

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH "SMC" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 601/SRT/2025
Assessment Year: 2012-2013**

Shri Dhaval Indravadan Gandhi,
At and Post Areth, Tal Mandvi,
Surat-394160.

PAN NO. AJJPG 4246 J

Appellant

ITO Ward-2,
Aayakar Bhavan, Janta Nagar
Society, Bardoli-394601.

Vs.

Respondent

Assessee by : Mr. Shaunak K. Zaveri, CA

Revenue by : Ms. Namita Patel, Sr. DR

Date of Hearing : 08/10/2025

Date of pronouncement : 30/10/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 28.03.2025 passed by the Ld. Addl./Joint Commissioner of Income-tax (Appeals) – 2, Nagpur [hereinafter shall be referred as ‘the Ld. CIT(A)’] for assessment year 2012-2013, raising following grounds:

1.0(a) That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [here-in-after referred to as Ld. CIT(Appeals)] was not justified and grossly erred by without considering the facts, evidences and documents submitted by the appellant. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the A.O. order passed u/s. 143(3) r.w.s 147 of the I.T. Act, 1961 which is incomplete and also bad on facts.



1.0(b) Without prejudice to above ground that on facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the AO in reopening of assessment was not justified because instead of the AO recording his satisfaction, initiated action at the behest of The Investigating Wing, Ahmedabad

2.0(a) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the A.O. in by accepting the addition of unexplained investment in shares of Rs. 12,64,005/-.

2.0(b) Without prejudice to above grounds, that on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the A.O. by erred in treating long term capital gain as accommodation entries and bogus entries.

2.0(c) Without prejudice to above grounds, that on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the A.O. by not proving right for cross-examining the director and or promoters and or broker of the company in which investment was made.

2.0(d) Without prejudice to above grounds, that on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the AO where sole reliance was placed on report of Ahmedabad Investigation Wing report.

3.0 That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred and indirectly confirming the action of the A.O. in not justified and erred in confirming the initiated penalty proceedings u/s. 271(1)(c) r.w.s. 274 of the Act.

4.0 That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated here-in-above, either before or at the time of hearing of this appeal.

2. Briefly stated, the material facts giving rise to the present appeal are that the assessee filed his return of income for the relevant assessment year on 07.03.2013, declaring a total income of Rs. 5,15,480/-. Subsequently, on receipt of specific information that the assessee had allegedly entered into transactions involving a so-called “penny stock” in the scrip of **M/s. Dhwanil Chemicals Ltd.**, and had purportedly purchased



shares aggregating to Rs. 12,64,005/-, the Assessing Officer recorded reasons to believe that income chargeable to tax had escaped assessment. Consequently, a notice under section 148 of the Income-tax Act, 1961 (“the Act”) was issued on 31.03.2019.

2.1 The assessee did not initially comply with the said notice. Thereafter, statutory notices under section 142(1) of the Act were issued, whereupon the assessee intimated that the return of income originally filed may be treated as a return in response to the notice under section 148.

2.2 During the reassessment proceedings, the assessee was called upon to produce his demat statement and to explain the source of investment in the shares of M/s. Dhwanil Chemicals Ltd. The assessee, however, failed to furnish satisfactory evidence regarding the source of such investment. The Assessing Officer, relying upon information received from the DDIT (Inv.)–1(3), Ahmadabad, in consequence of search proceedings under section 132 in the case of Shri Sanjay Shah and Shri Jignesh Shah—alleged operators of bogus Long-Term Capital Gain schemes—came to the conclusion that the assessee was one of the beneficiaries of accommodation entries in the guise of share transactions.

2.3 The Assessing Officer, therefore, treated the investment of Rs. 12,64,005/- in shares of M/s. Dhwanil Chemicals Ltd. as unexplained investment under section 69 of the Act and added the same to the total income of the assessee, initiating penalty



proceedings under section 271(1)(c) for concealment of income.
The relevant finding of ld AO is reproduced as under:

“4. In the instant case, information was received from DDIT(Inv.)-1.3, Ahmedabad that during the course of Search proceedings u/s 132 of the IT Act on 11.09.2018 in the case of Shri Sanjay Shah and Jignesh Shah certain incriminating digital and documentary evidences regarding unaccounted cash, synchronized trading and providing bogus LTCG were found and seized. On perusal of incriminating documents, it was found that the Assessee has entered into transactions in penny stock namely; Dhvanil Chemicals Limited and has purchased shares of Rs. 12,64,005/ during the year under consideration. The persons who have traded through/with Shri Sanjay Shah and Jignesh Shah were found to have indulged into the bogus transactions in the disguise of share trading and the Assessee was one of such beneficiary.

4.1 During the course of assessment proceedings, the Assessee was asked to furnish details of share transactions (purchase and sales) made during the year along with supporting evidences especially in the shares of M/s Dhvanil Chemicals Ltd. The Assessee was also requested to furnish copy of Demat account statement and explain the source of investment. In compliance, The Assessee could submit copy of DP transaction report of M/s Sykes & Ray Equities (1) Limited only. Except this no details regarding purchase of shares of M/s Dhvanil Chemicals Limited amounting to Rs. 12,64,005/- were furnished by the Assessee. Neither the Assessee has furnished copy of Demat account nor explained source of investment of Rs. 12,64,005/- in Penny Stock. Therefore, show cause notice was issued to the Assessee on 09.12.2019 requiring the Assessee to explain as to why an amount of Rs. 12,64,005/- should not be treated as unexplained investment and added to total income. In reply of the same, the Assessee submitted that each and every transaction made in shares through the registered broker with SEBI and STT has already been paid on these transactions. Reply of the Assessee was considered and not found convincing as the Assessee has failed to furnish any documentary evidences to substantiate his claim. The Assessee has not furnished any details in respect of transaction made with M/s Dhvanil Chemicals Limited and also failed to furnish any details regarding source of investment. Therefore, in absence of any supporting evidences, investment of Rs. 12,64,005/- made in shares of M/s Dhvanil Chemicals Limited is treated as unexplained and added to the total income of the Assessee. Since, the Assessee has concealed his particulars of true income, therefore, penalty proceedings u/s 271(1)(c) of the IT Act are initiated separately.”

2.4 Upon appeal, the ld CIT(A) upheld the findings of the Assessing Officer, by a reasoned and detailed order, thereby



affirming the addition made on account of unexplained investment.

3. Before us, the learned Counsel for the assessee tendered a paper book comprising pages 1 to 61 and contended that the assessee had not entered into any transaction whatsoever in the shares of M/s. Dhwanil Chemicals Ltd. He relied upon an affidavit sworn by the assessee, wherein the deponent has averred that:

3. That during the course of reassessment proceedings, I submitted documentary evidence including a copy of my DP transaction statement from M/s. Sykes & Ray Equities (1) Limited, clearly demonstrating that I had not entered into any transaction for the purchase of shares of M/s. Dhwanil Chemical Limited amounting to 12,64,005/- or any other amount during the relevant assessment year.

4. That I categorically affirm before the Hon'ble Income Tax Appellate Tribunal, Surat Bench, that I have not entered into any transaction for the purchase of shares of Mis. Dhwanil Chemical Limited amounting to 12,64,005/- during the relevant year, or at any other time relevant to the assessment in question.

5 That I further state that there was and is no intention on my part to cause any loss to the revenue or to mislead the Income Tax Department or Hon'ble Income Tax Appellate Tribunal, Surat Bench in anymanner. In the event that any of the statements made in this affidavit are found to be false or misleading, I undertake full personal responsibility and liability for the same.

4. The assessee further affirmed that there was neither intention to cause loss to the Revenue nor any attempt to mislead the authorities.

4.1 In contrast, the learned Departmental Representative (DR) invited our attention to para -3 of page-2 of paper book, being a copy of the letter dated 10.12.2019 addressed by the assessee to the Assessing Officer, wherein the assessee himself admitted that



the name of the company “**Dhwanil Chemicals Ltd.**” had been subsequently changed to “**Jagpro**”, and that he had earned a profit of Rs. 59,959/- there from.

5. We have heard the rival submissions at length and perused the record. The core issue for adjudication before us is twofold:

- (i) Whether the assessee had, in fact, entered into transactions involving the scrip of M/s. Dhwanil Chemicals Ltd.; and
- (ii) If so, whether the source of investment stands satisfactorily explained.

5.1 Upon careful consideration, we observe a clear contradiction between the assessee’s own communication dated 10.12.2019 to the Assessing Officer—wherein he acknowledged profit derived from the said scrip—and the subsequent affidavit filed before this Tribunal, wherein he categorically denies any such transaction. The relevant extract of the assessee’s letter dated 10.12.2019, placed at **PB pages 1–2**, records that the assessee admitted trading in the scrip (under its changed name “Jagpro”) and acknowledged a profit thereon. For ready reference, relevant letter filed by the assessee before the ld AO is reproduced as under:

“From:
Dhaval Indravadan Gandhi
At Areth, Po: Areth,
Tal: Mandvi, Bardoli,
SURAT

10th December, 2019.



To,
The Income Tax Officer,
Ward-1,
Bardoli,
SURAT

Sub: Reply against your show cause notice for A.Y. 2012-13.
Ref :- Your notice dated 09/12/2019 having number
ITBA/AST/F/147(SCN)/2019- 20/1021998587(1)

Respected Sir,

1.0 This is with reference to the above captioned subject, I have received your above notice dated 09.12.2019 having number ITBA/AST/147(SCN)/2019-20/1021998587(1) for the year under consideration. In this connection, I have to submit my written submission on or before 13.12.2019. The humble submission is as under:

2.0 As per the Show Cause notice mentioned that I have purchased the shares of M/s. Dhavanil Chemicals Ltd of 40200 amounting to Rs. 12,64,005/-. Your goodself have treated such script as Penny Stock. In this connection, I would like to know how can your goodself treat such stock as "Penny" and on which basis such stock treated as "Penny". So, I request your goodself that kindly provide me the facts/details on which basis your goodself have treated such script/ stock as penny stock.

3.0 Furthermore, I would like to intimate your goodself that I have not purchase any script in the name of M/s. Dhavanil Chemicals Ltd. But, I would like to intimate your goodself that such script name was changed from M/s, Dhavanil Chemicals Ltd to "Jagpro". In this script of shares I have net earned profit amounting to Rs.59,959/- which was duly considered while filling the return of income. The details profit earned from such transaction are duly attached for your ready reference from the books of Sykes and Ray Equities. And, also due taxes were already paid by me.

4.0 The source of investment in such script was out of my regular income as well as earlier years saving. Each and every transactions made in such shares were duly covered demate account and due security transaction taxes were already paid by me. The transactions are duly made through registered broker with SEBI. So, it is requested your goodself not treat such script/share transaction as "Penny" and also requested your goodself that not to make any addition amounting to Rs. 12,64,005/-.

Should your honour require any further details, I shall be pleased to submit the same.

Thanking you,
Yours faithfully."

5.2 This contradiction, going to the very root of the matter, necessitates verification of the correctness and veracity of the statements so made. While the affidavit may raise a factual plea,



the earlier letter constitutes an admission which, in law, cannot be lightly disregarded without proper inquiry.

5.3 In these circumstances, we are of the considered view that the ends of justice would be best served if the matter is remitted to the file of the Assessing Officer for fresh examination. The Assessing Officer shall, in particular, verify:

1. Whether the assessee had, in fact, purchased shares of M/s. Dhwanil Chemicals Ltd. (now Jagpro), either through demat or offline mode;
2. The veracity of the affidavit filed before this Tribunal vis-à-vis the admission made in the letter dated 10.12.2019; and
3. The source of funds, if any, utilised for such investment.

5.4 The Assessing Officer is at liberty to conduct such independent inquiry as may be warranted, including verification from the concerned depository participant or from the company itself, as the case may be. However, he shall ensure that the assessee is furnished copies of any material or investigation report relied upon, and is afforded a reasonable opportunity of being heard and to explain any discrepancy or adverse finding before final determination.

5.5 The Assessing Officer shall thereafter adjudicate the issue afresh and in accordance with law, by passing a reasoned, speaking order.



5.6 In view of the foregoing discussion, the impugned order of the learned CIT(A) is set aside, and the matter is restored to the file of the Assessing Officer for de novo adjudication in the light of the above directions.

5.7 The ground of appeal of the assessee is accordingly allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced by way display of result on notice board on 30/10/2025 under Rule 34(4) of ITAT Rules, 1963.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Surat;
Dated: 30/10/2025
Rahul Sharma, Sr. P.S. (on Tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Surat
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Surat