

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.606/Mum./2024**  
(Assessment Year : 2011-12)

**ACIT-4(2)(1),**

Room No.640,

Aayakar Bhavan, M. K. Road

New Marine Lines

Mumbai-400020

..... Appellant

v/s

**S.P. Jain Securities Pvt. Ltd**

14, Rajabhadur Building,

Ambalal Doshi Marg, Fort

400023

PAN-AAACH3923Q

..... Respondent

Assessee by : Shri Bhavya Sundesha

Revenue by : Shri Surendra Meena, Sr. DR

Date of Hearing – 13/06/2024

Date of Order – 21/08/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 26/12/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In its appeal, the Revenue has raised the following grounds: –

*"1) Whether on the facts and circumstances of the case, the Ld CIT(A)/NFAC is right in deleting the disallowance of Rs. 12,75,483/- wherein AO had made addition u/s 68 of the Act?*

*2) Whether on the facts and circumstances of the case, the Ld CIT(A)/NFAC is right in deleting the disallowance of Rs 12,75,483/- even though the assessee has traded in the Penny Stock KCP Infra Projects Ltd to launder money in the garb of long term capital gain (LTCEG) which was exempt from income tax u/s 10(38) of the Act during the year under consideration?*

*3) Whether on the facts and circumstances of the case, the Ld CIT(A)/NFAC is right in deciding the appeal by stating that the addition made by AO is on the basis of assumption only?*

*4) The appellant craves leave to add, amend, alter and/or vary any of the grounds of appeal which may be necessary."*

3. In the present appeal, the sole grievance of the Revenue is against the deletion of addition made under section 68 of the Act.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue, as emanating from the record, are that the assessee is a company incorporated under the Companies Act, 1956, and is engaged in the business of stock broking and investment. For the year under consideration, the assessee filed its return of income on 17/09/2011 declaring a total income of Rs.1,10,61,493. The return filed by the assessee was selected for scrutiny and vide order dated 19/12/2013 passed under section 143(3) of the Act the total income of the assessee was assessed at Rs.1,11,01,830 after making disallowance under section 14A read with Rule 8D of the Income Tax Rules, 1962, and expenses allocated to speculative business. Subsequently, based on the information received from PMO through email, it was noticed that KCL Infra Projects Limited is a penny stock and the assessee has traded in the scrip for a sum of Rs. 12,75,483. Accordingly, the AO initiated the proceedings

under section 147 of the Act and issued notice under section 148 of the Act on 28/03/2018. In response to the notice under section 148 of the Act, the assessee filed its return of income on 10/04/2018 declaring a total income of Rs. 1,10,61,493. Vide order dated 26/12/2018 passed under section 143(3) read with section 147 of the Act, the Assessing Officer ("AO") held that the assessee has claimed a business loss of Rs. 73,288 in the current year and this quantum of huge business loss is suspicious and detailed investigation of this issue was undertaken. The AO by placing reliance upon the findings of the Investigation Wing concluded that the sale value derived by the assessee amounting to Rs. 12,75,483 from trading in shares of KCL Infra Projects Limited is booked and completely arranged by an illegitimate means, and claimed as business loss by the assessee. Accordingly, the AO disallowed the business loss of Rs. 12,75,483 and added the same to the total income of the assessee.

5. The learned CIT(A), vide impugned order, deleted the impugned addition made under section 68 of the Act after noting the fact that AO has proceeded on incorrect facts as there is no trading of Rs. 12,75,483 in the shares of KCL Infra Projects Limited by the assessee, and instead the assessee incurred a short-term capital loss of Rs. 72,197. Being aggrieved, the Revenue is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. Before dwelling on the issue at hand, it is relevant to note the reasons recorded by the AO while reopening the

assessment under section 147 of the Act in the present case, which is reproduced as follows for reference: -

*"REASONS FOR RE-OPENING U/S 147*

*1. The assessee had filed its original return of income for AY 2011-12 on 17.09.2011 declaring total income of Rs. 1,10,61,493/-. The return was processed u/s 143(1) of the IT Act, 1961. Thereafter, the case was selected under CASS and assessed income was determined u/s 143(3) of the IT Act of Rs. 1,11,01,830/-. Subsequently, the case was re-opened and order u/s 143(3) r.w.s. 147 was passed on 29.02.2019 determining total income of Rs. 1,11,01,830/-.*

*2. A list of penny stock related cases was received from PMO through e-mail. On perusal of list, it is found that the assessee company has traded during AY 2011-12 of Rs. 12,75,483/- in the scrips name of KCL INFRA Projects Limited. On further verification of documents submitted by the assessee company during scrutiny proceedings u/s 143(3) of the IT Act, 1961 for AY 2011-12, it is found that the assessee company has traded in the scrips name KADAMB CONST which is now know as KCL INFRA Projects Limited.*

*3. In view of the above facts (para 1 to 3) and after due application of mind after analyzing all the relevant information in the case of the assessee in totality, I have reason to believe that income of Rs. 12,75,483/- has escaped assessment for AY 2011-12 and the same is therefore required to be reopened for scrutiny assessment."*

7. Thus, from the perusal of the aforesaid reasons, it is evident that based on the information received from PMO regarding the list of penny stock related cases, it was found that the assessee has traded during the year under consideration of Rs. 12,75,483 in the scrip of KCL Infra Projects Limited, which is also a penny stock. Accordingly, as evident from the perusal of the assessment order, the AO treated the sale value derived by the assessee amounting to Rs. 12,75,483 from trading in shares of the aforesaid company to be bogus and added the same to the total income of the assessee under section 68 of the Act.

8. On the contrary, it is the claim of the assessee that during the year under consideration, the assessee sold 11,412 shares of Kadamb Construction Ltd (now known as KCL Infra Projects Limited) for a total consideration of Rs. 6,92,221 on various dates. Further, out of the total 11,412 shares sold by the assessee, 4000 shares were opening balance and 7412 shares were purchased during the year on various dates. Therefore, the total cost of acquisition of 11,412 shares was Rs. 7,65,509. Accordingly, as per the assessee, it suffered a short-term capital loss of Rs. 73,288 during the year under consideration. Further, the assessee claims that it has also undertaken intraday trading in the shares of the aforesaid company, under which it has purchased 290 shares on various dates for Rs. 17,245 and sold them on the same dates for Rs. 18,326, thus driving speculative gain of Rs. 1091. Therefore, as per the assessee, it has incurred a short-term capital loss of Rs. 72,197 instead of Rs. 12,75,483 as claimed by the AO. In this regard, the assessee furnished various details regarding the purchase and sale of shares of KCL Infra Projects Limited, which were duly recorded by the learned CIT(A) in para-5.5 and 5.6 of the impugned order, as follows: -

*"5.5 The claim of the appellant that the loss is incurred in the ordinary course of business seems to be correct as the date wise purchases and sale are as under:-*

Purchase				Sale				Profit/loss
Date	Qty	Cost per share	Total cost	Date	Qty	Sale per share	Total Sale	
19.03.2010	4000	51.8	207200	25.06.2010	4000	48	192000	15200
14.07.2010	2000	86.2	172400	15.07.2010	2000	72.23	144460	27940
17.08.2010	500	71.55	35775	28.09.2010	500	65.8	32900	2875
20.08.2010	500	69.33	34665	28.09.2010	500	65.8	32900	1765
09.09.2010	2000	75	150000	30.09.2010	2000	66.2	132400	17600
27.09.2010	1400	68.6	96040	30.09.2010	1400	66.2	92680	3360
27.09.2010	869	68.6	59613.4	04.01.2011	869	63.33	55033.77	4579.63
27.09.2010	43	68.6	2949.8	05.01.2011	43	66.55	2861.65	88.15
27.09.2010	100	68.6	6860	06.01.2011	100	69.85	6985	-125
			765503.2				692220.4	73282.78

5.6 The appellant has purchased shares and has sold it before the next purchases as under:-

Purchase date	Qty	Sale date	Qty
19.03.2010	4000	25.06.2010	4000
14.07.2010	2000	15.07.2010	2000
17.08.2010	500		
20.08.2010	500	28.09.2010	1000
09.09.2010	2000	30.09.2010	2000
27.09.2010	2412	30.09.2010	1400
		04.01.2011	869
		05.01.2011	43
		06.01.2011	100
	11412		11412

9. Therefore, having carefully perused the aforesaid details, we are of the considered view that the AO proceeded on completely erroneous facts while holding that the assessee has incurred a loss of Rs. 12,75,483 during the year under consideration. Thus, we agree with the findings of the learned CIT(A) that the observations of the Investigation Wing may be correct, however, the same cannot be applied to the present case. Further, considering the fact that the assessee has a returned income of Rs. 1,10,61,493, the short-term capital loss of Rs. 72,197 incurred by the assessee is merely negligible. Accordingly, we find no infirmity in the order passed by the learned CIT(A) in deleting the addition made under section 68 of the Act, and therefore the same is upheld. As a result, the grounds raised by the Revenue are dismissed.

10. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 21/08/2024

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 21/08/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Shubham P. Lohar

Assistant Registrar  
ITAT, Mumbai