assessee, vide submission dated 17/09/2021. Therefore, we note that the addition made against the assessee is solely on the basis of assumptions and presumptions without any basis. The assessee has stated that the assessing officer failed to appreciate that the entire sale consideration as per the documents are paid through banking channels. As such, the same stands explained.

13. Therefore, we note that the amount has been received from the husband's proprietary concern, M/s. Prarekh Brothers and the same was subsequently paid to M/s. Madhav Developers on 25.06.2011. In support, the assessee has filed bank



account statements, ledger account in the books of M/s. Prarekh Brothers. In view these facts, we find that identity, creditworthiness and genuineness of the transactions were proved. With regard to identity of the party and genuineness of the transaction, the assessee has stated that it had received funds from her husband's firm vide bank account. Further, regarding the source of the funds, the assessee has furnished documentary evidence such as ITR copy of the husband, audited financials, treatment of loan in firm's books of accounts etc, to verify the same. Based on these facts, we note that assessee has submitted all the possible documents and evidences before the assessing officer, however, the assessing officer rejected these documents and evidences based on surmises and suspicious, which is not acceptable. In holding a particular receipt as income from undisclosed sources, the faith of the assessee cannot be decided by the revenue on the basis of surmises, suspicious and probabilities, Northern Bengal Jute Co. Ltd Vs CIT 70 ITR 407 (Cal). Hence, we are not inclined to accept the contention of the Assessing Officer in any manner and hence the addition so made is deleted. Hence this summarised and concise ground No.2 of the assessee is allowed.

14. In the combined result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 13/10/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(DR.ARJUN LAL SAINI)
ACCOUNTANT MEMBER

(True Copy)

राजकोट/Rajkot

दिनांक/ Date: 13/10/2025

Copy of the order forwarded to :

ITA No. 196/Rjt/2025
Nishant Parekh



- The assessee
- The Respondent
- CIT
- The CIT(A)
- DR, ITAT, RAJKOT
- Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot