

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,**  
**MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No.1145/Mum/2023  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Preeti Pankaj Agarwal 7A, Pankaj Mansion, 8, Dr. Annie Besant Road, Worli, Mumbai-400018.	<b>बनाम/</b> Vs.	ITO-21(2)(5) Piramal Chambers, Mumbai-400012.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AFXPA4228C</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Hiten Vasant	
Revenue by:	Shri Dharmvir D Yadav (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 28/06/2023  
घोषणा की तारीख /Date of Pronouncement: 26/07/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 17.02.2023 for AY. 2011-12.

2. At the outset, the Ld. AR assails, the action of Ld. CIT(A) confirming the action of AO making addition of Rs. 1,55,500/- and Rs. 7,775/- on purchase and sale of shares of M/s SVE Resources Ltd.

3. Brief facts are that the assessee is an individual had filed her original return of income on 28.09.2011 declaring total income of Rs. Nil for AY. 2011-12. Later, the case of the assessee was reopened by issuance of notice u/s 148 of the Income Tax Act, 1961 (hereinafter "the Act") dated 30.03.2018 on the ground that the assessee had transacted in the penny-stock named M/s. SVC Resources Ltd. And AO after re-opening the assessment, heard the assessee and not satisfied with the replies of assessee made an addition of Rs.1,55,500/-



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u/s 68 of the Act and also added the assumed brokerage/commission of Rs.7,775/- @ 5% support to have been paid to the broker for this transaction. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the appeal of the assessee.

4. I have heard both the parties and perused the records. The Ld. AR submitted that the appellant is an individual, who is into share trading activities. And in this year, *iner-alia* the assessee had entered into trading of only one transaction regarding share of M/s. SVC Resources Ltd; and that assessee purchased of Rs.10,000/- shares of M/s. SVC Resources Ltd. at a cost of Rs.15.55 per share on 21.02.2011 costing total of Rs.1,55,936/- from Bombay Stock Exchange through registered stock broker M/s. Ambit Capital Pvt. Ltd. [and when asked by AO, to prove the purchases the assessee had filed copy of contract note Bill No.01011/209D/0008781]. And the said shares were sold after three days on 24.01.2011 for Rs.1,51,641/- @ 15.21 making a loss of Rs.4,287/- @ 0.43 paisa per share which itself shows that this was due to *minor market fluctuation* and cannot by any stretch of imagination be termed as accommodation entry or assessee intentionally indulged in penny-stock transaction. It was pointed out that the purchase and sale of this shares within a span of 3 days took place in the Bombay Stock Exchange through the same stock broker and the assessee had made payments through bank and copy of contract note no. 01011/209D/0008781 copy of which has been filed before AO. Thus, the assessee claimed loss of Rs.4,287/-; And in order to prove the aforesaid facts drew our attention to page no. 3 to 9 of the



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PB which I find is the ledger in the books of the broker from 06.04.2010 to 11.02.2011. It is noted that the assessee has traded in various shares in Bombay Stock Exchange and in National Stock Exchange. It is noted that the assessee has purchased the share of M/s SVC Resource Ltd on 21.01.2011 for a sum of Rs.1,55,935/- and sold the same on 24.01.2011 at Rs. 1,51,641/- (loss of Rs. 4,287/-). As noted supra, the assessee had sold the shares within three (3) days of Purchase and suffered loss of 34 paisa only (per share) which can be attributed to normal market fluctuation. It is noted that the assessee is a regular trader in shares and that she was a genuine trader and has been trading in so many other shares and it was by chance that assessee has transacted in this share (M/s SVC Resource) which cannot be said to be outcome of some conspiracy or pre-planned action to earn LTCG/loss on penny stock. So, in the totality of facts and circumstances of the case, the action of assessee dealing with purchase and sale penny-stock name M/s. SVC Resources Ltd within 3 days cannot be said to be involved in pre-planned trading in penny-stock to book loss claimed to Rs. 4,287/-, which should have been allowed; and impugned action of AO/Ld CIT(A) cannot be countenanced and addition made need to be deleted. Before I part, it is made clear that by the aforesaid action I don't in any way say on the merit of the contention of Revenue that shares of M/s SVC Resources is a penny stock, that issue is left open. In the light of discussion, taking in to consideration the totality of facts and circumstance of this appeal, the AO's action of adding the entire purchase consideration of scrip in



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question of Rs.1,55,500/- as unexplained investment u/s 68 of the Act cannot be accepted. And on the same reasoning, the notional brokerage of Rs.7,775/- @ 5% u/s 69C of the Act cannot also be added. Therefore, giving benefit of doubt on the totality of the facts and circumstances of the case the AO is directed to delete the entire addition of Rs. 1,55,500/- and Rs. 7,775/-.

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

Order pronounced in the open court on this 26/07/2023.

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 26/07/2023.

Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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