

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER &  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 2432/Mum/2026**  
**(Assessment Year: 2011-12)**

<b>ITO 19(2)(4), Mumbai</b> 507, Piramal Chambers Lalbaug, Parel, Mumbai - 400 012	Vs.	<b>Pradeep Ram Mukhi,</b> 3A Jeevan Building,, L. D. Ruparel Marg, Malabar Hill, Mumbai-400006
PAN/GIR No. AABPM4888R		
(Applicant)		(Respondent)

Revenue by	Shri Virabhadra Mahajan, Ld. DR
Assessee by	Shri Vishrant D. Vora, Ld. AR

Date of Hearing	19.05.2026
Date of Pronouncement	22.05.2026

आदेश / ORDER

**PER MAKARAND VASANT MAHADEOKAR, AM:**

The present appeal has been filed by the Revenue against the order passed by the Ld. Addl./JCIT from the office of Commissioner of Income Tax (Appeals)-1, Ludhiana[hereinafter referred to as "CIT(A)"], dated 22.12.2025 for A.Y. 2011-12 arising out of the assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 [hereinafter referred to as "the

Act"]dated 24.12.2018 by the Income Tax Officer, Ward-19(2)(5), Mumbai.[hereinafter referred to as "Assessing Officer or AO"]

2. The brief facts of the case are that the assessee is an individual and filed return of income for A.Y. 2011-12 on 01.10.2011 declaring total loss at Rs. 18,855/-. Subsequently, information was received from ADIT (Investigation), Unit-1(3), Mumbai, that the assessee had carried out transactions in penny stock of M/s. G.S. Auto International Ltd. amounting to Rs. 2,82,991/-. Based on the said information, the case was reopened by issuance of notice under section 148 dated 28.03.2018. In response thereto, the assessee requested that the original return filed on 01.10.2011 be treated as return filed in response to notice under section 148 of the Act. Thereafter, notices under sections 143(2) and 142(1) of the Act were issued and complied with.

3. During the reassessment proceedings, the Assessing Officer observed that the assessee was engaged in trading in future and options, long term capital gains, short term capital gains and income from other sources. The assessee furnished ledger account, demat statement, computation of income, broker details, Form 10DB and other documents. On verification thereof, the Assessing Officer noticed that the assessee had purchased 10,000 shares of G.S. Auto International Ltd. in three tranches aggregating to Rs. 2,98,533/- and subsequently sold the same on 07.01.2011 for Rs. 2,82,196/- resulting into loss of Rs. 16,337/-.

4. The Assessing Officer referred extensively to the investigation carried out by the Investigation Wing, Mumbai, in relation to transactions in the penny stock company M/s. G.S. Auto International Ltd. According to the Assessing Officer, the investigation revealed that the said company was used for facilitating accommodation entries in the form of bogus capital gains/losses through artificially manipulated transactions. The Assessing Officer observed that the assessee was one of the beneficiaries identified by the Investigation Wing and therefore issued show cause notice requiring the assessee to explain as to why the sale consideration of Rs. 2,82,196/- should not be treated as unexplained income under section 68 of the Act and why the loss of Rs. 16,337/- should not be disallowed.

5. The explanation furnished by the assessee was not found acceptable by the Assessing Officer. According to the Assessing Officer, the impugned transactions lacked commercial substance and were structured transactions entered into with the sole purpose of evading taxes. The Assessing Officer invoked the theory of human probabilities and relied upon the judgments of the Hon'ble Supreme Court in the cases of **McDowell & Co. Ltd. v. CTO reported in 154 ITR 148** and **Sumati Dayal v. CIT reported in 214 ITR 801**. Accordingly, the Assessing Officer treated the sale consideration of Rs. 2,82,196/- as unexplained income under section 68 of the Act and also disallowed the loss of Rs. 16,337/-. Consequently, the assessment under section 143(3)

r.w.s. 147 of the Act was completed on 24.12.2018 assessing the total income at Rs. 8,83,81,850/-.

6. Aggrieved by the assessment order, the assessee preferred appeal before the Ld. CIT(A). During the appellate proceedings, the assessee submitted detailed written submissions contending that he was regularly engaged in trading of shares and derivative contracts through registered stock brokers and all transactions were carried out through banking channels and recognised stock exchanges. It was submitted that the assessee had furnished complete documentary evidences including broker contract notes, demat statements, ledger accounts, audited financial statements and transaction statements. It was further submitted that the assessee had actually suffered loss of Rs. 16,337/- in the impugned transaction and no material whatsoever had been brought on record by the Assessing Officer to establish that the assessee had derived any unaccounted benefit.

7. The assessee further submitted before the Ld. CIT(A) that during the year under consideration, he had earned long term capital gain of Rs. 8,81,02,170/- on sale of residential house and had paid taxes amounting to Rs. 1,86,00,000/- before filing return of income and therefore there was no occasion or motive to enter into manipulative transactions merely to incur insignificant loss of Rs. 16,337/-. It was also contended that the Assessing Officer had merely relied upon generalized findings of the Investigation Wing without conducting any independent enquiry against the assessee.

8. The Ld. CIT(A), after considering the assessment order, submissions and evidences furnished by the assessee, deleted the addition made by the Assessing Officer. The relevant findings of the Ld. CIT(A) are reproduced as under:

*“6.2 During the appellant proceedings, the appellant has submitted that it is in the business of buying and selling equity shares through a broker registered in Bombay Stock Exchange and National Stock exchange. Further, the appellant has submitted that it has audited its books of account for the year under consideration. It has been submitted by the appellant that appellant had purchased transaction of Rs. 2,98,646/- the scrip of GS Auto International Limited and sale transaction of Rs. 2,82,196/- which resulted loss of Rs. 16,450/-. Further, the appellant has submitted that AO has not established that the transaction in the scrip of GS Auto International Limited is bogus and benefit is derived by the appellant either in the form of cash or property. Further, the appellant has submitted that entire addition has been made by the Assessing Authority only on the basis of presumption and pre-suppositions, instead considering the documents/ information and explanation provided by the appellant. Assessing Officer failed to appreciate the facts of the case that the appellant made genuine sale and purchase of share and without correctly appreciating and understanding the transaction has made addition of Rs.2,98,533/- in the income of the appellant. (Rs.16,337/- as loss disallowed and Rs.2,82,196/-as unexplained income.”*

*“6.3 On perusal of the assessment order and written submission of the appellant, it is noted that appellant has disclosed loss of Rs. 16,337/- from the transaction of shares of GS Auto International Limited. It is noted that appellant had purchased 10,000 shares of GS Auto International Limited with the transaction of Rs. 2,98,533/- and sold total shares of 10,000 at the sale consideration of Rs. 2,82,196/- during the year under consideration and disclosed loss of Rs. 16,337/- in its income tax return. It is also noted that appellant has disclosed long term capital gain of Rs. 8,81,02,170/- from the sale of immovable property for the year under consideration. In view of the above facts, the contention of the appellant is found tenable and addition of Rs. 2,82,196/- made by the AO is deleted. Further, it is noted that levy of interest u/s 234B of the Act is consequential in nature and AO is*

*directed to recalculate interest as per the provisions of the Act Thus, the ground of appeal is allowed.”*

9. Against the aforesaid findings of the Ld. CIT(A), the Revenue is in appeal before us and has raised following grounds of appeal:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) while deciding the issue failed to considered that action of the AO was based on the report of the ADIT(Inv.), Unit-1(3), Mumbai, in respect of transactions of some penny stock companies carried out at NSE and BSE, which was found to be controlled by some hawala Traders, used either for giving artificial gain in the form of LTCG/STCG or STCL to the beneficiaries as per their requirements to evade tax and assessee was found to be one of such beneficiary, who has traded in the penny script, M/s. GS Auto International Limited, used to bring his unaccounted money, into his books in the guise of Capital Gain/Loss.*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,82,196/- from the sale of the scrip of GS Auto International Limited, which involved the series of preconceived steps and lack of commercial content and totally an artificially structured transaction entered into with the sole intent to evade taxes.*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has not considered the nature of the transactions executed by the assessee and accepted the documentation presented by the assessee at face value, without adequately considering the underlying fraudulent intent and the orchestrated steps taken to present these transactions as genuine. The assessment of the true character and intent behind these transactions was crucial and has been overlooked.*
4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the entire addition Rs. 2,82,196/- made on account of sale of shares of penny stock, without considering the judgment on Hon'ble Calcutta High Court's decision in the case of Pr. CIT Vs Swati Bajaj [A. No. GA/2/2022] in ITAT No 6 of 2022, Dated 14.06.2022, wherein it was held that the onus is on the assessee to establish the genuineness of the transaction and*

*also has to prove that the price of the shares/ stocks was not manipulated?*

5. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition Rs. 2,82,196/-, which was a bogus transaction, made on account of sale of shares of penny stock, without appreciating the facts that on the similar issue of LTCG, the Hon'ble ITAT, Kolkata in the case of Manoj Jain (HUF) in ITA No .1782/KOL/2018, treated the penny stock transaction as income from other sources instead of LTCG, and the same was upheld by the Hon'ble High Court Calcutta (2024) 164 taxmann.com 133 (Calcutta), which has been confirmed by the Hon'ble Supreme Court by dismissing SLP in SLP (c) of 21636/2024 Dated. 20.09.2024 ?*
6. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.*

10. The learned Departmental Representative strongly relied upon the assessment order and submitted that the Assessing Officer had rightly relied upon the findings of the Investigation Wing which established that the transactions in the penny stock company were manipulated transactions intended to provide accommodation entries.

11. Per contra, the learned Authorised Representative (AR) reiterated the submissions advanced before the lower authorities and drew our attention to the documentary evidences placed in the paper book including broker contract notes, demat statements, ledger account and bank statements. The learned AR submitted that the assessee had genuinely purchased and sold shares through recognised stock exchange and all transactions were routed through banking channels. It was submitted that the assessee had actually incurred loss in the impugned transactions

and therefore the entire allegation of introducing unaccounted money into books of account was wholly illogical and contrary to facts on record. The learned AR invited our attention to the details placed in the paper book page No. 3 as reproduced below:

Sr. No.	Name of Scrip	Date of Transaction	Nature of Transaction	Quantity of Shares	Average Price per Share (Rs.)	Amount (Rs.)
1	G.S. Auto International Ltd.	12.04.2010	Purchase	2,000	40.05	80,102.36
2	G.S. Auto International Ltd.	16.06.2010	Purchase	2,000	27.77	55,557.46
3	G.S. Auto International Ltd.	02.07.2010	Purchase	6,000	27.16	1,62,986.18
	<b>Total Purchase Cost</b>			<b>10,000</b>	<b>Average Price : 29.86</b>	<b>2,98,646.00</b>
4	G.S. Auto International Ltd.	07.01.2011	Sale	10,000	28.21	2,82,196.42
	<b>Net Loss</b>					<b>16,450.00</b>

12. The learned AR further submitted that the assessee had already paid taxes amounting to Rs. 1,86,00,000/- on long term capital gain arising from sale of residential property and therefore there was no reason for the assessee to indulge in manipulative transactions merely to incur nominal loss of Rs. 16,337/-. The learned AR further contended that no independent enquiry was conducted by the Assessing Officer against the assessee and the entire addition had been made merely on the basis of generalized investigation report without any direct evidence linking the assessee to any alleged accommodation entry provider or market operator.

13. During the course of hearing, the learned DR fairly conceded the factual contention advanced by the learned AR to the extent that the assessee had in fact suffered actual loss of approximately Rs. 16,450/- in the impugned transactions.

14. We have heard the rival submissions and perused the material available on record. It is an undisputed fact emerging from the assessment order itself that the assessee had purchased shares of G.S. Auto International Ltd. aggregating to Rs. 2,98,533/- and sold the same for Rs. 2,82,196/- thereby incurring actual loss of Rs. 16,337/-. It is also not in dispute that all the transactions were carried out through recognised stock exchange and supported by contract notes, demat statements and banking channels.

15. We further note that the Assessing Officer has not brought any direct material on record to establish that the assessee had received any unaccounted cash or derived any concealed benefit from the impugned transactions. The entire addition has been made on the basis of generalized findings of the Investigation Wing regarding alleged manipulation in the scrip of G.S. Auto International Ltd. However, no material has been brought on record to demonstrate any direct nexus between the assessee and the alleged operators or accommodation entry providers.

16. We also find considerable force in the contention of the learned AR that the assessee had during the year disclosed long term capital gain of Rs. 8,81,02,170/- on sale of residential

property and had already paid taxes amounting to Rs. 1,86,00,000/-. In such circumstances, the allegation that the assessee devised a colourable device merely to incur insignificant loss of Rs. 16,337/- does not inspire confidence. Even the learned DR fairly conceded during the course of hearing that the assessee had actually suffered loss in the impugned transactions.

17. We have also considered the reliance placed by the Revenue on the judgment of Hon'ble Calcutta High Court in the case of **Pr. CIT vs. Swati Bajaj** and the decision in the case of **Manoj Jain (HUF)**, which was subsequently affirmed by Hon'ble Calcutta High Court and the Hon'ble Supreme Court. However, in our considered view, the facts of the present case are clearly distinguishable from the facts involved in the aforesaid decisions. In those cases, the assessee had claimed exempt long term capital gains arising from abnormal appreciation in penny stock scrips and the authorities had found overwhelming material demonstrating pre-arranged transactions intended to convert unaccounted income into exempt capital gains. In the present case, admittedly, the assessee has not claimed any exempt long term capital gain or artificial tax-free income from the impugned transactions. On the contrary, the assessee has actually incurred loss of Rs. 16,337/- in the transactions of shares of G.S. Auto International Ltd. Further, the assessee has furnished complete documentary evidences including contract notes, demat statements and banking records in support of the transactions and no material has been brought on record by the Assessing

Officer to establish that the assessee had received any corresponding unaccounted cash or derived any concealed benefit from the impugned transactions. Therefore, the ratio laid down in the decisions relied upon by the Revenue, rendered on materially different factual matrix involving claim of bogus exempt capital gains, does not advance the case of the Revenue in the peculiar facts of the present matter.

18. In our considered view, suspicion, however strong, cannot take the place of evidence. The Assessing Officer has merely proceeded on assumptions and generalized investigation reports without bringing any cogent material to establish that the transactions carried out by the assessee were sham or fictitious. The documentary evidences furnished by the assessee have not been disproved. No enquiry has been conducted from the broker, stock exchange or banking authorities to controvert the claim of the assessee. Under these facts, we find no infirmity in the findings recorded by the Ld. CIT(A).

19. Accordingly, we uphold the order passed by the Ld. CIT(A) deleting the addition of Rs. 2,82,196/- made under section 68 of the Act as well as disallowance of loss arising from the impugned share transactions. Since levy of interest under section 234B is consequential in nature, the direction of the Ld. CIT(A) for recomputation thereof also does not call for any interference.

20. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 22.05.2026.

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND VASANT MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 22/05/2026  
Dhananjay, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai