

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.5438/MUM/2025
(Assessment Year:2013-2014)**

**Assistant Commissioner of Income Tax
19(3), Mumbai**

Room No.513, 5th Floor, Piramal Chambers, Parel,
Mumbai – 400012. Maharashtra

..... **Appellant**
Vs

Rajen Kirtilal Shah

41, Laxmi CHS Ltd., 17 Vachha Gandhi Road
Gamdevi, Mumbai - 400007 Maharashtra.
[PAN: ABEPS4430K]

..... **Respondent**

Appearance

For the Appellant/Department : Shri Annavarani Kosuri
For the Respondent/Assessee : Shri Dharmil Jhaveri

Date

Conclusion of hearing : 05.01.2026
Pronouncement of order : 07.01.2026

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Revenue is directed against the order, dated 26/06/2025, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] whereby the Ld. CIT(A) had allowed the appeal against the Assessment Order, dated 18/05/2023, passed under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] for the Assessment Year 2013-2014.
2. The Revenue has raised following grounds of appeal :
 - "1. *Grounds of Appeal:*
 1. *Whether as the facts and in the circumstances of the case and in view the Ld. CIT(A) has erred in directing the AO to delete the*

additions of Rs. 2,48,90,000/- an account of unexplained cash credit u/s. 68 of the Act made by the AO ignoring the fact that the addition was made on the basis of credible information received from DGIT (Inv.) Kolkata that the assessee has sold shares of Penny scrip's named 'Bakra Pratisthan Ltd.'?

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in deleting the addition made on account of penny stock transaction without appreciating the facts that on the similar issue of LTCCG, the Hon'ble ITAT, Kolkata in the case of Many Jain No. 1782/KOL/2018, treated the penny stock transaction as income from other sources instead of long term capital gain, and the same was upheld by the Hon'ble High Court of Calcutta [2024] 164 taxmann.com 133 (Calcutta), which has been confirmed by the Hon'ble Supreme Court by dismissing SLP in SLPC) of 21636/2024 dated 20.09.2025.*
3. *Whether on the facts and in the circumstances of the case and in law the LA CITA) has erred in directing to delete the addition made by AO in spite of the fact that the scrip 'Bakra Pratisthan Ltd' is penny stock and the said penny stock has been manipulated to generate entries of bogus LTCCG facilitating tax evasion by a large number of persons.*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of penny stock transaction without appreciating the facts that the action of the AO was based on analysis of information received from investigation wing Kolkata.*
5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of penny stock transaction without appreciating the facts that the assessor has entered into penny stock transaction, which is arranged transaction, which involve the series of preconceived steps und lack of commercial content and intent totally to evade an artificially structured transaction entered into with the sole intent to exude taxes.*
6. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of penny stock transaction without appreciating the facts that during the course of investigation, a was found that the scrips in which the assessee traded is penny stock used for providing accommodation entry only in form of bogus LTCCG and shared with the jurisdictional AO.*
7. *Whether on the facts and circumstances of the ease and in law, the Ld. CIT(A) has erred in not considering the fact that the direct and circumstantial evidences in view of the decision of Durga Prasad More (1971) 82 ITR 540 (8C) and Sumati Dayal*

[1995] 80 Taxmann 89(SC) [1995] 2014 ITR 801 (SC)/ (1995) 125 CTR 124(SC), rendered by the Supreme Court, where it was held that Hon'ble Court and Tribunal have to judge the evidence before it by applying the test of probabilities, the surrounding circumstances which exercise had been done by the Assessing Officer?

8. *Whether on the facts arid circumstances of the care and in law, the Ld. CIT(A) has erred in deleting the addition, by ignoring the fact that in such cases, where there was a suspicious or bogus trade, the onus is on the assessee to establish the genuineness of price hike and also to prove that the price of penny stock in which was traded to claimed LICG/STCG or loses was not manipulated. The reliance is placed on judgment of Hon'ble Calcutta High Court's decision in the case of Pr. CIT Vs Swati Bajaj (I.A. No. GA/2/2022) in ITAT No 6 of 2022, Dated 14.06.2022.*
9. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the decision of the Hon'ble ITAT, Delhi in the case of Pooja Ajmani vs. ITO, in ITA No.5714/Del/2018 wherein it has been held that the onus is on the assessee to prove that the ITCG on genuine. Further, reliance has also been placed on the decision of the Hon'ble Delhi High Court in the case of Suman Paddur us ITO (ITA 841/2019)."*
3. By way of the present appeal the Assessee has challenged the order of Learned CIT(A) confirming the addition of INR.2,48,96,000/- made by the Assessing Officer under Section 68 of the Act holding that the Assessee had sold shares of M/s Bakra Pratisthan Ltd. for a trade value of INR.2,48,96,000/- during the relevant previous year.
4. We have head both the sides on the grounds reproduced in paragraph 2 above and have perused the material on record.
5. From the perusal of record it emerges that Assessee, an individual, was assessed to tax for the Assessment Year 2013-2014 vide Assessment Order, dated 28/12/2017, passed under Section 143(3) read with Section 147 of the Act. The Assessment Officer made an addition of INR INR.24,89,600/- under Section 68 of the Act denying the Long Term Capital Gains exemption claimed by the Assessee under Section 10(38) of the Act in respect of purchaser/sale of shares

of Turbo Tech Ltd and an addition of INR.49,792/- in respect of brokerage computed at the rate of 2% of INR.24,89,600/-. The Assessee preferred appeal against the aforesaid assessment order [vide acknowledgment no 378207561290118, dated 29/01/2018]. The aforesaid tax dispute was settled under the Direct Tax Vivad se Vishwas Act, 2020. The Assessee received Form 5 being order for full and final settlement of tax arrears under Section 5(2) read with Section 6 of the Direct Tax Vivad Se Vishwas Act, 2020 [Acknowledgement No.634768301270522, dated 27/05/2022.]

6. On 30/06/2021 the Assessing Officer issued the notice under Section 148 of the Act initiating reassessment proceedings for the same Assessment Year 2013-2014. According to the Assessing Officer as per the information received from the office of the Deputy Director Income Tax (Investigation)- II, Baroda [vide letter dated 25/7/2016] Bakra Pratishtan Ltd was a penny stock listed on CSE and the purchase/sale transaction in shares of the said company were used to introduce unaccounted income of beneficiaries in the form of exempt capital gain or short term capital loss in their books of accounts. The Assessee had also transacted in the shares of Bakra Pratishtan Ltd during the relevant previous year. On the basis of the aforesaid information reassessment proceedings were initiated in the case of the Assessee. On 29/07/2022 the fresh notice under Section 148 and under Section 148A(d) of the Act as applicable with effect from 01/04/2021 was issued to the Assessee. It has been contended by the Assessee that the aforesaid notices were not complied with due to illness of the chartered accountant and family member of the chartered accountant. Thus, Order under Section 147 read with Section 144 read with Section 144B of the Act came to be passed by the Assessing Officer on 18/05/2023, assessing the total income at INR.2,85,33,350/-. The Assessing Officer made an addition of INR.2,48,96,000/ under Section 68 of the Act recording as under:

- "3.1 Information was received from the O/o the Deputy Director of Income tax (Inv)- II, Baroda vide letter dated 25.07.2016 that M/s Bakra Pratisthan Ltd. is a penny stock listed on CSE and this company has been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or Short Term Capital Loss in their books of accounts. During the course of post search investigation of Akshar Group of Vadodara, it was seen that one of the partners had taken accommodation entry in the form of Long Term Capital Gain in the scrip of Bakra pratisthan Ltd. listed on Calcutta Stock Exchange. Unaccounted money of the beneficiaries is being converted from black to white using the modus operandi of LTCG which is shown as exempt u/s 10(38) of the I. T. Act.
- 3.2 Thereafter, the assessee was given a questionnaire in notice u/s 142(1) of the Act, in response thereto, the assessee filed his reply on 27.02.2023 without any documentary evidences. Accordingly, a show cause notice proposing a variation of Rs.2,48,96,000/- on the issue. However, the assessee did not respond to the same.
- 3.3 Analysis of information received: - The data contained the various beneficiaries who have taken accommodation entries in the same scrip all over India. It was established that the company, Barka Pratisthan Ltd., is a paper/shell/bogus company and the directors of the company known as entry operators in Kolkata. The company has acted as exit provider and routed fund of the beneficiaries through its clients account to facilitate bogus Long Term Capital Gain/bogus business loss or Short Term Capital Loss. The price movements of the scrips (BARKAPRATISTHAN LTD.) on stock exchanges have been manipulated. The assessee has traded on different dates in this script during financial year 2012-13 for Scrip Trade Value of Rs. 2,48,96,000/-. The assessee has traded in the above scrips and earned LTCG during the FY 2012-13. The assessee has traded in shares of the penny stock company in the disguise of exempt income/to reduce taxable income. Hence, the transactions carried out by the assessee are not genuine. The trading in such shares is predetermined move which has sole aim to bring unaccounted money with bogus long term capital gain/short term capital loss.
- 3.4 In response to the aforesaid notice u/s 142(1), assessee only denied to any such transaction or holding the any such shares

however, he did not submit the full response of notice u/s 142(1) and requisite information called for through the notice. The assessee has not submitted any reply on the question raised in detailed, vide questionnaire dated 11.02.2023 . On perusal of return of income of the assessee, it is seen that assessee has shown Long Term Capital Gain of Rs. 25,22,985/- and claimed exempt to tax. The scrip of M/s Bakra Pratisthan Ltd. is a penny stock listed on CSE and this company has been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or Short Term Capital Loss in their books of accounts. It was established that the company, Barka Pratisthan Ltd., is a paper/shell/bogus company and the directors of the company known as entry operators in Kolkata. The company has acted as exit provider and routed fund of the beneficiaries through its clients account to facilitate bogus Long Term Capital Gain/bogus business loss or Short Term Capital Loss. The assessee i. e. Rajen Kirtilal Shah has traded in the above scrips named M/s Bakra Pratisthan Ltd. and earned LTCG during the FY 2012-13. The assessee has traded in shares of the penny stock company in the disguise of exempt income/to reduce taxable income. Hence, the transactions carried out by the assessee are not genuine. The trading in such shares is predetermined move which has sole aim to bring unaccounted money with bogus long term capital gain.

3.5 *The assessee is the beneficiary of accommodation entry of Rs. 2,48,96,000/- received from the M/s Bakra Pratisthan Ltd. scrip. M/s Bakra Pratisthan Ltd is a penny stock which has been facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or Short Term Capital Loss in their books of accounts to avoid the taxes. Since the assessee has not submitted complete information called for vide notice u/s 142(1) and questionnaire attached therewith. Therefore, the source of the purchase of the said scrip has not been disclosed by assessee.*

3.6 *As discussed above in point number 3.5, the amount of Rs. 2,48,96,000/- is treated as unexplained cash credit u/s 68 of the Act, for A.Y.2013-14 and added to the total income of the assessee u/s 144 of the Act. Addition: Rs. 2,48,96,000/-"*

7. In appeal preferred by the Assessee, the Learned CIT(A) deleted the above addition of INR.2,48,96,000/ made by the Assessing Officer under Section 68 of the Act holding as under:

"5. *DECISION:*

5.1 xx xx

5.2 *During the appellate proceedings, appellant submitted that AO has passed assessment order u/s. 143(3) rws 147 of the IT Act, 1961 dtd. 28/12/2017 making an addition of Rs.24,89,600/- u/s.68 on LTCG in script M/s. Turbo Tech Engineers Ltd and Rs.49,792/- u/s. 69 towards brokerage. The appellant has filed first appeal against the said impugned order vide ack.no.378207561290118 dtd. 29/1/2018. Thereafter, the appellant has filed Form no.1 and Form no.2 of the Direct Tax VSVS Act, 2020 on 17/12/2020. The appellant received Form 3 vide Ack. No.500177781130921 dtd. 13/9/2021 which was accepted by the department. However, appellant again received notice u/s.148 along with notice of approval u/s.151 of the IT Act for re-assessment on 30/6/2021. However, due to ill health of his C.A. the appellant has not complied to the said notice. However, for notices issued u/s.142(1) the C.A. of the appellant had replied to the notices stating that appellant was not holding any shares of the company M/s. Bakra Pratisthan Ltd and the appellant had not entered into any transaction of the said company during the year. The appellant further stated that he had not executed any trade on CSE trading platform. Therefore, appellant submitted that the information received in respect of the appellant from Income Tax Investigation wing was wrong and misleading and however AO without hearing his point of view has concluded the assessment by making addition of Rs.2,48,96,000/- as unexplained cash credit u/s.68 of the IT Act.*

5.3 *The submission of the appellant has been considered. It is seen from the assessment order that AO made this addition over and above the original returned income of the appellant i.e. Rs.36,37,350/-. However, AO has not considered nor mentioned about other re-assessment order passed u/s.143(3) rws 147 dtd.28/12/2017 where addition of Rs.24,89,600/- was made u/s.68 on LTCG in script of M/s. Turbo Tech Engineers Ltd. Even as per the computation of total income submitted by the appellant alongwith the original return of income filed on 31/10/2013, the exempted capital gains claimed by the appellant was only Rs.24,89,600/- in the case of Turbo Tech Engineers Ltd. Since the appellant has claimed only exemption of capital gains of Rs.24,89,600/- on Turbo Tech Engineers Ltd only and there is no question of unexplained cash credits in terms of*

capital gains as alleged by AO through the shares of Bakra Pratisthan Ltd amounting to Rs.2,48,96,000/-. From the available facts on record it can be seen that when there is no claim for exempted capital gain of Rs.2,48,96,000/- in the return of income by the appellant, there is no question of making addition of the same amount as unexplained cash credit u/s.68. Therefore, the addition made by the AO does not have any ground. Apart from this, whatever the capital gain claimed by the appellant through the other script which he has disclosed through his return of income viz. M/s. TurboTech Engineers Ltd which was considered by the AO in the original reassessment order as unexplained cash credit and made addition of Rs.24,89,600/- and brokerage addition of Rs.49,792/-. The appellant filed an appeal against that assessment order and during that proceedings he has opted for Income Tax Vivad Se Vishwas Scheme (VSVS) and settled the above addition by making requisite tax payment and obtained copy of Form 5 from the Department. The appellant submitted all the documents in support of his contention. Another point of consideration in this particular addition by the two re-assessment proceedings i.e. on 28/12/2017 and 18/5/2023 was having difference of one zero (0). The addition made through order dtd.28/12/2017 mentions LTCG at Rs.24,89,600/- and the addition made through other order dtd. 18/5/2023 mentions LTCG at Rs.2,48,96,000/-. This also clearly indicates inadvertent error committed by the AO in not verifying the facts before making addition based on the submission made by the appellant during the assessment proceedings. Further, AO failed to bring any evidences with regard to credit in the bank account of the said amount or any documentary nothings indicating that appellant had actually received the said amount of Rs.2,48,96,000/-. The AO also failed to bring forth findings of the demat account statement of the appellant which conclusively proves that appellant has actually traded in the shares of M/s. Bakra Pratisthan Ltd. Without bringing these evidences on to the fore, making addition blindly does not serve any purpose. In view of that addition made by the AO of Rs.2,48,96,000/- as unexplained cash credit U/s.68 of the IT Act on account of accommodation entry of Rs.2,48,96,000/- received from M/s. Bakra Pratisthan Ltd script is hereby deleted.

6. *In the result, appeal is allowed.” (emphasis supplied)*

8. We note that the above findings returned and conclusion reached by

the Learned CIT(A) are based upon material on record. The Assessee had filed affidavit before the Learned CIT(A) stating as under:

"I, Shri Rajen Kirtilal Shah, an adult, Hindu, Inhabitant of India presently residing at 401 Laxmi CHSL, 17 Vacha Gandhi Road, Gamdevi, Mumbai – 400007 do hereby solemnly declare as under:

- 1. I am assessed to Income Tax under PAN ABEPS4430K.*
- 2. During A.Y. 2013-14 (F.Y.2012-13) I was a partner in my partnership firm namely M/s. Shah Traders having PAN AABFS6536J.*
- 3. During A.Y. 2013-14 (F.Y.2012-13) there was no shares trading activity partnership firm M/s.Shah Traders and as such we have not opened any DMAT Account in M/s.Shah Traders.*
- 4. As per the Assessment Order u/s.147 r.w.s.144 read with section 144B of the Income-tax Act dated 18/05/2023 addition is made of Rs.2,48,96,000/- as unexplained cash credit u/s.68 of the Income Tax Act, 1961 on account of LTCG earned by trading in scrip namely M/s.Bakra Pratisthan Ltd.*
- 5. The said information is factually and completely incorrect in nature. During the above mentioned year I have not traded any scrip namely M/s. Bakra Pratisthan Ltd. and I have not earned exempt LTCG of Rs.2,48,96,000/-.*
- 6. During the course of assessment the sad fact was informed by my CA M/s. N.V.Parikh & Co. vide letter dated 27.02.2023 which clearly stated that I have neither traded in scrip namely M/s. Bakra Pratisthan Ltd. nor earned any LTCG from the same.*
- 7. I hereby once again state and confirm that neither myself nor my partnership firm namely M/s. Shah Traders have traded in shares namely M/s. Bakra Pratisthan Ltd. and we have not earned ant LTCG on the same during A.Y. 2013-14 (F.Y. 2012-13)."*

9. The computation of income, DMAT Account Statement and Bank Statement furnished by the Assessee supports the deposition made in the above affidavit and the stand taken by the Assessee that during the relevant previous year the Assessee had not purchased/sold any shares of Bakra Pratisthan Ltd. There is nothing on record to doubt the veracity of the aforesaid documents and affidavit furnished by the Assessee before the CIT(A). The Revenue has failed to bring to our

notice any material from which it can be inferred that the Assessee had transacted in the shares of Bakra Pratisthan Ltd. during the relevant previous year. Therefore, we decline to interfere with the order passed by the Learned CIT(A). Accordingly, all the grounds raised by the Revenue are dismissed.

10. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 07.01.2026

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 07.01.2026
Milan, LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai