

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri Shamim Yahya (AM)

I.T.A. No. 6207/Mum/2019 (Assessment Year 2011-12)

ITO-33(2)(4) Office of ITO-33(2)(4) Room No. 850 8 <sup>th</sup> Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra-East Mumbai-400 051.	Vs.	Nisha G. Shah B-903, Shankar Park Shakar Lane, Opp. Suman Apartment Kandivali West Mumbai-400 067.
(Appellant)		(Respondent)

C.O. No. 63/Mum/2021 (Assessment Year 2011-12)

Nisha G. Shah B-903, Shankar Park Shakar Lane, Opp. Suman Apartment Kandivali West Mumbai-400 067.	Vs.	ITO-33(2)(4) Office of ITO-33(2)(4) Room No. 850 8 <sup>th</sup> Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra-East Mumbai-400 051.
(Appellant)		(Respondent)

PAN : AADPS6150N

Assessee by	Shri Vinayak Pandya
Department by	Ms. Smita Verma
Date of Hearing	11.10.2021
Date of Pronouncement	29.10.2021

ORDER

This appeal by the Revenue and cross objection by the assessee are directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 26.6.2019 pertaining to A.Y. 2011-12.

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

1. "On the facts and in the circumstances of the case and in law, whether the Ld.CIT(A) was correct in deleting the addition of Rs.55,929/- being STCL on sale of shares of M/s. VAS Infrastructure Ltd., by considering that the assessee has purchased and sold such shares through

registered brokers and payment was made through proper banking channels in regular course of investment, without appreciating the fact that during investigation carried out by investigation Wing of the Department these scrips of M/s. VAS Infrastructure were found to be penny stock without sound financials and the assessee was found to be one of the beneficiaries who had traded in these scrips. "

2. "On the facts and circumstances of the case, the Hon'ble ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBD1 Circular No.23/2019 dated 06.09.2019.
3. Brief facts are that Nisha Girish Shah (assessee) is an individual earning income from salary, filed her return of income for A.Y.2011-12 on 30.07.2011 declaring the income at Rs.3,47,510. There was information from DGIT (Investigation), Kolkata that the assessee was one of the beneficiaries of obtaining of bogus Short term capital loss. The modus operandi of involvement of the operators, intermediaries and the beneficiaries was detailed in the investigation report prepared and disseminated by the Directorate of Investigation, Kolkata. As per the information received, the appellant received accommodation entries in STCL. Assessment was reopened by issuing notice u/s. 148 after following due procedure for reopening. Re-assessment was completed u/s on 27.12.2018 determining total income of Rs.3,47,510 after disallowing the STCL of Rs.55,929 claimed by the assessee on the scrip M/s VAS Infrastructures. In passing the assessment order the Assessing Officer referred to the finding of Investigation Wing and his opinion as under :-

“i) Individuals throughout the country identified who have taken such bogus entries of LTCG/loss amounting to several crores from 2010 to 2014.

ii) The result of the enquiry was also shared with SEBI and SEBI, after investigating 11 cases have found the allegation to be correct. The balance cases are still being investigated by SEBI.

iii) The top 25 groups under each investigation directorate of the country were confronted in course of further investigation. Almost all of them barring a few have accepted having taken the entries for a commission. A sum of hundreds of crores has been voluntarily surrendered by such assessees.

iv) Several assessees have filed revised return since the enquiry and have taken back their claim of exemption.

6.4 The Securities and Exchange Board of India (SEBI) has in the recent past, passed some orders on the issue of manipulation of share market for providing accommodation entry of bogus LTCG/STCL. The SEBI considering the inputs from Income Tax Department as well as from its own surveillance system and that of the stock exchanges has taken appropriate action in case of the suspect scrips. These actions include passing interim direction, suspending the trade, reducing the price band etc.

4. Thereafter he opined that price of shares has jumped 3.6 times in a short term. He concluded as under :-

“Considering the above circumstantial and direct evidences it is proven that the STCL on sale of shares of M/s VAS Infrastructure shown by the assessee is not genuine one. Since the assessee has not objected to proposed disallowance of STCL till the date of passing of this order and considering all the above comprehensive evidences, it is quite evident that the STCL claimed by the assessee is not genuine and is arranged one. The above circumstantial and direct evidences proves that the STCL claimed by the assessee is not genuine and hence STCL loss of Rs. 55,929/- claimed by the assessee on the penny stock scrip M/s. VAS Infrastructure is disallowed.”

5. Upon assessee’s appeal learned CIT(A) deleted the addition by holding as under :-

“4.2 I have carefully gone through the assessment order, the submissions of the appellant before the assessing officer and the submissions made during the appellate proceedings. The AO disallowed the STCL holding that the appellant had obtained bogus STCL. For making disallowance of loss, the AO heavily relied on the report of DIT(Inv.), Kolkata just because the scrip VAS Infrastructure Ltd. was named as Penny Stock. It is only mentioned that large number of beneficiaries has claimed bogus LTCG/STCL. There is no specific mention of the name of the appellant in the information. This shows that the enquiry carried out by the investigation wing of Kolkata did not reflect the name of the appellant as the beneficiary. Further, the statements recorded do not directly link the appellant with any of the said companies or persons. None of the persons whose statement was recorded stated that the appellant was involved in price rigging of the shares, or that she received or paid cash for getting the bogus STCL. Thus, the inference drawn by the AO on the basis of the said report and statements recorded by the Wing cannot be considered as any base for treating the STCL claimed by the appellant as bogus. Further, no adverse inference can be drawn with respect to the genuineness of the transaction entered by the appellant in the normal course of her share purchase and sale transactions, merely because some brokers were involved in arranging accommodation entries for LTCG/STCL to various others.

4.3 AO has not established that appellant was in collusion with any one in rigging of the shares of VAS Infrastructure Ltd. From the gamut of facts brought out above, it appears that the AO was predominantly influenced by

the penny stock related issue for treating the said transactions as sham. It is, however, seen that there is no adverse comments on the documentation involving these share transactions nor is there any allegation against the appellant individually as involved in price rigging or taking the benefit of accommodation entries to book loss. Thus, the purchase of shares of VAS Infrastructure Ltd. by the appellant is backed by evidences which have not been doubted by the AO and the reasons provided by him for making the addition can at the most be termed as presumptions, but in view of the evidences submitted by the appellant to substantiate the transaction, in absence of any adverse finding by the AO on any of the documents filed by the appellant, the STCL claimed by the appellant of cannot be treated as bogus. Reliance is placed on the following cases.

- C.I.T. vs. Shri Mukesh Ratilal Marolia (Income Tax Appeal No. 456 of 2007, order dt. 07/09/2011, Bom HC)
- Shyam R Pawar (54 Taxmann.com 108, Bom HC)
- Manishkumar Baid and Mahendrakumar Baid vs. A.C.I.T. Cir-35, Kolkata(I.T.A. No. 1236 & 1237/KoI/2017, order dt 18.08.2017, ITAT Kolkata)
- A.C.I.T. Circle-7, Ahmedabad vs. Vineet Sureshchandra Agarwal (I.T.A. no. 1442/ Ahd/2013, order dt. 06/01/2017, IT AT Ahmedabad)
- A.C.I.T. Circle Pali vs. Shri Pankaj Raj Shah(I.T.A. no. 330/Jodh/2011, order dt. 28/06/2012, IT AT Jodhpur)
- Ms. Farrah Marker vs. I.T.O. 19(3)(1), Mumbai(I.T.A. no. 3801/Mum/2011, order dt. 27/ 04/ 2016, ITAT Mumbai)
- I.T.O.- 24(3)(1), Mumbai vs. Indravadan Jain HUF and
- A.C.I.T.-24(3), Mumbai vs. Indravadan Jain (I.T.A. no. 4861 & 5168/Mum/2014, order dt 27/05/2016, IT AT Mumbai)
- Shri Mukesh B Sharma vs ITO 11(3)(2), Mumbai in ITA No.6249/Mum/2018 dated 29.05.2019

4.4 Therefore, in view of the binding decisions of the jurisdictional High Court and a plethora of decisions of Mumbai and other Benches of IT AT, in this factual and legal matrix of the case, I find that the disallowance of STCL derived by the appellant in the normal course of transactions in shares is not unsustainable and therefore the AO is directed to delete the disallowance.”

6. Against the above order Revenue is in appeal before the ITAT.

7. I have heard learned Departmental Representative and perused the records. I note that disallowance has been made by the Assessing Officer on surmises and conjecture. No defect in the documentation submitted has been found. There is no case made out that the broker or the shares involved are under SEBI investigation. No case has been made out that name of the assessee has surfaced in any search or survey. In these circumstances learned CIT(A) has passed a reasonable order and placed reliance upon Hon'ble Jurisdictional High Court decision in similar cases as above.

8. Learned Departmental Representative has referred to the decision of Hon'ble Bombay High Court in the case of Sanjay Bimalchand Jain Vs. PCIT (ITA No. 18/2017 dated 10.4.2017). The said decision is not applicable in the facts of this case.

9. In the result, Revenue's appeal is dismissed.

Cross objection:

10. Grounds of appeal read as under :-

1. Reopening of assessment was not valid. As amount involved was less than Rs. 1 lakh.
2. Filing appeal before ITAT was not valid as Tax effect is much below amount prescribed by CBDT.

11. Since I have already decided the issue in favour of the assessee in Revenue's appeal above, the cross objection adjudication is only of academic significance. The same is being treated as infructuous.

12. In the result, Revenue's appeal is dismissed and cross objection is treated as infructuous.

Pronounced in the open court on 29.10.2021.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 29/10/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai