

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "बी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

श्री संजय गर्ग, न्यायिक सदस्य एवं
अन्नपूर्णा गुप्ता, लेखा सदस्य के समक्ष।

Before Shri Sanjay Garg, Judicial Member And
Annapurna Gupta, Accountant Member

आयकर अपील सं./ITA No.1800/Ahd/2025
निर्धारण वर्ष /Assessment Year : 2018-19

Bhupesh Sajjansinh Rathod B-403, Pujan Apartment Nr., Loyala School Narangpura Ahmedabad - 380 015	<u>बनाम/</u> <u>v/s.</u>	NFAC, Delhi Present Juris. The ITO Ward-5(3)(1) Ahmedabad - 380 015
स्थायी लेखा सं./PAN: ADJPR 6771 P		

(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :		Shri Biren Shah, CA
Revenue by :		Shri Abhijit, Sr.DR

सुनवाई की तारीख/Date of Hearing : 08/01/2026
घोषणा की तारीख /Date of Pronouncement: 01/04/2026

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'] dated 21/07/2025 passed u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year (AY) 2018-2019. The assessee in this appeal has contested the action of the Ld. CIT(A) in confirming the additions made by the Assessing Officer (AO), as detailed in the below reproduced grounds of appeal, u/s.69A of the Income Tax Act, 1961 (hereinafter referred

to as 'the Act') treating the sale consideration received on sale of shares of Kushal Group as income of the assessee from explained sources.

2. The grounds of appeal taken by the assessee are reproduced as under:

*“Grounds of Appeal:
(Without prejudice to each other)*

1. The Learned Assessing Officer has erred in issuing notice u/ s.148 of the Act, which is illegal and bad in law and hence the same should be quashed and the reassessment made on the basis of the same is required to be cancelled.

2. The Learned CIT(A) ought to have quashed the assessment order passed by the Assessing on the basis that the assessee had sold Penny Stock Kushal Ltd, and which resulted into capital gain of Rs. 1,59,11,628/- and has claimed exemption u/s. 10(38) of the I.T. Act, 1961 holding that the assessee has taken accommodation entry of long term capital gain to bring his unaccounted income in the books of account to avoid the legitimate payment of tax and only on the basis information received from Investigation Wing search and seizure carried out u/s. 132 of the Act in the case of Kushal Group, Ahmedabad on 05.02.2019 holding that the they are involved in price rigging and providing bogus accommodation entries in the form of LTCG, loss, STCG, loss etc.

3. The learned CIT(A) has erred in upholding the additions, disallowances made by the AO without providing the copies of the materials, statements etc. of searched persons, brokers, operators, directors of paper companies relied upon despite the same sought for and therefore the assessment is made in violation of principles of natural justice and equity requires to be quashed.

4. The Learned CIT(a) ought to have quashed the order passed by AO as the AO has erred in not granting an opportunity for cross examination of the persons making the statement on the basis of which the notice u/s, 148 has been issued and completing the reassessment making additions, disallowances etc. Hence the assessment so made being against the principles of natural justice and law is illegal and void ab initio.

5. The Learned CIT(A) has erred in upholding the addition made by AO of Rs 1,59,11,628/- treating the entire amount of sale proceeds of sale of shares of M/s. Kushal Tradelink Ltd. as alleged unexplained credits, money u/s 69A of

the I. T. Act, 1961 He further erred in taxing the same applying the of the Act provisions of Sec. 115BBE

6. In law and in the facts and circumstances of the appellant's case, CIT(A) has erred in upholding the addition made by AO u/s. 69C of the Act for Rs. 7,95,581/- by assuming that the appellant has paid commission @5% on Rs. 1,59,11,628/-, being sale consideration of shares of Kushal Ltd.

7. In law and in the facts and circumstances of the appellant's case, the, CIT(A) has erred in upholding the addition of Rs. 26, 196/- in respect of interest from South Indian Bank, when no such addition was required to be made.

8. The appellant craves to leave, add, alter, modify and/or withdraw any grounds of appeal either before or during the course of the hearing."

3. The brief facts of the case are that the assessee is an individual and filed his return of income for the year under consideration declaring total income of Rs.64,16,450/-. The assessee had shown "Long Term Capital Gains" (LTCG) of Rs.43,51,087/- and "Short Term Capital Gains" (STCG) of Rs.63,27,563/- mainly from the sale of stock of M/s. Kushal Tradelink Ltd. The AO noted that as per the report of Investigation Wing, the scrip of Kushal Ltd. was found as a penny stock. Even the SEBI had also identified the scrip of Kushal Ltd., wherein synchronized share trading was being done by certain persons. Since it was also found that the assessee had also traded in the scrip of Kushal Ltd., therefore, the AO was of the view that the assessee had shown bogus LTCGs and STCG by trading in Kushal Ltd. scrip. He, accordingly, reopened the assessment of the assessee u/s.147 of the Act r.w.s.148 of the Act and show-caused the assessee as to why the LTCG and STCG /sales proceeds from the sales of shares of "Kushal Ltd." be not added to the income of the assessee. In reply, the assessee submitted that he was not engaged in any bogus share trading as alleged. It was submitted that the assessee was a bonafide purchaser of the shares. That the shares were

purchased by the assessee out of loan taken of Rs.50,00,000/- during the Financial Year (FY) 2015-16 and that no unaccounted investment was made. That the decision to buy the shares of "Kushal Ltd." was taken by him on the basis of knowledge of market and market trends and information from investors. It was further submitted that the assessee had purchased 73000 shares of "Kushal Ltd." out of which the assessee was holding 66100 as on 17/03/2017 upon which bonus shares of 66100 were issued and further that the assessee had not disposed of all the shares of "Kushal Ltd." and that there were 13800 shares of "Kushal Ltd." were still held in his DMAT account. It was submitted that all the shares were purchased and sold via DMAT account only and no transactions were made in physical mode. The assessee also furnished the details of the shares purchased and sold by the assessee of the different scrips including that of "Kushal Ltd."

3.1. It was submitted that the investment in shares of "Kushal Ltd." was just like any normal investment made for capital appreciation and that the assessee was not indulged in any type of manipulated transaction for earning bogus LTCGs/STCGs, etc. The AO, however, observed that the SEBI had found that certain persons were involved in synchronized share trading in the scrip of "Kushal Ltd." and some of the Directors/promoters of "Kushal Ltd." were found guilty in this respect and that the SEBI had also levied penalty upon the said violators. The AO further observed that even, thereafter, the SEBI had passed one more order dated 31/05/2019 against other 14 persons, who were indulged in price rigging in the scrip price of "Kushal Tradelink Ltd.", imposing penalty of Rs.3,00,000/- on each person. The AO discussed the unprecedented hike and fall in the share price of the Kushal Group. He, thereafter discussed the financials of the Kushal scrip and

observed that the “Kushal Ltd.” scrip was identified as a penny stock. He summed up the enquiries made by the Investigation Wing (IW) as under:

- *“During the Investigation Period, price of the scrip of KTL increased from Rs. 22.95 to Rs. 153 registering an increase of Rs. 130.05 (566.67%).*
- *Demat account of various persons was opened and operated by one Sh. Ashish Panalal Shah and used by him for synchronized share trading in the scrip Kushal Limited.*
- *These persons had bought and sold the same number of shares during the investigation period (viz. 5,28,000 shares bought, and 5,28,000 shares sold). It is also noticed that total traded volume by these persons is 21.52% to the total market which was voluminous in nature.*
- *Above persons had indulged among themselves into various synchronized trades (i.e. the trades where the buy and sell order quantity and rate were identical and orders for these transactions were placed within in a time gap of less than 1 minute) for 3,24,000 shares (which was 13.19% of the market volume) during the investigation period.*
- *Ashish Panalal Shah has also accepted that he has used demat account of various persons to do synchronized share trading to rise the share price of the scrip Kushal Limited. He had also accepted that he is doing this market manipulation in various scrips and receives commission for such market manipulation.*
- *All the trading in the above demat accounts were actually carried out by single person Ashish Panalal Shah which proves that the trading was synchronized share trading to rise the share price of the scrip Kushal Limited to provide undue benefit of bogus LTCCG/LTCL/STCG/STCL to the beneficiaries to help them to evade taxes.*
- *It is also pertinent to note here that SEBI has passed one more Adjudication Order No. EAD-7/BJD/NJMR/2019-20/3332-3345 dated 31.05.2019 against another 14 persons who indulged in trades that created a misleading appearance of trading and contributed to manipulation in the scrip price of Kushal Tradelink Limited and imposing penalty of Rs. 3,00,000/- on each person.”*

3.2. The AO, thereafter, discussed the evidence seized/impounded by the IW and concluded as under:

- *“ There is clear noting of the cash transactions by Kushal group against providing bogus LTCCG benefits to beneficiaries.*
- *Rate of commission and the amount received by Kushal group are clearly noted in these sheets.*
- *Detailed investment plan of the beneficiaries, details of their exit, price at which beneficiaries have to exit etc. are also systemically recorded in these sheets. Such record contains clear plan of taking undue benefits of bogus LTCCG provisions of the Act to willfully evade tax.*
- *Details of the beneficiaries along with details of their share transactions are also systemically recorded in these sheets.*
- *There is also clear noting of cash received by Kushal group and middle man persons.*
- *Some transactions are made through Angadia also.*
- *There are also noting of RTGS transactions against these cash transactions.*
- *These records are systematic, actual and contains corresponding cash transactions against bogus LTCCG benefits provided to the beneficiaries.”*

4. The AO, therefore, held that the aforesaid facts proved that the LTCCG benefits taken by the beneficiaries were bogus and a colorable device to introduce their unaccounted income in their books to evade tax payment. He observed that it was clear that this entire edifice through which the assessee claimed to have earned huge tax-exempt gains within a very short span of time fails the tests of both genuineness and human probabilities. He, therefore, held that the LTCCGs earned by the assessee were bogus. He added the entire sale consideration of Rs.1,59,11,628/-, on sale of shares of “Kushal Ltd.” as income of the assessee from unaccounted sources. He also added a sum of Rs.7,95,581/- as cash commission @ 5% of the bogus capital gain

amount. He also added a sum of Rs.1,32,415/- as interest income on account of mismatch to that extent in Form 26AS. The Ld. CIT(A) confirmed the addition so made by the AO.

5. Being aggrieved from the order of the Ld. CIT(A), the assessee has come in appeal before us.

6. We have heard the rival contentions of the Ld. Representatives of the parties and gone through the material available on record. The Ld. AR of the assessee has submitted that the assessee was a bonafide regular investor and was not indulged in any activity of rigging of the share price of the "Kushal Ltd." He has further submitted that had the assessee been indulged in bogus LTCG/STCG, the assessee would have sold the entire shareholding of "Kushal Ltd." He has submitted that the assessee was still holding 1380 shares of "Kushal Tradelink Ltd.". He has referred to page No.22 of the paper-book and submitted that the assessee had purchased the shares during the FYs 2015-16 and 2016-17 and had sold the shares from June-2017 to August-2018. He has referred to the share price fluctuation of the said scrip and submitted that the price of the shares were at peak at Rs.302.73 as on 20/01/2017, however, the assessee had sold the shares when the price was falling. Had the assessee been aware that the price of the said scrip has been rigged, he would have sold the shares when the price was at the peak. He has referred to page No.17 of the paper-book to submit that when the assessee purchased the said shares the company was showing good profits. He has further referred to page No.21 of the paper-book to submit that as on 31/03/2018, there were more than 7 crores individuals over holding the shares of "Kushal Tradelink Ltd." He, therefore, has submitted that the assessee was a bonafide investor in the shares of the scrip of "Kushal Ltd."

He has further submitted that there was nothing on the record that the assessee was indulged in any type of rigging of price of shares or had obtained any accommodation entry from any person involved in rigging of share price. The Ld. AR of the assessee has also submitted that the reopening of the assessment, in this case, was bad in law as the AO had reopened the assessment merely on the ground that the assessee had earned LTCGs/STCGs on account of sale of shares of Kushal Group without pointing out any assessee specific information that the assessee was involved in any bogus transactions as alleged. The Ld. AR relied upon the decision of Hon'ble Jurisdictional High Court of Gujarat in the case of Nimesh Maheshbhai Shah HUF vs. ITO in C/SCA 2036/2022 vide order dated 07/01/2025, wherein, the Hon'ble High Court, while adjudicating the issue of LTCGs relating to scrip of "Kushal Ltd." only, has held that merely relying on the information made available in the portal that the assessee had traded in scrip of "Kushal Ltd." was not an enough ground/reason for reopening the assessment u/s.147 of the Act. The relevant part of the order of the Hon'ble High Court is reproduced as under:

"39. Having considered rival submissions made by learned advocates for the respective parties and on perusal of the material on record as well as documents placed by the petitioner, it appears that the details of shares purchased and sold as per Contract nose, copy of lodger of broker ASE Capital Markets Ltd and copy of bank statement of assessee for purchase of share and sale of shares were produced by the petitioner and the purchase and sale of share have order number, order time, trade number and trade time mentioned in the contract. The assessee purchased 60,000 shares of Kushal Lid. The assessee has sold 1,05,465/- shares for Rs. 1,09,98,307 leaving the balance of 1,94,535 shares as closing investments as on 31.03.2016 which is disclosed in the balance sheet and part of demat statement. It, therefore, cannot be said that the petitioner has not disclosed fully and truly all material facts relevant for assessment.

40. It also appears from the reasons recorded that the no verification of the material on record is made by the respondent and there is no independent opinion that any

income has escaped assessment due to any failure on the part of the assessee in not disclosing fully and truly all material facts necessary for assessment.

41. *Moreover, from the reasons recorded it appears that the initiation of reopening proceedings are on the borrowed satisfaction as no independent opinion is formed and on bare perusal of the reasons recorded, it emerges that the Assessing Officer, considering the information received from the insight portal, has issued impugned notice forming reason to believe that the income has escaped the assessment on the presumption that the petitioner has been involved in creating the non-genuine profit which is already offered to tax in the return of income which is accepted in the regular course of assessment by passing the order under section 143(3) of the Act.*

42. *It is also pertinent to note that there is no basis to form reasonable belief for escapement of income except the information made available on the insight portal. The respondent-Assessing Officer has not considered the material on record to come to the conclusion that there is failure on the part of the petitioner to disclose truly and fully all material facts to have reason to believe for escapement of income. Therefore, on the basis of the information received from another agency on insight portal or from the SEBI report, there cannot be any reassessment proceedings unless the respondent, after considering such undefined information/material received from other sources, consider the same with the material on record in the case of the petitioner assessee and thereafter, is required to form independent opinion that income has escaped assessment. Without forming such opinion solely and mechanically relying upon the information received from the other sources, the respondent-Assessing Officer could not have assumed the jurisdiction to reopen the assessment based on such information. This Court in case of Raajrama Stockholdings Pvt Ltd. v. Assistant Commissioner of Income Tax Circle 1(1)(1) (judgment dated 25.11.2024 rendered in Special Civil Application No 3676 of 2022) in similar circumstances has quashed and set aside the impugned notice issued under section 148 of the Act and consequential order disposing off the objections raised by the petitioner.*

43. *Considering the facts the case, we are of the opinion that the respondent-Assessing Officer could not have assumed the jurisdiction merely and solely relying upon the information made available in the insight portal without forming any independent opinion on the basis of the material on record vis-a-vis the petitioner is concerned.*

44. *The petitions therefore, succeed and are accordingly allowed Impugned notice dated 31.03.2021 issued under section 148 of the Act and the consequential order dated 13.12.2021 dismissing the objections raised by the petitioner are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs."*

6.1. The Ld. AR of the assessee has also relied upon another decision of the Hon'ble High Court of Gujarat in the case of Deepakbhai Balkrishna Garg vs. ITO reported in [2025] 177 taxmann.com 712 (Gujarat), wherein, the Hon'ble Court in respect of capital gains earned on sale of shares of "Kushal Ltd." has held as under:-

"Where Assessing Officer issued reopening notice on ground that during search at premises of one 'K' Group, it was found that assessee had availed accommodation entries in form of trading in penny scrips of one K, since assessee had included income earned by purchase and sale of shares of K in its return, reopening notice issued merely based on information of price rigging in shares from K was to be set aside."

6.2. Similar view has also been taken by the Hon'ble High Court of Gujarat in the case of Ashishbhai Jashwantbhai Desai HUF vs. ITO reported in [2025] 171 taxmann.com 220 (Gujarat) relating to the issue of reopening of the assessment on the ground that the assessee had earned LTCGs on sale of shares of Kushal Group and it has been categorically held that in the absence of any other information to the AO that the assessee was indulged in any type of price rigging or any live-link of the information available on portal with the assessee, the reopening of the assessment was bad in law. It was held that the AO has recorded the reasons only on the basis of the borrowed satisfaction without there being any live-link between the information available on the Portal and the assessee, the AO cannot be said to have formed an independent satisfaction regarding the reasons recorded to re-open the assessment to come to the conclusion that there is escapement of income.

6.3. In the case in in hand also, the assessment has been reopened firstly on the ground that the assessee has made sales of shares of Kushal Group and there was no other information available to the AO that the assessee is

involved in rigging the price of the shares, etc. Moreover, the assessee had also demonstrated that he was a bonafide investor in the said scrip. Moreover, the AO from the IW report and further appreciation of evidences seized/impounded by the IW has concluded that the detailed investment plan of the beneficiaries, details of their exit, price at which beneficiaries have to exit etc. were systemically recorded in the seized sheets; details of the beneficiaries along with details of their share transactions were also systemically recorded in these sheets and that these records were systematic, actual and contained corresponding cash transactions against bogus LTCG benefits provided to the beneficiaries. However, the AO has not pointed out from the said record if the name of the assessee or his broker figured in the said record. There is no mention of any entry, name or amount relating to the assessee by the AO, either in the IW report or in any other evidence collected or available to the AO. When there was specific information available to the AO regarding the names, details and even of the amounts of bogus LTCG, etc. of the beneficiaries, who were allegedly indulged in bogus Long Term Capital Gains or Losses, then, in our view, the reopening of the assessment in the case of the assessee was not justified on the basis of general allegations when the name of the assessee did not figure in the said specific details.

6.4. Even otherwise also, the AO was not justified in making the addition on the entire sale consideration. The addition on account of alleged commission paid by the assessee without any evidence on the file is also not sustainable. Under the circumstances, not only the reopening of the assessment is bad in law but also the addition on account of bogus LTCGs/STCGs and alleged commission paid is not sustainable on merits also and the same is, accordingly, ordered to be deleted. Though, no arguments

have been advanced by the Ld. AR relating to the addition made by the AO of interest income of Rs.26,196/- on account of mismatch with Form 26AS, however, since we have held the reopening of the assessment as bad in law and, therefore, the consequential assessment order is not sustainable, hence all the additions made by the AO stand deleted.

7. In the result, the appeal of the assessee stands allowed.

Order pronounced in the Open Court on 01/04/2026.

Sd/-
(Annapurna Gupta)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

अहमदाबाद/Ahmedabad, दिनांक/Dated 01/04/2026

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad