

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

**BEFORE SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER
AND
SHRI SANJAY KUMAR, JUDICIAL MEMBER**

**ITA No. 2647, 2648 & 2649/AHD/2026
Assessment Year: 2016-17, 2017-18 & 2018-19**

Radhaben Arvindbhai Patel, B-1, Motinagar CHSL, Kalol, Kalol, Gujarat – 382721 [PAN – ABIPP7383G]		Vs.	Income Tax Officer, Ward – 1, Mehsana - 382715
(Appellant)			(Respondent)
Assessee by	Shri Parin Shah, AR		
Revenue by	Shri Amit Pratap Singh, SR-DR		
Date of Hearing		10.09.2026	
Date of Pronouncement		12.10.2026	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

These three appeals filed by the Assessee are directed against the orders of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “CIT(A)”] dated 30.04.2026 and 08.05.2026 for the Assessment Years (A.Y.) 2016-17, 2017-18 and 2018-19 in the proceeding u/s 147 r.w.s. 144B of the Income Tax Act [hereinafter referred as “the Act”]. As the issues involved in the three appeals are identical, all the matters were heard together and are being disposed of vide this common order for the sake of convenience. We will take up the appeal for A.Y. 2016-17 in ITA No 2647/Ahd/2026 as the lead case.

ITA No 2647/Ahd/2026, A.Y. 2016-17

2. The brief facts of the case are that the assessee had filed his return of income for A. Y 2016-17 on 08.09.2016 declaring total income of Rs.81,30,450/-. The case of the assessee was reopened on the basis of information received that the assessee had disclosed bogus long-term capital gain on sale of scrip of Kushal Tradelink Ltd. Accordingly, a notice u/s. 148 of the Act was issued on 31.03.2021 after recording the reason. The AO had treated the exempt LTCG of Rs. 1,10,02,762/-, disclosed in the trading of shares of Kushal Tradelink Ltd. as bogus, and had accordingly made the addition. The assessment was completed u/s. 147 r.w.s 144B of the Act on 30.03.2022 at total income of Rs.1,91,33,212/-.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the first appellate authority, which was decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

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

1. *The order passed by AO and confirmed by NFAC is invalid, bad in law and required to be quashed.*
2. *Ld. NFAC erred in law and on facts in confirming reopening of assessment u/s 148 of the Act.*
3. *The reopening of assessment is required to be quashed as same 3 has been made on borrowed satisfaction without independent application of mind.*

4. *The case has been reopened pursuant to search action in Kushal Group and accordingly, proceedings u/s 153C ought to have initiated rather than reopening of assessment u/s 148 of the Act.*
5. *The reopening of assessment is required to be quashed as the notice has been issued by Jurisdictional Assessing Officer instead of Faceless Assessment Officer.*
6. *Ld. NFAC erred in law and on facts in confirming addition of 6 Rs. 1,10,02,762/- on account of long-term capital gain and also confirmed invocation of section 68 of the Act.*
7. *The order passed by AO and confirmed by NFAC is required to be quashed as same has been passed without providing evidence and statements relied on and their cross examination.*
8. *Ld NFAC erred in law and on facts in taxing addition at special rate ignoring fact that there is no applicability of section.*
9. *Charging of interest u/s 234A, 234B and 234C are unjustified.*
10. *Initiation of penalty proceedings u/s 271AAC is unjustified.*

5. Shri Parin Shah, the Ld. AR of the assessee submitted that the AO had reopened the case on the basis of information collected during search in the case of Kushal Group. Therefore, the proceeding u/s. 153C of the Act, was required to be initiated in the present case. He submitted that the proceeding u/s. 147 of the Act, initiated by the AO was not valid. In this regard he relied upon the decision of Hon'ble Gujarat High Court in the case of *Paras Chandreshbhai Koticha v. Income Tax Officer (ITO) [2026] 485 ITR 628 (Guj)*.

5.1 On merits, the Ld. AR submitted that the assessee was a regular trader in shares and all the transactions were carried out through the share broker M/s. Shah Investors Home Limited on the stock exchange. He submitted that the evidences in the form of contract note, bill for purchase and sale of shares, copy of bank accounts and de-mat

statement were duly brought on record to establish the genuineness of the share transactions. He explained that the shares of Kushal Tradelink Ltd were purchased over a period from January 2015 to May 2015, which was sold during the current year as well as in the subsequent two years and the capital gain derived on the sale of these shares was duly disclosed in the Income-tax return. For the current year, the assessee has disclosed total LTCG Rs. 1,67,01,356/- as exempt income under schedule EI of the ITR, which was in respect of sale of shares of Kushal Tradelink Ltd and M/s. Creative Merchants Limited. He further clarified that the dividend income received by the assessee on various shares was also disclosed in the ITR. The Ld. AR contended that no evidence was brought on record by the AO to establish that the assessee had indulged in any accommodation entry transaction. Neither any link of the assessee was established by the AO with the persons who were engaged in share trading in the shares of Kushal Tradelink Ltd. He submitted that the addition was made on mere presumption

6. Per contra, Shri Amit Pratap Singh, the Ld. Sr.-DR strongly supported the order of the lower authorities. He explained that transactions in the Kushal Group scrips were systematically utilized for allowing accommodation entries to the beneficiaries and the assessee was one such beneficiary. The Ld. Sr.-DR submitted that the price of the scrip had risen abnormally within a short period of time, which was not supported by the fundamentals of the company and such price rise was a classic indicator of artificial rigging. He, therefore, submitted that the findings of the AO and the Ld. CIT(A) may kindly be upheld.

7. We have considered the rival submissions and gone through the materials available on record. The AO had primarily relied upon the report of the Investigation wing and the general allegations of price rigging for making the addition. However, no direct nexus between the assessee and any accommodation entry provider has been brought on record in the assessment order. No material evidence such as money trail or any statement implicating the assessee are cited by the AO to substantiate the charge of sham transaction. The fact that the purchase and sale of shares of Kushal Tradelink Limited was made through the broker and duly reflected in the de-mat account of the assessee has not been disputed. The assessee has brought on record a copy of contract note cum bill, bank statement, de-mat holding and transaction statement reflecting purchase and sale of shares of Kushal Tradelink Limited. No evidence has been brought on record that any cash was exchanged by the assessee either at the time of purchase or sale of the shares. The assessee was a regular investor in shares and apart from the LTCG on sale of shares of Kushal Tradelink Limited, he has also disclosed LTCG on sale of shares of M/s. Creative Merchants Limited, which was also claimed as exempt u/s. 10(38) of the Act and duly disclosed in the ITR. Considering these facts, the finding of the AO that the LTCG derived by the assessee in the sale of shares of Kushal Tradelink Limited was bogus is found to be based on mere presumption and not on any material fact. Though the AO had identified the persons who were involved in synchronized share trading in the shares of Kushal Tradelink Limited, no evidence was brought on record to establish the nexus of the assessee with the four persons as mentioned in the assessment order. The AO in his order has not recorded any factual finding connecting the assessee to the alleged synchronized

trading of the impugned shares. It is a settled position that unless the assessee is connected with the synchronized operation of price rigging, no addition can be made merely for the reason that the assessee is a regular investor and has transacted in the impugned shares. Considering these facts, the AO was not correct in treating the LTCG disclosed by the assessee and claimed exempt u/s. 10(38) of the Act, as bogus.

8. Hon'ble Gujarat High Court has held in the case of **Sanjaykumar Damjibhai Gangani [2025] 178 taxmann.com 276 (Gujarat)** that where assessee-company claimed LTCG u/s 10(38) arising out of sale of shares of S and had furnished complete evidence including contract note of shares, de-mat details, detail of bonus shares, since no adverse evidence was brought against said evidences, Assessing Officer was not justified in making addition under section 68 merely on allegation that assessee was a beneficiary of penny stock scrip. The findings of the Hon'ble Court are reproduced below:

[16] Considering the contentions raised on behalf of the Revenue, the Tribunal has arrived at a finding of fact that shares of Sunrise Asian Ltd. sold by the assessee cannot be doubted as bogus and exemption under Section 10(38) of the Act was rightly availed by the assessee. The Tribunal has also concluded that the presumption drawn by the Assessing Officer was not corroborated by any evidence to establish the alleged non-genuine transaction by the assessee. It was, therefore, rightly held by the Tribunal that the claim of the assessee for exemption of Long Term Capital Gains under Section 10(38) of the Act cannot be held to be bogus on the basis of presumption in absence of any evidence brought on record by the assessee with regard to shares of Sunrise Asian Ltd, which is not even found to be rigged by the SEBI also. The Tribunal has also considered that the assessee held the shares for two and half years and after holding the shares for a long period, the same were sold by the assessee and therefore, reliance was placed on the decision of this Court in the case of Jagat Pravinbhai Sarabhai (*supra*), wherein this Court has held as under:

"5. The genuineness of investment in the shares by the assessee was substantiated by him by producing copy of transaction statement for the period from 1.6.2001 to 1.10.2010. The investment was made in the year 2000-01. The shares were retained for more than ten years and were sold after such long time. These circumstances suggested that the investment was not

bogus or investment made in penny stock. The shares were purchased in order to invest and not for the purpose of earning exempted income by frequent trading in short span.

6. The finding recorded by the appellate authority and confirmed by the appellate tribunal is based on material before them. They are in the realm of findings of fact. No error could be noticed in the findings and conclusion that the investment was longstanding and genuine and was not penny stock on the basis of which the capital gain was wrongly claimed.

6.1 On the facts of case, no question of law much less substantial question of law arises.

7. Resultantly, appeal is dismissed."

[17] In view of the above, we are of the opinion that no question of law much less any substantial question of law arises from the impugned order passed by the Tribunal. The appeal, being devoid of any merit, is, accordingly, dismissed.

4. Considering the above dictum of law in case of *Divyaben Prafulchandra Parmar (supra)* and applying the same to the facts of the case, we are of the opinion that no question of law much-less any substantial question of law arises from the impugned order of the Tribunal on the same reasoning as assigned by this Court in the said case.

9. In view of the above facts and legal position, the addition of Rs.1,10,02,762/- treating the LTCG as bogus on account of accommodation entry is deleted and the ground taken by the assessee is **allowed**.

10. Considering the fact that the assessee gets relief on merits, we do not deem it necessary to adjudicate the legal grounds taken by the assessee.

11. In the result, the appeal of the assessee is **allowed**.

ITA No 2648 & 2649/Ahd/2026, A.Y. 2017-18 & 2018-19

12. The grounds taken by the assessee in these two appeals are identical to ITA No. 2647/Ahd/2026. The facts involved in these two appeals too are identical to ITA No. 2647/Ahd/2026 for A.Y. 2016-17.

Therefore, the decision as taken in ITA No. 2647/Ahd/2026 for A.Y. 2016-17 is applicable *mutatis mutandis* to these two appeals as well. Accordingly, both the appeals of the assessee are **allowed**.

13. In the final result, all the three appeals of the assessee are **allowed**.

Order pronounced in the Court on 12/10/2026 at Ahmedabad.

Sd/-
(SANJAY KUMAR)
Judicial Member

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Dated – 12th October, 2026

Neelesh, 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 / DR, ITAT,
6. गार्ड फाईल / Guard file.

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