

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

**BEFORE HON'BLE SHRI BR BASKARAN, ACCOUNTANT MEMBER &
HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 453/Mum/2025
(Assessment Year: 2012-13)**

ITO-41(2)(4) 836, Kautilya Bhawan, BKC, Mumbai – 400051.	Vs.	Rajesh Dineshchandra Sanghvi 36, Gala Industrial Estate, Din Dayal Upadhyaya Marg 400080.
PAN/GIR No. AACPS1668Q		
(Applicant)		(Respondent)

Assessee by	Shri Kirit Sanghvi
Revenue by	Shri Kiran Unavekar Sr. DR

Date of Hearing	13.03.2025
Date of Pronouncement	21.03.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 26.11.2025 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the Commissioner of Income Tax (Appeal)-1, Ahmedabad, for the A.Y 2012-13.

2. At the outset, we noticed that the present appeal has been filed by the revenue challenging the order of Ld. CIT(A) in deleting the additions of Rs.23,532/-

3. In this regard, we have heard the counsels for both the parties, perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities.

4. From the records, we noticed that the assessment was completed on the basis of reply received from BSE Ltd in response to the letter issued u/s 133(6) calling for information dated 15.12.2019. The AO has claimed that as per BSE data, the assessee has purchased 3606 shares of M/s Vas Infrastructure Ltd at Rs. 2,88,599/- and sold the same at Rs.3,12,131/- and accordingly booked profit of Rs.23,532/-. Consequently, the same was added to the total income of the assessee as short-term capital gain.

5. Whereas, on the contrary, the assessee has taken a specific stand that he has never dealt with any shares of Vas Infrastructure Ltd and not claimed any STCG / LTCG. Apart from this the addition was made in violation of the provisions of section 149(1)(b) of the act. Therefore, considering the specific stand taken by the assessee, Ld. CIT(A) passed a detailed order, the operative portion of the same is reproduced here in below:

7.1. Ground no. 1, 2 & 3: The appellant files his return of income for AY 2012-13 on 27.03.2014 declaring total income of

Rs.284950/-. Subsequently, the case has been re- opened u/s 147 of the Act after recording reasons for reopening and notice u/s 148 of the Act was issued on 29.03.2019. The reasons for reopening are reproduced as under:

"In this case, Information has been received from the Dy.DIT. (Inv), Unit 6(2), Mumbai vide letter No. DDIT (Inv)-6(2)/Information/VAS/2018-19/, dated 13/02/2019 received via email on 01.03.2019, stating that an information was received on 21.03.2018 in his office wherein it was alleged that M/s. VAS INFRA scrip is a penny-stock scrip which has been used by beneficiaries to launder money in the grab of LTCG while claiming F.Y. 2010-11, specifically in the month of Nov.. 2010, which is not prima facie supported by financial fundamentals of the scrip, which raises suspicion. Despite having poor financials during F.Y. 2010-11 and F.Y. 2011-12 the company raised funds through series of preferential allotments during the said period.

During the enquiry, it has been analyzed that even though net worth of the company is negligible the share prices have been artificially rigged by the group of operators to accommodate beneficiaries seeking LTCG/STCG and losses. No prudent businessman and particularly trader or investor in stock will invest in such a penny scrip which is defunct and inoperative. Further it is stated that there is no logical explanation for the rise in price of the scrip of VAS INFRA. The persons selling the scrip when the price of the scrip is high at its peak are all beneficiaries of bogus LTCG. The exit providers were not able to provide any logical explanation of the source of fund they have invested in the scrip when the price was at its peak. Thus, it appears that the scrip M/s. VAS INFRA has been used to provide bogus LTCG to various beneficiaries.

The assessee is one of such beneficiaries and sold shares during F.Y. 2011-12 for the amount totaling to Rs. 3,12,131.7. The assessee claimed exempt income u/s. 10(38) of the IT Act. The same is to be disallow u/s. 68 of the IT Act on account of unexplained cash credit.

Hence, considering the materials on record, I have reason to believe that income chargeable to tax to the tune of Rs.3.12, 132/- has escaped assessment within the meaning of Explanation 2(b) to Section 147 of the I. T. Act, 1961.

The assessment proceedings was completed on the basis of reply received from BSE Ltd. in response to letter issued u/s 133(6) calling for information vide dated 15.12.2019. The AO has claimed that as per BSE data the appellant has purchased 3606 shares of M/s VAS infrastructure at Rs.288599/- and sold the same at Rs.312131/- in FY 2011-12. Accordingly, booked profit of Rs.23532/-. The same was added to the total income of appellant as short term capital gain.

In this case the appellant has filed return of income for AY 2012-13 and declared total income of Rs.284950/-, which includes a short term capital loss of Rs.23532/- and accordingly the same was claimed to be carried forward. The appellant has submitted that during the year under consideration he has traded in the script of Orissa Mine and incurred loss of Rs.23532/-. The appellant has submitted that it is came to notice before AO during assessment proceedings that there is no transaction pertained to VAS Infra for the year under consideration and the appellant has also not claimed exemption of LTCG u/s 10(38) of the Act during the year. During the appellate proceedings the appellant has filed a reply of an email sent to BSE India for seeking trade details executed on the client ID of the appellant. In the reply the BSE India has confirmed that trade executed during the year on client ID of the appellant was in the script Orissa Mine. Details of the same are as under:

SCRIPCODE	SCRIPNAME	TRADE DATE	TRADEID	QTY	RATE	MEMBER NO	MEMBER NAME	CLIENT CODE	CLIENTNAME	PANNO	ORDER NO	BUY/SELL
590086	ORISSA MINE	2011-04-18	1095	1	58,193.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	19000030000592	B
590086	ORISSA MINE	2011-04-18	1145	1	58,200.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	19000030000720	B
590086	ORISSA MINE	2011-04-18	1393	1	58,140.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	22000035002214	B
590086	ORISSA MINE	2011-04-18	2115	1	56,140.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	19000030008221	B
590086	ORISSA MINE	2011-06-29	1060	1	54,089.95	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	21000038000271	B
590086	ORISSA MINE	2011-06-29	1061	1	54,089.95	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	21000038000271	B
590086	ORISSA MINE	2011-06-29	3416	1	39,000.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	18000030002907	S
590086	ORISSA MINE	2011-06-29	3417	1	39,000.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	18000030002907	S
590086	ORISSA MINE	2011-07-08	2452	1	60,750.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	21000047008813	S
590086	ORISSA MINE	2011-07-08	2453	1	60,700.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	21000047008813	S
590086	ORISSA MINE	2011-07-08	2460	1	60,700.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	21000047008813	S
590086	ORISSA MINE	2011-07-08	3074	1	59,799.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	16000027011925	B
590086	ORISSA MINE	2011-07-08	3077	1	59,799.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	16000027011925	B
590086	ORISSA MINE	2011-07-08	3078	2	59,799.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	16000027011925	B
590086	ORISSA MINE	2011-08-29	1077	1	42,250.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	23000037001455	B
590086	ORISSA MINE	2011-08-29	1078	1	42,299.45	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	23000037001455	B
590086	ORISSA MINE	2011-09-02	2211	1	46,375.00	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	14000042008831	S
590086	ORISSA MINE	2011-09-02	2256	1	45,850.05	612	ANGEL BROKING LTD.	R436	RAJESH D SANGHVI	AACPS1668Q	12000044005983	S

The appellant has also submitted computation of total income along with statement of STCG/Loss. It is seen that the appellant has claimed loss from securities transactions of Rs. 23532/- and accordingly the same was claimed to be carried forward. Copy of statement of STCG/Loss is as under:

RAJESH D. SANGHVI							
STATEMENT OF DETAILS OF SHORT TERM CAPITAL GAINS / LOSS							
For the period 01-04-2011 to 31-03-2012							
Sr.	Scrp	P.Date	Qty	P.Amount	S.Date	S.Amount	Gain/Loss
1	Orissa Mining	18-04-11	2	115740	02-09-11	92087	-23653
				115740	92087		-23653
STATEMENT OF DETAILS OF TRADING IN SHARES INTRADAY							
For the period 01-04-2011 to 31-03-2012							
Sr.	Broker	Debit		Credit		Gain/Loss	
1	Angel Broking Ltd.	0		13196		13196	
		0		13196		13196	

7.2. The appellant has also claimed that the notice u/s 148 was issued for A.Y.2012-13 on 29.03.2019, after more than 4 assessment years from the end of assessment year 2012-13. Therefore, the provisions of section 149(1)(b) applied to the facts and income escaping assessment or is likely to be escaped shall be Rs.100000/- or more, however, the actual addition made to the total income is of Rs.23532/-, which is less than Rs. 100000/-. Thus, assessment is made in violation of section 149(1)(b) of the Act, as it was then in force. The relevant part of section 149(1) is as under:

"Time limit for notice.

149. (1) No notice under section 148 shall be issued for the relevant assessment year,-

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c).

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year,

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment".

7.3. In view of above discussion it is seen that the appellant has traded in script Orissa Mine and incurred loss of Rs.23532/- during the year. It is also seen that the AO has not provided copy of reply received from BSE India to the appellant during assessment proceedings and no evidence was reproduced in assessment order passed. Therefore, as per details available it is seen that the appellant has entered in the transaction in the script Orissa mine not in VAS infra for

the year under consideration. It is also seen that the addition made by AO has not qualified with the provisions of section 149(1)(b) of the Act as income escapement was below the threshold limit of Rs.100000/- Therefore, escapement of income if any will be Rs.23532/- only. It is seen that the assessment is reopened after 4 years after the end of AY 2012-13. There is no escapement of more than Rs. 100000/- which is prerequisite condition for reopening of the assessment beyond 4 years.

During the course of re-assessment proceedings the appellant has furnished that he has received no LTCG on transaction of VAS Infra. However, AO has not accepted the submission of the appellant and added back the STCG The submission filed by the appellant during the assessment proceedings was not properly rebutted. During the course of appellant proceedings the appellant has submitted copy of return of income, computation of income and detailed submission. Appellant has vehemently contended that he is not beneficiary of transaction made in respect of purchase and sale of VAS Infra. Appellant has also claimed that he has not received any exempted capital gain of Rs.312132/- as alleged by the AO. The AO has not made addition on the basis of reasons mentioned in reasons recorded. Therefore, the judgment of CIT vs. Jet Airways(1) Ltd. (2011) 331 ITR 236 (Bom) will also come into picture. In this decision it is held that if the AO does not make any addition on primary ground on the basis of which proceedings u/s 147 were initiated, he cannot make other addition. Therefore, there is no enough material to substantiate the claim of AO that appellant is a beneficiary of transactions carried out on sale purchase of VAS Infrastructure. The regular traits or symptoms available in the cases while generating bogus LTCG are not seen in this case, Ground no.1, 2 and 3 are allowed. AO is directed to reduce the income of appellant by Rs.23532/-.

7.4. The appeal of the appellant is allowed.

6. After having gone through the orders passed by Ld. CIT(A) and hearing the parties at length, we found that the assessment order was passed on the basis of surmises and without any documentary evidences to prove that the assessee ever transacted in the shares of Vas Infrastructure Ltd or earned any LTCG. Moreover, the reassessment proceedings were initiated in violation of the provisions of section 149(1)(b) of the act, therefore Ld, CIT(A) rightly deleted the additions.

7. No new documents or evidences have been brought on record by Ld. DR to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore we find no reasons to interfere into or deviate from the well reasoned findings so recorded by Ld. CIT(A) therefore the grounds raised by the revenue stands dismissed.

8. In the result, the appeal filed by the revenue stands dismissed with no orders to cost.

Order pronounced in the open court on 21.03.2025.

Sd/-

(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 21/03/2025

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai