



आयकर अपीलिय अधिकरण, राजकोट न्यायपीठ, राजकोट।

**IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.466/RJT/2025

निर्धारणवर्ष / Assessment Year: (2013-14)

Urvashi Girishbhai Lal C/O Girish Communication, Sardarnagar Main Road, Near Astron Cinema, Rajkot - 360001	Vs.	ITO, Ward 1(2)(1), IT-Office, New Aayakar Bhawan, Vatiaka, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACGPL9693J		
(Appellant)		(Respondent)

Appellant by : Shri Kalpesh Doshi, Ld. AR

Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 01/09/2025

Date of Pronouncement : 01/12/2025

आदेश / ORDER

Per, Dr. Arjun Lal Saini, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2013-14, 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 21/05/2025, which in turn arises out of an order passed by the Assessing Officer dated 24/09/2021 u/s 147 read with Section 144B of the Income Tax Act, 1961.

2. Grounds of appeal raised by the assessee are as follows:

"1. That, the Ld. CIT(A) has wrongly confirmed the reopening of assessment u/s 147 r.w.s 144B of the I.T. Act, 1961.



2. That, the Ld. CIT(A) has wrongly confirmed the addition amounting to Rs. 8,14,100/- on account of unexplained cash credit u/s 68 of the I.T. Act, 1961.
3. That, the Ld. CIT(A) has wrongly confirmed interest u/s 234A, 234B, 234C and 234D of the I.T. Act, 1961.
4. That, the Ld. CIT(A) has wrongly confirmed initiation of penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961.
5. That, the findings of the Ld. CIT(A) are not justified and are bad-in-law.
6. The assessee carves to add, amend, alter and delete any of the above ground of appeals.”

3. Brief facts, as discernible from the orders of lower authorities are that during the course of investigation, information was received from DDIT(Inv), Unit-1(3), Ahmedabad, with regard to bogus long term capital gain and it was found that the assessee has made bogus LTCG through the scrip named, M/s Dhvanil Chemicals Ltd. As per the information, the assessee had purchased 10800 shares and paid value of Rs.7,01,955/-. The assessee had sold 10,800 shares and received sell consideration value of Rs. 8,14,100/-, during the F.Y. 2012-13 and routed his unaccounted income and booked bogus long-term capital gain (LTCG). It was found that the assessee has made transaction of sale in scrip of M/s. Dhvanil Chemicals Ltd., which is a penny stock. The assessee is one of the beneficiaries of the penny stock transaction for F.Y. 2012-13. The detail of trading value of the transaction in the scrip during FY 2012-13 in case of the assessee is as under:

Sum of Buy Quantity of shares FY in 2012-13	10800
Buy Trade Value in 2012-13 (in Rs)	7,01,954
Sum of sell Quantity of shares in FY 2012-13	10800
Sell TRADE VALUE in 2012-13 (in Rs.)	8,14,000

The case was re-opened u/s 147 of the Income Tax Act, 1961 after recording reasons in the assessee`s case. Accordingly, a notice u/s 148 of the Income Tax Act, 1961 dated 26.03.2020 was issued and duly served on the assessee. In response to notice u/s 148 of the Act, the assessee e -filed return for A.Y. 2013-



14 on 09.02.2021, declaring total income of Rs. 1,29,060/-, Further, notices u/s 143(2) were issued on 30.06.2021 and notice u/s 142(1) were issued on 04.02.2021, 05.08.2021 & 24.08.2021. In response to these notices, the assessee has filed reply on 11.02.2021 & 27.08.2021.

4. The assessing officer, after analyses of reply of the assessee found that alleged purchased and sale of the shares in the scrip of M/s Veronica Production Ltd. /Dhvanil Chemicals Ltd /Shrey Chemicals Ltd in the F.Y. 2012-13 trade value of shares sharp raised was pre-arrange and nothing only accommodation entries. Hence, the consideration received from sale of shares of M/s Veronica Production Ltd. /Dhvanil Chemicals Ltd / Shrey Chemicals Ltd of Rs. 8,14,100 /- was added back to the total income of the assessee u/s.68 of the Income tax Act.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the mater in appeal before the Ld. CIT(A), who has confirmed the action of the Assessing Officer. Therefore, assessee is in further appeal before this Tribunal.

6. I have given my thoughtful consideration to rival contention. I have perused case file as well as paper books furnished by assessee. The Ld. Counsel for the assessee submitted that based on the same scrip, which is involved in the assessee's case under consideration, the Assessing Officer dropped the assessment proceedings / reopening proceedings under Section 147 of the Act, that is, reassessment was dropped by the assessing officer. In this regard, the detailed submission made by the assessee and the arguments made before the Ld. CIT(A), are reproduced below:

“Simply relying upon the general modus operandi does not mean that all the transactions undertaken throughout the country by millions of subscribers are bogus.

42. In this regards, we would like to further state that on identical facts and reasons wherein department has reopened assessments in many cases, the reopening is either



dropped or assessment order has been passed without making any addition, the details of the identical cases are as under: -

- *Imran Amroniya A.Y. 2012-13*
- *Imran Amroniya A.Y. 2013-14*
- *Jayraj Gadesha A.Y. 2013-14*
- *Jayraj Gadesha A.Y. 2014-15*
- *Bhavesh Panchasara A. Y. 2013-14*
- *Tosif Amroniya A.Y. 2013-14*
- *Raju Lunagariya A. Y. 2013-14*
- *Sunil bhatt A.Y. 2012-13*

The copy of assessment orders for all the above mentioned assessee is enclosed at page no. 52-68.”

43. It is therefore stated that reopening of the assessment u/s 147 of the Act based on the said ground is bad-in-law.”

7. Therefore, Ld. Counsel for the assessee submitted that the reassessment proceedings, on the identical facts, considering the same scrip, was dropped by the Assessing Officer. Therefore, re- assessment proceedings initiated against the assessee may be quashed.

8. The Ld. Counsel further submitted that reasons were recorded by the Assessing Officer on the belief that assessee has earned Long Term Capital Gain. However, actual fact is that assessee has earned Short Term Capital Gain.

9. 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.

10. I have considered the submissions of both the parties. I note that the assessment is reopened based on incorrect facts. The re-opening is based on the basis of the information received from DDIT (Inv.), Ahmedabad. As per the reasons recorded for re-opening, the main reason is stated as under:



"That the assessee has booked bogus long term capital gain in script named M/s. Dhwani Chemical Ltd. and routed his unaccounted income. Therefore, I have reason to believe that assessee has escaped the assessment"

I find that the assessee is investing in shares and securities and the purchases and sales of shares are carried out through normal banking channel. The return of income has been filed declaring a short- term capital gain of Rs.1,03,931/-. The reasons for reopening are furnished vide notice dated 23/02/2021 and the assessee has also filed detailed objections against reasons for reopening, the assessee has reiterated the facts that no bogus long-term capital gain (LTCG) has been claimed. However, AO has failed to consider this essential fact and disposed the objections vide letter dated 23/08/2021. It can be seen from the return of income that the assessee has not **claimed any Long Term Capital Gain on sale of shares during the year.** The relevant extract of the return of income filed is as under:

b	i	Long-term (B7 - B4e - B5 of Schedule CG)	4bi	0
	ii	Long-term without Indexation (B4e + B5 of Schedule-CG)	4bii	0
	iii	Total Long-Term (4bi + 4b(ii)) (enter nil if loss and take the figure to schedule CFL)	4biii	0

Schedule EI		Details of Exempt Income (Income not to be included in Total Income)		
EXEMPT INCOME	1	Interest income	1	10000
	2	Dividend income	2	7624
	3	Long-term capital gains from transactions on which Securities Transaction Tax is paid	3	0
	4	Net Agricultural income (other than income to be excluded under rule 7A, 7B or 8 of I.T. Rules)	4	106182
	5	Share in the profit of firm/AOP/BOI etc.	5	0
	6	Others, (including exempt income of minor child)	6	0
	7	Total (1+2+3+4+5+6)	7	123806

Therefore, the very foundation of reasons recorded for re-opening of the assessment that the assessee has booked bogus LTCG is incorrect. The reasons



recorded by the Ld. AO are erroneous and fictitious. The reasons are recorded on completely wrong factual premises as there was no live link with the formation of belief for reopening of assessment u/s 148 of the IT. Act. The Hon'ble Supreme Court in the case of **CIT v. Kelvinator of India Ltd. (187 Taxman 312)**, where it has been held that Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment; reasons must have a live link with formation of belief. Thus, it is clearly evident from the above that the Ld. AO in reasons recorded, proceeded on erroneous footing and the very foundation of the reopening is vague. Reliance can be placed on the following decisions:

- ✓ *Amar Jewellers Ltd. v. DCIT [2018] 92 taxmann.com 4 (Guj.)*
- ✓ *Sunbarg Tradelink (P.) Ltd. v. ITO [2016] 74 taxmann.com 16 (Guj.)*
- ✓ *Mitul Gems v. ACIT [2015] 62 taxmann.com 66 (Guj.)*”

11. I note that the Assessing Officer has reopened the assessment of the assessee based on the fact that assessee has earned the long-term capital gain (LTCG) and therefore, income of the assessee has escaped assessment. However, the real fact is that the assessee did not earn the LTCG in the scrip mentioned in the assessment order and the assessee earned only short-term capital gain (STCG) which was disclosed by the assessee in the return of income and paid the taxes thereon. Therefore, the item on which the assessee has paid the taxes and it is already stated and mentioned in the Return of Income and books of accounts of the assessee, it cannot be said that the income has escaped assessment. Therefore, the income of short-term capital gain, is already mentioned in the books of accounts of the assessee and assessee has offered the same in the income tax return and paid the due taxes, therefore, on such item, there should not be any reassessment proceedings, as the income has not escaped from the assessment. Therefore, assessment in the assessee's case was reopened based on the incorrect facts and incorrect presumption. Moreover, the Assessing Officer did not provide



the information of reopening to the assessee. Apart from these reasons were recorded by the Assessing Officer on borrowed satisfaction without application of mind. Hence, I quash the reassessment proceedings and allow the appeal of the assessee. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

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

Order pronounced in the open court on 01/ 12/ 2025.

Sd/-
(Dr. Arjun Lal Saini)
लेखा सदस्य/Accountant Member

Rajkot

दिनांक/ Date: 01/12/2025

Copy of the Order forwarded to

1. The Assessee
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