IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

I.T.A. Nos. 2240/Ahd/2025 & 2511/Ahd/2025
(**निर्धारण वर्ष** / Assessment Years : 2017-18 & 2018-19)

Assistant Commissioner of Income Tax Room No.305, 3rd Floor, Aaykar Bhavan, Ashram Road, Ahmedabad, Gujarat - 380009 **&** ACIT, Central Circle 2(3), Ahmedabad	**बनाम** / Vs.	**Shital Omprakas Agrawal** A-15, Near J.B.R. Arcade Divine, Highland Sola, Ahmedabad, Gandhinagar, Gujarat - 380060
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABVPA7087K		
(Appellant)	..	**(Respondent)**

&

CROSS OBJECTION No.99/Ahd/2025
(in I.T.A. No. 2240/Ahd/2025)
&
CO No.5/Ahd/2026
(in ITA No.2511/Ahd/2025)
(**निर्धारण वर्ष** / Assessment Years : 2017-18 & 2018-19)

Shital Omprakas Agrawal A-15, Near J.B.R. Arcade Divine, Highland Sola, Ahmedabad, Gandhinagar, Gujarat - 380060	**बनाम** / Vs.	**Assistant Commissioner of Income Tax** Room No.305, 3rd Floor, Aaykar Bhavan, Ashram Road, Ahmedabad, Gujarat - 380009 **&** ACIT, Central Circle 2(3), Ahmedabad

स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABVPA7087K		
(Appellant)	..	**(Respondent)**

Assessee **by :**	Shri Biren Shah, AR.
प्रत्यर्थी की ओर से/**Respondent by :**	Shri Amit Pratap Singh, Sr. D.R.

Date of Hearing	30/07/2026
Date of Pronouncement	15/10/2026

(आदेश)/ORDER

Per Sanjay Garg, Judicial Member:

The captioned appeals by the Revenue and corresponding cross objections by the assessee are against the separate orders passed by the Ld. Commissioner of Income Tax (Appeals)-12, Ahmedabad (hereinafter referred to as "CIT(A)"), under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") and relate to same Assessment Years (A.Y.) 2017-18 & 2018-19. Since identical facts and common issues are involved in the captioned appeals and corresponding cross objections, hence, the same were heard together and are being disposed of by this common order. The Revenue's Appeal ITA No.2240/Ahd/2025 is taken as lead case for narration of facts.

ITA No.2240/Ahd/2025 & Cross Objection No.99/Ahd/2025:

2. The brief facts of the case as extracted from the impugned order of the Ld. CIT(A) are that the case of the assessee, who is a resident individual, was re-opened u/s 148A of the Act on the

basis of information flagged on Insight Portal of the Department that the assessee was one of the beneficiaries of accommodation entry in transactions of shares of Kushal Tradelink Limited and earned the profit of Rs. 60,37,086/-. The Assessing Officer (in short, "the AO") further noted from the computation of income of the assessee that assessee had reported 'nil' capital gains. The AO, therefore, observed that he has reason to believe that the income of the assessee has escaped assessment for the assessment year under consideration by reason of failure on the part of the assessee to disclose fully and truly all necessary material facts in her return of income. He, therefore, reopened the assessment u/s 147 of the Act. Consequently, notice u/s 148 was issued on 27.04.2021, in response to which the assessee filed her return of income declaring total income at Rs 2,04,00,940/-

2.1 During the course of re-assessment proceedings, the assessee was asked to prove the genuineness of the transactions in the script of Kushal Limited. The assessee during the course of re-assessment proceedings submitted that the transactions in the script of Kushal Limited were carried through recognized stock exchange, STT was duly paid and the transactions were carried out through regular banking channel. To prove the same, the assessee has submitted the copy of demat account statement showing purchase and sale of shares, copy of contract notes for purchase and sale of shares and relevant extract of bank statement evidencing transaction of purchase and sale of shares. The AO,

however, disregarding the evidences furnished by the assessee, referred to information received from Investigation wing and observed that a search action was carried out in the case of 'Kushal Group', wherein it was established that the said company was used for price rigging and providing bogus accommodation entries in the form of bogus Long Term Capital Gain / Loss and Short- Term Capital Gain/Loss. The AO has also referred to Adjudication Order passed by Security & Exchange and Board of India ("SEBI") dated 22 12.2017 against various persons involved in price rigging of shares of Kushal Limited. The AO further emphasized the share price movement of Kushal Limited from Face value of Rs.2/- on 03.09.2015 to Rs.469/- on 13.02.2017. The AO observed that the movement in the price was not commensurate with the trend of the BSE Sensex. The AO observed that the assessee purportedly had taken accommodation entry in the form of bogus profit/(loss) by trading in the scrip of Kushal Ltd. Thus, AO has made addition u/s 68 r.w.s 115BBE of Rs.60,37,086/-.

3. Being aggrieved by the above addition, the assessee preferred appeal before the Ld. CIT(A). During the course of the appellate proceedings, the assessee submitted that she had shown profit of Rs.52,63,897/-, which was shown under the head of income from business and profession. It was submitted that the shares were purchased and sold through banking channels, and the transactions were carried out through a registered broker of a

recognized stock exchange, where it is not possible to identify the counterparty. STT was duly paid on both purchase and sale transactions. It was further submitted that despite the search action conducted in the case of Kushal Limited, the Ld. AO has not brought on record any evidence to establish that cash was remitted back against the sale consideration received by the assessee or that any cash was received in lieu of the cheque payments made at the time of purchase. That the name of the assessee did not figure even in the Investigation Report / order of the SEBI. It was further submitted that the assessee held total of 1,74,020 shares as on year end as closing stock and if the intention of the assessee was to earn bogus profits, the assessee would have sold all the shares held by her. The assessee further submitted that the shares were not sold when the prices were the highest. The price of Kushal Limited was at its peak on 13.02.2017 i.e. Rs.469/- and that if the transaction was bogus, then she would have sold the shares during such period when prices were substantially higher. Further, the shares were purchased in a range of Rs.103/- to Rs.293/- and not at Rs.2/-.

3.1 The Ld. CIT(A) after considering the submissions and details furnished by the assessee observed that the assessee had not sold the entire quantity of shares held by her and shares were still lying in her demat account as per the latest submission filed by her during appellate proceedings. He observed that had the assessee resorted to preconceived scheme and part of such scheme, she

would have sold all the shares at a higher price and would not have retained it. The Ld. CIT(A), thereafter, referred to the decisions of Co-ordinate Ahmedabad Bench of the Tribunal "Income-tax Officer v. Ice Worth Reality LLP" reported in [2024] 159 taxmann.com 775, " Vikas More vs. ITO" ITA No.1036/Ahd/2024, order dated 14.02.2025, "ITO vs. Dhwani Alpesh Shah" ITA No.1817 & 1818/Ahd/2024, order dated 29.07.2025 and of the Mumbai Bench of the Tribunal in the case of "Shri Mahaveer Kanwarlal Ranka vs. ACIT", ITA No.224/Mum/2024, dated 29.11.2024 and observed that the different Benches of the Tribunal have held that where no role of assessee qua rigging of the shares has been assigned, alleged or established by any person including SEBI and no investigation / action have been taken out against the assessee by any of the authority and the assessee has furnished all the requisite documents to prove the genuineness of the transaction, then, merely because the assessee has traded in the share of Kushal Ltd., that itself is no ground to make addition in the case of the assessee. Further, it was also relevant factor that the assessee had sold only a fraction of shares during the year and had retained a large chunk of shares at the end of the year. The Ld. CIT(A), thereafter, adverting to the facts of the case of the assessee, observed that the AO, in this case, had proceeded on the basis of information received from the investigation Wing that the share price of the Kushal Ltd. had been rigged and there was an order of the SEBI against certain persons in this respect and that the

assessee had also traded in the scrip of Kushal Ltd., The Ld. CIT(A) observed that the AO, however, has not referred to any evidence to prove that the assessee introduced any unaccounted money. That in the SEBI adjudication order, there was no name of the assessee. He observed that the AO's conclusion that the assessee converted her unaccounted money through pre-planned fictitious transactions was based on conjectures and surmises. He noted that all transactions were routed through banking channels, shares were held in demat form, and sale proceeds were received through regular banking transactions. He, accordingly, deleted the additions so made by the AO.

4. Being aggrieved by the order of the Ld. CIT(A), the Revenue has come in appeal before us agitating the deletion of the additions made by the AO. On the other hand, the assessee has filed the cross objections contesting the very validity of the reopening of the assessment u/s 147 of the Act.

4.1 We have heard the rival contentions and gone through the record. So far as the issue of reopening of the assessment is concerned, we note that the only information available to the AO was that the assessee had traded in the scrip of Kushal Ltd. and that the assessee had not shown any capital gains in the computation of income and further, that the assessee had not truly and fully disclose the material facts necessary for his assessment for the year under consideration, thereby, necessitating reopening

of assessment u/s 147 of the Act. On the other hand, the Ld. Counsel for the assessee has demonstrated that the original assessment of the assessee for the year under consideration was carried out u/s 143(3) of the Act. That all the necessary particulars of income including the profits earned from trading in Kushal Ltd. were duly disclosed and the same was shown as 'business income' of the assessee. It is, therefore, apparent that the AO has not properly examined the facts of the case. The AO in the concluding part of the order passed u/s 148A(d) of the Act has observed as under:

> *" 07. Therefore, it is construed that the assessee does not want to avail the opportunity of being heard. Hence, it is established that the assessee* ***failed to explain the fact that income arising from the impugned transaction/transaction itself has been duly disclosed and relevant income arising there from has been offered for taxation for the relevant assessment year.***
>
> *08. Therefore, in the light of the above reasons, information and material available on record, I am of the considered view that the assessee* ***has failed to explain the above mentioned transactions and income earned/ derived there from, during the year under consideration and the same remained unexplained and unsubstantiated as per the relevant provisions of the Act.*** *Hence, on the basis of material available on record which establish that the income chargeable to tax in respect of above mentioned unexplained transactions of Rs. 60,37,086/- has escaped assessment for FY 2016-17 and therefore, this is a fit case for issuance of notice u/s 148 of the Act. for Assessment Year 2017-18."*
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> *(emphasis supplied by us)*

4.2. The relevant provisions of the Section 148A of the Act as inserted by Finance Act, 2021 w.e.f. 01.04.2021 and as applicable/in operation as on the date of passing of the order u/s 148A(d) i.e. 29.07.2022, are reproduced as under:

*" **Conducting inquiry, providing opportunity before issue of notice under section 148.***

***S. 148A.** The Assessing Officer shall, before issuing any notice under section 148-*

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires;
Provided that……."

4.3 A perusal of the above reproduced provisions of section 148A of the Act would reveal that a duty is cast upon the AO to firstly conduct an inquiry, if so required, in respect of the information received from the Investigation Wing to check the veracity of such information by co-relating and verifying such information suggesting escapement of income of the assessee. The AO is further supposed to share such information and results of

any such inquiry, if any, conducted by him, with the assessee and to provide him an opportunity of hearing as to why a notice under section 148 should not be issued on the basis of such information and/or results of such inquiry. Thereafter, the AO has to decide, on the basis of material available on record including reply of the assessee, if so furnished, whether or not it is a fit case to issue a notice under section 148, by passing an order u/s 148A(d) of the Act. In the case in hand, the only information available to the AO from the Investigation Wing was that the assessee had traded in scrip of Kushal Ltd. That information itself is not enough to hold that the income of the assessee has escaped assessment. This information, in fact, was already available to the AO. The original assessment of the assessee was carried out u/s 143(3) of the Act. The assessee had shown business profits of Rs.60,37,086/- earned from trading in the scrip of Kushal Ltd. After set off of loss of Rs.1,09,683/- in respect of transaction in another scrip, and after claiming administrative expenses of Rs.3,45,128/- and finance cost of Rs.3,42,778/-. The assessee had disclosed income from business and profession at Rs.52,63,897/-. The assessee had shown total returned income of Rs.2,04,00,940/- including the aforesaid income of Rs. 5263897/- from share trading. The assessee duly paid the applicable taxes thereupon. It was not a case that the assessee had claimed any tax exempt long term capital gain from the profit earned from the trading in the said scrip. It is also pertinent to mention here that though the assessee had shown business profits of Rs.52,63,897/- during the year

under consideration, however, in the next financial year, the assessee suffered heavy losses of Rs.1.57 Crores in trading of the same scrip, which was carried forward. Even in the subsequent three years, the assessee could not set off the said loss incurred from trading in Kushal Ltd. as the assessee had set off only 0.37% of the total loss in the next three years amounting to Rs.58,013/- only. Therefore, in this case, neither the assessee has claimed any tax exempt bogus long term capital gain nor the assessee has set off the profits earned during A.Y. 2017-18 against any business loss, except the minor amount as noted above, and even the heavy loss incurred of Rs.1.57 Crore was not set off against any business income for the next three years. Any motive on the part of the assessee for booking any bogus gain or loss is entirely missing in this case. The entire information pertaining to the transaction was available on record. Under the circumstances, the reasons recorded by the AO for reopening of the assessment that the assessee has not shown the income / loss from transactions in the shares of Kushal Ltd. was factually incorrect. The AO did not bother to co-relate the said information with the assessment records / original return of income filed by the assessee. In view of this, not only the reopening of the assessment is bad in law in this case, but also, the addition made by the AO on merits is not sustainable at all. Therefore, the cross objections filed by the assessee are, hereby, allowed and whereas the appeal of the Revenue is, hereby, dismissed.

ITA No. 2511/Ahd/2026 & CO No.5/Ahd/2026

5. Since the facts, and issue involved in the present appeal of the Revenue and cross objection of the assessee for the assessment year 2018-19 are completely identical to those discussed and adjudicated by us in the preceding paragraphs for the assessment year 2017-18, our findings and conclusions shall apply mutatis mutandis to these cross objections for year 2018-19 as well.

6. In the final result, the captioned two appeals filed by the Revenue are dismissed, and whereas, the corresponding cross objections filed by the assessee stand allowed.

This Order is pronounced on 15/10/2026

Sd/-	Sd/-
(NARENDRA PRASAD SINHA)	(SANJAY GARG)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 15/10/2026

S. K. SINHA *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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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