

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1110/M/2024
Assessment Year: 2012-13**

Income Tax Officer-24(3)(1), Room No. 616, 6 th Floor, Piramal Chamber, Lalbaug, Parel, Mumbai-400012.	Vs.	Mr. Nilesh Malshi Savla HUF 102, Saraswat APT, Vasudev Mishra Road Off P P Road, Andheri East, Mumbai – 400069 PAN: AACHN1857N
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing : 12.08.2024
Date of Pronouncement : 23.08.2024

O R D E R

Per: Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Revenue against the order dated 29.01.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. In the instant case, on the basis of investigation carried out by DDIT, Mumbai with regard to the penny stock scrips including M/s. VAS Infrastructure Ltd. and M/s. VMS Industries Ltd. the case of the Assessee was reopened and ultimately vide assessment order dated 24.12.2019 u/s 143(3) r.w.s. 147 of the Act, an addition of Rs.2,86,751/- was made as unexplained cash credit u/s 68 of the Act by rejecting the trade value of Rs.1,46,401/- & Rs.1,40,350/- respectively traded in penny stock scrip of M/s. VAS Infrastructure Ltd. and M/s. VMS Industries Ltd.

2.1 The Assessee, being aggrieved, challenged the aforesaid additions before the Ld. Commissioner who by considering the peculiar facts and circumstances of the case to the effect that the Assessee had stated that he had no idea of shares he had transacted, were penny stocks. Further, he had transacted through BSE only and had no intention of claiming any bogus Long Term Capital Gains (LTCG) rather in all scrips (penny stock as per the AO) the Assessee had not earned even a single penny but suffered minor losses of **Rs.90 and Rs.22.40** from such shares.

2.2 The Ld. Commissioner by considering the aforesaid facts came to conclusion *“that main objection of the penny stocks scam was to obtain LTCG which was an exempt income u/s 10(38) of the Act by fraudulent manipulation of share prices in a recognized stock exchange. If a person has not claimed LTCG rather losses in trading, then there is no way disallowances can be made in lieu of penny stock. In the instant case the Assessee had not claimed any bogus LTCG from trading of penny stock rather incurred minor losses, therefore the addition made by the AO is not correct”* and ultimately deleted the addition under consideration.

3. We have given thoughtful considerations to the peculiar facts and circumstances of the case and are in the concurrence with the findings of the Ld. Commissioner as the Assessee has not claimed any alleged bogus LTCG from trading of penny stock but in fact incurred losses and therefore the addition made by the AO is not correct. We even otherwise do not find any reason and/or material to contradict the findings of the Ld. Commissioner, hence the order under challenge does not require any interference, being not suffered from any perversity, impropriety and/or illegality.

4. In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 23.08.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* 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.