

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No. 1807/AHD/2024
Assessment Year:2017-18**

Deputy Commissioner of Income Tax, Circle – 1(1)(1), Ahmedabad - 380015	Vs.	Nilesh Todi, Chitrakoot, Lallubhai Park, St. Xaviers College Road, Navarangpura Ahmedabad, Gujarat - 380059 [PAN – AAOPT2933K]
(Appellant)		(Respondent)
Assessee by	Shri Arpan Shah, AR	
Revenue by	Shri R P Rastogi, CIT-DR	
Date of Hearing	19.01.2026	
Date of Pronouncement	28.01.2026	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal is filed by the Revenue against the order of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'] dated 22.08.2024 for the Assessment Year (A.Y.) 2017-18 in the proceeding u/s 147 r.w.s 144B of the Income Tax Act.

2. The brief facts of the case are that the assessee had filed his return of income for A.Y. 2017-18 on 30.10.2017 declaring total income of Rs. 67,85,900/-. The original assessment was completed u/s 143(3) on 15.12.2019 as per returned income. Subsequently, the AO had

reopened the case by issue of notice u/s 148 of the Act on 20.03.2021 to examine the loan of Rs. 19,77,45,404/- taken from various parties. In the course of re-assessment proceeding no compliance was made by the assessee and the loans of Rs.18,91,37,084/- received during the year was treated as unexplained and added to income. The AO had also made addition of Rs. 70,11,557/- on account of bogus loan on share trading. The assessment was completed u/s 147 r.w.s 144B of the Act on 30.03.2022 at total income of Rs.20,29,34,541/-.

3. Aggrieved with the order of the A.O., the assessee had filed an appeal before the first appellate authority, which was decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was allowed.

4. Now the Revenue is in second appeal before us. The following grounds have been taken in this appeal:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 18,91,37,084/- on account of unsecured loans u/s 68 of the Act., without appreciating the facts of the case.*
- (2) *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 70,11,557/- made on account of disallowance of Short Term Capital loss, without appreciating the facts of the case.*
- (3) *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee has transacted with M/s Kushal Group, an entity which is an accommodation entry provider?.*
- (4) *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*

(5) *It is therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.*

5. The first ground taken by the Revenue pertains to addition of Rs. 18,91,37,084/- on account of unsecured loan which was deleted by the Ld. CIT(A). Shri. R P Rastogi, Ld. CIT-DR submitted that in the course of assessment no compliance was made by the assessee and no details whatsoever in respect of these loans were furnished. Therefore, the Ld. CIT(A) was not correct in deleting the addition by admitting additional evidences.

6. Per contra, Shri Arpan Shah, Ld. A.R. of the assessee submitted that the non-compliance before the AO was due to default of the counsel and also time taken in collecting the evidences from various creditors. He explained that before the Ld. CIT(A) the evidences in respect of loans were furnished and the Ld. CIT(A) had called for a remand report of the AO in respect of those additional evidences. Thereafter, the Ld. CIT(A) had decided the issue on merits after examining the facts of the case and also the remand report of the AO. He, therefore, strongly supported the order of the Ld. CIT(A).

7. We have considered the rival submissions. It is found that the AO had made the addition for the reason that no compliance was made before him and no evidence to establish the identity, genuineness and credit worthiness of the loan transactions was furnished. The assessee, however, had furnished all the relevant details before the Ld. CIT(A). It is found that the Ld. CIT(A) had called for a remand report of the AO in respect of the additional evidences filed before him. The assessee had taken loan from 48 different creditors and evidences to establish the

identity, credit-worthiness and genuineness of the loan transactions were duly brought on record. The AO in his remand report had acknowledged that Income-tax return, ledger confirmation and bank statement of the creditors were furnished in respect of all 48 creditors and the assessee had discharged his onus to establish the identity, credit-worthiness and genuineness of the loan transactions. Considering the evidences as brought on record by the assessee as well as the remand report of the AO, the Ld. CIT(A) had deleted the addition and allowed the relief to the assessee. The finding of the Ld. CIT(A) on this issue is found to be as under:

10.2.1 I have considered the assessment order, the written submission and the documentary evidences filed during the appellate proceedings, the remand report submitted by the AO and the rejoinder of the appellant. I find that the addition of Rs. 18,91,37,084/ was made in the assessment as during the assessment proceedings, the appellant furnished some details but had failed to provide documentary evidences sufficient to prove the genuineness the transactions and the creditworthiness of the persons having given the above loans and for the above reasons, the AO proceeded to add credits of Rs. 18,91.37.084/ u/s 68 of the Act. However, during the appellate proceedings and the remand proceedings, the AO has examined all the documentary evidences filed by the appellant and after causing necessary verification has given the report (detailed report already extracted in the preceding para) that "on perusal of the details submitted the assessee, it is observed that the assessee has discharge his onus to prove the followings

- i. *Identity of the creditor*
- ii. *The capacity of the creditor to advance money*
- iii. *Genuineness of the transactions"*

Considering the submissions filed by the appellant and the above remand report, the appellant has been able to explain the nature and source of the above unsecured loans and therefore, the addition of the same u/s 68 of Act deserves to be deleted. **The AO is accordingly directed to delete the addition of Rs. 18,91,37,084/- u/s 68 of the Act.**

8. We do not find anything wrong with order of the Ld. CIT(A). When the Ld. CIT(A) had decided the matter on the basis of remand report of

the AO, the Revenue should not have agitated on this ground. It is not the contention of Revenue that the remand report of the AO was factually incorrect. Further, no material has been brought on record to establish that the finding of the Ld. CIT(A) was wrong. Therefore, the decision of the Ld. CIT(A) on this issue is upheld. The ground taken by the Revenue is **dismissed**.

9. Ground no. 2 and 3 pertain to addition of Rs. 70,11,557/- on account of disallowance of short-term capital loss. The AO had made the disallowance for the reason that this loss was incurred in trading in shares of M/s. Kushal Limited. According to the AO the share price of M/s. Kushal Limited was manipulated on the stock-exchange and the assessee was a beneficiary of bogus loss obtained through M/s. Tradbull Securities Pvt. Ltd. The Ld. CIT-DR submitted that the AO had rightly disallowed the loss as it was an accommodation entry while the Ld. AR supported the order of the Ld. CIT(A).

10. We have considered the facts of the case and the rival submissions. It is found that the assessee had submitted complete details of sale and purchase of share transactions, copy of ledger account with broker, contract note, bank statement, de-mat account statement etc. to establish the genuineness of purchase and sale transactions in the shares of M/s. Kushal Limited. The AO in the remand report had acknowledged that the assessee was a regular trader in shares and apart from shares of Kushal Limited he had also traded in the scrips of Ambuja, CG Power, IDFC, Hero Motoocorp, Indiabulls, India Cement, LIC, Mahindra & Mahindra, Reliance Capital, Sun pharma, Yes bank and also in F&O segment on regular basis. The Ld. CIT(A)

after examining the evidences brought on record by the assessee as well as the remand report of the AO had deleted the addition. The finding of the Ld. CIT(A) on this issue is reproduced below:

10.3.2 I have considered the various above submissions. On perusal of the assessment order, the A.O has mentioned that the information was received about the appellant being beneficiary of bogus loss on sale and purchase transactions of M/s Kushal Tradelink Pvt. Ltd a scrip, which was found to be involved in providing accommodation entries. The A.O. has mentioned that the share price of the above scrip was raised from Rs. 2 on 03.09.2015 to Rs 469 on 13.02.2017 and has mainly discussed about the above scrip and its movement etc and the related investigation in the search and survey action on Kushal Group The A.O. has stated that there are clear notings of the cash transactions by Kushal Group against providing bogus LTCG benefits to the beneficiaries and the commission charged on the same and the other aspect of the modus operandi but no specific details in respect of the appellant has been mentioned or brought out in the assessment order The A.O. has also not mentioned or brought out any specific incriminating evidence in the assessment order wherein the name of the appellant or statement recorded specifically involving the appellant has been stated I also find that the assessment order does not mention of any such evidence being confronted to the appellant during the assessment proceedings before proceeding to make the addition. In para 5 3 of the assessment order, the A O has mentioned about some of the details being asked for from the appellant in the notice u/s 142(1) and in the above query the A.O has enquired to the appellant as to how he knew "that the prices of the shares of M/s Kushal Tradelink has risen so high and you took decision to sell them when they were increased multiple times", which looks to be without any application of mind and quite contrary to the reasons recorded by the A.O himself that the appellant has booked bogus Short Term Loss on the sale of the same scrip. As per the details of the transaction in the scrip as detailed in 5 1 in the assessment order, it is noted that appellant had bought 9,02,812 shares for Rs 33,89,46,557/- (which gives an average purchase price of Rs.375.43 per share) and appellant sold 7,62,281 shares during the year for Rs 27,91,74,848/- (which gives selling price of Rs.366.23 per share) The Buy trades are 906 in number over 11 days and Sell trades are 1172 over 18 sell days and a loss of Rs 70.11,557/- has been made, which has been added back in the assessment order From the above details, it is also indicative that the purchase price (Rs.375.43) and sell price (Rs.366 23) are not disproportionate (difference of only 2.45%) and the loss is mainly on account of heavy volume of sell and purchase transactions The above view is also fortified by the comments of the A. O himself in the remand report dated 04.07.2024 obtained during the appellate proceedings. wherein he has specifically mentioned that "on perusal of the explanation offered by the assessee and the documents submitted by the assessee

it has been observed that the assessee in the business of trading in shares and hence, is a regular trader During the year under consideration as well, the assessee has dealt in a lot of scrips apart from that of the Kushal Ltd. The assessee has purchased as well as sold all shares of this company digitally through BSE. However, Kushal Ltd. was found to be involved in providing accommodation entries is also a fact as unearthed by the Investigation Wing, Ahmedabad From the above remand report obtained during the appellate proceedings also it is apparent that the A. O also states that the appellant was a regular trader and the sale purchase transactions of the above scrip was done digitally through BSE and it can be discerned that the addition has been made only for the reason that the above scrip was found to be involved in providing accommodation entries. On the other hand, the appellant has clearly stated that he has filed all the relevant details/documents about the above sale and purchase of share transactions and discharged his initial onus case upon him to prove the transaction and substantiate his claim. Even during the remand proceedings, the A.O was directed to submit a comprehensive remand report after further examination, verification and directed u/s 250(4) of the Act to make necessary enquiries giving opportunity to the appellant and call for documents as may be relevant and as per law. But as stated above, only based on such general observations in the assessment order and the remand report and without specific involvement of the appellant and without any specific evidence brought out against the appellant in the assessment order, the addition cannot be sustained in the eyes of law. The above view is also supported by the various judicial pronouncements including the jurisdictional high court and ITAT, as also relied upon by the appellant.....

11. The Revenue has been unable to controvert the findings of the Ld. CIT(A). The transactions done by the assessee in the shares of Kushal Limited was not an isolated transaction. Further, this was not a case of off-market transaction but all the purchase and sales were made on stock exchange through a recognised broker and duly reflected in demat account of the assessee. Apart from the general information that the share price of Kushal Limited was manipulated, no other evidence was brought on record by the AO to establish that the assessee had made any cash payment against alleged bogus transaction in the shares of Kushal Ltd. No evidence for any accommodation entry was brought on record by the AO. We, therefore, do not find any reason to differ with the

decision of Ld. CIT(A). The finding of the Ld. CIT(A) on this issue is, therefore, upheld and the grounds taken by the Revenue are dismissed.

12. The other grounds taken by the revenue are general in nature and are dismissed.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 28/01/2026 at Ahmedabad.

Sd/-
(TR SENTHIL KUMAR)
Judicial Member

Dated - 28th January, 2026
Nk

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

True Copy

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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,
6. गार्ड फाईल /Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad