

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No.221/Ahd/2021
(Assessment Year: 2012-13)

Genuine Finance Pvt. Ltd. 15, Haridwar, 23 Patel Society, Opp. Associated Petrol Pump, C. G. Road, Ahmedabad-380006	Vs.	DCIT Circle-2(1)(1), Ahmedabad
[PAN No.AABCG2937L]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Pankaj K. Shah, A.R.
Respondent by:	Shri Rakesh Jha, Sr. DR

Date of Hearing	13.09.2022
Date of Pronouncement	28.10.2022

ORDER

This appeal is filed by the assessee against the order dated 02.08.2019 passed by the Ld. CIT(Appeals), National Faceless Appeal Centre (in short ‘NFAC’), Delhi for A.Y. 2012-13.

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

“1. The order of the learned CIT(A) is erroneous and bad in law and on the facts of the case.

2. The learned CIT(A) has erred in confirming the disallowance of loss of Rs.18,57,032 which was incurred on sale of shares of Vas Infrastructure Limited and such disallowance of loss is required to be deleted.

3. The appellant craves to add, amend, alter, delete and / or modify the aforesaid ground of appeal.”

3. The assessee is engaged in the business of shares and securities and trades in shares of various companies and income / loss earned therefrom is shown as business income. The assessee filed return of income for A.Y. 2011-12 on 30.09.2011 declaring total loss of Rs. 60,36,102/-. The

Assessing Officer observed that the assessee company sold shares of VAS Infrastructure Pvt. Ltd. and total sale value for A.Y. 2011-12 is Rs. 39,08,227/-. The Assessing Officer further observed that M/s. VAS Infrastructure Pvt. Ltd. is penny stock company, which has been used by beneficiaries (sell of share) to launder money in the garb of Long Term Capital Gain (LTCG) while claiming tax exemption under Section 10(38) of the Income Tax Act, 1961. Thus, the Assessing Officer assessed the total income of the assessee at Rs. 2,70,191/- and made disallowance of loss of Rs. 18,57,032/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee company is doing the business of trading in shares and securities and trades in shares which is shown as business income of the assessee. During F.Y. 2011-12 the assessee declared total loss of Rs. 15,86,841/- and filed return of income under Section 139(1) and under Section 148. The accounts of the assessee were Audited under Companies Act and also under Section 44AB of the Income Tax Act, 1961. In response to reason of re-opening of assessment, the assessee filed its objection dated 20.05.2019 with Assessing Officer on 21.05.2019. However, the Assessing Officer disposed off such objection of the assessee by passing speaking order dated 30.09.2019. Thereafter show cause notice dated 12.11.2019 was received by the assessee mentioning that why sales consideration of Rs. 3,91,53,964/- in penny stock script of M/s. VAS Infrastructure Ltd. should not be considered as sham transactions to launder the assessee's own unaccounted money. The Ld. AR submitted that

- 3 -

in response to the said notice, the assessee filed reply with supporting documents justifying the sales value of Rs. 3,91,53,964/- for shares of VAS Infrastructure Ltd. Accordingly, the assessee submitted Broker's ledger in company's books and company's ledger in Broker's books alongwith copy of Demat Statement. Further, statement of Script wise purchase of Rs. 1,30,65,77,936/- and sales of Rs. 1,30,96,43,951/- of shares alongwith opening stock and closing stock of such shares were submitted which tallies with script wise total shares Purchase of Rs. 1,30,40,61,948/- (1,30,65,77,936 – 25,15,988) and script wise total shares sale of Rs. 1,30,71,37,518/- (1,30,96,43,951 – 25,06,434) shown in Audited Accounts after deducting purchase amount of Rs. 25,15,988/- and sale amount of Rs. 25,06,434/- of F&O Segment whose yearly summary sheet was also submitted before the Assessing Officer. The assessee also submitted Stock summary of VAS Infrastructure Ltd. which shows sale of shares of Rs. 3,91,88,824/- which almost tallies with sale consideration of Rs. 3,91,53,964/- shown by the Assessing Officer in reason of re-opening of assessment of the company for F.Y. 2011-12. Thus, there is no escapement of any income by the assessee as envisaged by the Assessing Officer while re-opening of the assessment for A.Y. 2012-13 which was already assessed under Section 143(3) on 21.10.2014 by ITO, Ward 4(1), Ahmedabad. However, while finalizing the assessment, the Assessing Officer had mentioned that as the assessee had not given any reply or evidence that the script of M/s. VAS Infrastructure Ltd. is not penny stock script and therefore it is presumed that the assessee is also in consonance with the findings of Investigation Wing Authorities that the captioned script is penny stock script which has been used by beneficiaries (sell of share) to launder

- 4 -

money in the garb of Long Term Capital Gain while claiming exemption under Section 10(38) of the Income Tax Act and book loss to reduce their taxable income.

5.1 The Ld. AR submitted that as regards, script of M/s VAS Infrastructure Ltd. as penny stock, there is no such category of shares given / define by the Stock Exchange to such script but it is determined by SEBI after certain investigation in market operation of that Company's pricing during financial year which is beyond financial year 2011-12 and thus when the assessee had entered / executed trade in such share, at that time the said script was not categorised as "PENNY STOCK" but it was normal script as traded by the assessee along with other 90 scripts during the year and that too with different brokers. Thus, the assessee has not done transaction in VAS Infrastructure Ltd. with any ulterior motive but had traded in such script alongwith so many other scripts as observed from the statement of script wise purchase / sales submitted before the Assessing Officer. The Ld. AR further submitted that the trading in such script is hardly 3% of overall turnover of the assessee being purchase of Rs. 378.46 lakhs out of total purchase of Rs. 13065.78 lakhs and sale of Rs. 391.89 lakhs out of total sales of Rs. 13096.44 lakhs as per Audited Accounts. The loss incurred by the assessee in trading of shares of VAS Infrastructure Ltd. is a genuine business loss and not a created / artificial loss and therefore should be allowed as per Profit & Loss A/c. The Ld. AR further submitted that it can be seen from audited accounts, the assessee had only business income and that too resulted in loss of Rs. 15,86,963/- which was assessed by ITO, Ward 4(1) for Rs. 9,76,506/- u/s 143(3) dated 21.10.2014 and thus there is

no question of reducing taxable income as observed by the Assessing Officer. Similarly, the assessee had not claimed any exemption of capital gain under Section 10(38) during the year and even in past or subsequent years. The Ld. AR further submitted that the assessee's assessment for A.Y. 2011-12 was also re-opened under Section 147 on similar reason i.e. trading in shares of VAS Infrastructure Ltd., which was assessed under Section 143(3) r.w.s. 147 by Dy. Commissioner of Income Tax, Circle 2(1)(1), Ahmedabad without any addition on this count. The Ld. AR also submitted the copy of the assessment order for A.Y. 2011-12 and Audited Accounts for F.Y. 2011-12, Statement of Script wise purchase and sales for F.Y. 2011-12, stock summary of M/s VAS Infrastructure Ltd. Thus, the Ld. AR prayed that the disallowance of Rs. 18,57,032/- on account of Loss on sales of penny stock shares made by the Assessing Officer be deleted. The Ld. AR relied upon the following decisions:

- i. Pratik Suryakant Shah (2017) 77 taxmann.com 260 (Ahd. Tri.)
 - ii. CIT vs. Maheshchandra G. Vakil (2013) 40 taxmann.com 326 (Guj.)
 - iii. PCIT vs. Vineet Sureshchandra Agarwal Tax Appeal No. 645 of 2017 (Guj. HC)
 - iv. Sandipkumar Parsottambhai Patel vs. ITO (2022) 137 taxmann.com 373 (Surat Tri.)
 - v. Smt. Karuna Garg vs. ITO (2019) 109 taxmann.com 403 (Del. Tri.)
6. The Ld. DR submitted that the scripts of M/s VAS Infrastructure Ltd. were manipulated to generate bogus gains/loss and the assessee was also one of the beneficiaries in accordance with the report of investigation wing of the department. As regards to Assessment Year 2011-12, the Assessing

Officer therein did not point out all the facts leading to non-addition on account of sales/purchase of VASIL shares, thus, the CIT(A) is not bound by the said view. The Ld. DR further submitted that the issue of reopening, the same is not mentioned/set out in the grounds of appeal by the assessee herein. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. As regards the reopening issue, the same though argued by the Ld. AR, the same is not specified in the grounds of appeal. Yet it is pertinent to note that the reopening is on the very same issue that of the transactions related to M/s VAS Infrastructure Ltd. There is no necessity to adjudicate this issue as the issue in hand will be decided on merit. It is pertinent to note that the assessee is continuously dealing in share trading of various shares/scripts and the said fact is not disputed. The Script of M/s VAS Infrastructure Ltd. was not black listed by the SEBI at the relevant period. In fact, the SEBI order is related to penalty imposed on the promoters for delay in publishing the financial results for the quarter ended December 2009. But nowhere in the said order of SEBI dated 09.01.2018 it is said that for the particular period mentioned herein the script of M/s VAS Infrastructure is black listed or is penny stock or sham and bogus script/shares. The assessee purchased shares online through various brokers and the payments made to brokers are reflected in the bank account. These details were also before the Assessing Officer. The assessee has DP accounts with all the brokers and the proof of payment of Securities Transaction Tax duly paid as per the contract note was also submitted

before the Assessing Officer. The assessee has transferred the shares through online platform of stock exchange that to through broker. The investigation wing report nowhere stated that the script of M/s VAS Infrastructure Ltd. is blacklisted. In fact, the report of investigation wing is much later than the dates of purchase /sale of shares and the order of the SEBI is also much later than the date of transactions and the order of the SEBI nowhere stated that the transaction at earlier dates as void. The Assessing Officer has not given any description as to why the script at particular juncture was at lowest or highest price at the time of trading due to assessee company's interference, when the entire transaction of purchase and sale of the scripts was through National Stock Exchange or Bombay Stock Exchange and that also through the authorised brokers. In fact, the Revenue has also not pointed out as to whether any of the broker during the said period was black listed or prevented to trade in the stock market by SEBI or other investigation agencies. Merely on conjecture and surmises, the Assessing Officer cannot made disallowance. In fact, the assessee has not claim the benefit of Section 10(38) in the present assessment year or earlier assessment year or in subsequent assessment years. The CIT(A) has totally ignored the evidences such as Audited accounts and Tax Audit report for F.Y. 2011-12, copy of demat statements for F.Y. 2011-12, F&O Segment yearly summary sheet, Audited Accounts for F.Y. 2011-12, Statement of Script wise purchase and sales for F.Y. 2011-12, stock summary of M/s VAS Infrastructure Ltd., copy of assessee's ledger in broker's books and copy of broker's ledger in books of assessee for F.Y. 2011-12 along with bank statements and bank book for F.Y. 2011-12 which were submitted by the assessee before the Assessing Officer as well as

- 8 -

before the CIT(A). Thus, the Assessing Officer as well as the CIT(A) was not right in disallowing the claim of business loss to the assessee. The appeal of the assessee is allowed.

8. In result, appeal of the assessee is allowed.

This Order pronounced in Open Court on	28/10/2022
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Sd/-
(Ms. SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 28/10/2022

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/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