

Shailesh S. Jhaveri, Ahmedabad vs The Dy.Cit, Cent. Circle-1(1), ... on 21 August, 2024

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER



I.T.A. Nos.14 to 16/Ahd/2024
(Assessment Years: 2011-12 & 2012-13)
Shailesh Subodhchandra Jhaveri, Vs. The Deputy Commissioner of
A/2, Manibhadra Flats, New Income Tax,
Girdhar Park Society, Ambawadi, Central Circle-1(1),
Ahmedabad-380015 Ahmedabad
[PAN No.ADTPJ0210B]
(Appellant) .. (Respondent)

Appellant by : Shri Deeapk Shah, A.R.
Respondent by: Shri Ashok Kumar Suthar, Sr. DR
Date of Hearing 13.08.2024
Date of Pronouncement 21.08.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These are appeals filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax-11, (in short "Ld. CIT(A)"), Ahmedabad vide orders dated 15.09.2023 for Assessment Years 2011-12 to 2012-13. Since common facts and issues for consideration are involved for all the assessees under consideration, all the appeals filed by the assessee are being taken up together.

Condonation of Delay:

2. At the outset, we observe that the appeals filed by the assessee are time barred for all the years and in respect of the same the assessee has filed an application for condonation of delay alongwith an Affidavit stating the reasons for delay in filing of the present appeals, alongwith request for ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

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condonation of the delay in filing of the present appeals. We observe that the delays in filing of the appeals are time barred by 46 days. The assessee has submitted similar Affidavits for the impugned years under consideration in which it has been submitted that the mother of the Authorized Representative was seriously ill. After prolonged illness she passed away in the last week of October, 2023. The A.R. was busy to perform the religious duties after the demise of his mother. Further, the

Counsel for the assessee submitted that the receipt of CIT(A)'s order and thereafter being busy in preparation of filing of time barring returns till 30.11.2023, the appeal against CIT(A)'s order went completely unnoticed. In view of the above and having perused the application duly supported by an Affidavit, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee.

A.Y. 2011-12:-

3. The assessee has taken the following grounds of appeal:

"[I] Addition on account of disallowance of loss in trading of shares of Chandni Textile Engineering Industries Ltd. Rs.1,52,20,891/-

1. That on facts, and in law, the learned CIT(A) has grievously erred in confirming the addition of Rs.1,52,20,891/- on account of disallowance of loss in trading of shares of Chandni Textile Engineering Industries Ltd. based on allegations/observations which are not only contrary to facts of the case but are irrelevant.

2. That on facts, and in law, the learned CIT(A) has grievously erred in not appreciating the fact that the trading in shares of Chandni Textile Engineering Industries Ltd. is genuine and has been carried out on screen based digital platform in normal course of his business, through BSE/NSE ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 3- and registered stock brokers, receipts/payments are through banking channels, shares are duly reflected in demat account, purchase and sale is at prevailing market rates and the STT and other Govt. levies have been duly paid apart from the fact that it is not the case of the AO that the said alleged bogus transactions have been carried out in connivance with BSE who has not treated the said transactions as bogus or sham.

3. That on facts, and in law, the learned CIT(A) has grievously erred in not appreciating that the adverse material and statements relied upon by the AO are neither completely furnished to the appellant nor an opportunity is given to cross-examine the deponents of such statements relied upon is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected.

4. The ld. CIT(A) has erred in failing to consider the fact that there is no averment of either SCS or his employees in their statements that SCS is providing share trading loss entry to clients by resorting to synchronized trading using the infrastructure of companies controlled by him as alleged/observed by the AO and CIT(A). That since the term synchronized trading having been used by Shirish Shah & Others with

reference to only capital gains and loss, both STCG/STCL and LTCG/LTCL as per their statements, their averments cannot be stretched/extended arbitrarily to mean that they are applicable to trading transactions also.

5. That on facts, and in law, the learned CIT(A) has grievously erred in not appreciating that the provisions of Section 132(4A) are applicable in case of Shri Shirish Shah and not the appellant and since the said burden has not been discharged by Shri Shirish Shah, the disallowance of loss requires to be cancelled/deleted.

In view of the above, the impugned addition of Rs. 1,52,20,891/- being loss incurred in trading of shares of Chandni Textile Engineering Industries Ltd. requires to be deleted.

The appellant craves leave to add, amend, alter modify or delete any of the above grounds and to submit additional grounds at the time of hearing of the appeal."

4. The brief facts of the case are that the assessee filed a return of income on 28.09.2011 declaring a total loss of Rs. (-)10,08,593. A notice u/s. 148 of the Income Tax Act was issued on 25.03.2015, requiring the assessee to file the return of income within 30 days. The assessee responded on 30.04.2015 stating that the original return should be treated as the return in response to the notice u/s. 148 of the Act. The assessee also requested the "reasons for ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 4- reopening" the case for A.Y. 2011-12. The reasons for reopening were provided to the assessee on 11.05.2015. The assessee objected to the reopening and the objection was disposed of on 14.09.2015. The assessee filed a writ petition before the Hon'ble High Court of Gujarat on 29.10.2015 challenging the reopening of the cases. The writ petition was dismissed by the Gujarat High Court on 14.06.2016.

5. Thereafter, notice u/s. 142(1) was issued on 01.08.2016, and a show cause notice on 20.09.2016 regarding the proposed disallowance of Rs.1,99,01,199/- on trading in Chandni Textiles Engineering Industries Ltd. shares. The assessee filed replies on 29.09.2016 and 04.10.2016. The Ld. Assessing Officer noted that a search and survey action was conducted at the residence and offices of Shri Shirish Chandrakant Shah (SCS) on 09.04.2013. It was found that SCS provided accommodation entries for various financial transactions, including share trading losses and gains. Statements from key individuals (e.g., Damodar Attal) confirmed SCS's involvement in managing these activities through dummy companies and synchronized trading. During the course of search, it was found that SCS was engaged in providing accommodation entries of share capital, share premium, share application money, unsecured loans, Long Term Capital Gains and Short Term Capital Gains wherein cash is received by him from various clients and against this cash he provides accommodation entries. For providing these accommodation entries, SCS has created an infrastructure of 212 companies which were used for layering of funds and purchase and sale of shares, While providing such accumulation entries, the companies controlled by him/ intermediaries like Rajesh Jhaveri & his group concerns purchase/sell shares of these scripts as part

of synchronized trading and incur share trading loss/share trading profit, in ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 5- such process. The Managing Director/Directors of Prraneta Industries Ltd. also categorically stated that the affairs of Prraneta Industries Ltd. are managed & controlled by Shirish Chandrakant Shah and he is only a dummy director. He further provided a list of 143 companies in which share trading is being done on instructions of SCS. Accordingly, in the light of these facts, the Ld. Assessing Officer observed that the assessee was involved in transactions with Chandni Textiles Engineering Industries Ltd., which was a dummy company resulting in a declared loss of Rs.1,99,01,199/-. The trading in these shares was found to be managed/manipulated by SCS, rendering them non-genuine. The assessee contended that all transactions were through banking channels, reflected in Demat accounts, and conducted at prevailing market rates. The assessee requested evidence and cross-examination of SCS, copies of statements, and detailed materials relied upon for such allegations. The assessee sought for evidence supporting the allegation of price manipulation cross-examination of Shirish C. Shah, copies of statements recorded u/s 132(4)/131, Materials/evidences seized and referred to in the reasons recorded and details of shares and payouts alleged to be noted against the assessee's name during the course of assessment proceedings.

6. The assessee's contentions were considered but rejected by the Ld. Assessing Officer. The Ld. Assessing Officer held that transactions in Chandni Textile Engineering Industries Ltd. shares though were at prevailing rates and through banking channels, however, evidence from the search conducted on Shirish Chandrakant Shah showed that he manipulated share prices and volumes via synchronized trading to provide Long Term Capital Gains (LTCG) entries to clients. These trades were linked to groups like Amrapali and Vaswani, with Rajesh Jhaveri acting as an intermediary. The assessee's ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 6- request for cross-examination of Shah and Damodar Attal was denied as the decision was based on evidence, not just their statements. The Ld. Assessing Officer held that the trades were not genuine business transactions, but a part of accommodation entries, thus the loss of Rs.1,52,20,891/- on Chandni shares was disallowed and added to the total income. The Ld. Assessing Officer made the following observations while passing the assessment order:

"5.5 The contentions of the assessee have been duly considered, but the same is not acceptable. It is not disputed that the transactions in the shares of Chandni Textile Engineering Industries Ltd. were purchased at the prevailing rates of the day and the payments were made/received through banking channels. At the same time, from the various evidences seized during the course of search in the Shirisih Chandrakant Shah and from the various statements recorded of Shri Shirish C Shah and his key employees mentioned above, it is proved beyond doubt that the price and volume of the scripts were managed and controlled by Shri Shirish Chandrakant Shah through synchronized trading. The evidences found during the course of search clearly established that Shri Shirish Chandrakant Shah had used the platform of BOLT to jack up the price of shares by resorting to synchronized trading to provide

accommodation entry of LTCG to his clients against receipt of cash. It is pertinent to mention here that the members of Amrapali Group and Vaswani Group of Ahmedabad were provided accommodation entry of LTCG on the shares of Prraneta Industries Ltd. SCS has also provided LTCG on shares of Chandni, to the members of Safal Group of Ahmedabad. These LTCG entries were provided by SCS through Rajesh Jhaveri as an intermediary. It is also seen from the trade data of the script that the name of members/entities of Rajesh Jhaveri Group appears as counterparty to the trades carried out by members of these group. While providing such LTCG entries, the companies controlled by him/intermediaries like Rajesh Jhaveri & his group concerns purchase/sell shares of these scripts as part of synchronized trading and incur share trading loss/share trading profit, in such process. The main person of the Group Shri Rajesh N Jhaveri and other entities/family members and the assessee are mainly engaged in the business of trading share, securities, derivatives etc. over a period of time and are well experienced in the field. Therefore, it is not expected from such a prudent investor/traders like assessee group to purchase the shares of these paper companies in huge quantity and incur losses. Therefore, the purchase and sale of shares of above two scripts were clearly made as a part of accommodation entry business of SCS.

5.6 As regards the assessee's request for providing cross-examination of SCS and Shri Damodar Attal, it is pertinent to mention that the issue involved in this case is not decided merely only the basis of statements given by these persons. The issue involved is being decided mainly on the basis of various evidences found during the course of search on SCS to the effect that the trading in the shares of "Chandni"

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- 7- during the relevant period is not genuine, but manipulated through synchronized trading. Cross examination is required only where the addition is made merely on the basis of statement of a third person. In this case, the statement is only of corroboratory to the evidences found.

5.7 In view of the facts discussed above, it is clearly established that the trading in the shares Chandni Textile Engineering Industries Ltd. was not carried out in the course of normal business transaction, but has been done with a view to book losses or to help Shirish C Shah to keep the scrip active through synchronized trading. Therefore, the loss incurred on such activities cannot be allowed as business loss. From the details filed during the course of assessment proceedings, it is seen that the assessee incurred losses/earned profit on trading of these two scripts as under.

Chandni Textile Engineering Industries Ltd. [Loss] Rs. 1,52,20,891/-

5.8 The findings of the search on Shri Shirish Chandrakant Shah clearly established that Shri Rajesh N Jhaveri is one of the key associate of Shri Shirish C Shah and he had introduced various clients of accommodation entries to Shri Shirish Shah. Shri Rajesh Jhaveri along with his associates

(including assessee) has also helped Shri Shirish C Shah in keeping the scrip active on the bourses and in synchronized trading, by trading on the script. This fact gets strengthened from the fact that the counterparties to the trades of assessee in the scrip of Prraneta Industries Ltd. were mainly the entities controlled and managed by Shri Shirish C Shah or his LTCG beneficiaries. This is not a mere coincidence. In view of the facts discussed above, it is clearly established that the trading in the shares of Chandni Textile Engineering Industries Ltd. was not carried out in the course of normal business transaction, but has been done as part of synchronized trading. The loss of Rs. 1,52,20,891/- incurred on trading in shares of Chandni Textile Engineering Industries Ltd. cannot be allowed as business loss and the same is hereby disallowed and added to the total income. Penalty proceedings u/s 271(1)(c) of the Act are separately initiated concealment of income.

[Addition: Rs. 1,52,20,891/-]"

7. In appeal, Ld. CIT(Appeals) confirmed the additions made by the Ld. Assessing Officer. Ld. CIT(Appeals) observed that during search and survey proceedings, evidence showed that 212 companies were managed by Shirish Shah from his office, which was not their listed addresses. Evidence included signed/unsigned cheque books, company stamps, bank statements, and statements from SCS and his associates. A survey at SCS's office found numerous cheque books, which his employee Chandan Kumar Singh had confirmed were managed by SCS, Chandan Kumar Singh also provided a list ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 8- of the companies and their bank accounts. Cheque books and seals of these companies were found and seized. Net banking details were discovered in a diary, and Chandan Singh confirmed that SCS controlled these transactions. Bank accounts of these companies were primarily held with banks in Mumbai's Fort/Kalbadevi area, despite the companies being listed as independent entities with addresses across the country. The analysis revealed that the bank accounts were operated by SCS through dummy directors using signed cheque books or internet banking. Given this evidence, the claim that funds received through account payee cheques were legitimate was rejected by Ld. CIT(Appeals), as these companies were found to be bogus and used for accommodation entries. Additionally, the registered offices of these companies were merely professional arrangements for correspondence. The statement by Damodar Attal, a key employee of Shirish Chandrakant Shah, recorded during a survey on April 9, 2013, revealed that he handled trading on BOLT under SCS's instructions. Attal stated that SCS managed the volume and price of shares through synchronized trading, providing bogus accommodation entries for capital gains and trading profits/losses. Evidence from the search confirmed that Shah used BOLT to manipulate share prices and provide these entries to clients, with Rajesh Jhaveri acting as an intermediary. The trades were carried out by entities controlled by SCS, and experienced traders like Rajesh Jhaveri were involved. The purchase and sale of shares in Chandni Textile Engineering Industries Ltd. was held by CIT(A) to be part of SCS's accommodation entry business. The CIT(A) also confirmed that

Rajesh Jhaveri was a key associate of SCS, introducing clients for accommodation entries and helping keep the scrip active through synchronized trading. The trades involving the assessee in Chandni Textile Engineering Industries Ltd. were mainly with entities controlled by Shah. Given the detailed findings, the disallowance by the ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 9- Assessing Officer (AO) was upheld, and the appeal of the assessee was dismissed. Ld. CIT(Appeals) made the following observations, while dismissing the appeal of the assessee on this issue:

"31.3 In this regard, it is stated that keeping in view of the detailed findings given in assessment order and para 6 to 24 of this order, it is observed that Shri Damodar Attal (key employee of Shri Shirish Chandrakant Shah) in his statement recorded u/s.133A on 09.04.2013 during the course of survey at Bokadia House, in reply to question no. 6 had stated that he handled trading in shares on BOLT from this office at the instructions of Shri Shirish Chandrakant Shah. Shri Damodar Attal also stated in reply to question no. 12 that Shri Shirish C. Shah managed volume, price of the scrips of the listed companies managed by him through synchronized trading and he monitored the volume of the trades executed in the shares of listed companies and on the instructions of Shri Shirish Shah, he did trading in the specified scrips managed by Shri Shirish C. Shah. Shri Damodar Attal further stated in reply to question no. 13 that synchronized trading was indulged in by Shri Shirish C. Shah so as to keep the scrips alive and provide accommodation entries of bogus long-term, short-term capital gains, trading profit/loss to the clients. The AO had also made statement of Shri Damodar Attal made part of the assessment order as annexure-1. The evidence found during the search clearly established that Shri Shirish C. Shah had used the platform of BOLT to jack up the price of shares by resorting to synchronized trading to provide accommodation entries to his clients against receipt of cash. Shri Shirish C. Shah had provided accommodation entries on shares of Chandni Textile Engineering to members through Rajesh Jhaveri as an intermediary. It was also seen from the trade data of scrips that the name of the members/entities of Rajesh Jhaveri Group appears as counterparty to the trades carried out by members of these group. While providing such accommodation entries, the company controlled by Shri Shirish C. Shah/intermediaries like Rajesh Jhaveri & his group concerns purchase/sell shares of these scrips as part of synchronized trading and incur share trading loss/share trading profit, in such process. The main person of the group Shri Rajesh N. Jhaveri and other entities/family members were mainly engaged in the business of trading share, securities, derivatives etc. over a period of time and were well experienced in the field. Therefore, it is not expected from such a prudent investor/traders like appellant to purchase the shares of these paper companies in huge quantity and incur loss. Thus, it can be concluded that the purchase and sale of shares of above scrip namely M/s. Chandni Textile Engineering Industries Ltd. was clearly made as a part of accommodation entry business of Shri Shirish C. Shah. 31.4

It is further observed from the assessment order that the findings of the search on Shri Shirish C. Shah clearly established that Shri Rajesh N. Jhaveri was one of the key associates of Shri Shirish C. Shah and he had introduced various clients of accommodation entries to Shri Shirish C. Shah. Shri Rajesh N. Jhaveri along with his associates (including appellant) has also helped Shri Shirish C. Shah in keeping the scrip active on the bourses and in synchronized trading, by trading on the script. These facts got strengthened from the fact that the counterparties to the trades of the appellant in the scrip of M/s. Chandni Textile Engineering Industries ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 10- Ltd. were mainly the entities controlled and managed by Shri Shirish C. Shah. Since, the Scrip M/s. Chandni Textile Engineering Industries Ltd. was managed and controlled by Shri Shirish Shah and also in view of detailed discussion made in para

6 to 24 of this order, the action of the AO in making disallowance is upheld and hence confirmed. Thus, the ground of appeal no. 1 is dismissed."

8. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). The counsel for the assessee raised several contentions before us. Firstly, the counsel for the assessee submitted that the entity under consideration, Chandni textiles has not been held to be bogus/sham entity in any of the Reports passed by SEBI. Therefore, SEBI has not passed any Report holding Chandni textiles as bogus company. Secondly, the counsel for the assessee submitted that in the survey proceedings, the name of the assessee has not been specifically mentioned and there is no specific allegation by Shirish Shah that he had provided bogus accommodation losses to the assessee. Thirdly, the counsel for the assessee submitted that all the entries of sale of the aforesaid entity have been done through banking channels, have been duly recorded in books of accounts of the assessee and due compliance has been made by way of contract notes etc. at the time of entering into such a transaction of sale of shares of Chandni textiles. Fourthly, the counsel for the assessee submitted that the reason why the shares were sold by the assessee was that the prices of the shares were falling and therefore, had the assessee held the shares of Chandni textiles any further, the assessee would have incurred further losses and, therefore, it was with a view to minimise these losses that the assessee had sold shares of Chandni textiles at a loss. Finally, the counsel for the assessee submitted that the case of the assessee is directly covered in favour of the assessee by the decision of Ahmedabad Tribunal in the case of Jhaveri Trading and Investment Private Limited in ITA number 399 and 400/Ahd/2023 vide order dated 13-06-2024, in which this issue has been ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 11- decided in favour of the assessee, wherein sale of shares of Chandni textiles was involved.

9. In response, D.R. relied upon the observations made by the assessing officer and Ld. CIT(Appeals) in their respective orders. The D.R. submitted that both the assessing officer in Ld. CIT(Appeals) have highlighted in detail the modus operandi in which an organized modus operation was taking place and SCS was systematically providing accommodation entries in the form of bogus

profits/losses in respect of penny stock companies to various persons. SCS in a statement before the tax authorities had categorically admitted to providing accommodation entries to various persons. The assessee was one of the beneficiaries of this operation and the assessee had taken bogus accommodation entries not with respect to one but several scrips including Chandni textiles, Prraneta industries and Gujarat Meditech Ltd. which prove that the assessee was clearly involved and was a beneficiary of such accommodation losses.

10. We have heard the rival contentions and perused the material on record. On going to the facts of the instant case, we have made several observations. Firstly, we are of the considered view that the reliance placed by the assessee on the case of Jhaveri Trading and Investment Private Limited in ITA number 399 and 400/Ahd/2023 vide order dated 13-06-2024 is not of any assistance to the assessee, for the simple reason that no categorical finding has been given by the Tribunal as to why and on what basis it can be concluded that Chandni textiles is not a bogus/penny stock company. The Tribunal in the aforesaid decision has not given any independent finding with regards to bogus accommodation entry obtained with respect to M/s. Chandni textiles. Further, in absence of any detailed discussion as to why the accommodation losses in ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 12- respect of Chandni textiles was allowed in the case of Jhaveri Trading (in which the Tribunal relied on the observations made for assessment year 2012- 13 only), we are of the considered view that such case would not have any bearing to the facts of the instant case, especially in light of the fact that no finding has been given as to why Chandni textiles is not a penny stock company. Secondly, regarding the issue of cross examination having not been afforded to the assessee of SCS, Ld. CIT(Appeals) in his order has specifically observed that SCS had been earlier arrested on account of these fraudulent transaction (at page 150, 152) and further, Ld. CIT(Appeals) also observed that Gujarat High Court in the case of Amprapali Fincap 73 Taxman.com, 97 held that when the settlement commission, besides relying on statement of SCS and other witnesses, had also taken into consideration the facts available on record, there was no scope for interference and the order of Settlement Commission rejecting the contention of the assessee for cross examination of SCS was upheld by the Gujarat High Court. Accordingly, looking into the instant facts, we are of the considered view that the tax authorities have unearthed an organised operation by SCS where has been providing bogus accommodation entries to various parties for a commission. The assessing officer observed that the assessee, for the impugned years under consideration before us, have systematically obtained losses in respect of three entities viz. Chandni textiles, Prraneta Industries and Gujarat Meditech Ltd. Accordingly, we observe that this is not a one-off case where the assessee has inadvertently incurred losses on sale of a shell entity, having no business whatsoever. For the impugned years under consideration, the assessee, being in this line of business of stock trading, has systematically incurred losses on sale of three companies, which have no financial standing to set off profits on sale of shares of the entities. The detailed modus operandi unearthed by the tax authorities clearly reveal ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 13- that SCS has been engaged in systematically providing bogus accommodation entries to various clients, through a systematic operation, involving various persons. Therefore, in the light of these

facts, the totality of circumstances need to be looked into, before coming to the conclusion whether it can be inferred that the assessee has incurred bogus losses, through the method of obtaining bogus accommodation entries. Though, admittedly, the entire transactions were carried out through banking channels, Chandni textiles has not been declared to be a shell entity/penny stock company by SEBI, the name of assessee has also not been pointed out specifically by SCS in any of the statements, however, there are other noteworthy facts and the totality of circumstances which need to be looked into before coming into a conclusive decision on this. Firstly, the assessee is engaged in the business of purchase and sale of shares as a professional stock broker and is not expected that he would be making systematic losses in three penny stock companies, having no substance whatsoever. An experienced share broker, who has dealt with several companies, is expected to have knowledge regarding the financials of the companies in which the assessee has traded. Secondly, the assessee has not incurred loss in one, but three penny stock companies for the impugned years under consideration, having no financial substance. Further, no concrete reason has been given by the assessee as to why the assessee was forced to sell shares within a short duration, at a time when the price of these companies was falling. The honourable Supreme Court has also confirmed that Prraneta is a penny stock company and has also taken a specific note of the systematic operation is being conducted by SCS, to provide bogus accommodation losses to various clients. In the "Reason to Believe" dated 11.05.2015, the assessing officer observed that on April 9, 2013, a search and survey action was conducted at the residence and offices of Shri Shirish Chandrakant Shah (SCS) ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 14- and his key employees and associates. It was found that SCS was engaged in providing accommodation entries for various financial transactions, including share capital, share premium, share application money, unsecured loans, and capital gains, by receiving cash from clients and providing these entries in return. Records of these transactions were maintained in Excel sheets under the names of intermediaries, with Shri Rajesh Jhaveri being the primary intermediary. During the survey at SCS's office in Dwarka Ashish Building, an Excel file named "n navkar bips 30.10.12" was found, containing records of transactions, including those involving the purchase and sale of shares in Chandni Textiles Engineering Industries Limited. SCS facilitated the conversion of unaccounted cash into exempt Long Term Capital Gains (LTCG) through synchronized trading, using bank and demat accounts he controlled. Further surveys revealed that SCS managed the volume and price of listed companies' shares through synchronized trading. Various "sauda sheets" were found, detailing the shares bought and sold by SCS, including those of Chandni Textile Engineering Industries Ltd. These transactions were cross-referenced with data from the Bombay Stock Exchange (BSE) and showed that the assessee received Rs. 2,00,43,500/- from selling 250,000 shares of Chandni Textile Engineering Industries Ltd., against the payment of cash. Consequently, it was believed that income amounting to Rs. 2,00,43,500/- had escaped assessment due to the assessee's failure to disclose all necessary facts. The relevant extracts of the "Reason to Believe" is reproduced for ready reference:

"Reasons for reopening the Assessment Shailesh S Jhaveri (ADTPJ0210B) - A.Y. 2011-12 A search and survey action was carried out at the residence and offices of Shri Shirish Chandrakant Shah (hereinafter referred to SCS) and at the residence of

his key employees and associates on 09.04.2013 and subsequent days. During the course ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 15- of search, it was found that SCS is engaged in providing accommodation entries of share capital, share premium, share application money, unsecured loans, Long Term Capital Gains, Short term capital gain wherein cash is received by him from various clients and against this cash he issues accommodation entries.

The records of providing accommodation entries are maintained by SCS in various excel sheets maintained in the name of intermediaries who have introduced clients to SCS. Perusal of these sheets and the statements of SCS and his employees establishes that the main intermediary through whom clients availed accommodation entries from SCS is Shri Rajesh Jhaveri of Ahmedabad.

During the course of survey conducted at the office of SCS situated at Dwarka Ashish Building "Sheet1" in MS Excel file "navkar hips 30.10.12" (relate of Rajesh Jhaveri) was impounded at the path F:\pen drive back up\Removable Disk\Navkar. Amongst other transactions, transactions related to purchase and sale of shares of Chandni Textile's Engineering Industries Limited were also found to be recorded in this sheet. As mentioned above, Shirish Chandrakant Shah is facilitating the conversion of unaccounted funds received in cash from the beneficiary clients into exempt Long Term Capital Gains (LTCG), in the shares of various listed companies managed and controlled. This is done by him by resorting to synchronized trading using the infrastructure of companies and some individuals whose Bank and De-mat accounts are controlled by him. It was found that he has provided accommodation entries in respect of shares of Chandni Textiles Engineering Industries Limited.

During the course of survey under section 133A of the Act at the office premises of Shirish Chandrakant Shah situated at 229, First Floor, Bokadia House, Princess Street, Mumbai on 09.04.2013, it was also established that Shirish Chandrakant Shah manages volume, price of the scrips of the listed companies managed by him through synchronized trading.

Further, during the course of survey at Dwarka Ashish Building various sauda sheets were impounded in the folder "Sauda sheet apr-11 onward", from the impounded hard disk of the computer of Naresh inventoried as Annexure A-31. In this file, details of shares purchased and sold by Shirish Chandrakant Shah in the name of various companies managed and controlled by him were recorded. Amongst transactions of purchase and sale of shares of listed companies managed and controlled by him purchase and sale transactions with regard to shares of Chandni Textile Engineering Industries Ltd. have also been found to be recorded. In this sauda sheet the transactions with regard to purchase and sale of shares of Chandni along with the shares of listed companies used for providing "LTCG" entries have also been

recorded. The trade date of Chandni, a sreceived from BSE, has been correlated with the data recorded in the "n Navkar bips 30.10.12.xls" sheet.

From the entries recorded in "n Navkar bips 30.10.12.xls" it is seen that the assessee has received pay out of Rs. 2,00,43,500/- on sale of 250000 shares of Chandni Textile Engineering Industries Ltd. As recorded in the "n Navkar bips 30.10.12.xls"

the payout has been received against payment of cash.

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- 16- In view of the above facts, I have no reason to believe that income amounting to Rs.2,00,43,500/- chargeable to tax has escaped assessment within the meaning of section 147 of the Act by reason of the failure of the assessee to disclose fully and truly all material facts necessary for assessment."

11. In the case of Sumati Dayal vs. Ld. CIT(A) 214 ITR 801 (SC), the Hon'ble Supreme Court has stressed upon the surrounding circumstances and application of test of human probabilities in the given set of facts in the following words:-

"The transaction about purchase of winning ticket took place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase had to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record, an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence."

12. On the issue of circumstantial evidence and in the matters related to the discharge of 'onus of proof' and the relevance of surrounding circumstances of the case, the Hon'ble Supreme Court in the case of CIT v. Durga Prasad More [1972] 82 ITR 540, have observed as under:

"...that though an appellant's statement must be considered real until it was shown that there were reasons to believe that the appellant was not the real, in a case where the party relied on self-sewing recitals in the documents, it was for the party to establish the transfer of those recitals, the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals. Science has not yet invented any instrument to test the reliability of the evidence placed before a

Court or Tribunal. Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probability. Human minds may differ as to the reliability of piece of evidence, but, in the sphere, the decision of the final fact finding authority is made conclusive by law."

ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 17-

13. In the case of Satish Kishore v ITO 110 taxmann.com 307 (Delhi - Trib.), the ITAT held that where long-term capital gain on sale of shares by assessee was an arranged affair to convert its own unaccounted money through accommodation entries and assessee failed to prove genuineness of transaction, exemption claimed under section 10(38) on sale of shares had rightly been disallowed. The ITAT made the following relevant observations, while dismissing the appeal of the assessee on this issue:

Thus, the contention of the assessee that the transaction leading to long-term capital gains are supported by documents of sale and purchase, bank statement etc., cannot be accepted keeping in view of the facts and circumstances of the case brought on record by the Assessing Officer after proper examination of the material facts and taking into account the corroborating evidences. The onus was on the assessee to prove the transaction leading to claim of long-term capital gain was a genuine transaction. The assessee failed to justify manifold increase in the prices of the shares despite weak financials of the companies. Initial investment in the company of unknown credential and subsequent jump in the share prices of such a company, cannot be an accident or windfall but could be possible, because of manipulation in the share prices in a preplanned manner, as brought on record by the Assessing Officer. In view of the failure on the part of the assessee to discharge his burden of proof and explain nature and source of the transaction and huge profit in all shares traded by the assessee against the human probability, it is opined that the Commissioner (Appeals) has rightly confirmed the addition in dispute, which does not require any interference. This action of the Commissioner (Appeals) on the issue in dispute is upheld and the grounds raised by the assessee in the appeal are dismissed. Accordingly, both the appeals of assessee are dismissed.

14. In the case of Sanat Kumar v. ACIT 122 taxmann.com 75 (Delhi - Trib.), the ITAT held that where assessee purchased and sold shares of a company which was engaged in providing bogus entries in form of LTCG and STCG and assessee failed to prove genuineness of transaction, alleged LTCG earned by assessee on such shares was rightly brought to tax under section 68 of the Act.

15. In the case of Sanjay Bimalchand Jain⁸⁹ taxmann.com 196 (Bombay), the High Court held that where assessee had purchased shares of ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 18- penny stocks companies at lesser amount and within a year sold such shares at much higher amount and assessee had not tendered cogent evidence to explain as to how shares in an unknown company had jumped to such higher amount in no time and also failed to provide details of person who purchased said shares, said transactions were attempt to hedge undisclosed income as Long term Capital gain. The High Court made the following observations:

The authorities found that the assessee had made investment in two unknown companies of which the details were not known to her, transaction of sale and purchase of shares of two penny stock companies, the merger of the two companies with another company, viz KL did not qualify an investment and rather it was an adventure in the nature of trade. It was held by all the authorities that the motive of the investment made by the assessee was not to derive income but to earn profit. Both the brokers, i.e. the broker through whom the assessee purchased the shares and the broker through whom the shares were sold, were located at Kolkata and the assessee did not have an inkling as to what was going on in the whole transaction except paying a sum of certain amount in cash for the purchase of shares of the two penny stock companies. The authorities found that though the shares were purchased by the assessee at much lesser amount from the two companies in the year 2003, the assessee was able to sell the shares just within a years time at much higher amount. The broker through whom the shares were sold by the assessee did not respond to the Assessing Officer's letter seeking the names, addresses and the bank accounts of the persons that had purchased the shares sold by the assessee. The authorities have recorded a clear finding of fact that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing, the authorities held that the assessee had not tendered cogent evidence to explain as to how the shares in an unknown company worth such less value had jumped to much higher amount in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no economic or financial basis as to how a share of a little known company would jump from lesser amount to higher amount. The findings recorded by the authorities are pure findings of facts based on a proper appreciation of the material on record. The findings do not give rise to any substantial question of law.

16. Accordingly, looking into the facts of the assessee's case, the detailed the modus operandi unearthed by the tax authorities, there is no explanation as to why the assessee during the impugned years under consideration invested in shares of three companies having no financial standing, the assessee has not furnished any reason as to why under what circumstances the assessee ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 19- deliberately sold shares of these companies and incurred losses on the stock exchange, the assessee is a professional stock broker and is deemed to have knowledge about financials of a company and assessee involved issues in not one but three penny stock companies all point to the fact that the assessee has deliberately and systematically booked bogus losses, during the impugned year under consideration.

17. So far as assessment year 2011-12 is concerned, Ld. CIT(Appeals) has made detailed observations in the appellate order as to how Prraneta Industries is a bogus/sham entity. For the impugned assessment year, the counsel for the assessee placed reliance on the observations made by the Ahmedabad Tribunal in the case of Vicky Rakesh Jhaveri in ITA numbers 426 to 428/Ahd/2023, and it was submitted before us that in this case relief has been allowed to the assessee, while dealing in the shares of Prraneta Industries. The counsel for the assessee submitted that Vicky Rakesh Jhaveri is related to Rakesh Jhaveri, who has been identified as the kingpin looking into the operations of SCS. However, in this respect we wish to point out that the Ld. CIT(Appeals) has observed that in the case of Vicky Rajesh Jhaveri⁷⁶ taxmann.com 96 (Gujarat), the High Court has held that made the following observations regarding the impugned the script in question Prraneta industries:

If one peruses the reasons recorded by the Assessing Officer and which are reproduced herein above, the first part gives details of the manner in which Shirish Chandrakant Shah had created a web of number of sham companies, through which, he would provide range of accommodation entries including long term capital gain through sale of shares and retain commission for himself in the process. In this part, we also notice that Rajesh Jhaveri was one of the important players in this process devised by Shirish Chandrakant Shah. There was prima-facie material suggesting Prraneta Industries Limited was one such company utilized by Shirish Chandrakant Shah for such purpose. These details had come on record through statements of various persons recorded by the Revenue authorities through search and survey operations. For example, during the search of Prraneta Industries Limited, the manager of the company - Radheshyam Sharma had stated that there ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 20- was no business activity in the company and the entire affairs including preparation and maintenance of books of accounts was being done by Shirish Chandrakant Shah. Shri Omprakash Anandilal Khandelwal, the Managing Director of the company had also stated that the company is engaged in providing accommodation entires and no actual business activity is being undertaken. The affairs of the company being managed and controlled by Shirish Chandrakant Shah and the bank accounts of the company are being used to provide accommodation entries. The two more directors of company viz. Jyoti Dhires Munver and Jils Raichand Madan had also filed declarations stating that they were dummy directors.

18. Accordingly, in these facts, the Gujarat court upheld the validity of issuance of notice under section 147 of the Act, by holding that the assessing officer had reasonable belief on the basis of the aforesaid facts that the income had escaped assessment. This decision of Gujarat High Court was affirmed by the Hon'ble Supreme Court in 76 taxmann.com 97 (SC).

19. Accordingly, in our considered view, Prraneta industries is a sham/bogus company and therefore, in the light of the observations made by the Hon'ble Gujarat High Court in the case of

Vicky Rajesh Jhaveri⁷⁶ taxmann.com 96 (Gujarat), which later came to be confirmed by the Hon'ble Supreme Court. The CIT in his order has also made the following relevant observations with regard to trading in shares of Prraneta industries:

13.11 The facts stated by them in their statements are discussed hereunder in detail: -

13.11.1A search under section 132 of the Act was also conducted in the case of M/s.

Praneta Industries Limited and Shri Omprakash Anandilal Khandelwal, Managing Director of M/s. Prraneta industries Limited along with-search in the case of Shirish Chandrakant Shah on 09.04.2013. During the course of search statement of Shri Radheshyam Sharma, manager of the company was recorded on 09.04.2013. In his statement he has stated that there is no business activity in the company and the entire affairs of the company including the preparation and maintenance of the books of accounts of the company is being done by Shirish Chandrakant Shah.

13.11.2 Further, statement of Shri Omprakash Anandilal Khandelwal, Managing Director of M/s. Praneta Industries Limited (now known as Aadhar Ventures India Limited) was recorded under section 132(4) of the act on 30.05.2013 and 31.05.2013. In his statement he has specific statedthat M/s. Praneta Industries ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 21- Limited though a company listed with BSE is engaged in providing accommodation entries of unsecured loans and share capital since 1996. He has further stated that there is no actual business activity in this company and the entire turnover is mere paper turnover. He has further stated that since 2008 the entire affairs of the company are being managed and controlled by Shirish Chandrakant Shah and the bank accounts of the company are being used by him for providing accommodation entries. He hasalso stated the shares of the company are being controlled by Shirish Shah and the same are being used by him so as to provide long term capital gains entries by resorting to synchronized trading.

20. Accordingly, in light of the above facts and observations, it is evident that Prraneta industries was shell entity (has also confirmed by the Gujarat High Court in its observations referred to above), the assessee has not given any justifiable reason as to why the assessee company invested in shares of three bogus/shell entities during the impugned year under consideration.

21. The Calcutta High Court in the case of the PCIT v. Swati Bajaj 2022] 139 taxmann.com 352 (Calcutta)[14-06-2022]held that the genuinity of unreasonable rise in the price of the shares of penny stock over a short period needs to be established, and the onus is on the assessee to do so as mandated in Section 68 of the Act. That onus is not discharged by merely citing the opinions of an expert who issued a buy call on the penny stocks. Nor is it discharged by the assessee being a regular investor who has also earned profits from blue-chip stocks when the claim for long-term capital gains is limited to the profits from the sale of penny stocks which saw huge unreasonable price rises in just over a year. While passing the order, the High Court observed as under:

However, the assessee had an opportunity to prove that there was no manipulation at the other end and that whatever gains the assessee had reaped were not tainted. This has not been proved or established before us. Therefore, the assessing officers were well justified in concluding that the explanation offered by the assessee was not to their satisfaction. Thus, the assessee having not proved the genuineness of the claim, ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 22- the creditworthiness of the companies in which they had invested and the identity of the persons to whom the transactions were done, have to fail necessarily.

- In such a factual scenario, the Assessing Officers, as well as the CIT(A), have adopted an inferential process which is a process which would be followed by a reasonable and prudent person. The Assessing Officers and the CIT(A) had culled out proximate facts in each of the cases, took into consideration the surrounding circumstances which came to light after the 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 companies when the general market trend was admittedly recessive and thereafter arrived at a conclusion which in our opinion is a proper conclusion and in the absence of any satisfactory explanation by the assessee, the Assessing Officers were bound to make addition under section 68 of the Act.

22. In the case of Smt. M.K. Rajeshwari v. ITO [2018] 99 taxmann.com 339 (Bangalore - Trib.), the Tribunal held that where assessee claimed exemption under section 10(38) in respect of capital gain arising from sale of shares, in view of fact that financial worth of said company was meagre and, moreover, there was abnormal rise in price of shares, it could be concluded that assessee introduced her own unaccounted money in garb of long term capital gain and, thus, claim raised by her was to be rejected.

23. The Bombay High Court in the case of Sanjay Bimalchand Jain v.

PCIT [2018] 89 taxmann.com 196 (Bombay) held that where assessee had purchased shares of penny stocks companies at lesser amount and within a year sold such shares at much higher amount and assessee had not tendered cogent evidence to explain as to how shares in an unknown company had jumped to such higher amount in no time and also failed to provide details of person who purchased said shares, said transactions were attempt to hedge undisclosed income as Long term Capital gain.

24. In the case of Satish Kishore v. ITO (2019) 110 Taxman.com 307 (Delhi Tribunal), the assessee, an individual, filed return of income claiming ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 23- long-term capital gain on sale of shares as exempt under section 10(38). The Assessing Officer held amount so received as unexplained cash credit under section 68 and made addition on ground that assessee failed to discharge burden of proof and explain nature and source of transaction and huge profit in all shares traded by assessee against human probability. AO held that it was found that assessee failed to justify manifold increase in prices of shares despite weak financials of companies. Further, investigation carried out by Department had brought facts on record that share prices had been manipulated artificially, purchased by a set of accommodation entry provider companies controlled by cartel of brokers, entry operator, etc. Moreover, fact that prices of all shares purchased by assessee went up, that too without any corresponding profit or prospects of company, and not even in single case price of share came down, was against human probabilities and impugned year was an isolated year of such profits with no such profits made in earlier or subsequent years. In such circumstances, the Tribunal held that assessee failed to prove genuineness of transaction and long-term capital gain on sale of shares by assessee was an arranged affair to convert its own unaccounted money and thus, exemption claimed under section 10(38) on sale of shares had rightly been disallowed.

25. In view of the above judicial precedents as applied in the assessee set of facts as discussed in the preceding paragraphs, we are of the considered view that the Ld. CIT(Appeals) has not erred in facts and in law in confirming the addition made in respect of bogus claimed by the assessee in the instant facts.

26. With regard to the shares of Gujarat Meditech Ltd, the assessing officer observed that the shares were sold by only 3 entities Jhaveri trading and investment private limited, Vicki Rajesh Jhaveri and Shailesh Jhaveri and a ITA Nos.14 to 16/Ahd/2024 Shailesh Subodhchandra Jhaveri vs. DCIT Asst.Years -2011-12 to 2012-13

- 24- total of only 96,000 shares of this company were traded on BSE. In view of the above observations for this entity as well, we observe that CIT has not erred in facts and in law in holding that shares of Gujarat Meditech Ltd. are bogus shares and therefore, loss of Rs.7,89,230/- made by the assessee is liable to be added to the income of the assessee.

27. Before us, the counsel for the assessee has submitted that he shall not be pressing for ground related to challenge to reopening of assessment under section 147 of the Act. Accordingly, grounds relating to challenge to reopening of assessment under section 147 of the Act are hereby dismissed.

28. In the result, the appeal of the assessee is dismissed for both the year under consideration.

This Order pronounced in Open Court on

21/08

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad; Dated 21/08/2024
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIY)
JUDICIAL MEMBER

TRUE COPY

/Copy of the Order forwarded to :

1. / The Appellant
2. / The Respondent.
3. / Concerned CIT
4. () / The CIT(A)-
5. , ! , / DR, ITAT, Ahmedabad
6. ' / Guard file.

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