

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2119/M/2023  
Assessment Year:2012-13**

Income Tax Officer, 1 <sup>st</sup> Floor, Mohan Plaza, Wayale Nagar, Khadakpada, Kalyan (West)-421 302	Vs.	Mr. Mohammed Sajid Shahid Shaikh, Flat No. 77, Block No-403, Building Royal Tower, Dargah Road, Gauripada Area Bhusar Mohalla, Bhiwandi, Maharashtra - 421302 <b>PAN: CDAPS1224B</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Punit Jhabak, A.R.  
Revenue by : Shri Ajay Singh, Sr. AR

Date of Hearing : 12 . 10 . 2023  
Date of Pronouncement : 31 . 10 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, Mr. Mohammed Sajid Shahid Shaikh (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 30.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter

referred to as CIT(A)] qua the assessment year 2012-13 on the grounds inter-alia that :-

*“1. i. On the facts and circumstances of the case, the CIT(A) has erred in not appreciating that the assessee had indulged in transactions of penny stock of M/s VMS Industries Ltd. through which Naresh Jain and his syndicate were engaged to accommodate unaccounted income of beneficiaries.*

*ii. On the facts and circumstances of the case, the CIT(A) has erred in holding that transacting through stock broker in a declared penny stock was sufficient to conclude that the assessee did not fit into the scheme relating to manipulation of share transactions without any further enquiry.*

*iii. On the facts and circumstances of the case, the CIT(A) has erred in not bringing on record facts from the stock broker regarding capital invested by the assessee by calling for a remand report from the A.O.*

*2. iv. On the facts and circumstances of the case, the CIT(A) has erred in not giving direction regarding treatment of speculative loss arising out of share transactions undertaken by the assessee.*

*v. It is submitted that the case falls under exceptions as per CBDT's Circular No. 23 of 2019 dated 06.09.2019.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of search and seizure operation carried out in case of Shri Naresh Jain and his associates on 19.03.2019 it was unearthed that scrip of M/s. BMS Industries Ltd., scrip code 533427 is a penny stock through which Shri Naresh Jain and his syndicate were engaged to accommodate unaccounted income of various beneficiaries. From the information it was also noticed that the assessee has sold shares of M/s. BMS Industries Ltd., scrip code 533427 for a consideration of Rs.6,42,540/- during the year under consideration which is found to be penny stock. It was also noticed that the penny stock scrip has been used by the beneficiary to launder money in the garb of Long Term Capital Gain (LTCG) and Short Term Capital Loss (STCL). The assessment was reopened by initiating the proceedings under section 147/148 of the Income Tax Act, 1961 (for short ‘the Act’).

Necessary notices under section 142(1) were issued. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to hold that despite the high value of the transaction the assessee has failed to file his regular return of income nor has filed any response to the notice. On failure of the assessee to file satisfactory explanation the entire consideration of purchase proceed to treat scrip of Rs.6,44,450/- as unexplained investment, and added to the total income of the assessee by farming the assessment under section 144 read with section 147 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the addition by allowing the appeal of the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. We have perused the order passed by the Ld. CIT(A) who has deleted the addition made by the AO by returning following findings:

*“8.3 I have perused the basis of making addition by the AO. The method of analysis followed by the AO is appeared to be erroneous. In the case of appellant, the transactions carried out are on the same day and no delivery of shares is involved. The impugned transactions are not an investment transaction. The purchase and sale of shares of impugned penny stock scrip happened in a single trading session of a day. So, the transactions have to be considered as day trading in nature. Hence, the same fits under speculative transactions. As rightly*

*pointed out by the appellant, in day trading transactions payment of total value of cost of purchase of shares is not required to be made. The broker will provide the cushion or leverage of capital to transact up to multiple times of the trader's capital in day trades. The procedure is approved by the SEBI. In gist, the trader need not deposit full amount of cost of purchase of shares with the broker to execute the trades if the shares purchased are not being carried forward to the next day. The broker or trader will sell the shares on the same day of purchase and the amount of gain or loss from the day trade(s) is credited or debited to the client account by the broker at the end of the day. These transactions could have been observed by the AO from the bank account or ledger account of appellant maintained with the broker which were submitted by the appellant during the assessment proceedings. The data tabulated on the impugned transactions by the AO are clearly showing the day trades but not the investments. Therefore, the entire analysis made in the assessment order relating to the manipulation of penny stock trades by operator or explanation of the scheme of defraud of the Revenue by various market players & beneficiaries is not useful in the day trading transactions.”*

6. In the face of undisputed facts that the assessee has purchased 18500 shares @ Rs.34.84 per share for a sale consideration of Rs.64,450/- of M/s. BMS Industries Ltd. on 14.06.2011 and sold the same on the same day i.e. 14.06.2011 @ Rs.34.73 for a sale consideration of Rs.64,450/- by booking STCL of Rs.1909.81, it is proved that it was a speculative transaction and was not the investment transactions as observed by the AO.

7. The Ld. CIT(A) has rightly and validly concluded that the source of purchase of shares is satisfactorily explained by the assessee. Moreover, when the assessee has not transferred the purchase amount for purchase of the shares he was not required to explain the source of income, moreover the loss suffered by the assessee is adjusted, and ought to be adjusted against the credit available with the broker. So the Ld. CIT(A) has rightly treated the addition made by the AO being based upon conjectures and presumption. Even otherwise there is no evidence on record if the

assessee was engaged into the manipulation of share transaction of penny stock through Shri Naresh Jain and his syndicate.

8. In view of what has been discussed above, we find no illegality or perversity in the impugned order passed by the Ld. CIT(A).

9. Resultantly, the appeal filed by the Revenue is hereby dismissed.

**Order pronounced in the open court on 31.10.2023.**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 31.10.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.