

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
**BEFORE SHRI D. KARUNAKARA RAO, AM**

Sl. No.	ITA Nos.	A.Y.	Name of the Appellant	Respondent
1.	1875/PUN/2018	2015-16	Shamim Imtiaz Hingora, Plot No.71, Indira Park Society, Aurangabad Road, Opp. Hotel Niwant, Jalna.  PAN No.AHUPH6035P	ITO, Ward-1, Jalna.
2.	1876/PUN/2018	2015-16	Parvez Hingora, K 327 Maharaja Trading Co., Ring Road, Jalna.  PAN No.AASPH3972Q	ITO, Ward-1, Jalna.
3.	1877/PUN/2018	2015-16	Shabeena Irfan Hingora, Plot No.70, Indira Park Society, Aurangabad Road, Opp. Hotel Niwant, Jalna.  PAN No.AHUPH6033M	ITO, Ward-1, Jalna.
4.	1878/PUN/2018	2015-16	Arif Abdul Razak Hingora, K 327, Maharaja Trading Co., Ring Road, Jalna.  PAN No.ACKPH1199M	ITO, Ward-1, Jalna.

अपीलार्थी की ओर से / Appellant by : Smt. Deepa Khare  
प्रत्यर्थी की ओर से / Respondent by : Shri M. K. Verma

सुनवाई की तारीख / <b>Date of Hearing : 14.02.2019</b>	घोषणा की तारीख / <b>Date of Pronouncement: 01.03.2019</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

There are **four** appeals under consideration. All these appeals relate to the same family and they are filed with common grounds of appeal for the assessment year 2015-16. Since the facts and issues involved in these four appeals are common, therefore, all these four appeals were heard together and are disposed of by this composite order.

2. The solitary issue raised by the assessee in all the four appeals relates to the addition on account of **Penny Stocks** involving the shares of

“Mishika Finance”. The assessee purchased the 300 shares from M/s Pyramid Trading & Finance Ltd. presently known as Mishka Finance & Trading Limited. The aforesaid shares have been transferred by M/s. Tohee Trading & Agencies Pvt. Ltd.. As per the SEBI’s website, the said company, M/s. Tohee Trading & Agencies Pvt. Ltd. was one of the delisted company since long. The share value went up substantially and it is to the benefit of the assessee. Assessee sold these shares and the gains were claimed exempt. Considering the Penny Stocks and off-market nature of the transactions, the Assessing Officer made addition at Rs.10,09,687/- in the case of Shamim Imtiaz Hingora and the contents of para 22 of the assessment order are relevant in this regard. Similarly, the additions made by the Assessing Officer in other three cases are as under :-

Sl.No.	Name	Addition
1.	Parvez Hingora (ITA No.1876/PUN/2018)	Rs.7,53,243/-
2.	Shabeena Irfan Hingora (ITA No.1877/PUN/2018)	Rs.8,17,800/-
3.	Arif Abdul Razak Hingora (ITA No.1878/PUN/2018)	Rs.8,73,073/-

3. During the first appellate proceedings, the CIT(A) confirmed the same and dismissed the appeal of the assessee. The contents of para 5.2 are relevant in this regard and the same are extracted hereunder :-

*“5.2 The test of human probability was also applied by the Hon’ble Punjab & Haryana High Court in the case of Som Nath Maini Vs. CIT (306 ITR 414). In this case, the assessee in his return declared loss from sale of gold jewellery and also declared a short-term capital gain from sale of shares so that the two almost matched each other. This simple tax planning became ineffective after the Assessing Officer disbelieved the astronomical share price increase applying the test of human probability. The Assessing Officer observed that short-term capital gains was not genuine in as much as the assessee had purchased 45000 shares of Ankur International Ltd. at varying rates from Rs.2.06/- to 3.1/- per share and sold them within a short span of six seven months at the rate varying from 47.75/- to Rs.55/- per share. Even though the two respective transactions for purchase and sale of shares were routed through two different brokers, yet the Assessing Officer did not believe the astronomical rise in share price of a company from Rs.3/- to Rs.55/- per share in a short-term. The assessee lost its case before the Tribunal. Confirming the order of the Tribunal, the Hon’ble Punjab and Haryana High Court held that the burden of providing that income was subject to tax is on the revenue but to show that the transaction was genuine, burden was primarily on the assessee. As per the Hon’ble High Court, the Assessing*

*Officer was to apply the test of human probabilities for deciding genuineness or otherwise of a particular transaction. Mere leading of the evidence that the transaction was genuine, could not be conclusive. It was further held that genuineness of the transaction could be rejected in case the assessee led evidence which was not trustworthy and the department did not lead any evidence on such an issue. Similar view was taken by the Hon'ble Punjab and Haryana High Court in the case of ACIT Vs. Balbir Chand Mani (111 TTJ 160). In the present case, it is beyond preponderance of probability that the fantastic sale price of a little known share i.e. Mishka Finance & Trading Ltd. without economic or financial basis, would increase from Rs.0.37/- to Rs.45/- per share. If one considers the fact that the assessee got 24,000/- shares against original 300 shares, the price increase is 120 times within 24 months which is evident from the fact that by investing Rs.9000/-, the assessee has got Rs.10,19,050/- (in respect of 22,500/- shares only) in a span of 24 months. There is no doubt that the capital gain was manipulated and bogus and was done only to claim exemption U/s 10(38). It can be safely concluded that the A.O. has rightly added amount of Rs.10,09,687/- to the meagre returned income of the appellant. Once the entire transaction is viewed from the perspective of human probabilities, it definitely fails on all counts. Respectfully following the above decisions and facts of the present case, the addition of Rs.10,09,687/- on account of bogus long term capital gain is confirmed. This ground of appeal is accordingly dismissed.”*

4. Aggrieved with the above conclusion of the Assessing Officer and the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal :-

- “1. The learned CIT(A) erred in law and on facts in confirming addition of Rs.10,09,687/- u/s 68 as income from undisclosed source in respect of income shown as long term capital gains from sale of shares.*
- 2. The learned CIT(A) erred in law and on facts in denying exemption u/s 10(38) for income shown as long term capital gains from sale of shares.*
- 3. The learned CIT(A) erred in law and on facts in not appreciating that the claim of long term capital gains on sale of shares was fully supported and genuine without there being any material to shown that the same was bogus.*
- 4. The appellant craves leave to add, alter, modify or substitute any ground of appeal at the time of hearing.”*

5. Similar grounds raised by the assessee in other three appeals also.

6. At the outset, ld. Counsel filed a written submission in support of the ground extracted above and claims of the assessee. The ld. AR submitted that the facts relating to the addition on account of Penny Stocks in this case are different from the cases relied on by the Assessing Officer/CIT(A). Bringing our attention to the recent judgment of the Hon'ble Delhi High Court in the case of Pr.CIT vs. NDR Promoters Pvt. Ltd. vide ITA 49/2018, order dated 17.01.2019, in particular, the contents of para 13 of the said judgement of the High Court (supra), the ld. Counsel submitted that the

facts are distinguishable and different. Referring to the other decision of Pune Bench of the Tribunal in the case of Rajkumar B. Agarwal vs. DCIT vide ITA Nos.1648 & 1649/PUN/2015, order dated 04.01.2019, he again submitted that the facts are different.

7. On the other hand, ld. DR for the Revenue submitted that, in the case of Penny Stocks addition, the nature of share transaction needs to be appreciated. Ld. DR relied heavily on the decision of Mumbai Benches of the Tribunal in the case of ITO vs. Shamim M. Bharwani vide ITA No.4906/Mum/2011, order dated 27.03.2015 and the judgement of the Hon'ble Delhi High Court in the case of NDR Promoters Pvt. Ltd. (supra).

8. On hearing both the sides, I perused the facts of the case, orders of the Assessing Officer and the CIT(A) and the judgements cited above in this regard. It is an undisputed fact that the shares involved are Penny Stocks and the Assessing Officer did not find any mistake in the documentation furnished by the assessee. The Assessing Officer alleges that the documentation is self-serving. Further, I also perused the judgement of the Hon'ble Delhi High Court in the case of NDR Promoters Pvt. Ltd. (supra) and find the contents of para 13 and 14 of the said order are relevant in this regard. For the sake of completeness, the said para 13 and 14 are extracted hereunder :-

*“13. In view of the aforesaid factual position, we have no hesitation in holding that the **transactions in question were clearly sham and make-believe with excellent paper work to camouflage their bogus nature.** Accordingly, the **order passed by the Tribunal is clearly superficial** and adopts a perfunctory approach and ignores evidence and material referred to in the assessment order. The **reasoning given is contrary to human probabilities**, for in the normal course of conduct, no one will take investment of such huge amounts without being concerned about the return and safety of such investment.*

*14. Accordingly, the appeal is allowed. The substantial question of law framed above is accordingly answered in favour of the appellant-revenue and against the respondent-assessee. There would be no order as to costs.”*

9. Considering all the facts of the case and the judgements cited above in force, I am of the opinion the matter should be remanded to the file of the CIT(A) for examining the facts of the said cases and consider the submission of the ld. AR for the assessee. There is need for finding of fact on (i) the nature of the shares transactions; (ii) make-believe nature of paper work; (iii) Camouflage the bogus nature; and, (iv) the relevance of human probabilities etc. Thus, ld. AR mentioned that all the judgements are distinguishable on facts. The CIT(A) needs to compare the facts of all these cases under consideration and others, if any. Hence, the issue is required to be remanded to the file of the CIT(A). With these directions, the CIT(A) is directed to pass a speaking order after granting a reasonable opportunity of being heard to the assessee. Accordingly, the grounds in all the appeals of the respective assessee are allowed for statistical purposes.

10. In the result, all the four appeals of the respective assessee are allowed for statistical purposes.

Order pronounced on this 01<sup>st</sup> day of March, 2019.

**Sd/-**  
**(D. KARUNAKARA RAO)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक Dated : 01<sup>st</sup> March, 2019.  
*Sujeet*

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Aurangabad;
4. The CCIT, Nashik;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune