

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

**BEFORE: SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 2277/MUM/2024
(Assessment Year : 2012-13)**

Income Tax Officer- 19(2)(2) 503, 5 th Floor, Piramal Chamber, Lalbaugh, Parel-400012.	Vs.	Madhubala Kailash Shah A/303, Swarg Hights, 100 Feet Road Opp, Maxus Mall, Bhayander West, 401101.
PAN/GIR No. BDBPS3299A		
(Appellant)	..	(Respondent)

Assessee by	Shri. Ashish Chowatia
Revenue by	Smt. R. M Brindha, Addl. JCIT
Date of Hearing	26/09/2024
Date of Pronouncement	20/12/2024

आदेश / ORDER

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 04.03.2024 passed in Appeal no. CIT (A) 30, Mumbai-10751/2019-20 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-

Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2012-13, wherein learned CIT(A) has deleted the additions made vide assessment order dated 19.12.2019.

2. The brief facts under appeal state that the assessee filed return of income for A.Y. 2012-13 on 31.12.2012, declaring total income of Rs. 1,82,640/-. An information was received from DGIT (Inv.) Mumbai, that a search and seizure action was carried out on one Shri Naresh Jain and his associates through out the country by the Directorate of Income Tax (Inv.)-2 Mumbai on 19.03.2019 and was concluded on 20.03.2019. The seven scrips were identified to have been manipulated on the stock exchange by the syndicate of persons led by the operator Shri Naresh Jain. The assessee's case was reopened u/s. 147 of the Act and after recording reasons and with prior approval from principal CIT(A)-19 Mumbai, notice u/s. 148 of the Act dated 31.03.2019 was issued and served upon the assessee. Assessee filed return of income in response to the notice u/s. 148 of the Act on 03.04.2019, declaring same total income of Rs. 1,82,640/- along with the required details. Notice u/s. 142(1) of the Act was also

issued and served upon the assessee. Assessee filed submissions in response thereof. Learned assessing officer, was not satisfied by assessee's submissions and found that the transaction entered into by the assessee in respect of shares of M/s. VMS Industries Limited, which was one of the seven scrips identified by the investigation department, was not genuine. Hence, the sale proceeds of Rs. 13,49,913/- received by the assessee in respect of shares of VMS Industries Limited, were treated as unexplained income u/s. 68 of the Act and an amount of Rs. 27,000/- as undisclosed commission paid to the entry provider/operator @ 2% of Rs. 13,49,913/- was also added as an unexplained expenditure u/s. 69 C of the Act.

3. Aggrieved, assessee filed an appeal before learned CIT(A), who deleted the aforesaid additions made by learned assessing officer.
4. Aggrieved by the impugned order passed by learned CIT(A), revenue has raised following grounds in this appeal.

“ 1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in directing the AO to delete the addition of Rs 13.49,913/ which is taxable under section 68 of the Income Tax Act. 1961?

2. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) failed in appreciating the fact that the company. M/s VMS Industries Limited 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?

3. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) erred in not appreciating the fact that there was huge price jump in the script of M/s VMS Industries 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?

4. Whether on the facts and circumstances of the case and in law the Learned CIT(A) erred in ignoring the direct and circumstantial evidence brought on record by the Assessing Officer to establish that the assessee had indulged in manipulation of the share prices of M/s VMS Industries Limited with a view to claim fictitious Long Term Capital Gains as exempt from taxation?

5. Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the total traded value of Rs 13,49,913/ 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?

6. Whether on the facts and circumstances of the case and in law the Ld CIT(A) has erred in ignoring the direct and circumstantial evidences while passing the order, whereas in view of the decisions in Durga Prasad More and Sumati Dayal rendered by the Hon, ble Supreme Court, where under 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. Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the total traded value of Rs. 13,49,913/ without considering the fact that Assessing Office relying on the report of Investigation wing which is premier investigation authority of Income tax department, and 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 of M/s VMS Industries Limited was not manipulated. Reliance is placed on Calcutta High Court decision in the case of Pr.CIT Vs. Swati Bajaj (L.A. No.GA/2/2022 in ITAT No. 6 of 2022 dated 14.06.2022.

8 .Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in directing the AO to delete the addition of Rs. 27,000/- which is taxable under section 69 of the Income Tax Act, 1961?

9. Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the addition of Rs 27,000/- commission being calculated @ 2% of Rs. 13,49,913/ overlooking the fact that assessee could not have ploughed back its unaccounted income in the form of fictitious Long Term Capital Gain without paying commission to the brokers?

10. This appeal is being filed as it is covered under the exception provided in the CBDT's Circular No. 23/2019 Dated. 06.09.2019, the assessee is involved in trading of penny stocks script and claimed bogus LTCG on sale of penny stock.

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5. Perused the records. Heard learned representative for the appellant/revenue department and learned representative for the respondent assessee.
6. The main points for the consideration under appeal are as under:
- a) Whether learned CIT(A) has erred in deleting the addition of Rs. 13,49,913/- made by learned assessing officer?
 - b) Whether learned CIT(A) erred in deleting the addition of Rs. 27,000/- being the undisclosed commission @ 2% of aforesaid addition of Rs. 13,49,913/- ?
7. Learned representative for the assessee has submitted that assessee has purchased the shares after approval from BSE and sold the same on the recognized stock exchange through normal banking channels. M/s. VMS Industries Limited was neither delisted nor its shares were ever suspended by SEBI. The transaction was done through a registered stock broker "Progressive Share Brokers Pvt. Ltd." It is further submitted that the assessing officer has neither found any fault in the assessee's transaction nor conducted an independent enquiry. The learned assessing officer has drawn the conclusions merely on the basis

of general enquiry conducted by the investigation wing of the department, comprising the statement of one Shri Naresh Jain.

Prayed to dismiss revenue's appeal.

8. Learned DR has submitted that learned CIT(A) has failed to appreciate the fact that M/s. VMS Industries Limited and the brokers of the other entities were involved in rigging the price of scrip. The assessee could not have ploughed back his unaccounted income in the form of fictitious LTGC without paying commission to the brokers. Vehemently supported the assessment order and prayed to set aside the impugned order passed by learned CIT(A).
9. After having gone through the submissions made by the parties and the material available on record, we find that a nationwide search and seizure action was carried out against Shri Naresh Jain and his associates during the period from 19.03.2019 to 21.03.2019. On the basis of the findings of the investigation wing, syndicate of persons were found to have manipulated seven identified scrips on the stock exchange led by the operator Mr. Naresh Jain, who, admitted in his statement recorded u/s. 132(4) of the Act that he, along with the various people,

manipulated the share price of various scrips in order to provide bogus entries of long term capital gain, short term capital loss and business loss. Assessee was found to have traded in one of the seven identified scrips in M/s. VMS Industries Limited during the year under consideration. On the basis of the general findings of the investigation wing of the department, learned assessing officer, came to the conclusion that the shares of M/s. VMS Industries Limited were not genuine. The transaction entered into by the assessee with M/s. VMS Industries Limited was thus treated as bogus and whole traded amount of Rs. 13,49,913/- was added in the total income of the assessee u/s. 68 of the Act without conducting an independent enquiry with regards to the assessee's said transactions.

10. The relevant part of the statement of Shri Naresh Jain recorded u/s. 132(4) of the Act read as under:

“

4	533427	VMS Industries Ltd.	"I am an investor in this scrip. I have taken help of BhaveshPabri for frontrunning in this scrip. I have arranged exit for my self in this scrip by asking Ravikant Chaudhary of ASL Capital Holdings PvtLtd to purchase when I sell the same. The brokers who have helped me in frontrunning and rigging the price of this scrip are Globe Capital Markets Ltd, Karvy Stock Broking Ltd, Fair Intermediate Investment Pvt Ltd, ASL Capital Holdings Pvt Ltd."
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11. It is noticed that the present assessee has not entered into any transaction with any of the aforesaid four brokers namely Globe Capital Markets Ltd., Karvy Stock Broking Ltd., Fair Intermediate Investment Pvt. Ltd., ASL Capital Holdings Pvt. Ltd. as appearing in the statement of Mr. Naresh Jain. The appellant assessee has admittedly dealt with the scrip of VMS Industries Limited through the registered broker i.e “Progressive Share Brokers Pvt. Ltd.” who is not named in the statement of Mr. Naresh Jain. We further notice that learned CIT(A) has taken note of the fact that learned assessing officer has categorically mentioned that public at large, also bought shares of VMS Industries Limited, thus learned CIT(A) observed that the possibility of the appellant, being one of such public, who

invested in the shares of VMS Industries Limited on the basis of market information cannot be ruled out.

12. Learned CIT(A) has further observed that the appellant has neither earned long term capital gain nor short term capital loss but has earned a meagre short term capital gain of Rs. 20,217/- on the transactions in the shares of M/s. VMS Industries Pvt. Ltd. In the totality of facts and circumstances of the case, the conclusion arrived at by the learned assessing officer is based merely on the conjectures and surmises and not on the test of human probabilities and surrounding circumstances. We are of the consistent view that learned CIT(A) has left no stone unturned in taking out the grain from the chaff and has rightly held that the assessee, cannot be held liable for any manipulation for price hike. We, accordingly hold that assessee's transaction of purchase and sale of shares of VMS Industries Pvt Ltd. cannot be treated as non-genuine transaction. Learned CIT(A) has rightly deleted the aforesaid addition. The aforesaid first point is accordingly determined in negative against the revenue and in favour of the assessee.

13. In view of our finding in respect of the first issue, the question of 2% of undisclosed commission of Rs. 27000/-does not arise. The second issue is also determined in negative against the revenue and in favour of the assessee accordingly.

14. In the result, this revenue's appeal stands dismissed. The impugned order dated 04.03.2024 is confirmed.

Order pronounced on 20.12.2024.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 20/12/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai