

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH MUMBAI**

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER &  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No. 582/Mum/2025  
(Assessment Year: 2018-19)**

<b>Kishor Jethalal Morbia</b> 304/310, Kailas Plaza, Vallabh Baug Lane, Ghatkopar (East), Mumbai-400 075	Vs.	<b>Assessing Officer, Assessment Unit, Income Tax Department</b> Jurisdictional Assessing Officer, ITO 27(2)(1), Vashi Railway Station, Vashi Navi Mumbai- 400 703
PAN/GIR No. AABPM4447J		
(Applicant)		(Respondent)

Assessee by	Shri Anant N. Pai, Ld. AR
Revenue by	Shri Hemanshu Joshi, Sr. DR

Date of Hearing	07.05.2025
Date of Pronouncement	14.07.2025

आदेश / ORDER

**PER RAJ KUMAR CHAUHAN, JM:**

This appeal is directed against the order dated 01.08.2024 passed by the National Faceless Appeal Centre, Delhi (herein after referred as “Ld. CIT(A)” u/s 250 of the

Income-tax Act, 1961 (herein after referred as “the Act”), wherein the addition made by the Ld. AO at Rs. 27,56,425/- claimed as STCG in the Income Tax Return was confirmed.

2. An application for condonation of delay has been filed by the appellant/assessee stating that statistically there is delay of 88 days and narrated the reasons for filing the appeal after the due date. The application is supported by affidavit of the assessee therein contending the reasons for delay in filing the appeal as extracted below:-

*“1. I stated that an appellate order dated 01-08-2024 was passed by Commissioner of Income Tax (Appeals) against me for Assessment Year 2018-19. Against this order, an appeal was required to be filed by me to the Hon'ble Tribunal within 60 days of its receipt.*

*The appeal is now being filed after delay.*

*2. I state that in the past, I had suffered from respiratory impairment and had undergone lung transplant surgery. Though this surgery has been lifesaving to me, I have risks of developing infections and uneasiness post this surgery. I am often not able to keep proper track of my tasks and I may tend to forget things in moments of anxiety.*

*3. When my office received the order of the learned Commissioner (Appeals) on 01-08-2024, it was brought to my notice, But, by mischance and in my moments of anxiety, the order remained to be brought to the notice of my chartered accountant for filing appeal to the Hon'ble Tribunal*

4. I state that I got alerted of my lapse in month of January 2025, when I received a notice from the Income Tax Department for recovery of the outstanding demand for the year in appeal.

5. I state that I immediately gathered all related papers to hand it over to tax counsel to prepare and file the appeal. The appeal is now being filed though belatedly.

6. I state that the delay in filing of his appeal is bona fide and due to an unintentional oversight. I also state that the delay is not on account of any deliberate indifference to law on my part. I state that I have been otherwise timely compliant in attending to my tax matters.

7. I state that I am making this affidavit to put the above facts correctly on record to support an application for condonation of delay in filing appeal being moved by me before the Income Tax Appellate Tribunal.

8. I state that the averments made in this affidavit are true and also to the best of my belief and knowledge and I have made this affidavit in order to present facts correctly to Income Tax Appellate Tribunal.”

3. The application is supported by affidavit of the assessee. The assessee put reliance upon the judgment of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition Vs. MST. Katiji & Ors.*, [1987] 167 ITR 471 (SC), dated 19.02.1987, the Hon'ble Apex Court was pleased to hold regarding the condonation of delay as under:

*“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits”. The expression “sufficient cause” employed by the Legislature is*

*adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making of justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.*

*And such a liberal approach is adopted on principle as it is realized that:*

- 1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.”*

4. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. Ld. AR argued that the reasons given in affidavit seeking condonation of delay, makes out sufficient cause for condonation of delay.

5. The Ld. DR supported the judgment of the Ld. CIT(A) and argued that appellant has failed to show sufficient cause for condonation of so much delay.

6. We have considered the arguments and examined the record. Since the assessee has filed affidavit in support of condonation of delay and no contradictory facts has been brought

on record by the revenue to the effect that contents of the affidavit are false. For these reasons, we find it expedient in the interest of justice that the assessee has shown sufficient cause for condonation of delay in filing the appeal before us. Hence, the delay in filing the appeal is accordingly condoned.

7. The brief facts as culled out from the proceeding before the lower authorities are that the assessee is an individual, has filed return of income for the year under consideration on 20.09.2018 declaring total income at Rs. 53,84,950/-. However as per the information available on record, the assessee has traded in penny scrip namely M/s Florence Investech Ltd. and has sold the share of said penny scrip of Rs. 15,47,847/- during the year under consideration. The assessment was reopened by issuing notice u/s 148 of the Act dated 01.04.2022. In response thereto, the assessee has filed the return of income on 11.04.2022 declaring the total income at Rs. 53,84,950/-. Subsequently, statutory notice u/s 143(2) of the Act was issued on 27.06.2023 and notice u/s 142(1) was issued on 13.01.2023. In response the assessee has filed reply on 20.01.2023 and 28.06.2023 alongwith necessary documents including copy of bank statement, contract notes, working of LTCG /STCG, capital account, trade summary, ledger account details, bank book, etc. during the FY 2017-18 relevant to AY 2018-19. A show cause notice was issued on 29.02.2024 asking the assessee as to

why STCG of Rs. 15,47,847/- from the sale of shares of M/s Florence Investech Ltd. which is penny scrip and has also been delisted from BSE, should not be disallowed and added to the total income as unexplained credits u/s 68 of the Act. In response, the Assessee has submitted reply on 04.03.2024. It is admitted in the assessment order that assessee has made reply and submitted all the necessary documents with respect to the transaction in question. It was explained by the assessee that he has purchased 1000 shares @ Rs. 846 per share on 03.04.17 and further 1000 shares @ Rs. 1000 per share of M/s Florence Investech Ltd. on 06.04.2017. The said shares were sold by the assessee on 30.10.2017 @ Rs. 1706/- per share. The AO however relied on the report of investigation wing that M/s Florence Investech Ltd. is a penny scrip and the whole arrangement of its listing and trading was done to provide a medium for the beneficiaries to route their unaccounted money. It is further stated that BSE has also carried out detailed investigation in the said scrip and found manipulation in the said scrip because the brokers were found issuing fake contract notes to the beneficiaries to provide artificial LTCG or STCG. Therefore, the BSE has delisted the said scrip from the stock market. In view of the above facts, the AO concluded that assessee in the guise of sale of shares of penny scrip has routed its unaccounted money and accordingly, STCG of Rs.

15,74,847/- on account of sale of shares was disallowed and added to the total income of the assessee as unexplained credits u/s 68 of the Act.

8. The said assessment order was challenged by assessee before the Ld. CIT(A) who confirmed the action of AO and dismissed the appeal of assessee.

9. Thus aggrieved by the order of Ld. CIT(A) the present appeal has been filed and following ground has been raised by the appellant / assessee.

*1. Ground no. 1: On facts and circumstances of the case and in law, the Appellant submits that his assessment had been re-opened by the learned Assessing Officer without having any credible information on hand that suggested that his income chargeable to tax has escaped assessment.*

*The re-assessment proceedings u/s 147 were illegal and deserve to be quashed in appeal.*

*2. Ground no. 2:-On facts and circumstances of the case and in law, the Appellant submits that his assessment was re-opened merely on promptings in the DRI Report and not basis of his any independent enquiry and own decision of the learned Assessing Officer as required u/s 148A.*

*The notice u/s 148 issued was illegal, as being issued without following the mandatory preconditions prescribed in section 148A. The re-assessment action therefore, deserves to be quashed in appeal.*

Grounds no. 3:- On facts and circumstances of the case and in law, the re-Massessment proceedings were also illegal because the same have been initiated on basis of approval given by the specified authority u/s 151 without application of mind.

The re-assessment proceedings u/s 147 may therefore please be quashed in appeal.

4. Ground no. 4:- On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the addition u/s 68 of Rs. 15, 74, 847/-/- made in the assessment order on account of alleged bogus short term capital gains.

The addition has been sustained solely on basis of unsubstantiated findings of the DRI report adopted by the learned Assessing Officer in the assessment order and in the process, by rejecting, without any credible reason, the documentary evidences and explanations submitted by the Appellant.

The addition of Rs. 15,74,847/- so sustained was devoid of any merit and may, please be deleted in appeal

5. Ground no. 5:-Without prejudice to the above grounds, the Appellant submits that he has been subjected to double taxation on the amount of Rs. 15,74,847/- in the assessment order. The amount has been taxed firstly as part of his returned income and also, again as a separate addition u/s 68 in the assessment order.

Double taxation may not be permitted, in any case, in this appeal.

6. Ground no. 6:- The lower authorities erred in passing their respective orders without granting the Appellant an adequate opportunity of being heard.

*The orders passed by them are in contravention of the principles of natural justice and require to be set right in this appeal.*

*7. The Appellant reserves the right to add to, alter or delete any of the above grounds of appeal.*

10. During the arguments, Ld. AR appeared on behalf of the assessee submitted that assessee does not press Ground no. 1, 2 and 3 which are legal grounds wherein the assessee has questioned the reopening of assessment and issuance of notice u/s 148 of the Act. The assessee has contested only the ground with respect to addition of Rs. 15,74,847/- as unexplained credit u/s 68 of the Act.

11. We have heard the Ld. AR and the Ld. DR and examined the record. The Ld. AR at the very outset submitted that both the lower authorities has not considered the relevant documents submitted by the assessee to prove the genuineness of the transaction and the purchased shares were dematerialized as per the prescribed procedure and thereafter the same has been sold through the stock exchange. During the arguments, Ld. AR referred the Paper Book 2 containing 3 pages with respect to demat transaction details of the assessee from 10.04.2017 to 01.11.2017. It is further submitted that the assessee is a regular investor in stock market and has also been trading in other scrips Suzlon Energy of 1,09,000 shares and Rain Industries, etc. which established that

assessee is regular investor in shares and during the course of investment, assessee has earned STCG and offered the same as income. It is further argued that there is no material brought on record against the assessee by the revenue to show that assessee has played any role in manipulating the penny scrip. Ld. AR further argued that assessee has filed all the necessary documents to prove the genuineness of the transaction which shows that assessee is trader in shares and has even offered the income from STCG which was made subject to tax and assessee is sufferer from double taxation.

12. Ld. AR further submitted that Ld. CIT(A) has dismissed the appeal of the assessee on the ground that despite the documents supporting the claim of the assessee, the evidence cannot be accepted due to the surrounding circumstances and human probability. The finding of Ld. CIT(A) in para 4.3.6 to 7 in this regard is extracted below:-

*“4.3.6. Having being put to the test of fact finding, it is observed the transactions have failed the test, more so when read with the test of probability and human conduct, so essential, to arrive at facts. The confirmation documentation remains mere documents and self serving, and they fail as evidence. In the case of DCIT VS Smt. Phoolwati Devi (2009) 314 ITR (AT) 1 (Delhi) the Hon'ble judges have observed at page 9 that "In our opinion, despite the documentation supporting the claim of the assessee superficially, the evidence*

*cannot be accepted in view of the surrounding circumstances and human probabilities" Taking a view of the matter, the assessee's claim that payments through bank the transactions genuine is rejected as being devoid of merit in the light of the surrounding circumstances.*

*4.3.7. It is seen that merely documenting transaction do not render them genuine, more so in the face of overwhelming findings that they have been and are established to be make-believe. A taxing authority has always to give precedence of substance over form, and is not bound to recognize a transaction merely because it may have been routed through a negotiable instrument in a bank. In this case, the substance proves that the transactions were bogus, and the form given to them was a receipt. Reliance is placed on the judicial precedent of Karanpura Development Co. Ltd. Vs CIT (SC) 44 ITR 362.*

*4.3.8 Further, considering the tax evasion in the instant case, it is pertinent to refer to ratio of the decision of the Hon'ble Supreme Court in case of Rajendran Chingaravelu Vs. R.K. Mishra (320 ITR 1), in which the Hon'ble Apex Court noted with grave concern the rampant circulation of unaccounted money destroying the economy of our country. Further, the ratio of the decision of the Hon'ble Supreme Court in the case of Mc Dowell Vs CTO (154 ITR 148) is also relied upon. In this land mark decision, the Hon'ble Apex Court noted with concern the colourable devices of tax planning. Considering the gamut of issues dealt with in the assessment order with which the undersigned concurs, the decision of the assessing officer is upheld and Grounds raised in this appeal are dismissed.*

6. Lastly the appellant craves to leave, adduce additional grounds. Since no such option has been exercised by the appellant during appeal proceedings, the same is dismissed as infructuous.

7. In the result, the appeal is dismissed.”

13. Ld. AR further referred Paper Book 1 containing 1 to 71 pages and relied upon the case of Hon'ble Jurisdictional Bombay High Court in **PCIT 31 vs. Indravadan Jain HUF, ITA No. 454/2018 order dated 12<sup>th</sup> July 2023**, wherein the AO has not considered the documents of assessee with regard to penny scrips and Ld. CIT(A) set aside the order of AO while considering the documents submitted by the assessee and on appeal, the said order was also confirmed by the Tribunal and dismissed the appeal of revenue. For the sake of clarity, the order of Hon'ble Bombay High Court in para no. 4 is reproduced below:-

*“4. The A.O. did not accept respondent's claim of long term capital gain and added the same in respondent's income under Section 68 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one*

*transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT[A] found there was no reason to add the capital gains as unexplained cash credit under Section 68 of the Act. The tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal.”*

14. Ld. AR further relied on the decision of Jurisdictional Tribunal in the case of **Subhash Damodar Annamwar vs. ITO in ITA No. 3227/Mum/2023 order dated 22.02.2024** placed in Paper Book 1, pages 65 to 71 where in the

similar situation while referring Hon'ble Bombay High Court order in ITA No. 454/2018 (supra), the addition made on account of trading in penny scrip was deleted. The relevant portion of the decision of Jurisdictional Tribunal is reproduced below:-

*“8. We heard the parties and perused the matter on record. The Assessee through share brokers has bought 5029 shares of Pace Electronics Ltd. The name of the said company is subsequently changed to M/s. SVC Resources Ltd. Out of 5029 shares bought the Assessee sold 1377 shares on various dates during the year under consideration. The Assessee has claimed exemption under section 10(38) of the gain arising from the said transaction. The AO relied on the investigation report in which the script names M/s. SVC Resources Ltd., was held to be a Penny Stock and accordingly, reopened the assessment of the Assessee for the reason that the Assessee has transacted in the said script. We noticed that the reason for AO to make addition in the hands of the Assessee is that the price of the script is jacked up within a short period of time and that the financial performance of the company does not support the increase in the share prices. We further, noticed that the AO though has elaborated on the modus operandi for how Penny Stock companies are used for converting cash, has not recorded any specific findings to incriminate the Assessee or to establish that the assessee in any way is involved in rigging the price of the shares. The assessee in order to support the genuineness of the transaction has submitted all the relevant documents in the form of broker bill, contract summary, bank statement, etc. (page 39 66,125,and 149 of paper book) It is also relevant to note that the lower authorities have not recorded any adverse finding with regard to the various documents submitted by the*

assessee. From the perusal of the broker statement with the list shares held by the assessee in various companies (page 53 of paper book) we noticed that the assessee is holding investments in various companies to the tune of Rs. 39,35,416/- which includes 9738/- shares of M/s. SVC Resources Ltd. Therefore, we see merit in the contention of the ld. AR that the assessee is a regular investor and that in his normal course of operation has sold a part of his investments made in M/s. SVC Resources Ltd. The fact that the assessee continues to hold the portion of shares also goes to substantiate the claim that assessee is a regular investor.”(emphasis is made by us)

15. Similarly, Ld. AR further relied on the decision of Coordinate Bench in ITA No. 16/JP/2018 order dated 29.08.2018 and ITA No. 532/JP/2019 order dated 08.08.2019 wherein similar issues were decided in favour of the assessee and one of us was member of the Coordinate Bench.

16. On the other hand Ld. DR supported the orders passed by the lower authorities stating that the assessee is involved in manipulating the penny scrip and the whole arrangement of its listing and trading was done to provide a medium for the beneficiaries to route their unaccounted money. Therefore, Ld. DR prayed for dismissal of the appeal filed by the assessee.

17. We have considered the rival submissions and perused the material on record. On perusal of the case in hand, we have noticed that there is no evidence brought on record by

the revenue which may show that the assessee played any role in manipulating the penny scrip. Nothing has been brought on record to contradict the fact that the assessee is a regular investor and has also invested in other scrips. The assessee has filed all the necessary documents like copy of bank statement, contract notes, working of LTCG /STCG, capital account, trade summary, ledger account details, bank book, etc. and nothing has shown brought by the revenue that these documents are fabricated by the assessee.

18. Moreover, the facts and circumstances of the present case are squarely covered by the judgments of the Hon'ble Bombay High Court in the case of **PCIT 31 vs. Indravadan Jain HUF, ITA No. 454/2018 (supra)** as well as Coordinate Bench's case of **Subhash Damodar Annamwar vs. ITO in ITA No. 3227/Mum/2023 (supra)** referred and relied by the Ld. AR. Therefore, respectfully following the aforesaid decisions relied by Ld. AR, we are of the considered opinion that the addition has been made by the AO and confirmed by the ld. CIT(A) purely on the basis of surmises and conjectures and without any legal basis and is not sustainable in the eyes of law. Accordingly, we direct the AO to delete the addition so made u/s 68 of the Act. Accordingly, ground no. 4 and 5 regarding addition of Rs. 15,74,847/- u/s 68 of the Act, are allowed as directed above.

19. In the result, the appeal is accordingly allowed in the above terms.

Order pronounced in the open court on 14.07.2025.

**Sd/-**  
**(VIKRAM SINGH YADAV)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 14/07/2025  
Dhananjay, SPS

**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, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

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