

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 772/SRT/2024  
(Assessment Year: 2014-15)

Kamlesh Kumar Gadiya, Flat No.7, Avenue-77, Canal Road, Vesu BO, Surat-395007 [PAN : ADVP] 2044 H]	Vs.	Income Tax Officer, Ward-1(2)(2), Surat
<b>(Appellant)</b>	..	<b>(Respondent)</b>
<b>Appellant by :</b>		Shri Sapnesh Sheth, Advocate
<b>Respondent by:</b>		Ms. Namita Patel, Sr. DR
<b>Date of Hearing</b>		19.01.2026
<b>Date of Pronouncement</b>		19.01.2026

**ORDER**

**PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-**

This appeal has been filed by the assessee against the order dated 21.06.2024 passed by the Ld. Addl/JCIT(A)-12,Mumbai ('Ld. CIT (A)' in short), under Section 250 of the Income-tax Act, 1961 ('the Act' in short) for Assessment Year 2014-15.

2. The assessee has raised following grounds of appeal:-

*"1 Ground-1: On the facts and the circumstances of the case and as per law, the Ld. Addl. CIT(A) has erred in confirming the additions made by the Ld. Assessing Officer by denying the claim of Long term capital gain of Rs 5,65,783-(but addition made is of sale consideration of Rs. 5,71,800) on account of sale of scrip of Life Line Drugs & Pharma ltd and grossly erred in treating the same as unexplained cash credit u/s 68 of the Income Tax Act, 1961.*

*2. Ground-2: On the facts and circumstances of the case and as per law, the Ld. Addl. CIT(A) erred in confirming the addition made by the Ld. Assessing Officer on account of unexplained expenditure u/s 69C of the Act of Rs 17,154/- presuming it as commission paid a 3%.*

*3. Ground-3: On the facts and circumstances of the case and as per law, the Ld. Addl. CIT(A) erred in not following the order of the Hon'ble jurisdictional ITAT, Surat passed in case of appellant's brother namely Shri Nitesh Gadiya's vide ITA No. 199/SRT/2023 dated 27.02.2024 on the identical issue despite the fact that inter-alia order of the Hon'ble jurisdictional ITAT, Surat was submitted to the Ld. Addl. CIT(A) which is covered issue in favor of the appellant."*

3. The facts of the case are that the issue involved in the present appeal stands adjudicated *mutatis mutandis* by the Coordinate Bench of the Tribunal in the case of the assessee's brother, Shri Nitesh Kumar Gadiya, in ITA No. 199/SRT/2023, vide order dated 27.02.2024. The order passed in the said case is reproduced hereunder in toto:-

*"3. Succinct facts qua the issue are that assessee before us is an individual and during the year under consideration, earned income from house property, business and other sources. The assessee filed return of income declaring total income of Rs.3,94,180/- on 20.09.2015, for the assessment year 2015-16. The case was selected under scrutiny through CASS under criteria "completed scrutiny" with the reason "Mismatch in sale turnover reported in audit report and ITR and suspicious sale transaction in shares and exempt long term capital gains shown in return (penny stock tab in ITS). During the assessment proceedings, the assessing officer noted that assessee derived Long Term Capital Gain (in short 'LTCG') of Rs.5,97,789/- and claimed the same as exempt u/s 10(38) of the Income Tax Act in his return of income (ROI) filed for assessment year (AY) 2015-16 and the said exempt LTCG is related to sale transactions effected during the year in the Scrip, named "Lifeline Drugs & Pharma Ltd". The assessee has sold 2400 units of share of "Lifeline Drugs & Pharma Ltd" during the year under consideration with total sale prices of Rs.5,99,649/- which has resulted in LTCG amounting to Rs. 5,97,489/- after deducted purchase cost of Rs.2,160/-. As per the details available on record, the Assessing Officer noticed that the said scrip was named in Kolkata Investigation Report titled "Project Bogus LTCG/STCL through BSE Listed Penny Stocks" prepared by DDIT (Inv.), Unit 2(3). The Assessing Officer has observed that as per records available with the Income Tax Authorities, along with ITD system of the department and information available on the website of BSE, SEBI, public domain and other departmental tools, the investigation which has been conducted in the case of Scrip named "Lifeline Drugs & Pharma Ltd" to verify the genuineness of share transaction and the investigations revealed that the said scrip was a penny stock.*

4. During the assessment proceedings, the assessee submitted its written submissions and other details and stated that object of the assessee was not to deal in penny stock transaction and assessee in fact was not aware that the scrip "Lifeline Drugs & Pharma Ltd" is a penny stock or not. However, the Assessing Officer rejected the contention of the assessee and observed that the scrip named "Lifeline Drugs & Pharma Ltd" was having no financial strength as well as no substantial business activities in the company during the period of purchase of shares to period of sales by the assessee. On the other hand, in contrast to the financial position, the share price of the concern was jacked up to in the range of Rs. 36.10 (at the time of purchase) to Rs. 249.90 (at the time of sale) for reaping of bogus LTCG to the beneficiaries. The Assessing Officer has noted that the assessee has purchased 100 shares of Lifeline Drugs & Pharma limited on 14.03.2012 from Broker M/s Purva Sharegistry (INDIA) Pvt. Ltd., and the shares were purchased offline but the same was acquired through banking channel. The Assessing Officer has further noted that the assessee is not a regular trader or investor in the shares. The Assessing Officer observed that the assessee has entered into above share transaction though above mentioned circular trading to take accommodation entry of bogus exempted long term capital gain. The Assessing Officer therefore held that the assessee has taken accommodation entry of bogus exempted long term capital gain of Rs.5,97,489/- and the claim of the assessee for exempt LTCG to the tune of Rs. 5,97,489/- was rejected by the Assessing Officer and added to the total income of the assessee u/s 68 of the Act for the year under consideration on account of unexplained credit entries.

5. An addition was also made by the Assessing Officer on account of unexplained investment u/s 69C of the Act of Rs.17,925/- (3% Rs.5,97,489) presuming it as commission paid @ 3% for arranging long term capital gain to the assessee.

6. On appeal, Id CIT(A) confirmed the action of the Assessing Officer. The Id CIT(A) noted that in depth analyzed balance sheets and profit and loss accounts which shows that there is astronomical increase in share price of said company. The financial parameters of said company cannot justify price rise in such a manner. It is not explained by assessee, as to why anyone would purchase said shares at such high price. Thus, assessee's contention that such transaction is genuine and credible was not accepted by Id CIT(A), therefore Id CIT(A) confirmed the addition made by the Assessing Officer. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

7. Shri Aditya Nemani, Learned Counsel for the assessee, argued that assessee made transaction in the scrip of 'Lifeline Drugs & Pharma Ltd.' and said scrip

is covered by the judgment of Co-ordinate Bench of Kolkata in the case of Shri Sanjay Kumar Patwari (HUF) vs. ACIT, Cir-3, Kolkata in ITA Nos.2268-2270/Kol/2018 & 205/Kol/2018 for A.Ys. 2012-13-2013-14, 2015-16 & 2014-15, order dated 08.05.2019. The Ld. Counsel also argued that during assessment stage, assessee submitted copy of bank statement highlighting purchase of share, contract note for sale of shares, copy of bank statement, copy of contract for sale of shares in subsequent years, copy of computation of income of subsequent year and relevant extract of income tax return. Therefore, Ld. Counsel contended that the order passed by the Assessing Officer is bad in law as the Assessing Officer has failed to point out the mistake in the documents and evidences submitted by the assessee. The Ld. Counsel for the assessee also relied on the following judgments:

- CIT-13 vs. Shyam R. Pawar (2015) 229 Taxman 256 (Bom.)
- CIT vs. Mukesh Marolia ITANo.456 of 2007 date 07.09.2011 (Bom)
- PCIT vs. Krishna Devi TA No.125 of 2020 dated 15.01.2021 (Del)
- Chandra Prakash Jhunjhunwala vs. DCIT ITANo.2351/Kol/2017 dated 09.08.2019
- Radhika Garg vs. ITA No.4738/Del/2018 dated 01.01.2019
- Mahavir Jhawar vs. ITO ITA No.2474/Kol/2018 dated 01.02.2019
- Manish Kr. Baid vs. ACIT ITANo.1236/Kol/2017 dated 18.08.2017
- Amar Nath Goenka vs. ACIT ITANo.5882/Del/2018 dated 12.12.2018

The Ld. Counsel also stated that assessee has sold some shares in subsequent years, however, Assessing Office has not made addition.

8. The Id Counsel further argued that Assessing Officer made addition of Rs.17,925/-, as unexplained expenditure u/s 69C of the Act, by treating it as a 3 per cent commission on LTCG without unearthing any person or any evidence of movement of cash. Thus this observation is again a blatant lie as no evidence in support of above contention has been cited even in the assessment order. The Id Counsel has argued that the Assessing Officer presumed that the assessee paid commission of Rs. 17,925/- out of books and proceeded to make addition of this amount u/s 69C of the Act but failed to identify any such person and even failed to put on record any evidence of movement of cash between the assessee and any person. Therefore, Id Counsel contended that both these additions made by the Assessing Officer may be deleted.

9. On the other hand, Ld. Sr.DR for the Revenue defended the order passed by NFAC/Ld. CIT(A) and he submitted that judgments relied on by the Ld. Counsel, in the case of Shri Sanjaay Kumar Patwari (HUF) (supra) does not cover the assessee's case, as entire facts of the assessee are different. The Ld. DR also pointed out that the plea of Ld. Counsel to the effect that in

*subsequent year, the assessee has sold some shares but the Assessing Officer did not make addition in respect of impugned scrip, is not accepted, because in subsequent year, the assessment order was framed u/s 143(1) instead of 143(3) of the Act, therefore, Assessing Officer did not get opportunity to examine the assessee's facts. Besides, commission payment is inherent in this type of business hence, addition of Rs.17,925/-, as unexplained expenditure u/s 69C of the Act made by the Assessing Officer may also be upheld. The Ld. DR also relied on the findings of Assessing Officer and stated that the order passed by the Assessing Officer may be upheld.*

*10. 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. We note that assessee before us submitted the following documents and evidences, Viz: (i) Copy of bank statement, highlighting purchase of shares, (vide paper book page No.1) (ii) Contract note for sale of shares during year under consideration (vide paper book page no.2-3) (iii) Copy of bank statement highlighting sale of shares (vide paper book page no.4-5) (iv) Holding statement for the Month of Dec. 2012 ( vide paper book page 6-7) (v) Copy of contract for sale of shares in subsequent years (vide paper book page 8) (vi) Copy of computation of income of subsequent year and relevant extract of the ITR (vide paper book pages 9-12). We have examined the above documents and evidences. It is well settled position of law that, an assessee receiving a credit has to testify its case through the 'triple marker test' of identity, Creditworthiness and Genuineness of Transactions. It is imperative, therefore, that the case be analysed in light of these three well settled canons of adjudication, as embedded in the statute, as also promulgated by various judicial pronouncements. The onus of proof requires the assessee to furnish the proof of identity, creditworthiness and genuineness of the transaction. We note that in assessee's case under consideration, the assessee has submitted the copy of Contract note. The said contract notes show the quantity, rate, time, stamp, value, taxes and charges viz. STT, brokerage, SEBI and exchange turnover charges, service tax and stamp duty incurred on all the transactions done on stock exchange platform. These documents have been accepted by the assessing officer. The transactions are done through proper banking channel and the sale is done at prevailing price quoted on the Stock Exchange. Hence, by submitting these documents, the assessee has proved identity, creditworthiness and genuineness of the transactions.*

*11. 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 appellant 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 appellant 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”.

12. We note that the Assessing Officer having failed to bring on record any material to prove that the transaction of the assessee was a collusive transaction could not have rejected the evidences submitted by the assessee. In fact, in this case nothing has been found against the assessee with aid of any direct evidences or material against the assessee, under these circumstances nothing can be implicated against the assessee. One is bound to consider and rely on the evidence produced by the assessee in support of its claim and base decision on such evidence and not on suspicion or preponderance of probabilities, no material was brought on record by the Assessing Officer to controvert the evidence furnished by the assessee. Under these circumstances, the evidence filed by the assessee is accepted and the claim that the income in question is a bona fide Long Term Capital Gain arising from the sale of shares is allowed and hence exempt from income tax. Based on the above factual position, we deleted the addition of Rs.5,97,489/-

13. In the result, ground No.1 and 2 raised by the assessee is allowed.

14. In ground no.3, assessee stated that Assessing Officer made addition u/s 69C on account of commission paid @ 3% of bogus long term capital gain. Since, we have deleted the alleged addition of Rs.5,97,489/-, hence addition made by Assessing Officer does not have leg to stand, therefore it is hereby deleted, and hence ground No.3 raised by the assessee is allowed.”

4. Keeping in view the order passed by the Coordinate Bench of the Tribunal in the case of the assessee’s brother, which is identical on facts and issues involved in the present appeal, we respectfully follow the same. Accordingly, the appeal filed by the assessee is allowed.

5. In the result, the appeal of the assessee is allowed.

**Heard, dictated and pronounced in the open Court today on 19.01.2026**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Surat; Dated 19/01/2026

btk

Sd/-

**(DR. B.R.R. KUMAR)  
VICE-PRESIDENT**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,/DR,ITAT, Surat,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण  
ITAT, Surat