

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

**BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND
SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 803/Ahd/2025

(निर्धारण वर्ष / Assessment Year : 2014-15)

Ismail Abdulaziz Lakhani Plot No.475/A, Opp. Manjul Guest House, Prabhudas Talav, Bhavnagar, Gujarat - 364001	बनाम/ Vs.	Income Tax Officer Ward-1(1), Bhavnagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AALPL7310B		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Sarju Mehta, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Sudhakar Verma, Sr. DR

Date of Hearing	04/06/2025
Date of Pronouncement	02/09/2025

(आदेश)/ORDER

PER SMT. ANNAPURNA GUPTA, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), (hereinafter referred to as “CIT(A)”), National Faceless Appeal Centre (hereinafter referred to as “NFAC”), Delhi dated 18.02.2025 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2014-15.

2. Grounds raised by the assessee are as under:

- “1. That the CIT(A) has erred in law and on facts in upholding Id AO's act of invoking the provisions of section 147/148 for A.Y. 2014-15.
2. That the CIT(A) has erred in law and on facts by issuing order u/s 250 without effectively granting any fresh opportunity to the appellant to submit latest citation etc, after sitting silent for one and half year, by mechanically upholding Id AO's Assessment Order issued u/s 143(3) r.w.s 147 which itself was issued without taking on record submission made by the appellant during assessment proceeding.
3. That the CIT- Appeals is not justified in upholding the action of AO in adding the aggregate amount realized on sale of shares of M/s. KDJ Holidayscape and Resort Limited (which were held in the demat account as capital asset in the intervening period, before the same were transferred through registered broker, on the floor of the recognized stock exchange, after suffering Security Transaction Tax and ultimately settled through proper banking channel) as unaccounted income under section 68 of the Act amounting to Rs.1,51,12,000/-.
4. That the CIT- Appeals is not justified in upholding the action of AO in adding unilaterally estimating the amount of commission as unexplained expenditure under section 69C of the Act amounting to Rs.3,02,240/- to the income of the appellant.
5. Your Appellant reserves the right to add, alter, amend and withdraw any of the above grounds of appeal.”

3. The solitary issue in the present appeal relates to long capital gain earned by the assessee during the impugned year on sale of shares of an entity, M/s. KDJ Holidayscape and Resort Limited, for Rs. 1,51,12,000/- as a mere accommodation entry taken by the assessee for routing its own income by trading in bogus penny stock shares/scrips.

4. We have heard the contentions of both the parties and have gone through the orders of the authorities below. Ld. Counsel for the assessee has also filed before us in writing a brief gist of the arguments orally made before us during the course of hearing. Considering all of the above, we shall now proceed to adjudicate the issue.

5. The issue being whether the transaction of sale of shares undertaken during the impugned year by the assessee was a penny stock transaction or not, the facts relating to the case are that during the year the assessee had sold scrips of one M/s. KDJ Holidayscape and Resort Limited for a consideration of Rs.1,51,12,000/-. The assessee returned capital gain of Rs.1,31,25,238/- on the same and treating it to be long term capital gain fulfilling all the conditions specified u/s.10(38) of the Act, the entire capital gain was treated as exempt. The AO, however, came in possession of information that the scrip traded in by the assessee was a penny stock scrip and the company M/s. KDJ Holidayscape and Resort Limited was of no worth but had only engaged in providing bogus accommodation entries of long term capital gain or loss to various entities. This information was revealed during search and seizure action u/s.132 of the Act conducted in the case of Jatia Group and other related group on 17.04.2018. The premises of M/s. KDJ Holidayscape and Resort Limited was also covered u/s.133A of the Act. All information gathered during search and survey so conducted was posted on the

insight portal of the department and noting that the assessee had also indulged in a sale of shares of the said scrip claiming income earned of the same as exempt, the case of the assessee was reopened by issuing notice u/s.148 of the Act. Subsequently order was passed u/s 147 of the Act treating the impugned transaction of sale of shares of M/s. KDJ Holidayscape and Resort Limited as a bogus transaction and the entire consideration received amounting to Rs.1,51,12,000/- as a consequence, the income of the assessee. Simultaneously, addition on account of alleged commission paid by the assessee to the entry provider for availing this alleged accommodation entry, amounting to Rs.3,02,240/- was also made to the income of the assessee. The commission being computed @2% of the accommodation entry so taken by the assessee, added to the income of the assessee as expenditure incurred from unexplained sources u/s.69C of the Act.

6. The assessee carried the matter in appeal before the Ld. CIT(A), who confirmed both the additions.

7. Both the parties were heard at length and the brief submissions filed by the assessee before us in writing were also gone through. The primary argument made by the Ld. Counsel for the assessee which emerges from all of the above is that

- the assessee had duly discharged its onus of proving that the transaction of earning long term capital gain on the sale of shares of M/s. KDJ Holidayscape and Resort Limited was a

genuine transaction and the Revenue had pointed out that no infirmity in the documentary evidences submitted by the assessee nor demonstrated as to how the said documents failed to prove the genuineness of the transaction.

- The contention of the Ld. Counsel for the assessee was also that the entire case of the Revenue rested on a generalized understanding of the scheme of operation of entry providers giving long term capital gains and no case was made out by the Revenue demonstrating how the assessee's case fitted into the *modus operandi* of these entry providers despite all facts being brought to the notice of the AO by the assessee.

8. In this regard, the Ld. Counsel for the assessee pointed out that the assessee discharged its onus of proving the genuineness of the transaction by pointing out that the assessee had entered into legitimate transaction of acquisition of shares of M/s Gomti Finlease Limited as capital asset, parking the same in the demat account maintained with the broker M/s. Prabhudas Liladhar Private Limited, making payments through banking channel for purchase of shares and recording their acquisition in the books of accounts also. Further, demonstrating the fact of conversion of this company i.e. M/s Gomti Finlease Limited in the name and style of M/s. KDJ Holidayscape and Resort Limited, which later affected split of the shares after complying with the requirements of law and, thereafter, the assessee transferring shares of this company during the impugned year after paying Security

Transaction Tax and other charges through a registered broker on a recognized stock exchange and the sale proceeds thereof being realized through proper banking channel and accounted for in the books of account of the assessee. The documentary evidences proving the above facts filed to the authorities below were pointed out to us as under:

- i. Copy of invoice showing purchase of shares of M/s Gomti Finlease Limited through a registered broker;
- ii. Copy of the bank statement reflecting the purchase of shares of M/s Gomti Finlease Limited;
- iii. Copy of balance sheet reflecting the impugned investment made in shares of M/s Gomti Finlease Limited;
- iv. Copy of demat account reflecting the shares so purchased of Gomti Finlease Limited being parked therein and also demat account reflecting shares being held in the name of the amalgamated company i.e. M/s. KDJ Holidayscape and Resort Limited subsequent to amalgamation;
- v. The fact of there being split in the shares on amalgamation of M/s Gomti Finlease Limited in M/s. KDJ Holidayscape and Resort Limited, which was affected with the approval of the Jurisdictional High Court;
- vi. The demat account statement of the assessee reflecting shares of this amalgamated company also being held in the demat account right from this conversion;

- vii. Documents evidencing transfer or sale of shares on the platform of the recognized stock exchange through a registered broker;
- viii. Documents evidencing transaction of sale of shares being subjected to levy of Securities Transaction Tax by way of contract notes;
- ix. Copy of bank accounts showing receipt of sale consideration of share through banking channels.

9. Having demonstrated the fact of having discharged its onus of proving the genuineness of the transaction of purchase and sale of shares of KDJ Holiday Resorts and Spa Ltd. supported with documentary evidences, the Ld. Counsel for the assessee drew our attention to the findings of the AO and the Ld. CIT(A) to demonstrate that their entire case was based only on general information relating to the scrip being a penny stock and no attempt being made by the department to demonstrate assessee's nexus or assessee's connection in any way in the *modus operandi* adopted by the alleged entry providers. Our attention in this regard was drawn to the assessment order at para 13 wherein the findings and conclusion of the AO were contained as under:

"13. Findings and conclusion

15.1 From the facts of the case, investigations made by various directorates, and from statements recorded it is concluded that long term capital gains booked by assessee in her books were pre-arranged method to evade taxes and launder money. Following are the findings and the reasons which substantiates the findings.

1. *Acquisition of the shares: The assessee has purchased shares of KDJ Holidayscape & Resort Ltd. Which is already proved as Penny Stock Company.*
1. *Sale of shares and unusual rise in the price: Further the assessee has sold the 30.000 shares at the price of Rs 1,51,12,000/-, thus resulting the long term capital gain, and as discussed the rise in share prices is not holding to any commercial principles and market factors.*
1. *Analysis of transactions: Facts revealed that such trading transactions of purchase and sale of shares are not been effected, for commercial purpose but to create artificial gains, with a view to evade taxes-*
 - i. *Transactions of shares were not governed by market factors prevalent at relevant time in such trade, but same were product of design and mutual connivance on part of assessee and the operators.*
 - ii. *The assessee resorted to a preconceived scheme to procure long-term capital gains by way of price difference in share transactions not supported by market factors.*
 - iii. *Cumulative events in such transactions of shares revealed that same were devoid of any commercial nature and fell in realm of not being bona fide and, hence, impugned long term capital gain is not allowable.*
1. *Failure of Assessee to discharge his onus: The assessee has not been able to prove the unusal rise and fall of share prices to be natural and based on the market forces. It is evident that such share transactions were closed circuit transactions and clearly structured one.*
2. *Ignorance of the assessee about shares and penny stock companies: Assessee has failed to show of having any knowledge about the shares traded and having any knowledge about the fundamentals of the penny stock companies.*
3. *Financial analysis of the penny stock companies: The networth of the penny stock company is negligible. Even though the networth of the company and the business activity of the company is negligible the share prices have been artificially rigged to unusual high.*

4. *Order of the SEBI: Sebi has passed an order where the main operator Shri Anil Agarwal and M/s Comfort fincorp are said to be indulging in to share manipulations.*
5. *Cash trail in the accounts of the entry providers: The investigations in the fund flow analysed in the accounts of the entry providers have established that the cash has been routed from various accounts to provide accomodations to assessee.*
6. *Arranged transactions: The transactions entered by the assessee involve the series of preconceived steps, the performance of each of which is depending on the others being carried out. The true nature of such share transactions lacked commercial contents, being artificially structured transactions, entered into with the sole intent, to evade taxes.*

15.2 The facts and circumstances of the case, as recorded above, clearly suggest that the revenue cannot take or accept such make-believe transactions, as presented by the assessee. Truth or genuineness of such transactions must prevail over the smoke screen, created by way of pre-meditated series of steps taken by the assessee, with a view to imparting a colour of genuineness and character of commercial nature, to such share transactions. Needless to say that one has to look at the whole transactions and a series of steps taken to accomplish such share transactions, in an integrated manner, with a view to ascertaining the true nature and character of such purchase and sale of shares.

16. On perusal of the facts it is observed that the assessee had devised a colourable scheme by introducing his unaccounted money in to the bank to give it a colour of legitimate transaction. In this regard, reliance is placed on the judgement of supreme court in the case of Mc. Dowell Ltd. vs. commercial tax officer (154 ITR 148) it was held as under:

"Tax planning may be legitimate provided it is within the frame work of law, colourable devices cannot be part of tax planning and it is wrong to encourage and entertain the belief that it is honourable to avoid the payment of by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly with out resorting to subterfuges."

The preponderance of probability test is required to be applied in the nature of circumstances of the case and the capital gain claimed by the assessee is to be held as non-genuine. Reliance in this

regard is placed on the judgement of the Hon'ble Supreme Court in the case of Sumati Dayal (214 ITR 801) (SC) wherein the Supreme Court is held as under:

"This, in our opinion, is a superficial approach to the problem, the matter has to be considered in the light of human probabilities. The observations by the Chairman of the Settlement Commission that "fraudulent sale of winning tickets is not an usual practice but is very much of an unusual practice" ignores the prevalent malpractice that was noticed by the Direct Taxes Enquiry Committee and the recommendations made by the said Committee which led to the amendment of the Act by the Finance Act of 1972, whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races etc., was withdrawn." Similarly, the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the allegor to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record.

14. Thus considering the findings of the search/ survey, conducted in the case of brokers, operators, entry providers and the enquiries conducted in the case of assessee and the nature of transaction entered into by the assessee, the LTCG claimed exempt u/s 10(38) of the act by the assessee can not be allowed and the amount of Rs 1,51,12,000/- received back as sales proceeds on sale of shares is required to added back towards her taxable income under section 68 of the act. In view of the above I am satisfied that the assessee has furnished inaccurate particulars of her income therefore Penalty proceeding u/s 271(1)(c) is initiated for furnishing inaccurate particulars of income."

10. Referring to the above, the Ld. Counsel for the assessee pointed out that the AO's case was made out on general reports of investigation revealing the scrip to be penny stock on the basis of the price of the scrip not being supported by any financials of the assessee company which were found to reveal no worth of the

company, the transaction of shares not being covered by market factors but being product of design and mutual connivance on the part of stakeholders, SEBI passing order indicting the main operator to be indulging in share manipulations, investigation revealing cash to have been routed from various accounts to the entry operators, and the assessee failing to show any knowledge about the shares traded in having no knowledge about the fundamentals of the penny stock companies.

11. He further drew our attention to the order of the Ld. CIT(A) reiterating the findings of the AO at para 6.2.1 as under:

6.2.1 Finding & Decision:

The case has been reopened based on the report from Investigation Wing stating that the appellant was one of the beneficiaries in the transaction of claim of long term capital gains as exempt. The claim of the appellant that the transaction was done through banking channel and all the entries are reflected in the demat account alone could not be considered to treat the transaction as genuine. The Assessing Officer has made a detailed analysis about the financial results of the company M/s KDJ Holiday Scape & Resort Ltd. in which the appellant has invested in shares wherein it was categorically proved by the Assessing Officer that the net worth of the company was insignificant. A prudent business man would invest in shares which has a sound financial results and where the growth of the company is consistent and functioning of the business activity is such that the face value of shares do not decrease even due to economic crisis. The company KDJ did not admit any operational income by way of doing business activity. The reserves and surplus show the amount of share premium and it was not out of profits earned by the company.

It could be seen from the return of income of the appellant that he had admitted interest on capital from the firm at Rs.9,86,000 and income from house property at Rs.1500. The receipts by way of sale consideration in shares were transferred to the firm in which the

appellant is a partner as investment. Other than the said investment, it could be seen from the balance sheet, the appellant is not a regular investor in shares and his financial position is nominal and it could be seen from the balance sheet, there were no other investments found in the balance sheet. Based on the above findings, the Assessing Officer construed that:

Acquisition of the shares: The assessee has purchased shares of KDJ Holidayscape & Resort Ltd.. Which is already proved as Penny Stock Company.

Sale of shares and unusual rise in the price: Further the assessee has sold the 30,000 shares at the price of Rs 1,51,12,000/-, thus resulting in the long term capital gain, and as discussed the rise in share prices is not holding to any commercial principles and market factors.

It is common knowledge that in penny stock transactions, the entire transactions are stage managed and well-orchestrated to conform to the requirements of the Act to satisfy the claim of exemption but the apparent is not real and therefore the appellant's claim that she had no role in it and since the trading in the scrip was permitted, she was able to generate the gains cannot be accepted.

The legal precedents relied upon are equally countered by other legal precedents on this subject and the decisive decision in famous case Swathi Jain (lead case), and the Bombay Tribunal decisions are pointers to the fact that the system could be manipulated in such a way to achieve the desired objectives by people acting in concert viz., entry and exit provider choosing the scrip and executing the same. Here whatever documentary evidence was submitted would not be the conclusive evidence but what would be conclusive was the test of preponderance of probabilities.

The common pattern in all such transactions is:

- 1. Purchase of stock at rock bottom price*
- 2. No Financial credibility of the company, whose shares are purchased by the investors.*
- 3. Bell Pattern in share price movement i.e. once price target is achieved price falls back to minimum.*
- 4. No rhyme or reason for sudden spurt of share price, defying Index or similar share price movements.*

5. Promoters of shares are also not from any established groups, in fact they are of people of no means.

6. Price escalation through synchronised trading within limited parties, mostly entities controlled by the entry operators.

7. Statement recorded during search or survey operations conducted by the investigation wing clearly established the fact that price of the shares is manipulated with the sole aim of providing bogus Capital Gain or Loss.

8. Failure of Assessee to discharge his onus: The assessee has not been able to prove the unusual rise and fall of share prices to be natural and based on the market forces. It is evident that such share transactions were closed circuit transactions and clearly structured one.

In view of the above facts and circumstances of the case, the addition made by the Assessing Officer in relation to the denial of claim of exemption under Sec. 10(38) and treating the same as unexplained income is upheld. The grounds raised on this issue stand "Dismissed".

6.3 Unexplained Expenditure: Since the transaction of investment in shares in a penny stock company was treated as non-genuine, the corresponding expenditure which is nothing but commission paid to the share broker / exit provider has been treated as unexplained expenditure under Sec.69C and the addition made by the Assessing Officer is upheld. This ground stands "Dismissed".

12. The Ld. DR, however, relying on the same finding of the AO and the Ld. CIT(A) as referred to by the Ld. Counsel for the assessee, stated that the authorities below had made out a water tight case against the assessee proving the scrip dealt in by the assessee to be a penny stock scrip. He contended that when the entire investigation and analysis of the department clearly revealed that the Company, whose scrip, the assessee had traded in had no financial backing for increase in its shares to such an extent justifying an increase of 400% in its price, particularly, in

the light of the fact that no business activity as such was being carried out by such entity and the SEBI passing order holding the broker to have indulged in providing accommodation entries and even cash trail of the transaction being revealed during investigation, He contended that the order passed by the Ld. CIT(A) was justified in holding the shares of M/s. KDJ Holidayscape and Resort Limited sold by the assessee to be penny stock and treating the entire sale consideration received by the assessee of Rs.1,51,12,000/- as income of the assessee.

13. Having considered the arguments of both the sides, we find that undoubtedly, the department was in possession of information that the scrip traded in by the assessee was a penny stock scrip and this was revealed on account of search and survey action which conducted on Jatia Group and the assessee respectively. When the assessee was confronted with this fact the assessee undisputedly filed all documents proving that it had genuinely entered into this transaction. The documents filed by the assessee are listed above in our order at para 8 and we have noted that right from the evidences demonstrating the acquisition of share of this scrip genuinely transacted through banking channel and the scrip being parked in a demat account, to the sale of scrip all undertaken by a registered broker after paying Security Transaction Tax on the same, was filed by the assessee.

14. We have also noted that the department was in possession of information that the scrip was a penny stock scrip, which information was based on investigation conducted revealing the brokers and alleged beneficiaries colluding to make available certain scrips in the market through private placement or otherwise for very little value and subsequently rising their prices artificially and selling them at very high price. The sale being made to companies owned, managed and controlled by entry operators and being financed through cash made available by the beneficiaries. The information apparently revealed the cash trail also of the beneficiaries.

15. But, we agree with the Ld. Counsel for the assessee, that despite being in possession of this information, the department was unable to demonstrate that the assessee's case fit into the *modus operandi* adopted by the accommodation entry providers of the scrip, not a single word has been mentioned as to how assessee's case fitted into the *modus operandi* of this scrip. We completely agree with the Ld. Counsel for the assessee that the Revenue has merely relied on the general information revealing this scrip to be a penny stock scrip and despite the assessee furnishing all evidences before it no case has been made out by the Revenue to show that the assessee's trading in the scrip fitted into the *modus operandi* adopted by the alleged accommodation entry providers.

16. In the light of the same, we are not in agreement with the Ld. DR that in the facts of the present case a water tight case had been made against the assessee revealing transaction of sale of scrip of M/s. KDJ Holidayscape and Resort Limited entered into by the assessee to be a penny stock transaction. The Revenue having failed to dislodge or controvert in any way the onus discharged by the assessee of proving the genuineness of this transaction, we hold that the impugned transaction entered into by the assessee was a genuine transaction. The addition made, therefore, of Rs.1,51,12,000/- by treating the scrip dealt in by the assessee as a penny stock scrip is directed to be deleted.

17. In the result, appeal filed by the assessee is allowed.

This Order pronounced on 02/09/2025

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Ahmedabad; Dated 02/09/2025

S. K. SINHA

True Copy

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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

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