

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

**BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.2856/M/2023  
Assessment Year: 2011-12**

<b>Komal Kumarpal Shah</b> 403, Zozwala Complex, Agra Road, Kalyan. - 421301 <b>PAN: AZUPS5227N</b>	Vs.	<b>Income Tax Officer</b> <b>Ward 3 (2)</b> Rani Mansion, Murbad Road- 421301.
(Appellant)		(Respondent)

**Present for :**

**Assessee by** : Shri Subodh Ratnaparkhi, C. A.

**Revenue by** : Shri R. R. Makwana- SR. D.R.

**Date of Hearing** : 23 . 07 . 2024

**Date of Pronouncement** : 22 . 08 . 2024

**O R D E R**

**Per: Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1054070135(1) Dated 30/06/2023 for the Assessment Year 2011-12.

2. Following grounds of appeal have been raised by the appellant:

1. *“Learned CIT (A) /A.O has erred in making addition of Rs.26,02,810/- against the principle of equity natural justice Learned CIT(A)/A.O has erred in making addition of a genuine taxation conducted as per rule of exchange. hence order passed by AO is bad in law & wide abinitio.*
2. *Learned CIT(A)/A.O has erred in making addition of Rs.26,02,910/- as assessee has earned profit of Rs.3,22,794/- and offered the same for taxation in its return of income.*
3. *Learned CIT (A)/A.O has erred in making addition of assessee had conducted the trade of sale after purchase of shares in open market and source of the same without payment of money for purchase and without receiving sale proceeds of Rs.26,02,810/-. Assessee has credited with Rs.3,22,794/-. Looking at the above facts your appellant prays your honor to kindly delete the addition obliged.”*

3. The facts of the case, in brief, are that the assessee is an individual and has been deriving income from investment and trading in shares. It has been stated by the AO in the assessment order that it had received information from DDIT (Inv.), Unit 6(2), Mumbai vide letter dated 23.03.2018 that during the assessment year under consideration, the assessee had traded in penny stock scrip of M/s. VAS Infrastructure Ltd., amounting to Rs.26,02,910/- and this VAS infrastructure Ltd. has been used by the beneficiaries to launder money in the garb of Long Term Capital Gain (LTCG) while claiming exemption u/s. 10(38) of the Income Tax Act. The assessee was one of such beneficiaries of this penny stock. It was observed

by the AO that the share price movement of the VAS scrip was not supported by financial fundamentals of that scrip. Since, the assessee, in its return of income, had disclosed taxable LTCG of Rs.28,461/- only and no other income was shown, the case was reopened u/s. 147 of the Income Tax Act and Notice u/s. 148 was issued to the assessee by recording reasons and getting necessary approval of the competent authority.

4. During the assessment year under consideration, the AO noticed that the assessee has traded in penny scrip code 531574 of M/s. VAS Infrastructure Ltd. as under: -

Date of Purchase	Rate	No. of shares	Amount	Date of sale	Rate	No. of Shares	Amount	Profit/Loss
04/11/2010	95.74	24000	2297884	04.11.2010	94.66	7700	728890	-1568993
				05.11.2010	114.10	15000	1711500	1711500
				08.11.2010	125.02	1300	162520	162520

Since the assessee had not disclosed the above transactions, the AO added a sum of Rs.26,02,910/- u/s. 143(3) r.w.s. 147 of the Income Tax Act as unexplained cash credit u/s. 68 of the Act on the basis of the information received from the Investigation Wing wherein the modus operandi adopted by the penny stock dealers was given in detail. The AO has discussed this in the body of the assessment order and is not being reproduced to avoid repetition.

5. Aggrieved by the order of the Ld. AO, the assessee filed appeal before the Ld. CIT(A) who dismissed the appeal of the assessee by holding as under: -

*“6.5 From the above, it is clear that the Assessing Officer had brought out the modus operandi as to how bogus Long Term Capital Gain/Long Term Capital Loss is claimed in respect of sale of penny scrips. In respect of the scrip, M/s. VAS Infrastructure Ltd. the Assessing Officer had clearly analyzed the financials of the company. Also, the appellant does not explain as to how purchase of 2500 shares was made by the appellant when the company, M/s VAS Infrastructure Ltd had no proven financial results This issue was not addressed by the appellant in her reply. The Assessing Officer also analyzed the variation in share price and commented that the share price in the captioned case displayed a short rise in FY 2010-11 specifically in the month of November, 2010, which was not prima facie supported by financial statements. The Assessing Officer has clearly given a finding that the appellant had not shown the penny stock transactions of Rs.26,02,910/- in November, 2010 and held that the entire sale and purchase transactions are dubious in nature and the entire sale consideration on sale of shares of Rs.26,02,910/- in non disclosure of sale of shares. The same need to be brought to tax.*

*6.6. It is seen from the return of income, the appellant had shown the income of Rs 37,586/- which includes long term capital gains of Rs.28.461/-but, the appellant had not shown any exempt income. The appellant herself submits she earned profit of Rs.3,27,794/- on trading*

*of shares of M/s. VAS Infrastructure Ltd. In that case, the appellant should explain how this profit was reflected in the return of income. Mere Long Term Capital Gains of Rs.28,461/- does not seem to explain such huge profit. Also, it is pertinent to note that the appellant claims to have paid STT, but no exempt income under section 10(38) of the Income Tax Act, 1961 was shown in the return of income. Therefore, the appellant failed to give explanation/documentary evidence that this corresponding capital gain in respect of this transaction was reflected in the return of income Hence, keeping in view the Assessing Officer's observation that the appellant had not shown this penny stock transaction, the Assessing Officer is right in bringing the entire sale consideration of Rs.26,02,910/- to tax.*

*6.7 In view of the above, in the instant case there is merit in the Assessing Officer's observation that even though it appears that the appellant had received the proceeds on sale of share of scrip, in reality it was its own cash which it received back through some clandestine deals. The above facts clearly showed that the alleged purchases sale of shares was nothing but fictitious transaction. Therefore, the assessing officer added the total amount of Rs.26,02,910/- which is the sale proceeds of the alleged share. However the appellant was not able to rebut the findings of the Assessing Officer, neither during assessment proceedings nor appellate proceedings. Keeping in view the facts and*

*circumstances of the case, respectfully following the ratio of case laws cited above, I do not have any reason to interfere in the order the Assessing Officer. Accordingly, these grounds of appeal No 1, 2, 3, 4, 5, 6 & 7 are required to be dismissed.”*

6. Aggrieved by the order of the Ld. CIT (A), the present appeal has been filed. During the appellate proceedings before us, the appellant, besides making oral submissions, also submitted Paper Books both on facts of the case as well as on the judicial decisions given by various courts/tribunals on the issue of the penny stock. The extracts of the submissions are given as under: -

- 1) *The appellant is an individual having income from capital gains, both long term as well as short term. The return of income for the year under appeal was filed on 28.09.2011 declaring total income of Rs.37,590/-*
- 2) *The appellant regularly purchases and sells listed securities. During the year under appeal, the appellant has sold equity shares of Rs.1,30,308/- and earned long-term capital gains of Rs.28,461/-, Similarly, on sale of equity shares of Rs.3,58,77,933, the appellant has incurred loss of Rs.2,11,458/- which is declared as short-term capital loss and carried forward to subsequent asst. year. The total list of equity shares held and dealt with by the appellant is given at page no. 3 to 5 of the paperbook. The shares trading account being*

*part of financial statements is enclosed at pg no. 32 of the paper book.*

- 3) *One of the shares dealt with by the appellant in the year under appeal is M/s. VAS Infrastructure Ltd. During the year under appeal, the appellant has purchased 34337 shares and sold 26250 shares of the said company on various dates. Kindly refer to pg no. 5 of the paperbook for details. Out of these transactions of purchase and sale of shares, the Id AO disputes only the transaction of purchase and sale of 24000 equity shares which has taken place in the month of November 2010. The appellant has purchased 24000 equity shares of M's. VAS Infrastructure Ltd on 04.11.2010 for the consideration of Rs.22,97,760/- and sold the same between 04.11.2010 and 08.11.2010 for the total consideration of Rs.26,02,910/-, thereby earning short term capital gain of Rs.3,05,150/- (pg no.1 of the paperbook). The gain on sale of shares translates to 13.28% ROI. This gain of Rs.3,05,150/- is credited to the shares trading short term account (pg no. 32 of paperbook) and is part of total short-term sales of Rs.3,58,77,933-.*
- 4) *Even though, the purchase and sale of 24000 share of M/s. VAS Infrastructure Ltd in the month of Nov. 2010 has resulted in gain of Rs.3,05,150/-, the Id AO has made addition of the entire sale consideration of Rs.26,02,910/- as unexplained cash credit u/s. 68*

*of the Act. The Hon. CIT(A) has upheld the addition. The addition is made by relying upon information received from DDIT (Inv) Unit 6(2), Mumbai regarding M/s. VAS Infrastructure Ltd. The appellant submits that all evidences with regards to purchase and sale of 24000 equity shares of M/s. VAS Infrastructure Ltd. have been placed on record of the lower authorities. The contract notes issued by the broker, M/s. SMC Global Securities Ltd., the d'mat statement, the account of the appellant in the books of broker and bank statements of the appellant have been placed on record. The sale proceeds have been credited to the account of the appellant in the books of the broker, M/s. SMC Global Securities Ltd. and such credit has been utilized for subsequent purchase of shares.*

- 5) *The case of the appellant is that it has suitably discharged the onus of explaining the transaction and supported the same by adequate documentary evidences and therefore the addition made in her hands u/s 68 is uncalled for. The appellant also draws attention to the following specific aspects of the transaction.*
- i. Firstly, the appellant points out that she has dealt with a large number of other scrips also and is undisputedly a regular investor in the stock market. This is not in dispute*
  - ii. Secondly, it is also to be noted that apart from the disputed 24000 equity shares of M/s. VAS Infrastructure Ltd, the appellant has*

*also purchased further 10337 shares of the said company and sold 2270 shares in the year under appeal itself. The other transactions of the appellant of purchase and sale of shares of VAS Infrastructure Ltd carried out in the year under appeal itself are not disputed. No addition is made in respect of such other transactions of purchase and sale of shares of the same scrip.*

*iii. Apart from the above, it is to be appreciated that the appellant has first invested Rs.22,97,760/- in purchase of 24000 equity shares of M/s. VAS Infrastructure Ltd and on sale of such shares received credit of Rs.26,02,910/-, thereby the net credit in the year under appeal in the books of the appellant is of Rs.3,05,150/- only. Thus, when the benefit to the appellant is credit of Rs.3,05,150/- only, any addition over and above the said amount is not justified. Needless to say, this amount of Rs.3,05,150/- is also offered to tax as part of sale proceeds credited to shares trading short term account.*

*Accordingly, it is the case of the appellant that no addition on account of the said transaction is warranted.*

*6) In support, the appellant relies upon the following decisions, all of which deal with purchase and sale of equity shares of M/s. VAS Infrastructure Ltd. The same may kindly be taken into consideration while deciding the present appeal.*

- i. *PCIT-vs-Genuine Finance P. Ltd., 152 taxmann.com 330 (Gujarat) [2023]*
- ii. *ITO-vs-Kamalesh Mohandas Lakhwani, Hon. Members "SMC" Bench. ITAT Mumbai ITA No. 253/Mum/2023.*
- iii. *ITO -vs- Ronak Iqbal Lakhani, Hon. Members "I" Bench, ITAT Mumbai ITA No. 835/Mum/2022 dt. 17.01.2023.*
- iv. *Naveen Kishor Mohnot-vs-ITO, 152 taxmann.com 658 (Mumbai - Trib) [2023]*

*Similarly, the appellant also relies upon the under mentioned decision of the Hon. Jurisdictional High Court in support of her appeal.*

*Copies of above decisions were also separately submitted by the appellant in the paper book.*

7. The DR, on the other hand, relied on the orders of the Ld. AO and Ld. CIT (A) and submitted that the Ld. AO has discussed the modus operandi adopted by the appellant in detail in the assessment order and the Ld. CIT (A) has already confirmed his order by holding that the entire transactions in said scrip is fictitious.
8. We have considered the rival submissions. It is found that the coordinate benches of ITAT, Mumbai have already considered the sale of scrip of VAS Infrastructure Ltd. in several other cases. One of the Members of this Bench, while dealing with stock scrip of VAS Infrastructure, has also held

in the case of ITA. No. 253/Mum/2023 CO No.28/Mum/2023 (A.Y. 2012-13) in ITO- 22(2)(1) vs. Kamalesh Mohandas Lakhwani as under :-

*“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 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 Id. 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 Id. 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 are dismissed.”*

9. It is also found that the Hon’ble High Court of Gujarat in Principal Commissioner of Income-tax vs. Genuine Finance P. Ltd. in Tax Appeal No. 222 of 2023 dated June 13, 2023[2023] 152 taxmann.com 330 (Gujarat) has also upheld the order passed by ITAT in Genuine Finance (P) Ltd v. DCIT [IT APPEAL NO.221 OF 2021 dated 28.10.2022] wherein VAS scrip was examined.
10. Even, the Hon’ble Jurisdictional High Court of Bombay in the case of Principal Commissioner of Income-tax vs. Indravadan Jain, HUF [2023] 156 taxmann.com 605 (Bombay) in IT APPEAL NO. 454 OF 2018 dated July 12, 2023 didn’t find any infirmity in the orders passed by the ITAT on the issue

of penny stock on facts by saying that there is no substantial question of law is involved.

11. Thus, respectfully following the decisions of the coordinate benches of Hon'ble ITAT, Mumbai, we also hold that transactions of share scrip of VAS infrastructure Ltd. cannot be termed as fictitious in the absence of any evidence of manipulation of that scrip. The orders of the Ld. AO and the Ld. CIT (A) are found to be based only on the modus operandi given in the Investigation report and not based on any independent enquiry.

12. In the result, the appeal is allowed.

**Order pronounced in the open court on 22.08.2024.**

**Sd/-  
MS KAVITHA RAJAGOPAL  
JUDICIAL MEMBER**

**Sd/-  
RATNESH NANDAN SAHAY  
ACCOUNTANT MEMBER**

Mumbai, Dated: 22.08.2024.  
*Snehal C. Ayare, Stenographer*

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.