

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

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

I.T.A. Nos. 401&402/Ahd/2019
(Assessment Years: 2014-15 & 2015-16)

Deputy Commissioner of Income Tax, Central Circle-3, Vadodara	Vs.	Shri Rajnikant Prabhudas Mandavia, 801, Sheetal Apartments, Diwalipura, Vadodara-390007
[PAN No.ACEPM2259F]		
(Appellant/Respondent)	..	(Respondent/Cross Objector)

I.T.A. No. 1662/Ahd/2019
(Assessment Years: 2016-17)

Deputy Commissioner of Income Tax, Central Circle-3, Vadodara	Vs.	Shri Rajnikant Prabhudas Mandavia, 801, Sheetal Flats, Near Sunflower Society, Diwalipura, Vadodara-390015
[PAN No.AACI4327B]		
(Appellant)	..	(Respondent)

Appellant by :	Shri S. N. Soparkar, Sr. Advocate, & Shri Parin Shah, A.Rs.
Respondent by:	Dr. Darsi Suman Ratnam, CIT D.R.

Date of Hearing	31.08.2023
Date of Pronouncement	25.09.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

All these three appeals have been filed by the Department against the orders passed by the Ld. Commissioner of Income Tax (Appeals)-12 (in short “Ld. CIT(A)”), Ahmedabad vide different orders dated 03.12.2018 and 09.08.2019 passed for the different Assessment Years i.e. A.Ys. 2014-15 to 2016-17. Since common issues are involved for all the

years under consideration, the appeal filed by the Department are being disposed of by the way of common order.

ITA No. 401/Ahd/2019 (A.Y. 2014-15)

2. The Department has raised the following grounds of appeal:-

“1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.9,67,73,500/- on account of bogus/non-genuine Capital Gain by sale of shares of Penny stock Company i.e. M/s Global Infratech Finance Ltd. erstwhile M/s Asianlak Capital and Finance Ltd., by not appreciating the fact involved in this case that the said company had almost no trading in shares for the past many years and the assessee himself failed to explain the basis of making investment in such penny stock company.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.9,67,73,500/- on account of bogus/non-genuine Capital Gain by sale of shares of Penny stock Company i.e. M/s Global Infratech Pvt. Ltd. erstwhile M/s Asianlak Capital and Finance Ltd., by not appreciating that the share price of the said company was rigged almost 100 times in span of 1 year (197 trading). This fact also substantiate that the said company was a penny stock company.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.9,67,73,500/- on account of bogus/non-genuine Capital Gain by sale of shares of Penny stock Company i.e. M/s Global Infratech Pvt. Ltd. erstwhile M/s Asianlak Capital and Finance Ltd., by not appreciating that the brokers have admitted that they were involved in providing accommodation entries in the form of Long Term

Capital Gain by using the listed company i.e. M/s Global Infratech Finance Ltd.

4. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.4,36,044/- on account of unexplained expenses when the assessee failed to substantiate the same with documentary evidence.*

5. *It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside/ and that of the AO may be restored to the above extent.*

6. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

Ground No.1:-

3. The brief facts of the case are that the assessee is an individual engaged in the activity of investment in and sale of shares and mutual funds, portfolio management schemes and dealing in futures and options. During the year under consideration, the assessee submitted his return of income declaring total income at Rs. 1,16,46,980/-. The case of the assessee was selected for scrutiny and a survey under Section 133A was conducted on the group cases of the assessee on 18.06.2015. During the course of assessment proceedings, and further as a result of the findings of the survey proceedings and post survey enquiries, the Assessing Officer observed that the assessee had sold shares of M/s Asianlak Capital and Finance Ltd which was later changed to M/s Global Infratech Finance Ltd. The assessee had sold 15,33,500 shares for a total consideration of Rs. 9,67,73,500/- and after deducting cost of purchase of Rs. 23,00,250/-, long-term capital gains of Rs.

9,44,73, 350/- was claimed as exempt. The AO was of the view that M/s Global Infratech Finance Ltd. was involved in providing bogus long-term capital gain entries through listed penny stocks on the Bombay Stock Exchange. During the course of assessment, the Assessing Officer observed that the assessee purchased 1,75,000 shares of M/s Asianlak Capital and Finance Ltd @ Rs. 15 per share during the Financial Year 2012. Subsequently, the name of the company was changed to M/s Global Infratech Finance Ltd. and the face value of the shares was split from Rs. 10 to Rs. 1 on 14.12.2012 and the assessee received 17,50,000 shares. During the year under consideration, the assessee sold 15,33,500 shares of M/s Global Infratech Finance Ltd. The Assessing Officer observed that the price of the company rose from Rs. 7.99 to Rs. 57.20 in 80 trading days only during the period 25.06.2012 to 12.12.2012 and on splitting of the shares in the ratio of 1:10, the market price fell to Rs. 5.80 on 13.12.2012 and again rose to Rs. 75.85 on 05.06.2013 in 117 trading days. The huge price rise and returns on investment provided by M/s Global Infratech Finance Ltd. was without any financial basis and was manipulated to just to provide bogus long-term capital gains entries to various beneficiaries. The statements of Shri Raj Kumar Kedia, an accommodation entry provider at Delhi, Shri Subrata Halder, a close associate of an accommodation entry provided and a Shri Manoj and Shri Anup Kumar Maheshwari (both share brokers) were recorded on various dates, who admitted involvement in the business of providing accommodation entries on long-term capital gains by using the listed company M/s Global Infratech Finance Ltd. During the course of survey, statement of the assessee was also recorded on oath, who on being asked various questions to justify the reason for such huge investment in a

penny stock company earning meager profits, stated that he had invested in this stock on the advice of his late father and took the risk in spite of being aware that financial status the company M/s Global Infratech Finance Ltd. was not up to the mark. Accordingly, the AO added a sum of Rs. 9,44,73,250/- to the total income of the assessee as bogus long-term capital gains.

4. In appeal, Ld. CIT(Appeals) allowed the appeal of the assessee on this ground that the assessee had invested in the shares on the advice of his late father. Further, Ld. CIT(Appeals) held that the Assessing Officer has not brought on record any evidence of the involvement of the assessee in share rigging so far as the investment in M/s Global Infratech Finance Ltd. is concerned. The purchase of shares was made by the assessee through banking channels, and the purchase and sale of shares have been duly accounted for. There is no allegation in the instant facts that any unaccounted cash had come back to the assessee. The assessee was a regular investor in shares and during the year under consideration, the assessee had held shares of 85 companies, including investments made in M/s Global Infratech Finance Ltd. Further, the shares of M/s Global Infratech Finance Ltd. were still quoted in the Bombay stock exchange till 19th January and hence the genuineness of the transactions could not be suspected. Further, as regards statements of persons on whom reliance was sought to be placed by the AO, the Ld. CIT(Appeals) observed that no cross-examination of the persons had been afforded to the assessee. Since the persons on the basis of whose statements the additions were made, were not allowed to be cross-examined by the assessee, then merely on the basis of general statements of

third party, it could not be presumed that such general statements can be applied to every cases of transactions in shares to hold that the assessee is also a beneficiary of such/similar accommodation entry. It may be the case that the entry operators might have been involved in price rigging and may have provided entries to some beneficiaries but so far as the assessee is concerned, there is no iota of evidence that he is involved in price rigging and is merely taking entry of bogus capital gain. While allowing the appeal of the assessee, Ld. CIT(Appeals) made the following observations:

“5.4 I have diligently considered the facts of the case, observations of the AO and submissions of the appellant. The AO has made addition of Rs.9,44,73,250/- u/s 68 of the I.T. Act being gain on sale of shares of M/s.Global Infratech Finance Limited on the ground that sales and purchases of these shares were not genuine. I find that the appellant had not purchased the shares but he had been allotted shares of M/s. Asianlak Capital & Finance Limited on application made by him on 27/12/2011 with payment of application money by cheque number 318603 of HDFC Bank and the shares were allotted on such application in terms of Board's Resolution dated 19/01/2012. The share certificates were also issued to the appellant and those shares were in lock in period till 18/01/2013. \The copies of documents like share application, Board Resolution,' Shares certificate No:0025287 with Distinctive numbers from 11320301 to 11495300 were furnished to the AO by the appellant along with his letter dated 10/10/2016. I also find from the copy of bank account of the appellant with the HDFC Bank that cheque number 318602 is cleared and debited to the account of appellant on 29/12/2011. These shares were then deposited for Dematerialisation as per letter of M/s. URJA INVESTMENT LIMITED and were also credited to the appellant's DEMAT account DPID No:12057000 on 14/12/2012. These documents prove that the shares were acquired by the appellant by way of allotment on making

payment of share application through banking channel and the same were also allotted in terms of a Board resolution. It is also seen that the shares were credited to DEMAT ACCOUNT of the appellant long before the sale of shares. In fact, the appellant later received shares of M/s, Global Infratech & Finance Limited which were sold on various dates through the authorised member (Broker) of the Stock Exchange on the floor of the Exchange at the then prevailing price as per their Contract Notes Cum Invoices after due payment of STT (Securities Transaction Tax). The sale proceeds were also received through banking channel as per the Broker's statement of account. The AO has made addition on the ground that M/s. Global Infratech Finance Ltd. was involved in trading in penny stocks and there was abnormal rise in the prices of the shares. The AO has narrated share prices which rose up to Rs.75.85 from Rs.7.99 on two different dates and that the prices rose without any underlying fundamentals of the said Company. The AO has relied on certain statements of the accommodation entry operators who narrated modus operandi in cases where they provided entries of capital gains and also one alleged beneficiary who accepted having taken entry. However, no such persons were allowed to be cross examined and merely on the basis of general statements of third party it could not be presumed that general statements can be applied in every cases of transactions in shares to hold that the appellant is also a beneficiary of such/similar accommodation entry and had not done actual/genuine transactions when the factual aspect of genuine acquisition of shares in the appellant's case is proved based on documentary evidences. May be the entry operators might have been involved in price rigging and providing entries to some beneficiaries but so far as the appellant before me is concerned,, there is no iota of evidence that he also is involved in price rigging and taking merely entry of capital gain. On the contrary, the documentary evidences of allotment of shares and payment thereof by cheque which is duly cleared long back in earlier year within two days, its

dematerialisation in earlier year, holding of shares in said DEM AT account in earlier year and sale thereof on the floor of the Stock Exchange at the then prevailing price go to prove that as far as the appellant is concerned, the transactions cannot be held to be non-genuine. The AO has not contradicted these documentary evidences by bringing any clinching and cogent evidences that still, the transactions are bogus. It is pertinent as pointed out that shares of M/s. Global Infratech Finance were still quoted in the Stock Exchange. The AO has made observations based on general modus operandi adopted by entry operators, prudence of investment, abnormal rise in prices and the statements of some of such entry operators which, in my opinion, do not lead to the conclusion that the transactions of acquisition and sale of shares by the appellant are also non-genuine particularly in the wake of the above uncontroverted documentary evidences furnished by the appellant to him.

5.5 *I am inclined to agree with the appellant that when the acquisition of shares acquired in earlier year and payment for which being also made by cheque duly debited at the time of acquisition, substantiated by the relevant share certificates which are further credited in appellant's DEMAT account, the genuineness of acquisition of shares is proved. The case of the appellant is of acquiring shares through allotment which is different than the case of an off market purchase making payment in cash which may raise eyebrows to doubt the genuineness of purchase. However, when the shares are allotted long back and payment of share application is made by cheque at the time of application of shares itself, the acquisition of shares has to be accepted as genuine and once the shares are genuinely held, any subsequent sale thereof on the floor of the stock exchange at prevailing rates through recognised broker cannot be disregarded as being non-genuine. The reliance placed by the AO on alleged statements of some of the persons without allowing cross examination is also a violation of principles of natural justice as held by the Supreme Court in the case of Andaman Timber Industries 62 taxman.com*

(SC). Even otherwise, it is held in several cases that when shares are received through regular banking channel and not in cash, the factual position of genuine capital gain emerging on the sale of such shares on the floor of the stock exchange cannot be disregarded merely on presumption and general modus operandi. Each case depends on its own facts and the facts regarding genuineness of the transactions in the instant case of the appellant based "on above documentary evidences is established. As regards receipt of consideration of sale of shares, from the statement of account of the Broker/member of the Stock Exchange namely M/s. Urja Investment PTE Ltd, it is evident that the sale consideration is paid to the appellant by the said broker /member to the appellant through banking channel and appellant has no concern as to who purchased the shares sold by him hence the appellant cannot be held to be pre-involved in the transaction on sale of shares also. It is also relevant to note that even when the price of shares as stated by the AO rose up to Rs.75.85, the appellant offloaded most of the shares at much less price and that too which was prevailing at the time of transaction of sale. I am therefore of the opinion that the long term capital gain earned by the appellant on sale of some of the shares of Global Infratech Finance Limited is genuine and not bogus. Consequently, the exemption claimed under section 10(38) is allowable to him as claimed and addition of Rs.9,44,73,250/- by invoking provisions of section 68 is not justified."

5. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) deleting the additions made by the Assessing Officer. Before us, the Ld. DR submitted that in the instant facts, there is no dispute that the company in which investment has been made by the assessee i.e. M/s Global Infratech Finance Ltd. does not have any financial standing so as to justify such a steep rise in the price of the aforesaid stock. Further, based on the applications received, the aforesaid company had

passed resolution at the meeting of the Board of Directors on 19.01.2012 allotting 1,05,05,000/- equity shares to 49 persons from non-promoter group on preferential basis. Subsequently, the company allotted 1,75,000 shares to the assessee in physical form and subsequently on 19.11.2012, assessee applied for dematerialisation of the securities and same were dematerialised on 14.12.2012. The assessee sold 15,33,500 shares between 02.05.2013 and 05.08.2013. The DR submitted that the shares of the company were listed on the Bombay stock exchange for the first time on 18.11.2011. The company had no business activity and no past performance of giving good return to investors. Out of total sale consideration of Rs.10,27,59,725/- received by the assessee, it may be observed that 5 companies purchased shares worth Rs.7,46,76,343/- and all the five companies were merely existing on paper and were used to artificially inflate the share price of M/s Global Infratech Finance Ltd. as was told by Mr Subrata Halder in a statement recorded under Section 131 of the Act. Further, the shares of M/s Global Infratech Finance Ltd. are primarily held by companies which are Jama Kharchi / bogus companies used only for the purpose of accommodation entries. The Directorate of Investigation, Kolkata had undertaken large-scale investigation on accommodation entry of long-term capital gains and amongst the list of penny stock companies indicated by the Directorate of Income tax, Kolkata, M/s Global Infratech Finance Ltd. was one of the penny stock companies and in this company, bogus long-term capital gains were generated through preferential allotment of shares, share splitting and allotment of bonus shares etc. The DR placed reliance in the case of **PCIT v. Swati Bajaj 139 Taxman.com 352 (Calcutta)** where the High Court held that where assessee earned LTCG on sale of shares and AO

denied said claim and made additions under Section 68 on ground that assessee invested in shares of penny stock companies which provided bogus LTCG, since assessee failed to establish genuineness of rise of price of shares within a short period of time that too when general market trend was recessive, additions made under Section 68 were justified.

6. In response, Ld. Counsel for the assessee submitted that in the instant facts, Ld. CIT(Appeals) has made detailed observations while deciding the issue in favour of the assessee. The counsel for the assessee submitted that Ld. CIT(Appeals) has correctly observed that nothing has been brought on record by the Department to prove that the assessee was involved in price rigging of the instant share or that any form of cash had flown back to the assessee, so as to treat the instant gains made by the assessee as bogus long-term capital gains. Further, the counsel for the assessee also drew our attention to the fact that the assessee during the impugned year under consideration was holding total of 85 shares including shares of other listed companies as well. Therefore, it is not a case where the assessee had made sole investment in this particular share so as to come to the conclusion/draw an inference that the assessee had made investment in this share so as to earn bogus long-term capital gains. The assessee had invested in this share on the advice of his father, and this fact has also not been disputed by the Department. Further, the counsel for the assessee also drew our attention to three judicial precedents, which pertained to the very same script i.e. M/s Global Infratech & Finance Ltd and have held that the assessee has not been engaged in earning bogus long-term capital gains on sale of such scrip. Further, the counsel for the assessee also placed reliance on various judicial

precedents, which have held that in absence of any concrete evidence that the assessee was specifically engaged in price rigging and that the aforesaid transaction was entered only with a view to earn bogus long-term capital gains or that investments in the aforesaid shares were made in cash etc. the long-term capital gains could not be held to be bogus. Further, there is no doubt that in the instant facts all investments were made through banking channels and necessary paper work was done at the time of making investments, which has not been doubted. Further, the company, M/s Global Infratech & Finance Ltd is a listed company and the shares were sold on the Bombay stock exchange. Further, even subsequent to sale of shares by the assessee i.e. till 2019, the shares of the company M/s Global Infratech & Finance Ltd still continued to be traded on the Bombay Stock Exchange, which further proves the fact that the assessee had not made investments in the aforesaid shares only with a view to earn bogus long-term capital gains. Accordingly, the order by Ld. CIT(Appeals) was a well reasoned order and also, in view of various judicial precedents, including specific judicial precedents which have been rendered in with respect to this very same share i.e. . M/s Global Infratech & Finance Ltd, the aforesaid capital gains cannot be held to be bogus.

7. We have heard the rival contentions and perused the material on record. The question posed before us is whether, if the assessee makes sale of shares of a company having no financial standing/base i.e. a penny stock company, whether this by itself, would lead to the inevitable conclusion that such transaction was entered only with a view to earn bogus long-term capital gains. The answer to this question would lie in the surrounding facts

and circumstances of the case as well. In the instant facts, it is not disputed that the company i.e. M/s Global Infratech and Finance Ltd. had no financial standing i.e. it is a penny stock company. Therefore, there is seemingly no rationale as to how or why the price of such company would rise so substantially within a short period of time, when ostensibly, this company had no business activities which could justify such a substantial share price hike. Further, there is also no reason as to why any reasonable investor would invest in shares of the aforesaid company, which has no financial standing. In **Pr. CIT vs. Swati Bajaj (2022) 446 ITR 56(Cal)**, the AO received information from Investigation Wing that the prices of some shares of penny stock companies which included the company X in which the assessee made investment, were artificially rigged to benefit share holders through bogus claim of long term capital gain. The assessee had purchased shares of the company for Rs. 1 lakh and when the investments in shares became eligible for long term capital gain it was sold for Rs. 29 lakhs during the period when the general market trend was recessive. The AO opined that the shares of the company X matched all the features of the companies which were provided bogus long term capital gain and made addition under Section 68 of the Act by treating long term capital gain as unaccounted income on the ground that the assessee invested in shares of company X to convert unaccounted cash under the guise of long term capital gain. When the matter was taken by the Revenue before the Hon'ble Calcutta High Court it held that it has been established by the Revenue that the rise of prices of the shares was artificially done by adopting manipulative practices. Consequently, whatever resultant profit accrued from out of such manipulative practices, same were also to be treated as

tainted. However, the assessee had opportunity to prove that there was no manipulation at the other end and whatever gains the assessee had reaped was not tainted. This has not been proved or established by the assessee. Therefore, the AO was well justified in coming to a conclusion that the so called explanation offered by the assessee was not to his satisfaction. Thus, the assessee having not proved the genuineness of the claim, the creditworthiness of the company in which the assessee had invested and the identity of the person from whom the transactions were done, the assessee had to necessarily fail. The court went on to observe further that in such a factual scenario, the AO had adopted an inferential process which was found to be a process which would be followed by a reasonable and prudent person. The AO had culled out proximate fact of the case, took into consideration the surrounding circumstances which came to light after investigation, assessed the conduct of the assessee, took note of the proximity of the time between the buy and sale operations and also the sudden and steep rise of the price of the shares of the company when the general market trend was admittedly recessive and thereafter arrived at a conclusion which was a proper conclusion and in the absence of any satisfactory explanation by the assessee, the AO was bound to make addition under Section 68 of the Act.

8. Now coming to the facts of the assessee' case, it is observed that assessee had invested in shares of 85 listed companies, as is evident from the portfolio of investments maintained by the assessee during the impugned year under consideration. Therefore, if investment in 85 scrips were held to be genuine, then investment in one scrip alone may not be held

to be bogus only on the ground that the price of such share rose substantially and the company had no financial fundamentals which would justify such a steep price hike. Now coming to the instant facts, we observe that the assessee is an experienced investor who has been investing in shares of various companies. Therefore, an obvious question does seem to stem is that the assessee being an experienced investor who is holding shares of 85 other listed companies in far lesser numbers (ranging between 100 to 5000 in most cases) has given no justifiable explanation as to why he would invest in / purchase as many as 1,75,000 shares of a little known company having no financial standing and no sound business fundamentals. Further, there is no reasonable explanation by the assessee as to why shares of this company, having no sound financial basis, would increase by almost 100 times in a span of one year in 197 trading days only. Further, the assessee has also admitted that he was aware of the fact that investment which is making is in a company having no financial standing. However, we also need to be mindful of other facts surrounding the case. It may be noted that Department has brought nothing on record to prove that the assessee was involved in price rigging of the instant share or that any form of cash had flown back to the assessee, so as to create the instant gains made by the assessee as bogus long-term capital gains. Further, in the instant facts, the assessee was not provided any opportunity of cross examination, which is an absolute necessity when such substantial addition amounting to Rs. 9,44,73,250/- is made to the income of the assessee by placing reliance on the statement of third parties. In the case of **Andaman Timber Industries**⁶² **taxmann.com 3 (SC)**, the Hon'ble Supreme Court held that when statements of witnesses are made basis of demand, not allowing

assessee to cross-examine witnesses is a serious flaw which makes order nullity, as it amounts to violation of principles of natural justice. Further, three Tribunals on similar set of facts and with reference to the very same share i.e. M/s Global Infratech and Finance Ltd. have decided the issue in favour of the assessee by holding that the assessee was not engaged in bogus purchase and sale of shares (**Mukesh Sharma in ITA Number 6249/Mum/2018, Kaushalya Agarwal 194/Kol/ 2018 and Mangilal Jain 729/Kol/2018**). It was also observed that the assessee sold the shares during the impugned Assessment Year (Assessment Year 2014-15), but trading in the said shares continued till January 2019, which is also a pointer to the fact that the instant shares were not sold only with a view to earn bogus capital gains. Further, in the cross examination, the brokers have given information on modus operandi in obtaining bogus capital gains, but the name of the assessee has not been specifically mentioned in the list of beneficiaries, and therefore simply because the assessee sold shares of a company coming in the list of alleged bogus companies identified by the Investigation Wing cannot lead to the inference that such shares were purchases and sold only to earn bogus long term capital gains.

9. In the case of **Parasben Kasturchand Kochar [2021] 130 taxmann.com 177 (SC)**, the assessee-individual was engaged in business of trading in shares claimed long term capital gains arising out of sale of shares as exemption under Section 10(38). The Assessing Officer denied claim and made certain additions into assessee's income on grounds that said gains were earned through bogus penny stock transactions and companies to whom sold shares belonged were bogus in nature. The Tribunal observing

that assessee by submitting records of purchase bills, sale bills, demat statement, etc., had discharged his onus of establishing said transactions to be fair and transparent, same not being earned from bogus companies was eligible for exemption under Section 10(38) of the Act. The High court by impugned order held that no substantial question of law arose from Tribunal's order. The SC dismissed the SLP against said impugned order. In the above case, the Gujarat High Court while passing the order observed as under:

“2. We take notice of the fact that the issue in the present appeal is whether the assessee earned long term capital gain through transactions with bogus companies. In this regard, the finding of fact recorded by the Tribunal in paras 9, 10 and 11 reads thus:—

“9. In our considered opinion, in such case assessee cannot be held that he earned Long Term Capital gain through bogus company when he has discharged his onus by placing all the relevant details and some of the shares also remained in the account of the appellant after earning of the long term capital gain.

10. Learned A.R. contention is that no statement of the Investigation Wing was given to the assessee which has any reference against the assessee.

*11. In support of its contention, learned A.R. also cited an order of Coordinate Bench in ITA No. 62/Ahd/2018 in the matter of Mohan Polyfab (P.) Ltd. v. ITO wherein ITAT **has held that A.O. should have granted an opportunity to cross examine the person on whose statement notice was issued to the assessee for bogus long term capital gain. But in this case, neither statement was supplying to the***

assessee nor cross examination was allowed by the learned A.O.

Therefore, in our considered opinion, assessee has discharged his onus and no addition can be sustained in the hands of the assessee."

3. Thus, the Tribunal has recorded the finding of fact that the assessee discharged his onus of establishing that the transactions were fair and transparent and further, all the relevant details with regard to such transactions were furnished before the Income-tax authorities and the Tribunal also took notice of the fact that some of the shares also remained in the account of the appellant."

10. In the case of **Himani M. Vakil [2014] 41 taxmann.com 425 (Gujarat)**, the Gujarat High Court held that where assessee duly proved genuineness of share transactions by bringing on record contract notes for sale and purchase, bank statement of broker and demat account showing transfer in and out of shares, Assessing Officer was not justified in bringing to tax capital gain arising from sale of shares as unexplained cash credit.

11. In the case of **Maheshchandra G. Vakil [2013] 40 taxmann.com 326 (Gujarat)**, the Gujarat High Court held that where assessee proved genuineness of share transactions by contract notes for sale and purchase, bank statement of broker, demat account showing transfer in and out of shares, as also abstract of transactions furnished by stock exchange, Assessing Officer was not justified in treating capital gain arising from sale of shares as unexplained cash credit.

12. Recently, the Supreme Court of India in the case of **PCIT vs. Renu Aggarwal 153 taxmann.com 579 (SC)** dismiss the SLP filed by the Department against the order of High Court which held that were Assessing

Officer disallowed exemption claimed by the assessee under Section 10(38) of the Act and made additions, alleging involvement in penny stock which were misused for providing bogus accommodation of Long Term Capital Gain (in short “LTCG”), however, there was lack of adverse comments from stock exchange and officials of company involved in these transactions and no material relating to assessee was found in Investigation Wing Report, addition made by Assessing Officer has been rightly deleted.

13. In the case before us, the Assessing Officer has not doubted the purchase of shares were through banking channels. The assessee has placed on record copies of contract memos in connection with purchase and sale of shares. Besides the above shares, the assessee has also held shares of 84 other companies as well. In the present case, no material has been brought on record to suggest that assessee was involved in any price rigging and not has the case of assessee mentioned in the list of beneficiaries, by the persons whose statements were recorded. In the statements recorded, the name of the assessee as a beneficiary was not specifically mentioned this fact was also specifically taken noted by Hon’ble Supreme Court in the case of Renu Aggarwal (supra). The Ld. Assessing Officer has not brought any material to support his finding that there has been collusion or connivance between the broker and the assessee for the introduction of his own unaccounted money. In the present case, despite the assessee’s specific request, no opportunity of cross examination was provided to the assessee on the basis of whose statements reliance has been placed to hold that the sale of shares was sham / bogus. Further, the ITAT Kolkata and ITAT Mumbai with respect to the very same stock i.e. M/s Global Infratech and Finance Ltd. in

three separate judgments (**Mukesh Sharma in ITA Number 6249/Mum/2018, Kaushalya Agarwal 194/Kol/2018 and Mangilal Jain 729/Kol/2018**) have decided the issue in favour of the assessee by holding that the assessee was not engaged in bogus purchase and sale of shares.

14. Accordingly, looking into the facts of the instant case, and respectfully following the decisions in the case of **Mukesh Sharma in ITA Number 6249/Mum/2018, Kaushalya Agarwal 194/Kol/2018 and Mangilal Jain 729/Kol/2018**, which were rendered with respect to the same stock i.e. Global Infratech and Finance Ltd. which the assessee had sold during the impugned assessment year, and the recent decision of Hon'ble Supreme Court in the case of Renu Aggarwal (supra) we are of the considered view the Ld. CIT(Appeals) has not erred in facts and in law in allowing the appeal of the assessee.

15. In the result, Ground Nos. 1 to 3 of the appeal of the Department are dismissed.

Grounds of Appeal Number 4: Ld. CIT(Appeals) erred in deleting the addition of Rs. 4,36,044/- on account of unexplained expenses

16. The brief facts relating to this ground of appeal are that during the course of assessment proceedings, the Assessing Officer observed that on the basis of certain loose papers and other documents found during the course of survey under Section 133A of the Act on 18.06.2015, the details of cash expenses were mentioned at Rs.4,04,28,526/-, and based on the dates mentioned, the Assessing Officer worked out the total expenses

pertaining to various years beginning from Assessment Year 2009-10 to Assessment Year 2016-17. The Assessing Officer worked out the expenses relating to the year under consideration at Rs.13,26,641/- and added the aforesaid amount under Section 69B of the Act.

17. In appeal, Ld. CIT(Appeals) gave partial relief to the assessee by observing firstly that the actual total of expenses comes to Rs.1,54,28,426/- as against Rs. 4,04,28,526/- and Assessing Officer has himself added an amount of Rs. 2,50,00,000/- in Assessment Year 2016-17 on the total of payments side so as to make the total at Rs. 4,04,28,526/-. According to Ld. CIT(Appeals), the Assessing Officer erred in making additions to the seized paper on his own, when the total cost of payments side as per the loose papers seized during the course of survey came to only Rs.1,54,28,426/-. Secondly, Ld. CIT(Appeals) also gave credit to the assessee of unaccounted receipts amounting to Rs.50,71,090/- from the total unaccounted payments/expenses of Rs.1,54,28,526/-. Accordingly, Ld. CIT(Appeals) directed the Assessing Officer to compute the addition on account of unexplained expenses and unexplained receipt pertaining to the year under consideration on pro rata basis as against Rs.13, 26, 641/- added by the Assessing Officer.

18. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). During the course of hearing, the Ld. DR placed reliance on the observations made by the Assessing Officer.

19. On going to the facts of the case, we observe that Ld. CIT(Appeals) has given a detailed basis of partially allowing the appeal of the assessee,

and, the Ld. DR has not pointed out to any specific infirmity/factual inaccuracy in the observations made by Ld. CIT(Appeals) in the appellate order. Accordingly, looking into the facts of the instant case, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in partly allowing the appeal of the assessee, after taking into consideration the facts of the case. Accordingly, we find no infirmity in the order of Ld. CIT(Appeals) so as to call for any interference.

20. In the result, Ground No. 4 of the Department's appeal is dismissed.

21. Ground Nos. 5 and 6 of the Department's appeal are general in nature and do not require any specific adjudication.

22. In the result, the appeal of the Department is dismissed for Assessment Year 2014-15.

ITA No. 402/Ahd/2019 (A.Y. 2015-16):-

23. The Department has raised the following grounds of appeal:-

“1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.56,33,096/- on account of bogus/non-genuine Capital Gain by sale of shares of Penny stock Company i.e. M/s Global Infratech Finance Ltd. erstwhile M/s Asianlak Capital and Finance Ltd., by not appreciating the fact involved in this case that the said company had almost no trading in shares for the past many years and the assessee himself failed to explain the basis of making investment in such penny stock company.

2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.56,33,096/- on account of bogus/non-genuine Capital Gain by sale of shares of Penny stock Company i.e. M/s Global Infratech Pvt. Ltd. erstwhile M/s Asianlak Capital and Finance Ltd., by not appreciating that the share price of the said company was rigged almost 100 times in span of 1 year (197 trading). This fact also substantiate that the said company was a penny stock company.*

3. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.56,33,096/- on account of bogus/non-genuine Capital Gain by sale of shares of Penny stock Company i.e. M/s Global Infratech Pvt. Ltd. erstwhile M/s Asianlak Capital and Finance Ltd., by not appreciating that the brokers have admitted that they were involved in providing accommodation entries in the form of Long Term Capital Gain by using the listed company i.e. M/s Global Infratech Finance Ltd.*

4. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.13,68,091/- on account of unexplained expenses when the assessee failed to substantiate the same with documentary evidence.*

5. *It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.*

6. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

24. The facts and the issues for consideration for Assessment Year 2015-16 are identical as in the case Assessment Year 2014-15. Accordingly, in

light of our observations for Assessment Year 2014-15, Ground Nos. 1 to 4 of the Department's appeal are dismissed. Ground numbers 5 and 6 of the Department's appeal are general in nature and do not require any specific adjudication.

25. In the result, the Department's appeal is dismissed for Assessment Year 2015-16.

ITA No. 1662/Ahd/2019 (A.Y. 2016-17):-

26. The Department has raised the following grounds of appeal:-

- “1. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the unaccounted expenses of Rs.4,04,28,562/- (for A.Y. 2009-10 to 2016-17) to Rs.1,03,57,436/- without appreciating that the assessee failed to submit any documentary evidence, proving contrary to the evidences recorded in the seized material.*
2. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.2,52,81,900/- made on account of unexplained expenditure without appreciating that the assessee failed to submit any justification with documentary evidence.*
3. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.56,320/- made on account of unexplained receipts without appreciating that the assessee had admitted that the said cash receipts were not recorded in the books of account.*

4. *It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.*
5. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

27. Grounds of appeal of the Department are similar to grounds 4 of the Department’s appeal for Assessment Years 2014-15 and 2015-16.

28. In the light of our observations with respect to Ground No. 4 for Assessment Year 2014-15, the appeal of the Department is dismissed for Assessment Year 2016-17, since we find no infirmity in the order of Ld. CIT(Appeals) so as to call for any interference.

29. In the combined result, the appeals of the Department are dismissed.

This Order pronounced in Open Court on

25/09/2023

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 25/09/2023

TANMAY, Sr. PS

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/-

(SIDDHARTHA NAUTIYAL)

JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad