

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL  
MEMBER**

**&**

**SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4337/Mum/2023**

**(A.Y. 2011-12)**

ITO-19(2)(2) Room No. 503, 5 <sup>th</sup> Floor, Piramal Chamber, Lalbaug, Parel, Mumbai-400012	Vs.	Meher Anoop Malani, 6, Homcruz Mansion, 2 <sup>nd</sup> Floor, 72 Bhulabai Desai Road, Mumbai-400026
<b>स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAEPM08655D</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Mr. Vinod John
Respondent by :	Shri. Himanshu Kumar

Date of Hearing	14.05.2024
Date of Pronouncement	17.05.2024

**आदेश / O R D E R**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the revenue against the order of the Learned Commissioner of Income-tax (Appeals)-30, Mumbai [hereinafter referred to as "CIT(A)"] dated 06.10.2022 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the relevant Assessment Year [A.Y.] 2011-12.

2. The grounds of appeal raised by the revenue are as under:

"1. "On the facts and circumstances of the case and in law, Ld. CIT (A) has erred in deleting the addition made of Rs.26,78,488/-on

account of u/s GB of the I.T.Act and Rs. 80,355/- on account of commission paid to the entry provider @ 35% of Rs. 26,78,488/

2. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the additions of Rs. 26,78,488/- made on LTCG, without considering the fact that, AO has relied on the report of Investigation Wing of Income-Tax Department, who has published the discreet report with a list of penny stocks/ scripts and the assessee by transacting in one of the penny stock ie "VAS Infrastructure Limited" has generated fictitious Long Term Capital Gains of Rs. 26,78,488/-and claimed the LTCG as exempt income"

3. "On the facts and circumstances of the case and in law, the Ed. CIT(A) has failed to appreciate the fact that the company and the brokers/other entities were involved in price manipulation in the scrip thereby confirming the investigation of the department that the scrip is utilized by entry operators for providing accommodation entries under the garb of LTCG by manipulating/rigging up the share price."

4. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the fact that there was a huge price jump in the scrip of M/s. VAS Infrastructure Limited, without any economic rationale which was an arrangement for converting the unaccounted income of the beneficiaries into legitimate income under the garb of exempt LTCG without paying any taxes and assessee was one such beneficiary

5. "On the facts and circumstances of the case and in law the order of the CIT(A) suffers from perversity as it ignores the facts brought on record establishing manipulation of share prices of M/S. VAS Infrastructure Limited, as part of colorable device to generate fictitious LTCG with the aim to evade taxes due"

6. "On the facts and circumstances of the case and in law the order of the CIT(A) ignored the direct and circumstantial evidences in view of the decisions in Durga Prasad More (1971) 82 ITR 540(SC) and

*Sumati Dayal [1995] 80 Taxmann 89(SC)/(1995) 2014 ITR 801(sc)/[1995] 125 CTR 124 (SC) rendered by the Hon'ble Supreme Court, wherein it was held that the Court and Tribunal have to judge the evidence before it by applying the test of human probabilities, the surrounding circumstances which exercise had been done by the Assessing Officer?" 7 "On the facts and circumstances of the case and in law the CIT(A) erred in deleting the disallowance of Long Term Capital Gains of Rs.26,78,488/- overlooking the fact that the entire transactions were stage managed with the object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gains and claim bogus exemption*

*8. "On the facts and circumstances of the case and in law the CIT(A) erred in deleting the disallowance of Long Term Capital Gains of Rs 26,78,488/- without considering the fact that Assessing Office relied on the report of Investigation Wing which is premier investigation authority of Income tax department, therefore the onus is on the assessee to establish the genuineness of the price hike and also has to prove that the price of the share was not manipulated. Reliance is placed on Calcutta High Court decision in the case of Pr.CIT Vs. Swati Bajaj (I.A. No.GA/2/2022 in ITAT No. 6 of 2022 dated 14.06.2022.?"*

*9. "In this case Tax effect is Rs 8,52,482/-/-which is below the monetary limit of Rs. 50,00,000/-, specified in the CBDT Circular No.17/2019 dated 08.08.2019. However, the issue of penny stock falls under exception to monetary limits as per CBDT'S OM dated 16.09.2019. Hence, the appeal is filed before the Hon'ble ITAT."*

3. Brief facts of the case are that the return of income was filed by the assessee on 31.07.2011 declaring total income of ₹8,74,620/-. The assessee has shown salary income, capital gains as well as income

from other sources. Subsequently, on the basis information received from the Investigation Wing regarding trading in penny stocks, the case was reopened and notice was issued u/s 148 of the Act. In response to the notice, the assessee filed return on 25.04.2018 declaring total income of ₹12,44,600/-. Assessment was finalized u/s 147 r.w.s. 143(3) of the Act on 28.12.2018 after making an addition of ₹ 26,78,488/- u/s 68 of the Act on account of sale of shares of the penny stock companies M/s VAS Infrastructure Ltd.

4. Aggrieved by this order, the assessee filed an appeal before Ld.CIT(A) on 11.01.2019. Vide order dated 06.10.2023 the Ld.CIT(A)/NFAC allowed the assessee's appeal with the following observations:

*“Considering such coordinated orders of several courts involving transactions in the shares of M/s VAS infrastructure learned, it appears that these shares cannot be considered as penny stocks. Accordingly, both the additions made by the AO on account of bogus transaction in the shares of M/s VAS infrastructure Ltd. and undisclosed payment of commission, appear to be based on wrong appreciation of facts.”*

Aggrieved with the above order, the revenue is in appeal before us.

5. The Ld.AR has submitted the following facts in support of genuineness of the transactions in question:

*“1.The Respondent is a salaried employee.*

2 All transactions in the shares of VAS Infrastructure Ltd. (VAS) were carried out by account payee cheques through the Respondent's bank account and there was not even a single transaction in cash.

3. The Purchase and Sale of all the shares were transacted on the Stock Exchange through registered stock brokers with credibility.

4 The shares purchased in 2006 were credited to the Respondent's Demat Account. The delivery of shares sold was also through the Respondent's Demat Account.

5. There were no preferential allotments of share to the Respondent.

6 The purchase of shares was made in 2006 and the sales were in 2010 and 2011. (Pg 109 and 110 of Paper Book).

7. Security Transaction Tax (STT) was paid on every transaction as per the Broker's Note.

8. Contract Notes both for purchase and sale of shares, Demat Statements and Bank Statements were filed during the assessment proceedings and no discrepancies were noticed by the Assessing Officer.

9 Out of the total sale of 46,480 shares of VAS made by the Respondent, 16,480 shares were sold in Financial Year 2009-10 (AY 2010-11) at an average sale price of ₹ 38.97 per share against average cost of 30.66. (page 110 of Paper Book).

10. 30,000 shares were sold in Financial Year 2010-11 (AY 2011-12) at an average sale price of 89.28 per share against average cost of 30.66. (page 109 of Paper Book). Only sale of one lot of 5000 shares on 11-11-2010 fetched a price of 188 per share, rest of the shares were sold for price ranging from 53/- to 85/-

11. It may also be noted that the shares purchased by the Respondent were held for a period of around four years which shows that the transactions were not used to facilitate introduction of unaccounted income in the form of exempt capital gain or short-term capital loss in the books of accounts as mentioned in the reasons recorded for reopening.

12. During the F.Y.2010-11, the Respondent was holding shares in 80 quoted companies and had transacted in shares of 18 companies.

13. From the website of VAS it was found that at the relevant time the company had constructed more than 10 multi-storey buildings and even declared dividend. The financial fundamentals of VAS were not weak as mentioned in the report of the Investigation Department. Key financial figures of VAS for four years as reflected in the chart provided by the Investigation Department shows that the Company was profit making except in one year.

14. In the year subsequent to the year under scrutiny, SICOM Ltd. (State Industrial and Investment Corporation of Maharashtra), a Maharashtra State owned company was holding 28.59% of the total share capital of VAS. It can be safely assumed that the Government of Maharashtra would not have invested in VAS unless the government has found the VAS a sound company.

6. The Ld. DR has relied on the order of the AO.

7. We have heard the rival submissions and carefully considered the facts of the case. Besides the submissions of the assessee, it is also noticed that in various cases relating to transactions in shares of M/s VAS Infrastructure Ltd., the matter has been decided in favour of the assessee by different co-ordinate benches of this Tribunal. In one such case of **ITO v/s Kamallesh Mohandas Lakhwani (ITAT Mumbai), ITA No. 253/Mum/2023**, the observations of the Tribunal are reproduced hereunder:

*"10. From the above observation, we are of the considered view that the assessee has furnished all the supporting documentary evidences to substantiate the genuinity of the said transaction. It is also evident that the assessee has not only invested in the scrip of M/s. Vas Infrastructure Ltd. but has also made investment of huge sum in other scrips as well. The fact that the assessee has not made*

*any off line purchases and has not claimed LTCG but has merely incurred a nominal loss of Rs. 51,279/-, in our view, cannot be a case of doubtful investment in penny stock. The A.O. has also not made any enquiry as to the payments made by the assessee to the recognized broker nor has the A.O. brought on record any material evidence to show that it was a mere bogus transaction except for the information received from the DDIT (Investigation) that M/s. Vas Infrastructure Ltd. was a penny stock. Even otherwise, if it is assumed that M/s. Vas Infrastructure Ltd. was a penny stock, we find no reason to hold the assessee liable for having invested in the said share in the absence of any corroborative evidence. The Ld. AR has placed reliance on the decision of the Tribunal where similar additions have been deleted in case of investment made in M/s. Vas Infrastructure Ltd. We are not in agreement with this submission of the Ld. AR for the reason that the decision in other cases of penny stock cannot be a binding precedent in this case, as the facts of each case has to be considered in isolation with regard to the evidences available in that particular case. We are also conscious of the fact that mere suspicion that the assessee has invested in alleged penny stock scrip cannot be made basis of addition u/s. 69B of the Act. In the absence of any material evidences to corroborate the information received from DDIT that M/s. Vas Infrastructure Ltd. is a penny stock, we find no justification in upholding the addition made by the A.O. On this note, we find no infirmity in the order of the Id. CIT(A). Hence, the grounds raised by the Revenue is dismissed."*

8. Similar decisions have been given by the various co-ordinate benches of the ITAT as also the Hon'ble Gujarat High Court in the case of **Genuine Finance P. Ltd. (2023) 152 taxmann.com 330 (Gujarat)**

9. In view of the facts of this case discussed hereinbefore as well as the decisions of the co-ordinate benches the claim of the revenue that

the assessee has shown bogus capital gains is not tenable as rightly held by the Ld.CIT(A).

10. In the result, the appeal filed by the revenue is dismissed.

Order Pronounced in Open Court on 17.05.2024

Sd/-

(NARENDER KUMAR CHOUDHRI)  
JUDICIAL MEMBER

Sd/-

(RENU JAUHRI)  
ACCOUNTANT MEMBER

Place: Mumbai

Date 17.05.2024

ANIKET SINGH RAJPUT/STENO

**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 DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार** (Dy./Asstt. Registrar)  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**