

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

**SHRI AMIT SHUKLA, JM**

आयकरअपीलसं./ I.T.A. No. 1936/Mum/2021  
(निर्धारणवर्ष / Assessment Year: 2011-12)

<b>Prafulla Jayantilal Gangar.</b> Room No.11, 1 <sup>st</sup> Floor, Jay Kanta Bhavan, Paterill Road, Dombivli, Thane, Maharashtra, 421201	<b>बनाम/ Vs.</b>	<b>ITO WD 3(2) Mumbai.</b> Rani Mansion, 2 <sup>nd</sup> Floor, Murbad Road, Kalyan Maharashtra 421301
स्थायीलेखासं ./जीआइआरसं ./PAN No. AGLPG4386N		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri. Prashant Shah
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Ms. Neeta Jeph
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	01.09.2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	29.11.2022

आदेश / O R D E R

**Per Amit Shukla, Judicial Member:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 31.08.2021, passed by National Faceless Appeal Centre (NFAC), Delhi for the quantum of assessment passed u/s143(3) r.w.s 147, AY 2011-12.

2. In the various of grounds of Appeal, the Assessee has challenged the validity of re-opening u/s.147; and on merits, addition of Rs. 4,88,848/- as unexplained credit on account of sale consideration of shares of **M/s. Vax Housing Finance Corporation Ltd.**

3. The facts in briefs are that, Assessee is an individual having income from speculation business, capital gain and income from other sources. The Assessee was regularly engaged in the activity of trading of shares and securities and the resulted income/loss was offered to tax under the head business income. During the year under reference Assessee has traded in 414 scrips listed with the stock exchange which is evident from the Global Summary report issued by the broker the copy which has been placed in the paper book from paged 64-84.

4. Further, from the records it is evident that, out of the 414 scrip traded by the assessee during the year under reference, one scrip, viz., M/s. Vax Housing Finance Corporation Ltd (VHFC) was alleged to be a penny stock scrip as per the findings of DDIT (Inv) Unit 6(2), Mumbai. As evident from the Global report, the Appellant

has purchased shares of VHFC for a consideration of Rs.5,01,024/- and sold the shares on the very same day at a consideration of Rs.4,88,848/- and accordingly, speculation loss of Rs.12,176/- was declared in the return of income of the Appellant.

5. Before, the Assessing officer, the Assessee has submitted various documents to substantiate the genuineness of the transaction, that there is no exemption claimed whatsoever in the return of income, in fact from the intraday trading activity, she has suffered a loss of Rs.12,176/-. The genuineness of the transactions undertaken in respect of script M/s. Vax Housing Finance Corporation Ltd was proved from the following:

- Contract notes in respect of purchase and sale of shares of M/s. Vax Housing Finance Corporation Ltd.
- Bank statement evidencing payments made to/received from the registered broker.
- Global summary report from the registered broker for the year under reference.
- Ledger account of Your Appellant in the books of Broker.

- Computation of income and ITR Acknowledgement for the year under reference.

6. Further, Assessee submitted that the;

- The shares were traded in the open market and listed on the stock exchange as regulated by SEBI and Securities Transaction Tax (STT) was duly paid and hence no manipulation is possible under any circumstances whatsoever.
- The share was not a penny stock at the time of trading and hence no adverse inference should be drawn.
- The shares were held by Your Appellant for not even a single day as she had purchased and sold the share on same day itself and hence there is no question of manipulation.
- The rise and fall in its share prices could be due to the market forces of demand and supply, which is beyond the control of Your Appellant and hence the contention that prices have been artificially rigged high is invalid and thus no adverse inference should be drawn.
- No benefit is taken by the Appellant by entering into intra-day transaction for sale of such shares as nature of such

transaction would not give rise to convert the unaccounted money into capital gain. In fact the Appellant has suffered a loss of Rs.12,176/-by entering in to such transactions.

- No benefit of long term capital gain arose out of trading activity of such shares and hence there is no question of claiming any tax benefit.
- There is no offline transfer of shares in either purchase or sale transaction in the case of your Appellant and hence there is no chance of manipulation.
- There is no cash deposit or withdrawal from the bank account of your Appellant pursuant to trading activity in respect of the shares.

7. However, the Ld. Assessing Officer based on some general finding of the investigation viewing held that Assessee was one of the beneficiary of selling of shares of said company for consideration of Rs. 4,88,848/-. In fact, Assessing Officer has presume that Assessee has earned long term capital gain which is an exempt. Which fact is incorrect.

8. The Ld. CIT(A), has simply conformed the order of the Assessing Officer without any discussion.

9. After hearing both the parties, I find that first of all, Assessee is regular trader who has traded in 414 scrips during the year. The Assessee has purchased the share of VHFC online from the Bombay Stock Exchange for consideration of Rs. 5,01,024/- on 14.01.2011; and on the same day was sold at Rs. 4,88,848/-. Thus, Assessee incurred speculation loss of Rs. 12,176/-. It was intraday transaction which was speculative in nature as there was no delivery of share. There is no benefit of long term capital gain taken by the Assessee which has been alleged by the Assessing Officer who was not even verified the records. It is not a case of any accommodation entry in some "Penny Stock" where Assessee has bought the share for any exempt long term capital gain or long term capital loss or short term capital loss. Once the Assessee is dealing in 414 scrips and out of which one scrip was intraday transaction, it cannot be held that Assessee was any beneficiary of some accommodation entry by some any entry operator. Thus, the

addition made by Assessing Officer and as sustained by the Ld. CIT(A) is **deleted**.

**10. Accordingly, Appeal by the Assessee is allowed.**

*Orders pronounced in the open court on 29<sup>th</sup> November. 2022.*

*Sd/-*  
**(Amit Shukla)**  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 29.11.2022  
*Mrs. Urmila*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**