

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

**BEFORE Ms. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER  
&  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 247/Ahd/2024  
(निर्धारण वर्ष / Assessment Years : 2014-15)

<b>ITO</b> Wd.1(2)(2), Race Course Circle, Vadodara	<b>बनाम/ Vs.</b>	<b>Neetaben Snehalkumar Patel</b> B-5, Vrajdeep Apartment, Opp. Rokadnath, Race Course Circle, Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BWRPP7664K		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

अपीलार्थी ओर से /Appellant by :	Shri C S Sharma, Sr. DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Sunil Talati, A.R.

<b>Date of Hearing</b>	15/04/2024
<b>Date of Pronouncement</b>	03/05/2024

**ORDER**

**PER SHRI NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the Revenue against the order of the National Faceless Appeal Centre, Delhi, (in short ‘the CIT(A)’) No. ITBA/NFAC/S/250/2023-24/1058831220(1) dated 18.12.2023 for the Assessment Year 2014-15 allowing the appeal of the assessee.

2. The grounds of the appeal raised by the Revenue are as under:

"1. Whether on the facts and circumstances and in law, the Ld. Commissioner of Income-tax(Appeals) was justified in deleting the addition made u/s 68 of the

*Act, without appreciating the fact that the suspicious transactions in shares cannot be exempted under section 10(38) of the Act and that unexplained LTCG comes under the purview of unexplained cash credits under section 68 of the Act?*

2. *Whether on the facts and circumstances and in law, the Ld. Commissioner of Income-tax(Appeals) was justified in deleting the addition made u/s 68 of the Act, without appreciating the findings of the AO and also ignoring the larger scam of organized tax evasion by way of bogus capital gain generated in penny stock?*

3. *Whether on the facts and circumstances and in law, the Ld. Commissioner of Income-tax(Appeals) was justified in deleting the addition made u/s 68 of the Act, without appreciating the findings of the AO and overlooking the fact that entire transactions were managed with the object to facilitate the assessee to plough back its unaccounted income in the form of fictitious LTCG and claim bogus exemption?*

4. *The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.”*

3. The grounds taken by the Revenue pertain to disallowance of Long Term Capital Gain (LTCG) claimed exempt u/s. 10(38) of the Act and addition of Rs.33,30,995/- made u/s.68 of the Act. Before we discuss the arguments taken in this appeal by the two sides, it will be relevant to recapitulate the facts of the case.

**Brief facts of the case:**

4. The return of income was filed by the assessee for A.Y. 2014-15 on 31.12.2014 declaring total income at Rs.5,56,630/-. The case was selected for scrutiny on the ground “suspicious transaction relating to long term capital gain on shares (inputs from Investigation Wing)”. In the course of assessment, the AO made enquiries in this regard and the relevant facts which emerge from the assessment order are as under:

(i) The assessee had purchased 500 equity shares of an unlisted company M/s. Basukinath Real Estate Pvt. Ltd. @ Rs.250/- per share at total cost of Rs.1,25,000/- on 04.11.2011. A copy of the bill issued by M/s. Jwalaji

Suppliers Pvt. Ltd. of Kolkata for purchase of these shares was produced and AO found that the bill did not contain the details of certificate number. The payment for this offline purchase of shares was made through cheque dated 23.03.2012 after nearly 4 & ½ months. It was further found that this payment was made after taking unsecured loan of equivalent amount from Shri Snehal Patel, husband of the assessee.

**(ii)** The assessee was allotted bonus shares of M/s. Basukinath Real Estate Pvt. Ltd. on 16.03.2012 in the ratio 18:1 and after allotment of the bonus shares the total holding of the assessee was 9,500 shares of M/s. Basukinath Real Estate Pvt. Ltd.

**(iii)** As per scheme of arrangement approved by the Bombay High Court dated 18.01.2013 the shareholders of M/s. Basukinath Real Estate Pvt. Ltd./ Baviscon Vincom Limited/ Pinnacle Vintrade Limited were allotted 10 shares of M/s. Unno Industries Ltd. against every 1 share of aforesaid 3 companies. Thus, the assessee who was holding 9500 shares of Basukinath Real Estate Pvt. Ltd. got 95,000 shares of M/s. Unno Industries Ltd. after this amalgamation. All the transactions up to this event were off market transactions.

**(iv)** Thus, the original investment of Rs.1,25,000/- in 500 shares of M/s. Basukinath Real Estate Pvt. Ltd. on 04.11.2011 was ultimately converted into 95000 shares of M/s. Unno Industries Ltd. on 12.03.2013.

**(v)** The assessee had opened a demat account on 09.04.2012. The shares of M/s. Unno Industries Ltd. were issued to the assessee on 12.02.2013 not in dematerialized form but in physical form. The assessee didn't get these shares dematerialized immediately on allotment. The shares were dematerialized only a few days prior to the sell. The assessee had sold these 95000 shares of M/s. Unno Industries Ltd. in tranches between 08.07.2013 and 06.09.2013, for a total sale consideration of Rs.33,15,085/-. Thus, the

assessee had derived LTCG of Rs.31,90,085/- on sale of shares of M/s. Unno Industries Ltd.

**(vi)** The AO found that no LTCG was disclosed in the return of income for A.Y. 2014-15 neither any exempt income u/s. 10(38) of the Act was shown in the return. When this fact was brought to the notice of the assessee, it was explained that LTCG of Rs.31,90,085/- was exempt income u/s. 10(38) of the Act, which was reflected as capital addition of equivalent amount by the Accountant. It was further explained that the Tax Consultant forgot to mention the exempt income under the relevant schedule of return of income by mistake and that mis-reporting of the information was an inadvertent error.

**(vii)** The AO found that the shares of M/s. Unno Industries Ltd. was one of the BSE listed penny stock company which was used for generating bogus LTCG. The price of shares of such stock company were rigged and raised through circular trading. SEBI had placed the company M/s. Unno Industries Ltd. under surveillance and trading in the company was under suspension.

**(viii)** Shri Amit Saraogi, a share broker based in Calcutta had accepted his involvement in providing accommodation entries for LTCG/STCG and a copy of his statement accepting the involvement in such activities has been reproduced in the assessment order. The AO found that the said Shri Amir Saraogi was also one of the Directors in M/s. Basukinath Real Estate Pvt. Ltd., the share of which was initially acquired by the assessee. On the basis of these links, the AO concluded that the transfer arrangement entered into by the assessee was part of multi-layer transactions for obtaining bogus LTCG.

**(ix)** The AO also analyzed the financial statement of M/s. Unno Industries Ltd. in the assessment order and came to the conclusion that this company

was a non-trading company/shell company used as a vehicle for various financial manoeuvres. The fluctuation in the share price of this company was not based on any realistic parameters and the fluctuations were too abrupt. M/s. Unno Industries Ltd. was one of the BSE listed penny stock company used for generating bogus LTCG having total trade value of Rs.1006,96,23,779/-. As mentioned earlier SEBI had placed this company under surveillance measures and trading in the company was under suspension.

(x) The AO also noticed that the assessee had not dealt in trading of any other shares except investment of Rs.1,25,000/- in the shares of M/s. Basukinath Real Estate Pvt. Ltd. in offline mode and sale of 95000 shares of M/s. Unno Industries Ltd. The AO, therefore, treated the documentary evidence provided by the assessee as not conclusive and on the principle of preponderance of human probabilities, rejected the LTCG derived by the assessee. The AO held that the transactions were sham transactions aimed only to bring unaccounted money in the guise of exempt LTCG and that the paper work was done merely to give a colour of authenticity to the transactions by creating a facade of legitimate transactions.

5. The AO had issued a detailed show cause notice to the assessee wherein all these facts were brought to notice and the assessee was required to explain as to why the total sale value of Rs.33,30,995/- should not be treated as unexplained u/s.68 of the Act. The assessee submitted that the LTCG derived by her was genuine and supported by well documented evidences. The AO, however, rejected the explanation of the assessee and added the amount of Rs.33,03,995/- under Section 68 of the Act.

6. In first appeal, the CIT(A) allowed the appeal of the assessee by following the decision of CIT(A)-12, Ahmedabad on the identical issue in the case of Late Shri Mihir P. Panchal for A.Y. 2014-15. The CIT(A) also relied upon the decision of Ld. ITAT, Delhi in the case of Mohit Hora (HUF) vs. ITO in ITA No. 410/Del/2018. In both these cases LTCG on sale of shares of M/s. Unno Industries Ltd. was involved. Aggrieved with the order of the CIT(A), the Revenue is in appeal before us.

**Submission of the Revenue:**

7. Shri C S Sharma, Sr. DR appearing for the Revenue submitted that the CIT(A) has allowed relief to the assessee by merely relying on the decision of CIT(A)-12, Ahmedabad and the decision of the ITAT, Delhi and without appreciating the facts of the present case. He further submitted that the CIT(A) has not appreciated and discussed the facts brought on record by the AO and has not taken a decision after considering the merits of the case. The Ld. Sr. DR has painstakingly taken us through all the facts as mentioned in the assessment order as already enumerated earlier and strongly supported the order of the AO.

**Submission of the assessee**

8. Shri Sunil Talati, Id. AR of the assessee submitted, at the outset, that the tax effect involved in this case was below the limit as prescribed by the CBDT. Therefore, the appeal should be dismissed for this reason alone. On merits, he submitted that the purchase and sale transactions were all supported by proper documentary evidences and there was no reason to doubt the genuineness of the transactions. The Ld. AR submitted that there was no dispute to the fact that the assessee had purchased the shares of

Basukinath Real Estate Pvt. Ltd. in support of which the contract note of M/s. Jwalaji Suppliers Pvt. Ltd. was furnished and the source of this investment was also explained. The allotment of bonus shares of M/s. Basukinath Real Estate Pvt. Ltd. was also documented. Further, allotment of shares of M/s. Unno Industries Ltd. pursuant to amalgamation was supported from the copy of extract of ROC data base and the order of Hon'ble Bombay High Court dated 18.01.2013. The Ld. AR emphasized that the shares of M/s. Unno Industries Ltd. were sold at the rate as quoted on the Stock Exchange on which STT was paid and the capital gain arising on sale of this share was eligible for exemption under Section 10(38) of the Act. The Ld. AR submitted that the AO had made the disallowance on mere suspicion and without any specific material against the assessee. The reliance placed by the AO on the report of Investigation Wing, Kolkata was misplaced. The Ld. AR further submitted that identical addition was made in the case of Late Shri Mihir P. Panchal, which was deleted by Id. CIT(A)-12, Ahmedabad and the CIT(A) has rightly deleted the addition in this case as well following the said decision.

**Findings and Order:**

9. We have carefully considered the submissions of both the parties. At the outset, the objection of Id. AR on the issue of low tax effect is not found sustainable. The CBDT vide circular 5/2024 dated 15<sup>th</sup> March, 2024 has clarified that the monetary limit for filing of appeal will not be applicable to certain exceptions as mentioned in the said circular. It is found that the cases involved in organized tax evasion including the case of bogus capital gain/loss through penny stock and case of accommodation entries is one of the exception listed in the circular. In such cases, the appeal is required to be filed without regard to the tax effect involved and the monetary limit

prescribed. It is found that the issue involved in this case is bogus capital gain through penny stock and, therefore, this case is found to be covered under the exception of the said circular. Therefore, the objection of the Ld. AR for dismissing the appeal due to low tax effect is rejected.

**10.** We have carefully gone through the decision of the Id. CIT(A). As rightly pointed out by the Ld. Sr. DR, the CIT(A) has allowed the appeal of the assessee by merely relying on the decision of CIT(A)-12, Ahmedabad in the case of Late Shri Mihir P. Panchal for A.Y. 2014-15. The finding of the Id. CIT(A) is reproduced below:

*“5.4 I have gone through the assessment order, submissions of the appellant judicial pronouncements and facts of the case. The appellant has filed copy of CIT(A)-12, Ahmedabad on the identical issue in the case of Late Mihir P Panchal (ABJPP7642M) for A.Y. 2014-15. The CIT(A)-12, Ahmedabad has concluded in his order the relevant extract is reproduced as under:*

*“...13.9 the AO in assessment order has also doubted financial statements of Unno Industries from March 2011 but in present case, the appellant has purchased shares of Basukinath and said company was merged with Unno Industries subsequently on which appellant cannot have any control. Even the AO has no evidence to prove that gain earned by the appellant is bogus or accommodative whereas appellant has cogent evidence to prove such gain as genuine capital gain.*

*13.10 it is abundantly evident from the assessment order that the addition of Rs.32,04,410/- is made by the AO without bringing on record any direct evidence to prove that these LTCG were not genuine and were in the nature of accommodation entries. The Ld. AR has submitted that neither Basukinath nor Unno Industries is listed anywhere as shell companies. Considering the facts discussed herein above and relying upon decision quoted by the appellant on each and every issue related thereto, addition made by the AO for Rs.32,04,410/- has to be deleted and the AO is directed to tax such gain as LTCG exempt u/s 10(38) of the Act....”*

*5.5 The appellant has also relied upon the various decision of Tribunals on the similar issue in favour of assessee. The appellant has relied upon the decision of Hon'ble Tribunal, Delhi in ITA No. 410/Del/2018 in the case of Mohit Hora (HUF) Vs. ITO, Ward-2(5), Gurugaon. In the said decision Hon'ble Delhi Tribunal on identical issue in the case of Mohit Hora HUF for A.Y. 2014-15 with respect to the shares of Unno Industries Ltd has allowed the appeal of the*



*appellant and deleted the addition made by the AO u/s 68. Thus, respectfully following the decision of the Hon'ble Delhi Tribunal on identical issue, addition made by the AO of Rs.33,30,995/- u/s 68 is deleted. The ground of appeals is allowed.”*

**11.** It is found that the Id. CIT(A) has not independently examined the evidences brought on record by the AO in this case but has merely followed the decision of CIT(A)-12, Ahmedabad in the case of Late Shri Mihir P. Panchal. This Tribunal did not have an occasion to examine the issues in the case of Late Shri Mihir P. Panchal on merit. The department had filed an appeal in the case of Late Shri Mihir P. Panchal (represented by legal heir Smt. Rutuben M. Panchal) for A.Y. 2014-15 on 04.02.2020. It was registered as Appeal No. ITA No. 130/Ahd/2020 and a CO was also filed in that case. The said appeal was, however, dismissed as withdrawn for the reason that the assessee had availed benefit of ‘Vivad se Vishwas Scheme, 2020’ (VSV) and consequently a request was made for withdrawal of appeal. The other case of Mohit Hora (HUF) relied upon by the Ld. CIT(A) was the decision of Delhi Tribunal in ITA No. 410/Del/2018. The only similarity was that in that case also the sale of shares of Unno Industries Ltd. was involved. The addition made in this case under Section 68 of the Act was deleted by the Ld. CIT(A) merely for the reason that the sale of shares of Unno Industries Ltd. was also involved in both the cases as relied upon in his order. The Ld. CIT(A) was not correct in blindly following the decision of the CIT(A) and the ITAT in those two cases without examining the facts of the present case.

**12.** Where the issue of LTCG is involved, not only the sale of shares but the genuineness of the purchases also has to be examined. In the mechanism of capital gains computation what is relevant is not only the sale of shares but also the purchase of shares. Therefore, the genuineness of the entire

transaction of acquisition as well as sale of shares has to be looked into as a whole. The CIT(A) was not correct in adopting a dissecting approach by accepting the sale of shares of Unno Industries Ltd. as genuine without examining the genuineness of purchase of original shares. Such an approach by the Id. CIT(A) cannot be upheld and his order is liable to be reversed for this reason alone.

**13.** The department had conducted detailed enquiries in the organized racket of bogus LTCG transactions which were claimed exempt from tax. During the course of investigation the transactions in BSE listed penny stocks, which were used for generating bogus LTCG, were verified. The SEBI had placed scrip of M/s. Unno Industries Ltd. under surveillance measures and the trading in this scrip was also suspended. This was pursuant to manipulation / abrupt movement in the price of this security as noticed by BSE. In fact, SEBI had subsequently levied a fine of Rs.5 Lakhs on M/s. Unno Industries Ltd. for indulging in non-genuine trade in illiquid stock options segment of BSE and this information is available in the public domain. The SEBI had observed large scale reversal of trades in the illiquid stock option segment of the BSE leading to creation of artificial volumes on the bourse during the period from April 2014 to September 2018, for which this penalty was levied.

**14.** As pointed out by the AO in the assessment order the name of Unno Industries Ltd. was appearing among the list of companies suspended by the BSE and was found as suspended on the website of SEBI as well. These enquiries and evidences conclusively proved that the trades were manipulated and the gains/losses made by beneficiaries in trade of this security can't be held as genuine. The AO had further analyzed the financial

statements of M/s. Unno Industries Ltd. in the assessment order and found that the movement of its share price was abrupt, unrealistic and not based upon any sound realistic parameter. The Supreme Court has held in the case of *SEBI Vs. Rakhi Trading (P) Ltd. (90 taxmann.com 147(SC))* that abnormal difference between the prices at which the trades were executed without corresponding effect on the price of the underlying security, shows that the option in which the party traded was not in demand in the market and that it was unusual that the trades were transacted with such huge profits when there was no change in the underlying prices. It was held by the Apex Court that such trade transactions were obviously only aimed at carrying out manipulative objective. Following this principle laid down by the Apex Court, there was nothing wrong in the Revenue's doubt about the genuineness of the transaction, considering the volatile fluctuation in share price of M/s. Unno Industries Ltd. The AO had issued a detailed show cause notice to the assessee to establish the genuineness of the LTCG as claimed. It is apparent from the assessment order that the AO had doubted the genuineness of the transactions and this aspect was not at all considered and commented upon by the CIT(A) in his order.

**15.** The genuineness of transactions can be tested on the principle of preponderance of human probability as settled by the Hon'ble Apex Court in the case of *Smt. Sumati Dayal vs. CIT, (1995) 214 ITR 801 (SC)*. The documentary evidences in themselves, cannot be held as conclusive evidence of the transaction. When someone is deliberately entering into a transaction in shares of penny stock company, it is obvious that all the documentary evidences will be in order. After all, he or she has to establish the transactions with reference to the documentary evidences so as to claim the benefit of exemption of LTCG available under the Act. Therefore, while

examining such evidences, surrounding circumstances also has to be taken into account in order to unravel the true nature of the transactions. The Hon'ble Supreme Court has observed in the case of *CIT vs. Durga Prasad More*, [1971]82ITR540(SC) that “*the taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.*” In penny stock transactions a facade of genuineness is created and in order to unravel the truth one has to go behind such façade. The Hon'ble Supreme Court had held in the case of *Vodafone International Holdings B.V. v. Union of India* (204 Taxman 408)(SC) that the Revenue may invoke the "substance over form" principle or "piercing the corporate veil" test after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the impugned transaction is a sham or tax avoidant.

**16.** When we examine the evidences brought on record by the Assessing Officer, the first question that arises is whether these evidences satisfy the test of preponderance of human probability. The assessee was new to share trading activity as no evidence of any past history of trading in shares or having any investment in any other share has been brought on record. When the assessee is going to make investment in shares for the first time, she does not trade in listed shares, neither she indulge in direct stock market transaction. For the first time, the assessee has made an investment in shares by way of off-market purchase of unlisted share of an unknown decrepit company M/s. Basukinath Real Estate Pvt. Ltd. This off market transaction was made through a broker based in Kolkata, who was totally unknown to the assessee based in Vadodara. No evidence of any past transaction of the assessee with Kolkata based broker M/s Jwalaji Supplies Pvt. Ltd. has been

brought on record. In addition, the assessee didn't have the funds to buy the shares when the shares were actually bought by her on 04.11.2011; as the payment to the broker was made after 4 & ½ months on 23.03.2012. Further, this payment was made after obtaining an unsecured loan of equivalent amount from her husband Shri Snehal Patel. The ld. AR has filed a copy of the bill for purchase of shares on 04.04.2011 from M/s. Jwalaji Suppliers Pvt. Ltd. of Kolkata which is mostly illegible. The distinctive number of shares appearing on contract note/bill cannot be read and the certificate number is missing. The assessee has failed to bring on record any evidence as to on what date the shares of M/s. Basukinath Real Estate Pvt. Ltd. were actually transferred in the name of the assessee. **The question as to why a broker based in Kolkata will sale the shares to a client resident in Vadodara on credit, with whom there was no previous transaction, and why the ownership of such shares sold on credit will be transferred without receipt of payment, has not been answered or explained.** It is further found from the contract memo that no brokerage was charged by M/s. Jwalaji Suppliers Pvt. Ltd., Kolkata for sale of the shares to the assessee. The broker in Calcutta was after all doing a business and not running a charity.

**17.** It is further found that payment for the shares purchased from Kolkata broker was made on 23.03.2012 whereas the bonus shares were allotted to the assessee prior to that date on 16.03.2012 itself. **It is difficult to digest that a broker will transfer shares to an unknown first-time buyer without receiving the payment. It is equally difficult to believe that bonus shares would be allotted to the assessee even before the consideration for original shares was paid by the assessee to the broker.** The assessee had not brought on record any evidence for transfer of

ownership of shares of Basukinath Real Estate Pvt. Ltd. prior to the payment of consideration for purchase of these original shares. The assessee has not explained why the initial purchase of shares was not carried out on the recognized stock exchange or through a registered member of the stock exchange. Neither the reason for off market purchase of shares on credit from an unknown broker in Kolkata has been explained. Such a conduct of the assessee casts a serious doubt on the genuineness of the transactions. For the reasons as discussed above, the tell-tale evidences for purchase of shares as brought on record, can't be held as genuine.

**18.** It is also found that the assessee had opened a demat account on 09.04.2012. The shares of M/s. Unno Industries Ltd. were issued to the assessee on 12.02.2013 when the assessee already had a demat account but these shares were not dematerialized immediately after allotment, the reason for which has not been explained. Why these shares were dematerialized only a few days prior to the sale in July 2013 ? Obviously, the shares were dematerialized prior to sale in order to pay the STT and give it a colour of LTCG exempt u/s. 10(38) of the Act. It is also relevant to consider that the assessee had not disclosed the LTCG of Rs.31,90,085/- in the return of income at all. It was only after the matter was taken up for scrutiny by the AO that it was submitted that this amount was taken to capital account and that the non-disclosure to exempt LTCG in the return was an inadvertent error.

**19.** The surrounding circumstances that the shares of M/s. Unno Industries Ltd. were utilized for generating huge bogus LTCG having total trade value of about Rs.1007 Crores, as revealed in the investigation carried out by the Department, puts a question mark on the genuineness of the transactions

carried out by the assessee. The statement of Shri Amit Saraogi, a sub-broker of Calcutta Stock Exchange who was involved in providing accommodation entries through Jamakarchi/shell Companies as reported in assessment order, also casts a serious doubt on the genuineness of the transactions. Shri Amit Saraogi, who was a Director of M/s. Basukinath Real Estate Pvt. Ltd., the shares of which was initially acquired by the assessee, had admitted that he was providing accommodation entries through multilayered transactions and the involvement of shares of M/s. Basukinath Real Estate Pvt. Ltd. and that of M/s. Unno Industries Ltd. in providing such accommodation entries cannot be ruled out.

**20.** The discrepancies and adverse evidence collected by the AO in the course of assessment were not explained by the assessee and the thrust was always on the documentary evidence of the transactions. As already discussed earlier, the documentary evidences cannot be relied upon and treated as conclusive in view of various unanswered questions as already discussed earlier and the dubious nature of transactions. The surrounding circumstances of the transactions establish that the transactions entered into by the assessee was not genuine. The assessee had not discharged her onus against the overwhelming adverse evidences that has been brought on record by the Revenue authorities.

**21.** The thrust of the assessee's argument is that the sale consideration was received by cheque on which STT was paid and, therefore, the LTCG earned was genuine. This cannot be accepted in view of multiple adverse evidences collected by the Revenue and, therefore, the assessee cannot be treated as a passive beneficiary of the transactions. In trade transactions with

huge price variations of the transactions, it is too naive to hold that the transactions are through screen based trading and hence anonymous. In such transactions there is prior meeting of minds involving synchronization of buy and sale order and such transactions are manipulative/deceptive device to create a desired loss and/or profit.

**22.** On consideration of the facts and the surrounding circumstances as discussed above, we are of the considered opinion that the transactions entered into by the assessee are not genuine. From the purchase of shares of M/s. Basukinath Real Estate Pvt. Ltd. to the sale of shares of M/s. Unno Industries Ltd., the assessee has not discharged her onus against the adverse evidences brought on record by the AO and no satisfactory reply was given to explain the same. The approach of the CIT(A) to allow the appeal of the assessee without considering the facts and the surrounding circumstances was fallacious and cannot be upheld. The Id. CIT(A) did not consider the attending facts and circumstances of the case at all and the transactions cannot be held as genuine only on the basis of documentary evidence of sale consideration and payment of the STT thereon. The unusual sequence in the purchase transactions, the preponderance of probabilities and the surrounding circumstances as discussed above, are heavily loaded against the genuineness of the transactions and, therefore, we have no hesitation in reversing the findings of the Id. CIT(A). The issue involved in the case is not of application of any particular case law as done by the Id. CIT(A) but to examine and appreciate the facts and circumstances of the instant case which has not been touched upon by the CIT(A).



As the Revenue had invoked the provisions of Section 68 of the Act, the onus was squarely on the assessee to prove the genuineness of the credit transaction, which has not been discharged. The Revenue has brought enough materials on record to exhibit the transactions as sham or bogus and the assessee has miserably failed to establish the genuineness of the impugned credit entry appearing in the accounts. Since the exempted LTCG claim of the assessee was only a façade created to conceal the true nature of the credit entry of Rs.33,30,995/- appearing in the accounts, the addition as made by the AO is confirmed.

**23.** In the result, the appeal preferred by the Revenue is allowed.

**This Order pronounced on 03/05/2024**

Sd/-  
(SUCHITRA RAGHUNATH KAMBLE)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 03/05/2024

S. K. SINHA

*True Copy*

Sd/-  
(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

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,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad