

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

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.128/Ahd/2024
Assessment Year: 2014-15**

Rohit Prakashchandra Shah, B-339, Advance Business Park, Opp. Swaminarayan Temple, Shahibaug, Ahmedabad – 380 004 (Gujarat) [PAN – AXRPS 8716 R]		Vs.	Income Tax Officer, Ward – 1(2)(3), Aaykar Bhavan (Vejalpur), Nr. Sachin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad – 380 015. (Gujarat)
(Appellant)			(Respondent)
Assessee by	Shri K. C. Thaker, AR		
Revenue by	Shri Abhijit, Sr. DR		
Date of Hearing		23.09.2025	
Date of Pronouncement		30.10.2025	

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi (in short “the CIT(A)”) dated 19.12.2023 for the Assessment Year (A.Y.) 2014-15 in the proceeding under Section 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. The brief facts of the case are that the assessee had filed his return of income for the A.Y. 2014-15 on 11.03.2015 declaring total income of Rs.5,28,079/-. The case of the assessee was identified as a potential case after risk profiling based on enquiry reports and findings of the

Directorate of Income Tax (Investigation) and Directorate of Intelligence & Criminal Investigation and the case was flagged for scrutiny. The information was disseminated through the Insight Portal of the Department wherein the enquiry reports and findings were uploaded. From the information available to the Assessing Officer on the Insight Portal of the Department, it is transpired that the assessee had taken accommodation entry of Rs.1,88,34,063/- through Long Term Capital Gain (LTCG) on sale of shares. Based on this information, the case of the assessee was reopened under Section 147 of the Act by the AO, after recording the reason and obtaining approval of the competent authority. Accordingly, a notice under Section 148 of the Act was issued on 30.03.2021. The assessee had objected to the reopening of the proceeding and the Assessing Officer vide a separate order had disposed the objection of the assessee. In the course of assessment, the Assessing Officer was not satisfied with the explanation of the assessee regarding the LTCG of Rs.1,70,55,65/- derived by trading in the shares of M/s. Nyasa Corporation Limited. From the information available with the Assessing Officer, the trading in the shares of penny stock company M/s. Nyasa Corporation Limited was arranged through one Shri Naresh Jain, who had admitted that he was providing accommodation entries through such transactions. The Assessing Officer, therefore, treated the transactions made by the assessee as accommodation entry and the entire sale proceeds of shares amounting to Rs.1,88,34,063/- was held as unexplained cash credit of the assessee. The assessment was completed under Section 147 r.w.s. 144B of the Act on 29.03.2022 at a total income of Rs.1,93,62,142/-.

3. Aggrieved with the order of the Assessing Officer, 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 dismissed.

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

- "1. The learned CIT (A) has erred in law and on facts in proceeding to dispose of the appeal by order dt. 19-12-2023 thereby dismissing the appeal based on cryptic observations and without dealing with detailed written submissions accompanied by several relevant documents placed on record on 11-09-2023 and 03-10-2023 vide acknowledgment No.245128141110923, and 382852151031023.*
- 2. The learned CIT (A) has also erred in law and on facts in dismissing the appeal without recording specific finding regarding the grounds contesting validity of proceedings u/s. 147 of the Act, and validity of impugned assessment being void ab initio.*
- 3. The Ld. AO has also erred in law and on facts in not deleting the addition of Rs.1,88,34,063/-.*
- 4. On the facts and in the circumstances of the case and in law the learned CIT (A) ought to have quashed the proceedings u/s. 147 of the Act, ought to have annulled the assessment under appeal, and ought to have deleted the addition of Rs.1,88,34,063/-.*
- 5. It is therefore prayed that the proceedings u/s.147 may be quashed, the impugned assessment may be annulled, and the addition of Rs.1,88,34,063/- may be deleted.*
- 6. Your appellant craves leave to add, amend, alter or withdraw any ground of appeal at the time of hearing."*

Submission of the assessee on re-opening

5. Shri K.C. Thaker, Ld. AR of the assessee requested that the legal ground taken by the assessee in respect of validity of the proceeding

under Section 147 of the Act should be adjudicated first. The Ld. AR submitted that the reason recorded by the Assessing Officer about the escapement of income was without availability of any information with the Assessing Officer. In this regard, he has drawn our attention to the reasons recorded by the Assessing Officer and submitted that paragraph no.-3 of the reason was left blank, which revealed that there was no foundational fact or information available on record with the Assessing Officer. Therefore, the satisfaction recorded by the Assessing Officer was baseless and without any merit. The Ld. AR submitted that the validity of the proceeding under Section 147 of the Act can be considered only on the basis of reasons as recorded before issuance of notice and that the reasons cannot be supplemented later on through the order disposing the objection of the assessee. In this regard, he relied upon the judgement *Hon'ble Gujarat High Court in the case of Gujarat Flurochemicals Limited, 319 ITR 282 (Guj.)*. The Ld. AR further submitted that the Assessing Officer cannot record only some of the reasons and keep back the others to be disclosed before the Court if the action is challenged in court of law, for which reliance was placed on the decision in the case of *Kantibhai D. Narola, 436 ITR 302 (Guj.)*. He further submitted that the PCIT had given the approval to the incomplete reason as recorded by the Assessing Officer. Therefore, the approval granted under Section 151 of the Act was vitiated and invalid. The other contention of the Ld. AR was that the reason of the Assessing Officer was based on material found during search in the case of a third party. Therefore, the proceeding initiated u/s 147/148 of the Act was bad in law as provision of Section 153C of the Act was applicable in such cases. In this regard, he relied upon the decision of *Hon'ble Rajasthan High Court in the case of Shyam Sunder Khandelwal & Ors., (338 CTR 129 (Raj.))*.

Submission of the Revenue

6. Per contra, Shri Abhijit, Ld. Sr. DR submitted that the information in the present case was uploaded on the Insight Portal of the Department which was available to the Assessing Officer, on the basis of which he had recorded his reasons. He submitted that it was not necessary for the Assessing Officer to reproduce the information as available on Insight Portal in his reasons. The Ld. Sr. DR submitted that the Assessing Officer had gone through the information available on the Insight Portal and, thereafter, formed his belief and recorded his independent reason that income of the assessee had escaped assessment. He submitted that the Assessing Officer, after examining the information available and also the materials available on record (the return of the assessee), had drawn his categorical conclusion that an amount of Rs.1,88,34,063/- had escaped assessment. He further submitted that the objection raised by the assessee against the reopening was duly disposed of by passing a separate order dated 15.11.2021. Thereafter, the Assessing Officer had passed another order dated 10.02.2022 disposing the further objections raised by the assessee. The Ld. Sr. DR submitted that it was not mandatory for the Assessing Officer to share the information, based on which his reason was recorded for escapement of income. The reason as recorded by the Assessing Officer was duly communicated to the assessee and the objection of the assessee was also disposed of by the Assessing Officer. The Ld. Sr. DR further submitted that the information uploaded on Insight Portal was also available to the PCIT on his system and he had given his approval after going through the reasons as recorded by the Assessing Officer and also verifying the information as available on the Insight Portal. He, therefore, submitted that all the due process was followed in the present case for the reopening u/s 147 of the

Act. The Ld. Sr. DR further submitted that there was no bar that proceeding u/s 147 of the Act can't be initiated on the basis of materials found in the course of search of a third party. He, therefore, strongly supported the action of the AO to re-open the case u/s 147 of the Act.

Our findings on reopening

7. We have carefully considered the rival submissions. The assessee has challenged the reason as recorded by the Assessing Officer on the ground that satisfaction of escapement of income was recorded by the AO without any foundational fact or information available on record. This allegation has been made on the basis of a missing paragraph in the reasons as recorded by the Assessing Officer. In order to correctly appreciate the facts and to examine the application of mind by the Assessing Officer, it will be relevant to reproduce the reason as recorded by the AO, which was as under: -

"In this case, the assessee has filed return of income for A.Y. 2014-15 declaring total income of Rs.528079/- on 11/3/2015.

2. The case of the assessee has been identified as potential case flagged by the Directorate of Income tax (Systems) after risk profiling based on enquiry reports and findings of the Directorate of Income tax (Investigation) and Directorate of Intelligence & Criminal Investigation. The information has been disseminated to this office through the Insight Portal wherein enquiry reports and findings have been uploaded by the field officers of the respective directorate. In this case, information has been received that

4. The report is perused and having satisfied with the outcome and no further enquiry is necessary. I have gone through the information received and I have also gone through the material available on records. The ITBA/ITD data available in this office is also verified. The information and facts are found to be correct. On personal analysis of the data, prima facie, I have reason to believe that an amount of Rs.18834063/- has escaped assessment within the meaning

of section 147 of the I.T. Act. In view of this, the case is fit to be proceeded u/s.147 and u/s.148 of the I.T. Act.

5. The assessee has filed return of income for year under consideration, which does not commensurate with the transactions found in information available with this office as stated above.

6. It is pertinent to mention here that the assessee filed return of income but chosen not to disclose fully and truly all particulars of income in the ITR filed as discussed above and no assessment was made in this case.

7. In view of the above findings, I have reason to believe that this is a case where income chargeable to tax has escaped assessment by an amount of more than Rs.1 lakh and it is a fit case for re-opening the assessment for A.Y. 2014-15.

8. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

9. In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 of the Act is requested for approval from The Principal Commissioner of Income tax-1, Ahmedabad as per provisions of section 151 of the Act."

7.1 The contention of the assessee that the AO had no information for recording the reason for escapement of income is not found correct. The AO had mentioned in the reason that the information pertaining to the case was available on Insight Portal of the Department. Apparently, the information available with the Assessing Officer was intended to be reproduced in paragraph no.-3 of the reason, which is found missing. Merely because the information available with the Assessing Officer was not reproduced in paragraph no.-3 of the reason, it does not mean that the Assessing Officer had no information at all. The omission of paragraph-3 in the reason might be a typographical mistake. The Assessing Officer had discussed the source of the information in paragraph no.-2 of the reason from which it is found that information was

disseminated by Directorate of Income Tax (Systems) on the Insight Portal of the Department, after risk profiling based on enquiry reports and findings of the Directorate of Income Tax (Investigation) and Directorate of Intelligence & Criminal Investigation. Thus, the information centrally disseminated by the Directorate of Income Tax (Systems) was available on the Insight Portal of the Department and was available to all the concerned officers to whom the information pertained. In view of these facts, the assessee cannot take a plea that no information was available with the Assessing Officer at all. There is no requirement that the information received by the Assessing Officer should be reproduced in the reasons as recorded by him. What is necessary is that the Assessing Officer has to apply his mind on the information received and thereafter record his reason on that basis, which is found satisfied in the reason as recorded by the AO in the present case. The AO had categorically recorded satisfaction for escapement of income of Rs.1,88,34,063/- in the reason, which couldn't have been possible if no such information was available with him. In fact, para 4 of the said reason also states that the Assessing Officer has also verified ITBA/ITD data available in Assessing Officer's Office. Thus, the reasons recorded are holistic and complete for reopening the assessee's case. Therefore, the contention of the assessee that there was no foundational fact or information available on record of the Assessing Officer, is rejected.

7.2 The assessee has relied upon the decision of the Hon'ble Gujarat High Court in the case of *Gujarat Flurochemicals Limited (supra)* in support of the contention that the reasons recorded cannot be supplemented later on through order disposing of the objections. It is found that the issue involved in that case was reopening beyond four

years and the assessee had contended that since the assessment was earlier made u/s 143(3) of the Act, the Assessing Officer had not recorded that escapement of income was due to reason of failure on the part of the assessee to disclose fully and truly all material facts. The Hon'ble High Court had held that in the reasons as recorded by the Assessing Officer, no satisfaction was recorded that the assessee had failed to disclose fully and truly all material facts. In the present case, however, there was no requirement for the AO to record such satisfaction, as no assessment was made in this case earlier. Besides that, the Assessing Officer never supplemented the reason later on. Rather, he had taken the information from Insight Portal of the Department and verified it with ITBA & ITD data available with him. Thus, the case is found to be reopened after recording of proper reason by the Assessing Officer and he was satisfied about escapement of income in this case. Thus, the facts of the case relied upon by the assessee are totally different from the facts of the present case and the ratio of the said judgement cannot be applied to the facts of the present case.

7.3 The assessee has also relied upon the decision of Hon'ble Gujarat High Court in the case of *Kantibhai D. Narola (supra)*. The Hon'ble High Court has held in that case that the Court should be guided by the reasons recorded for the reassessment and not by the reasons or explanations given by the AO at a later stage in respect of notice of the assessment. The Hon'ble High Court has also held that the sufficiency or correctness of the material/information available with the Assessing Officer was not to be considered at that stage. We have to, therefore, examine whether the Assessing Officer had applied his mind to the materials available with him in order to conclude that the income had escaped assessment.

7.4 The Assessing Officer, in his reason, has mentioned about the information disseminated to him through the Insight Portal along with enquiry reports and findings of the Directorate of Income Tax (Investigation). The Assessing Officer has further recorded that he had examined the information received, verified the data available in ITBA/ITD and, thereafter, formed his belief that amount of Rs.1,88,34,063/- had escaped assessment. The Assessing Officer had also recorded that the return of income filed by the assessee was not commensurate with the transactions as appearing in the information available on the Insight Portal. The information available to the Assessing Officer on the Insight Portal was in respect of LTCG derived in transactions in shares of penny stock company, made through accommodation entry provider Shri Naresh Jain. A copy of the original return filed by the assessee for the A.Y. 2014-15 has been brought on record by the assessee in the paper-book filed. It is noticed therefrom that the assessee had disclosed income from salary and interest income only in the Income-tax return. No capital gain was disclosed in the return. Further, the assessee had also not disclosed any exempt income in the form of LTCG in Schedule-E1 of the return. **Since the assessee did not disclose any capital gain, either taxable or exempt, in respect of share transactions, in the original return of income, the AO after considering the information available with him, had rightly concluded that the income had escaped assessment.** The assessee has also brought on record a copy of the return filed on 29.04.2021 in response to notice u/s 148 of the Act dated 30.03.2021. It is found that in this return, the assessee had disclosed exempt LTCG of Rs.1,70,55,665/- in Schedule-E1 of the return. Thus, **it is evident that the assessee had earned LTCG of Rs.1,70,55,665/- which was not disclosed in the original return filed by the assessee on 11.03.2015.**

In view of this fact, the Assessing Officer had rightly concluded that the income of the assessee had escaped assessment.

7.5 The assessee has relied upon the judgement of Hon'ble Bombay High Court in the case of *Nirmal Bang Securities Pvt. Ltd. (95 CCH 19)* in support of contention that the reasons which are recorded by the Assessing Officer for reopening of the assessment, are the only reason which could be considered for formation of the belief by him. As already discussed earlier, this condition is found fulfilled in the present case. The Assessing Officer is required to provide only copy of the reasons as recorded by him. It is not mandatory for the Assessing Officer to share the information as available with him on the basis of which the reason was recorded. The reliance placed by the assessee on the decision of the Hon'ble Bombay High Court in the case of *Deshmukh Sahebrao Property Bank (116 CCH 0079)* is found to be misleading. In that case, the Hon'ble High Court while disposing the writ petition of the assessee had directed the AO to provide the information along with appraisal report, copy of statement etc. The information based on which the reason was recorded can be provided only as per the direction of the Hon'ble Court and not otherwise. It is further found that the Assessing Officer had disposed the objection of the assessee on the reopening vide order dated 15.11.2021 wherein the AO had also relied upon the decision of Hon'ble Gujarat High Court in the case of *Purviben Snehalbhai Panchhigar (101 taxmann.com 393)*. In that case the Assessing Officer had received information from Investigation wing that the company 'T' was a shell company and shares of said company were basically used for providing bogus claim of long-term or short-term capital gain. The Hon'ble Court has held that since no scrutiny assessment was earlier made, the Assessing Officer had no

occasion to form any opinion and, therefore, the reason recorded by the AO on such information was correct and there was no change of opinion. In the present case also, the information received by the Assessing Officer was specific and no scrutiny assessment was made in this case earlier. Therefore, the decision of the Hon'ble High Court in that case supports the case of the Revenue.

7.6 The other contention of the assessee that the information received by the assessee was pursuant to search conducted in the case of Shri Naresh Jain, the entry operator, and, therefore, the proceeding u/s 153C of the Act should have been initiated and the reopening done u/s 147 of the Act was invalid. We do not find any merit in this objection of the assessee. The proceeding u/s 153C of the Act could have been initiated only if the AO of the searched person had recorded his satisfaction and forwarded the documents pertaining to the assessee to his AO. In the present case, no such satisfaction/reason recorded by the "AO of the searched person" was received by the AO of the assessee. Rather the investigation report of the Investigation Wing was uploaded on the Insight Portal of the Department by the Directorate of Systems in a centralized manner and disseminated to all the concerned officers, including the AO of the assessee. Since the basic condition of recording of satisfaction of the "AO of the searched person" was not fulfilled in this case, there cannot be any question of issue of notice under Section 153C of the Act. Further, the Hon'ble Supreme Court has held in the case of *Abhisar Builders P Ltd.* (150 taxmann.com 257) that the proceeding under Section 147/148 of the Act can be initiated in order to consider the documents seized in the course of search. Therefore, this objection of the assessee is rejected.

Submission of the assessee on merits of the case

8. On merits, the Ld. AR submitted that the assessee had furnished all the details in respect of purchase and sale of shares. The entire transactions were done on stock exchange through a registered broker and were appearing in the de-mat account of the assessee. Further, that the payment for all the transactions was made through banking channels. Therefore, there were no question of treating the share transactions of the assessee as accommodation entry. The Ld. AR submitted that the AO had failed to show that there was any corresponding transaction in respect of amount received by the assessee towards sale of shares. According to the Ld. AR, the addition was made with a pre-determined conclusion that the assessee had obtained accommodation entry but no opportunity was allowed to the assessee to cross-examine the entry provider Shri Naresh Jain. Further that there was no material on record to implicate assessee's involvement in the alleged manipulative activity. The Ld. AR also relied upon the decision of Co-ordinate Bench of this Tribunal in the case of *Shri Dhirubhai Kantilal Sharma in ITA No.421/Ahd/2023 dated 06.02.2023*.

Submission of the Revenue on merits

9. Per contra, Shri Abhijit, Ld. Sr. DR submitted that the assessee did not bring on record any evidence for purchase of shares and contract note and the invoice/bill for purchase of shares were not filed in spite of specific request by the AO. He submitted that the assessee was a salaried person and not a regular investor in shares. The investment in shares of M/s. Nyssa Corporation Limited was made for the first time by the assessee. It was not explained as to why the assessee had preferred to start his

investment activity by purchasing shares of a non-decrepit company M/s. Nyssa Corporation Limited rather than investing in blue-chip stocks. The Ld. Sr. DR submitted that the Assessing Officer had dealt in detail the manipulation done by the entry operator in the share price of M/s. Nyssa Corporation Limited in the assessment order. He submitted that the investment made by the assessee in M/s. Nyssa Corporation Limited, a penny stock company, was intentionally done to launder unaccounted money and only a colour of genuineness was given to the transactions. He submitted that the AO had rightly considered the circumstantial evidences and held the entire sale transactions of shares of M/s. Nyssa Corporation Limited as accommodation entry.

Our decision of merits

10. We have considered the rival submissions. The assessee has submitted that the shares of M/s. Nyssa Corporation Limited were purchased by him on the following dates:

S.No.	Date	Quantity	Amount (Rs.)
1.	28.03.2012	8410 Shares	9,97,678/-
2.	13.07.2012	4000 Shares	7,33,120/-
		12410 Shares	

10.1 The Assessing Officer has given a categorical finding that **no contract note/bill/invoice for purchase of shares was filed by the assessee in spite of specific requisition.** In the paper-book filed by the assessee also, these documents have not been brought on record. From the copy of de-mat account filed by the assessee, it is found that **1,24,100 shares of M/s. Nyssa Corporation Limited were credited on**

18.09.2013, which was on subdivision. In the de-mat account statement, the credit of shares of Ravinay Trading Company Limited is found appearing as under: -

02.05.2012	Edelweiss Broking Limited	8410
17.07.2012	CM Sparkle Securities Solutions Pvt. Ltd.	<u>4000</u>
		<u>12410</u>

10.2 These 12,410 shares of Ravinay Trading Company Limited were debited on 18.09.2013 towards subdivision. **It thus, prima facie, appears that 12,410 shares of Ravinay Trading Company Limited were divided into 1,24,100 shares of M/s. Nyssa Corporation Limited on 18.09.2013.** Thus, the original purchase of shares was not of M/s. Nyssa Corporation Limited but that of Ravinay Trading Company Limited. It is thus found that **the assessee has not come clean and explained the mode of acquisition of the original shares.** Contract notes/bills/vouchers for purchase of shares was not brought on record. The de-mat account of the assessee was opened on 21.04.2012. The assessee was a salaried person and had no prior experience of investment in shares. It has not been explained as to why the assessee had made the initial investment in shares of a non-decrepit company Ravinay Trading Company Limited or M/s. Nyssa Corporation Limited. According to the AO, acquisition of the shares was a predetermined move with sole aim to bring back his own unaccounted money. Considering the nature of investment made by the assessee, the suspicion of the Assessing Officer was not unfounded.

10.3 The assessee has submitted that the sale of shares were made through stock exchange on which STT was paid and the payment was

received through banking channel. Where the issue of LTCG is involved, not only the sale of shares but the genuineness of the purchases also has to be examined. In the mechanism of capital gains computation what is relevant is not only the sale of shares but also the purchase of shares. Therefore, the genuineness of the entire transaction of acquisition as well as sale of shares has to be looked into as a whole. One can't adopt a dissecting approach by accepting the sale of shares as genuine without examining the genuineness of purchase of the shares. The AO had casted aspersion on purchase of shares while doubting the genuineness of the entire transaction. The AO in the assessment order had specifically pointed question mark on the purchase transactions and as discussed earlier the purchases have not been satisfactorily explained by the assessee. The assessee has not established that the purchase of shares was made through stock exchange and not in off-market transactions.

10.4 The genuineness of transactions can be tested on the principle of preponderance of human probability as settled by the Hon'ble Apex Court in the case of *Sumati Dayal v. CIT* [1995] 80 Taxman 89/214 ITR 801 (SC). The documentary evidences in themselves, cannot be held as conclusive evidence of the transaction. When someone is deliberately entering into a transaction in shares of penny stock company, it is obvious that all the documentary evidences will be in order. After all, one has to establish the transactions with reference to the documentary evidences so as to claim the benefit of exemption of LTCG available under the Act. Therefore, while examining such evidences, surrounding circumstances also has to be taken into account in order to unravel the true nature of the transactions. The Hon'ble Supreme Court has observed in the case of *CIT v. Durga Prasad More* [1971] 82 ITR 540 (SC) that "the taxing authorities

were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents." In penny stock transactions a facade of genuineness is created and in order to unravel the truth one has to go behind such facade. The Hon'ble Supreme Court had held in the case of *Vodafone International Holdings B.V. v. Union of India* [2012] 17 taxmann.com 202/204 Taxman 408/341 ITR 1 (SC) that the Revenue may invoke the "substance over form" principle or "piercing the corporate veil" test after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the impugned transaction is a sham or tax avoidant.

10.5 When we examine the evidences brought on record the first question that arises is whether these evidences satisfy the test of preponderance of human probability. The assessee was new to share trading activity. If so, why he didn't trade in a blue-chip listed company rather than investing in shares of unknown decrepit company Ravinay Trading Company Limited. The department had conducted detailed enquiries in the organized racket of bogus LTCG transactions which were claimed exempt from tax. During the course of investigation, the transactions in BSE listed penny stocks, which were used for generating bogus LTCG, were verified. The AO has discussed the price movement of this share in the assessment order from which it is evident that there was continuous manipulation of the price of the share and the increase in share price of penny stock M/s Nyssa Corporation Ltd. was non-commensurate with its financial results. The enquiries and evidences conclusively proved that the trades were manipulated and the

gains/losses made by beneficiaries in trade of this security can't be held as genuine. The movement of the share price was abrupt, unrealistic and not based upon any sound realistic parameter. The Supreme Court has held in the case of *SEBI v. Rakhi Trading (P.) Ltd. [2018] (90 taxmann.com 147/146 SCL 163)* that abnormal difference between the prices at which the trades were executed without corresponding effect on the price of the underlying security, shows that the option in which the party traded was not in demand in the market and that it was unusual that the trades were transacted with such huge profits when there was no change in the underlying prices. It was held by the Apex Court that such trade transactions were obviously only aimed at carrying out manipulative objective. Following this principle laid down by the Apex Court, there was nothing wrong in the Revenue's doubt about the genuineness of the transaction, considering the volatile fluctuation in share price of M/s Nyssa Corporation Ltd. The doubt of the Revenue was enforced by the fact that no LTCG was disclosed by the assessee in his original return of income and, therefore, AO had required the assessee to establish the genuineness of the LTCG as disclosed in the return filed u/s 148 of the Act. It is apparent from the assessment order that the AO had doubted the genuineness of the transactions and this aspect was not at all addressed by the assessee in its submissions.

10.6 The surrounding circumstances that the share of M/s Nyssa Corporation Ltd was utilized for generating bogus LTCG, as revealed in the investigation carried out by the Department, puts a question mark on the genuineness of the transactions carried out by the assessee. The admission of the share broker of Mumbai Sri Naresh Jain, that he had provided accommodation to the beneficiaries through bogus LTCG also

casts a serious doubt on the genuineness of the transactions. He had admitted to have provided accommodation entries through multi-layered transactions through multiple bank accounts. He was also instrumental in manipulating the share price of several penny stocks on the stock exchange including that of M/s Nyssa Corporation Ltd. Though the assessee was not directly indicted in the statements, the fact that accommodation entries were provided by dealing in shares of M/s Nyssa Corporation Ltd., stands established.

10.7 It was held by the Hon'ble Calcutta High Court in the case of *Swati Bajaj* (139 taxmann.com 352) that a holistic approach is required to be taken and the test of preponderance of probabilities have to be applied and while doing so, one cannot lose sight of the fact that the shares of very little-known companies with in-significant business had a steep rise in the share prices within the period of little over a year. To reproduce from the said order:

"69. Thus, the legal principle which can be culled out from the above decision is that to prove the allegations, against the assessee, can be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled and when direct evidence is not available, it is the duty of the Court to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded so as to reach a reasonable conclusion and the test would be what inferential process that a reasonable/prudent man would apply to arrive at a conclusion. Further proximity and time and prior meeting of minds is also a very important factor especially when the income tax department has been able to point out that there has been a unnatural rise in the price of the scrips of very little known companies. Furthermore, in all the cases, there were minimum of two brokers who have been involved in the transaction. It would be very difficult to gather direct proof of the meeting of minds of those brokers or sub-brokers or middlemen or entry operators and therefore, the test to be applied is the test of preponderance of probabilities to ascertain as to whether there has been violation of the provisions of the Income-tax Act. In such a circumstance, the conclusion has to be gathered from various circumstances like the volume from trade, period of persistence in trading in the particular crips, particulars of buy and sell orders and the volume thereof and proximity of time between the two which are relevant factors. Therefore, in our considered view the methodology adopted by the department cannot be faulted.

10.8 The Hon'ble Calcutta High Court has thus endorsed that surrounding circumstances has to be taken into account and the matter can't be decided only on the basis of documentary evidences brought on record by the assessee. The Court also upheld the approach of the Department by 'working backwards' to reach to the beneficiaries who had taken accommodation entries. Further, the Court re-iterated that the onus was squarely on the assessee to prove the genuineness of the credit entry appearing in the form of LTCG in their books of accounts. The discrepancies and adverse evidence collected by the AO in the course of assessment were not explained by the assessee and the thrust was always on the documentary evidence of the transactions, which also was not furnished by the assessee in respect of purchase transactions. The documentary evidences for sales only cannot be relied upon and treated as conclusive in view of various unanswered questions as already discussed earlier and the dubious nature of transactions. The surrounding circumstances of the transactions establish that the transactions entered into by the assessee were not genuine. The assessee had not discharged his onus against the overwhelming adverse evidences that has been brought on record by the Revenue authorities.

10.9 The thrust of the assessee's argument is that the sale consideration was received by cheque on which STT was paid and, therefore, the LTCG earned was genuine. This cannot be accepted in view of multiple adverse evidences collected by the Revenue and the assessee cannot be treated as a passive beneficiary of the transactions. The Hon'ble Supreme Court held in the case of *Rakhi Traders (P.) Ltd. (supra)* that in trade transactions with huge price variations of the transactions, it will be too naive to hold that the transactions were through screen based trading and

hence anonymous. According to the Apex Court, such conclusion would be overlooking the prior meeting of minds involving synchronization of buy and sale order and that such transactions were manipulative/deceptive device to create a desired loss and/or profit.

10.10 On consideration of the facts and the surrounding circumstances as discussed above, we are of the considered opinion that the transactions entered into by the assessee are not genuine. The manner of purchase of shares of M/s Nyssa Corporation Ltd being not explained, non-disclosure of the gain arising in trade of shares in the original return of income; the assessee has not discharged his onus against the adverse evidences brought on record by the AO and no satisfactory reply was given to explain the same. The unusual investment in shares of M/s Nyssa Corporation Ltd., the preponderance of probabilities and the surrounding circumstances as discussed above, are heavily loaded against the genuineness of the transactions and, therefore, we have no hesitation in confirming the findings of the AO which was upheld by the Id. CIT(A).

10.11 The assessee has relied upon several case laws which are found to be different on facts. On the other hand, the AO and the Id. CIT(A) have also relied upon various decisions in their respective orders. The issue is not of application of any particular case law, but to examine and appreciate the facts and circumstances of the instant case. As the Revenue had invoked the provisions of Section 68 of the Act, the onus was squarely on the assessee to prove the genuineness of the credit transactions, which has not been discharged by the assessee. The Revenue has brought enough materials on record to exhibit the

transactions as sham or bogus as well as unexplained and the assessee has miserably failed to establish the genuineness of the impugned credit entry of LTCG/sale transactions appearing in the accounts. Since the exempted LTCG claim of the assessee was only a facade created to conceal the true nature of the credit entry of Rs.1,88,34,063/- appearing in the accounts, the addition as made by the AO is confirmed and the order of the Id. CIT(A) is upheld.

11. In the result, appeal preferred by the assessee is dismissed.

Order pronounced in the open Court on this 30 th October, 2025.
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Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Ahmedabad, the 30th October, 2025

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *The PCIT*
(4) *The CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

TRUE COPY

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad