

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

**BEFOR SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4322/Mum/2024
(Assessment year: 2012-13)**

Jitendra Sharma, ACIT Circle-19(1), Mumbai 506, 5th Floor, Piramal Chamber, Lalbaug, Mumbai- 400 012	vs	Shri Kashyap Mahesh Vora 401/402, A, Sanidhya Apts, 22A, Walkeshwar Road, Mumbai- 400 006 PAN: ABXPV1914E
APPELLANT		RESPONDENT

Assessee by : Shri K. Gopal a/w Shri Akhilesh
Deshmukh

Respondent by : Shri Hemanshu Joshi, SR DR

Date of hearing : 03/07/2025

Date of pronouncement : 10/07/2025

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the revenue was filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld. CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 25.06.2024. The impugned order was emanated from the order of the Learned Assistant Commissioner of Income-tax-19(2), Mumbai [for brevity, the "Ld.

AO"] passed under section 143(3) read with section 147 of the Act, date of order 04/12/2019.

2. The revenue has taken the following grounds of appeal:-

"1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 59,36,000/- as unexplained income which is taxable under section 68 of thus Income Tax Act, 1961?"

2. Whether on the facts in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,18,720/, being 2% of the total amount paid to the entry providers/operators, as unexplained expenditure u/s 69C of the IT. Act, which is taxable under Income Tax Act, 1961 2

3. Whether on the facts and circumstances of the case and in law, the CITYA) has erred in deleting the entire addition of Rs. 59,36,000/- made u/s. 68 of IT. Act, without considering the fact that Assessing Officer's action was based on the discreet report of the O/o. DGIT(Inv.), Mumbai post Search & Survey action on Shri. Naresh Jain & His syndicates/Groups, who were involved in colluding to execute managed transactions on the stock exchange, thereby generating fraudulent LTCG/STCG and business losses for various beneficiaries and the assessee was found to be one of such beneficiaries, who have involved in such transactions by trading in a Penny stock script of M/s VMS Industries Limited?"

"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) failed in appreciating the fact that, during the statement recorded on oath of Shri. Naresh Jain, during the search operation by the O/o. DGIT(Inv.) Mumbai, revealed that their syndicates have managed, controlled several scripts in the stock exchange and also they have acted as conduit for funneling of fund through the stock market transactions in a large number of cases and also revealed that the assessee's accounts were used as conduit account for transit of funds from the beneficiaries to entry/exit provider.?"

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that Investigation wing of the income Tax Department, on the basis of evidence gathered, found that Mr. Naresh Jain and his Group has manipulated stock prices of various scrips including of M/s. VMS Industries Limited a penny stock, to provide false entries of capital gains and losses

and that established collusion among Mr. Naresh Jain, stuck Promotors, brokers and intermediaries to facilitate these Sham Transactions?"

6. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has 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/STCL, without paying any taxes and assessee was one of such beneficiary of such transactions ?"

7. Whether on the facts and circumstances of the case and in law, the Learned CIT(A) has erred in ignoring the direct and circumstantial evidence brought on record by the Assessing Officer that a colorable ploy was used by various players to obtain accommodation entries which disclosed, the aim, modus operandi and analyzed the flow of process to provide the accommodation entry of STCG/loss to beneficiaries and 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?"

8. Whether on the facts and circumstances of the case and in law, the order of the CIT(A) ignored the direct and circumstantial evidences in view of the decisions in Durga Prasad More (1971) 82 ITR 540(SC) and Sumati Dayal [1995] 80 Taxmann 89(SC) /[1995] 2014 ITR 801(SC) [1995] 125 CTR 124(SC) rendered by the Hon, ble Supreme Court, wherein 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 had been exercised by the Assessing Officer ?"

9. 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 where the onus is on the assessee to establish the genuineness of the price hike and also 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 Swatt Bajaj (LA no. GA /2/2022 in ITAT No. 6 of 2022, Dated. 14.06.2022, wherein the Hon'ble High Court has held that the onus is on the assessee to establish the genuineness of the price hike. Merely demonstrating the financials of the company, volume of trade, transactions through banking channels, inter alia, will not suffice. The assessee has to prove that price of the share was not manipulated?"

10. In the instant case, the appeal is being fled before Hon'ble ITAT. The tax effect involved in the instant case is Rs. 18,70,908/-, which is below the prescribed limit as per CBDT's revised Circular No. 5/2024 dated 15.03.2024, however, this case falls under one of the exceptions specified in paragraph 3.1 (h) of the above stated Circular, wherein it is stated that in cases involving Organized Tax Evasion, including cases of bogus Capital gain/loss through penny stocks, the decision to file appeal/SP shall be taken on merit without regard to the tax effect and the monetary limit."

11. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

3. The brief facts of the case are that the assessee filed the return under section 139(1) of the Act declaring total income amount to Rs.42,39,230/-. The information was gathered from DDIT(Inv), Mumbai that during the impugned year, the assessee has dealt with bogus scrips and the assessee is also the beneficiary of the traded scrips of "M/s VMS Industries Ltd" and earned the short term capital gain amount to Rs.11,74,936.95. The assessee purchased the said scrip, quantity 70,000 and purchases and sales online traded value for purchase was amount to Rs.47,61,063.05 on dated 12/03/2012 and 13/03/2012 and the sales value amount to Rs.59,36,000/-. So the trading profit amount of Rs.11,74,936/- was declared as short term capital gain in ROI. The assessee has made purchases and sale online through stock exchange. But the Ld.AO treated the entire transaction as part of bogus transaction and added back the sale value amount to Rs.59,36,000/- as unexplained income under section 68 of the Act and commission paid to the entry provider calculated at Rs.1,18,720/- which is added back under section 69C of the Act which works to total amount to Rs.60,54,720/-. Aggrieved assessee filed an appeal before the Ld. CIT(A). After considering the assessee's submission, the

Ld.CIT(A) deleted the addition and allowed the appeal of the assessee. Being aggrieved, the revenue filed an appeal before us.

4. The Ld.DR argued and stated that the DDIT(Inv), Mumbai has taken note that the said scrip is a bogus scrip, so the entire transaction made by the assessee itself is a bogus transaction. So, the addition made by the Ld.AO should be upheld. So, the Ld.DR stands in favour of the impugned assessment order and prayed for upholding the impugned addition of Rs.60,54,720/-.

5. The Ld.AR argued and filed a written submission containing pages 1 to 107 which is kept on record. The Ld.AR argued that the sales transaction was made on 29/03/2012 online. But the amount received on 02/04/2012 after settlement of the said transactions. The Ld.AR further argued that the said scrip was duly transacted through stock exchange and till the movement of the VMS Industries Limited stock price, which is duly annexed at **page 32 of APB**. In argument, he stated that the assessee before the revenue authorities and before the bench submitted the documents like contract notes executed by stock brokers for purchase and sale of share (**APB pages 5 to 7**), copy of ledger account in the books of the broker (**APB 8-10**), copy of demat account **APB page 11-12**. The Ld.AR further stated that on verification of the balance-sheet with annexures for impugned financial year placed at **APB 13-18** reveals that the assessee was regularly traded the share and highly involved in the stock market for trading.

6. The Ld.AR respectfully relied on the order of Ld.CIT(A) and the relevant paragraphs on pages 32 to 35 are extracted below:-

“5. Decision**Findings:**

I have carefully perused the facts and circumstances of the cases, submissions and contentions made by the Assessee and the Assessing Officer, all supporting documents, and the relevant judgements of various judicial authorities applicable to the present proposition.

The impugned Assessment Order dated 04.12.2019 has been passed u/s 143(3) r/w Sec 147 of the IT Act, 1961.

The Assessee has disputed the aforementioned order on three (3) major grounds of appeal and has substantiated the same using various materials throughout the course of his Written Submissions.

Regarding the ground relating to applicability of Sec 147, the Assessee contends that the re-assessment proceedings are untenable in law as they have been made on the basis of mere conjecture as opposed to cogent basis.

The Hon'ble Supreme Court in the case of Sheo Nath Singh [82 ITR 147] has laid down that the words “reason to believe” suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. When so-called reasons are in the nature of beliefs, it leads to an obvious self-contradiction and a notice issued on such beliefs as basis is illegal and invalid.

Further, the Hon'ble ITAT, Surat in the case of Nishant Kantilal Patel & Muktaben Nishant Patel [ITA No. 05 & 06/SRT/2019] dated 07.01.2021 established that re-assessment proceedings cannot be started on the basis of information received from another agency. The only acceptable route is that the Assessing Officer considers the material on record in light of the facts and circumstances of the case and forms an independent opinion in the matter that is not based on borrowed satisfaction. If the opinion is formed solely and mechanically relying upon the

information received from another source, then the assumption of jurisdiction to reopen the assessment u/s 147 is bad in law.

Additionally, the Hon'ble ITAT, Mumbai in the case of M/S Vora Financial Services Private Limited [ITA 3835/MUM/2023] dated 08.03.2024, in a matter involving penny stocks of VMS Industries Ltd., established that the Assessing Officer cannot form a pre-determined notion that the assessee has indulged in bogus transactions merely for the reason that he has traded in penny stocks.

Regarding the ground relating to applicability of Sec 68, the Assessee contends that the trades were made on BSE, a recognised stock exchange, through normal banking channels as per exchange guidelines. They were received and transferred in DEMAT form using Assessee's personal account which is regularly used for investment purposes. He paid STT on the trades at both times and also paid tax @15% on the Rs. 11,74,936/- short-term capital gains in accordance with Sec 111A, IT Act.

The Hon'ble Supreme Court in the case of Nishant Kantilal Patel & Muktaben Nishant Patel [ITA No. 05 & 06/SRT/2019] dated 07.01.2021 distinguished "reason to believe" from "reason to suspect" and said that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year.

Moreover, the materials on record which have been made the basis of the reassessment have not been cross-examined by the Assessee. In this regard, the Hon'ble Supreme Court in the case of Andaman Timber Industries [281 CTR 214] held that not allowing the appellant to cross-examine the witness by the adjudicating authority though the statements of the witness were made the basis of the impugned order is a serious flaw which makes the order a nullity.

Regarding the onus of proof in such matters, the Assessee has discharged his burden by submitting all the requisite documents to prove the genuineness of the transactions in alleged penny stocks. The Hon'ble Supreme Court in the case of CIT (Central) Kolkata vs Daulat Ram

Rawatmull [87 ITR 349] held that the onus of proving that a transaction is bogus lies on the party claiming so, and must be strictly discharged by adducing legal evidence, which would directly prove the fact of bogusness or establish circumstance unerringly and reasonably raising an inference to that effect.

Here, the Assessing Officer has offered no reasons for rejecting or refuting the evidence forwarded by the Asseseee. In this regard, the Hon'ble ITAT, Mumbai in the case of Dipesh Ramesh Vardhan vs DCIT [ITA No. 7648/MUM/2019 & Ors.] dated 11.08.2020 laid down that once the documentary evidence and the transaction flow of the appellant remains uncontroverted and no defects are pointed out therein, the onus shifts on to the Assessing Officer to substantiate the allegations.

Regarding the ground relating to applicability of Sec 69C, the Assessee contends that the alleged unexplained expenditure must be a matter of fact and not a figment of imagination. Moreover, the matter of addition u/s 69C has not been raised in any Show Cause Notice or otherwise.

Conclusion

With respect to the ground relating to opening of reassessment proceedings, I find that the same were invalid due to lack of jurisdiction. The impugned assessment order is based on the materials obtained in an investigation involving penny stock trades and market manipulation undertaken but certain third parties and no direct nexus has been established between the same and the Assessee's case.

With respect to the ground relating to unexplained credit arising from disinvestment proceeds, I conclude that the same is based not on a cogent or reasonable basis but on suspicions and surmises, and thus is bad in law. Consequently, the addition of Rs.59,36,000/- stands nullified.

With respect to the ground relating to unexplained expenditure, I find that the allegation is made on mere presumption of the Assessing Officer without making any reference to any record

or findings or entries. The same lacks tangible basis and as a result, the addition of Rs.1,18,720/- made thereunder is null and void.

6. In the result, the appeal is allowed on all grounds.”

7. We have heard the rival submissions and perused the material available on record. During the course of assessment proceedings, the Ld. AO added back the entire sale consideration pertaining to the scrip M/s VMS Industries Ltd, amounting to Rs.59,36,000/-, along with the commission of rs.1,18,720/- allegedly paid to the entry provider. The assessee, in support of the genuineness of the transaction, submitted all relevant documents, including contract notes, broker's ledger confirmation, demat account statements showing delivery of shares, and proof of transactions undertaken through banking channels. There is no material on record to indicate that the said scrip was ever suspended by the Stock Exchange. It is pertinent to note that the Ld. AO neither rejected any of the documentary evidence furnished by the assessee nor raised any doubt regarding their authenticity. The assessee has earned a short-term capital gain of Rs.11,74,936.95, which has been duly disclosed in the return of income. Upon careful consideration, we observe that no independent inquiry or verification has been conducted by the Ld. AO during the assessment proceedings. The addition has been made solely on the basis of the report of the DGIT (Investigation), Mumbai, without corroborative evidence specific to the assessee.

In view of the above, we do not find any infirmity in the order passed by the Ld. CIT(A). Accordingly, the grounds raised by the revenue are dismissed, and the impugned appellate order is hereby upheld.

8. In the result, the appeal of the revenue bearing **ITA No.4322/Mum/2024** is dismissed.

Order pronounced in the open court on 10th day of July 2025.

Sd/-

sd/-

(SMT. RENU JAUHRI)
ACCOUNTANT MEMBER

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 10/07/2025

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai