

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"D" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 417/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2014-15

Varun Naginbhai Patel, Gallops House, Nr. Babul Party Plot, Thaltej, Ahmedabad-380059.  <b>PAN : AGMPP 1852 B</b>	Vs	DCIT, Circle 3(3), Ahmedabad
(Applicant)		(Respondent)
Revenue by	:	Shri Ashok Kumar Suthar, Sr DR
Assessee by	:	Shri Dhrunal Bhatt & Shri Gulab Thakor, ARs

सुनवाई की तारीख/**Date of Hearing** : **06/12/2023**

घोषणा की तारीख /**Date of Pronouncement:** **08/12/2023**

**आदेश/ORDER**

**PER WASEEM AHMED ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-3, Ahmedabad (hereinafter referred to as "Ld. CIT(A)") dated 27.12.2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The assessee has raised following grounds of appeal:

*"1. On the facts and in the circumstance of the case, the learned CIT(A) has erred in confirming the disallowance made by Assessing Officer without appreciating fact that the Assessment Order passed by Assessing Officer is void ab initio and deserves to be quashed.*

*2. On the facts and in the circumstance of the case, the learned CIT(A) has erred in confirming the action of the AO in disallowing the claim of short term capital loss of Rs 1,78,23,848/- in respect of sale of shares of "Looks Health Services Ltd", treating the transaction as in- genuine without appreciating the fact that during the course of Assessment Proceedings and appellate proceeding, the Appellant has already submitted contract note, purchase and sale bills, brokers account, demat account and the Bank statement to prove the genuineness of the transactions.*

*3. On the facts and in the circumstance of the case, the learned CIT(A) has erred in confirming the action of the A.O and thereby treating the entire loss as not genuine by ignoring all the material evidences furnished, and has erred in treating the said transaction as a "penny stock" transaction simply on presumption and on probabilities and thereby incorrect observations.*

*4. On the facts and in the circumstance of the case, the learned CIT(A) has erred in confirming the alleged action of A.O which is purely based on suspicion and presumptions that the difference in purchase and sale price of share is unusually high though the revenue did not bring any material on record to support its finding that there has been collusion / connivance between the broker and the assessee for the introduction of his unaccounted money.*

*5. On the facts and in the circumstance of the case, the learned CIT(A) has erred in confirming the alleged action of A.O which is based on the search reports conducted by the DDIT Investigation Wing, Calcutta in their searches. Though the appellant had no connection with either of the searches.*

*6. On the facts and in the circumstance of the case, the learned CIT(A) has erred in confirming the alleged action of A.O. in levying interest u/s 234A, 234B, 234C and 234D of the Act."*

3. The only effective issue raised by the assessee is that the AO as well as the learned CIT(A) has erred in treating the short-term capital loss of ₹ 1,78,23,848/- on sale of shares of M/s Looks Health services Ltd as bogus.

4. The facts in brief are that the assessee, an individual, claimed to be engaged in the activity of trading of shares & securities. The assessee in the return of income filed for the year under consideration has declared income under the head salary, business income, income from speculative business, short term capital loss and long-term capital gain.

5. The assessee during the year purchased 1,38,400 shares of M/s Looks Health Services Ltd on stock exchange through broker namely M/s Shashwat Brokers Pvt Ltd (an ACML Capital Market Ltd authorized person) on different dates detailed as under:

<i>Date</i>	<i>No of Shares</i>	<i>Price/share (Rs.)</i>	<i>Total value (Rs.)</i>
<i>19-Feb-2014</i>	<i>32800</i>	<i>289.71</i>	<i>95,02,488/-</i>
<i>20-Feb-2014</i>	<i>34400</i>	<i>288.91</i>	<i>99,38,504/-</i>
<i>26-Feb-2014</i>	<i>20000</i>	<i>245</i>	<i>49,00,000/-</i>
<i>18-Mar-2014</i>	<i>51200</i>	<i>132.04</i>	<i>67,60,448/-</i>
<i>Total</i>	<i>138400</i>	<i>-</i>	<i>3,11,01,440/-</i>

5.1 All the shares of M/s Looks Health Services Ltd were sold by the assessee on 26<sup>th</sup> March 2014 for ₹ 1,33,76,360/- (₹ 96.65 per share x 138400 share). Accordingly, the assessee incurred short term capital loss of ₹ 1,78,23,848/- on sale of shares of M/s Looks Health Services Ltd. The impugned loss was set off against the long-term capital gain of ₹ 2,46,90,000/- earned on sale of shares of closely held company namely M/s Gallops Motors Pvt Ltd dated 21<sup>st</sup> May 2013.

6. The AO in the impugned transaction of sale and purchase of shares of M/s Looks Health Services Limited observed certain deficiency which are detailed as under:

- Fund for purchases of impugned shares were transferred from assessee's father account to ACML-BSE client account and not from the bank account of the assessee.
- The assessee during the year has entered into share trading activity in various scrip (47 scrip excluding the scrip of Look Health services) through Parbhudas Lilladhar Pvt or through Citigroup Global Market India Ltd whereas transaction in scrip of M/s Look Health Services Ltd only entered

through the broker M/s Shaswat Brokers Pvt Ltd whose key person, Shri Rajesh Jhaveri is friend of assessee's father.

- The company M/s Looks Health Services Ltd is not a financially viable company whose script may attract the public at large. As such the company is constantly making loss.
- The trade data of the script of the company clearly shows that the price has been rigged up through synchronized trading at the stock exchange and the price reached its peak during the year under consideration. During the peak period bulk transactions were carried out in the impugned script and the persons who were involved in the bulk transaction are mainly from Ahmedabad only.
- The share purchased by the assessee on 18<sup>th</sup> March 2014 was not found in the trade date of BSE which means that the assessee purchased 51000 shares through broker pool in prearranged transaction.

7. The AO based on the above observation and by applying the principle of surrounding circumstantial evidence was of the view that the assessee in order to set off his long-term capital gain on sale of the shares of closely held company entered into prearranged transaction to book short term loss. The AO, while applying the principles of surrounding circumstantial evidence referred to the judgment of the Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More in 82 ITR 540 and Sumati Dayal vs CIT reported in 214 ITR 801. The AO also hold that the price movement in the scrip of the M/s Looks Health Services Ltd are also abrupt and unrealistic on the parameter of the human probabilities. In this regard the AO referred the judgment of Hon'ble Guwahati High Court in case of CIT vs. Sanghmitra Bharali reported in 361 ITR 481. Thus, the AO disallowed the claim of the assessee for short term capital loss as bogus loss taken to setoff long term capital gain and added the same to the total income of the assessee.

8. On appeal by the assessee, the learned CIT(A) confirmed the finding of the AO. The relevant observation of the learned CIT(A) is extracted as under:

*2.3. I have carefully considered the Assessment Order and submission filed by the Appellant. The appellant has shown Short Term capital Loss in a span of less than 40 days of holding period from a single scrip namely Looks Health Services Ltd. On verification, it is seen that the company Looks Health Services Ltd. was earlier known as Looks Cosmetic Clinic. The appellant claimed STCL of Rs. 1,78,23,848/- on account of sale of shares of Looks Health Services Ltd. Such loss had been adjusted with LTCG derived from sale of shares of closely held company Gallops Motors Pvt. Ltd. of Rs. 2,46,90,000/-. Normally, a person treads into the investment in shares has a surplus fund hand. The bank account of the appellant with HDFC Bank shows that sufficient credit balance available for investment in shares on the date of transaction. The funds for making such investments were directly paid by appellant's father Shri Naginbhai G. Patel to the brokers account. The sale and purchase of shares in the case of Looks Health Services Ltd. was carried out through Shaswat Stock Brokers Pvt. Ltd., which is authorized person of ACML. During assessment proceedings statement on oath of Shri Varun N. Patel was recorded on 19.12.2016. In reply to Q.No.6 he stated that he has no knowledge of bulk deals of the share. Whatever loss incurred is genuine loss and should be allowed. The reply of the assessee cannot be accepted by the AO in view of the details furnished by the assessee as well as data received from BSE, Moneycontrol etc and the input received from Investigation Wing. The shares of Looks Health Services Ltd. is not a healthy and worthy scrip in terms of value in which public at large picks for investment purpose in relation to quoted price but as per the data available in the public domain i.e. BSE, Moneycontrol etc. price rigging/abnormal fluctuation in the scrip price is noted which is not relatable and justifiable in terms of the performance of the company. The details of such fluctuation can easily be seen from the price graphic representation available on public domain and has been discussed by AO in the assessment order. The extract of the grap from Moneycontrol is as under:-*

.....

*2.4. From the above graph, it can be easily noted that the scrip undergone price rigging and the peak for such rigging during the period in which assessee entered into the transaction of purchase/sale of shares of the said company. In this scenario the appellant booked short term capital loss ie assessee allegedly made purchase and sale of share at pre-decided level as per the amount of accommodation entry required. As per the data available on BSE that major portion of purchase and sale of shares are done in a short span of time and are through Bulk i.e. high volume of shares dealt in a single deal and in most of the cases it is in the nature of prearranged transactions. On verification of the bulk deals in respect of Looks Health Services Ltd. it is seen that there are 80 persons/firms were involved in such bulk trading in the said scrip. Majority of these persons/firms were based at Ahmedabad. From the analysis of the transactions of purchase and sale of shares by the assessee in the scrip "looks Health Services Ltd.", it is found that the case falls in the category of those persons who have taken the advantage in carrying out buy & sale of the said scrip during the short span of time for the purpose of showing short term capital loss. The appellant has claimed Short Term Capital Loss of Rs.1,78,23,848/- for the period under consideration. On verification it is evident that the actual claim is through dubious methods. This is also noted that when assessee has purchased shares on 18/03/2014, such shares were received in pool account of broker maintained with NSDL however the same was not credited to assessee's demat account. The said transaction is also not*

*appearing in BSE data, accordingly the same appears to be an arranged accommodation entry. The onus was on the assessee to prove that there was no such scheme and even if there was one, the benefit to the assessee was a result of genuine transaction. The assessee failed to discharge this onus and therefore, the only inescapable conclusion is that like many other individuals the assessee has also taken entry of bogus STCL by paying commission to set off his LTCG and avoid payment of tax thereon.*

*2.5. It can be seen from financial data of the company which is available at public domain; no prudent person will invest in such companies. When there are large number of fundamental companies are available in the market, why appellant has chosen to invest in these types of shares clearly prove that appellant wishes to obtain exempt capital gain by obtaining accommodative entries. It is an established law that Income Tax proceedings fall in the domain of preponderance of probabilities, meaning that the action of assessee is considered to be rational and well inform falling in the domain where probable choice are exercised. In Sumati Dayal Case Hon'ble Supreme Court has held that a man is considered as making rational decisions and the choices exercised by him falls under probable alternatives available before him. The financial analysis made herein above clearly prove that the decision of investment in nondescript penny stock is highly unlikely for a prudent investor and also that the quantum jump in stock prices of Looks Health Services Ltd. The scrip in which Appellant has made the transaction is listed in penny stock by SEBI and no prudent person would invest in such type of shares. As discussed herein above, transactions of shares were not governed by market practices and initial payment was made in cash which prove that transactions are non-genuine and Appellant has resorted to preconceived scheme to procure long term capital gain by way of price difference in share transactions which is not support by market.*

*2.6. The Hon'ble Supreme Court in the case of Commissioner of Income Tax, West Vs. Durga Prasad More 82 ITR 540 observed the often quoted following relevant observation: "It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The Hon'ble Apex court in Mc. Dowell & Co. Ltd. - 154 ITR 148 (SC), has held that:- "Tax Planning may be legitimate provided it is within the framework of Law. Colourable devices cannot be a part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly and without resorting to subterfuges. Every person is entitled to so arrange his affairs as to avoid taxation, but the arrangement must be real and genuine and not a sham or make-believe one."*

*2.7. With regard to observation of Appellant that entire transactions are supported by various documentary evidences, it is observed that shares in which Appellant has carried out transaction is penny stock and entire circumstantial evidences clearly suggest that Appellant has obtained accommodation entries. This issue and modus operandi in similar transaction is discussed by Mumbai ITAT in the case of ITO v/s Shamim Bharwani 69 taxmann.com 65 as under:*

.....  
.....

*2.9. The Hon'ble Gujarat High Court in Tax Appeal No. 1037 of 2017 dated 12/02/2018 has confirmed the view taken (supra) by the Hon'ble ITAT, Ahmedabad. In present case Appellant has dealt in penny stock, which is similar to shell companies for which various investigations were already carried out by Calcutta Investigation Wing. From the above graph on page 23 of this order, it can be easily noted that the scrip undergone price rigging and the peak for such rigging during the period in which assessee entered into the transaction of purchase/sale of shares of the said company. In the given situation, the assessee booked short term capital loss i.e. assessee allegedly made purchase and sale of share at pre-decided level as per the amount of accommodation entry required/decided/allegedly agreed upon. In view of the facts and discussed supra and circumstantial evidence available on record, it is concluded that the transactions were sham transactions and aimed only to bring unaccounted money in the guise of exempted long term capital gains and paper work has been got up and done merely to give a colour of authenticity to the transaction and by creating a facade of legitimate transactions. In view of the aforesaid, I am satisfied that the transaction of the assessee is wholly concocted just for the purpose of setting off his LTCG of Rs. 2,46,90,000/- and to reduce the taxable LTCG. Accordingly, the alleged claim of short term capital loss on account of purchase/sale of shares of Looks Health Services Limited is not found genuine and accordingly the same i.e. STCL loss of Rs 1,78,23,848/- disallowed by the AO is confirmed in view of the judicial pronouncements referred herein above and the circumstantial evidences as discussed above. The ground of appeal is, therefore, dismissed."*

9. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

10. The learned AR before us filed a paper book running from pages 1 to 42, compilation of case laws and synopsis of arguments which are kept on record. It was contended by the learned AR that the authorities below without pointing out any defect in the documents furnished with respect to the transaction for the sale purchase of the shares have held the short-term capital loss as bogus. According to the learned AR there was no verification carried out by the revenue from the parties involved in the transaction especially the broker but arbitrarily the concluded that the assessee has carried out prearranged transaction. As per the learned AR the loss incurred by the assessee was based on the documentary evidence and therefore the same cannot be disallowed.

11. On the contrary, the learned DR contended that the assessee has shown losses in a short span of time just to wipe out the profit against the long-term capital gain. The learned DR vehemently supported the order of the authorities below.

12. We have heard rival contentions of both the parties and perused the materials available on record. In the case on hand, the short-term capital loss claimed by the assessee on sale of shares of M/s Looks Health Services Ltd was held as bogus by the AO and subsequently by the learned CIT(A) for the reason elaborated in the previous paragraph. The facts are without ambiguity. The purchases and sales of M/s Looks Health Services Ltd were carried out on the platform of Bombay Stock exchange. However, the lower authority treated the transaction carried out by the assessee as sham transaction. The entire thrust of the revenue authority is based on certain general facts like the company M/s Looks Health Services Ltd was not financially viable in which general public should show interest. The price of the scrip was unusually skyrocketed without any financial or economic basis and unusually decreased. The scrip in that period were traded in bulk and most people who indulged in bulk trading were from Ahmedabad city only. Based on these general observations, the AO concluded that the price of shares M/s Looks Health Services Ltd rigged up to provide bogus LTCG/ STCL to beneficiaries. The AO in its order has stated nowhere that any enquiry or investigation was carried out with any concerned authority or income tax department regarding rigging up of the price of M/s Looks Health Services Ltd or by the assessee's broker. The AO predominantly proceeded to hold the price of the shares was rigged up merely on analysis of trade data of impugned scrip and financial strength of the company. Thus, the AO based on sweeping observation held that the assessee entered a prearranged transaction to set off the long-term capital gain earned by him during the year. As such, there is no information or finding based on corroborative material available with the AO that the price of impugned scrip was rigged up or the assessee along with his broker have rigged up the price or prearranged the transaction. The AO and learned CIT(A) also emphasizes the principles of surrounding circumstantial evidence. In this regard we are of the considered opinion the principle of surrounding circumstantial evidence is also not as strong to draw adverse inference against the assessee



especially considering the fact that the transaction of purchases and sales were made on the BSE platform where seller and buyer do not know each other, and transaction entered on the basis of current market scenario. Further it is pertinent to mention that the assessee during the year under consideration has earned LTCG of Rs. 2,46,90,000/- whereas claimed setoff of STCL of Rs. 1,78,23,848/- only, had the assessee prearranged the transaction to set off the gain then he might have setoff entire capital gain. It is also pertinent to mention that the assessee during the year entered into share trading on short term basis in 48 different scripts and he incurred losses as well as earned profit which were not doubted. At this juncture, we find it necessary to refer to the judgment of the Hon'ble Delhi High court in the case of PCIT vs. Krishna Devi reported 126 taxmann.com 80. In the case of Krishna Devi (supra) the AO predominantly based on financial and trade analysis of scrip held that modus operandi is similar to penny stock and disallowed the LTCG claimed by the assessee on the basis of modus operandi, parameters of human probability etc. The Hon'ble Bench of Delhi High court decided the issue in favour of the assessee. The relevant observation of the Hon'ble High Court reads as under:

**11.** *On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under section 10(38), in a preplanned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income-tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made*

*by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.*

13. Thus, in view of the above discussion and respectfully following the judgment of Hon'ble Delhi High Court in identical facts and circumstances in case of PCIT vs Krishna Devi, we hereby set-aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

14. In the result, the appeal of the assessee is hereby allowed.

**Order pronounced in the Court on 08/12/2023 at Ahmedabad**

**Sd/-**

**Sd/-**

**(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

**(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 08/12/2023

Bt/manish

**आदेश की प्रतिलिपि ग्रेषित/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,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**TRUE COPY**

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