

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

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
&
SMT.RENU JAUHRI, ACCOUNTANT MEMBER**

ITA No.4344/MUM/2025

(A.Y.2012-13)

&

ITA No.4343/MUM/2025

(A.Y.2011-12)

Hitesh ShashikantJhaveri A/304, Alanknanda Building, 51 st TPS Road, near Veer Sawarkar Garden, Borivali (West), Mumbai-400092.	Vs.	Deputy Commissioner of Income Tax Circle 42(1)(1) C41-43, G Block BKC, Gilban Area, Bandra Kurla Complex, Bandra(East), Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:ADEPJ1181A		
Appellant	..	Respondent

Appellant by :	Shri RaghunathSarangapani
Respondent by :	Shri Hemanshu Joshi- Sr. DR

Date of Hearing	01.09.2025
Date of Pronouncement	16.10.2025

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 03.06.2025 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2012-13.

2. The grounds of appeal are as followed:

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1. That the learned Assessing Officer erred in law and on facts in reopening the assessment under section 147 of the Income-tax Act, 1961, without any fresh tangible material and merely on the basis of a general report from the Directorate of Investigation, which does not establish any live link or nexus with the Appellant's specific transactions. Hence, the reassessment proceedings are void ab initio and liable to be quashed.
2. That the learned Assessing Officer erred in making an addition of Rs. 70,49,121/- under section 68 of the Act on account of sale proceeds of shares of M/s VAS Infrastructure Ltd., ignoring the fact that the said transactions were carried out on recognized stock exchanges through registered brokers, duly supported by demat statements, contract notes, and bank records.
3. That the learned Assessing Officer erred in law and on facts in invoking section 68 in respect of a sale transaction of quoted shares, despite there being no cash credit or inflow of unaccounted funds into the books of the Appellant. The invocation of section 68 in such circumstances is wholly misconceived and untenable in law.
4. That the learned Assessing Officer further erred in making an addition of Rs. 2,11,474/ under section 69C of the Act, on an alleged presumption of commission payment, without bringing any material evidence on record to establish that any such expenditure was incurred or paid by the Appellant.
5. That both the Assessing Officer and the CIT(A) failed to appreciate that the Appellant had not claimed any capital gains on the alleged penny stock transactions and had in fact earned a nominal gain of only Rs. 1,301/-, thereby negating the allegation of accommodation entry or tax evasion.
6. That the learned CIT(A)-NFAC erred in law and on facts in confirming the additions made by the Assessing Officer without independently verifying the evidence furnished by the Appellant, and by placing sole reliance on a generic investigation report unconnected to the Appellant's conduct or specific transactions.
7. That the additions made under sections 68 and 69C are based solely on conjecture, surmise, and suspicion, without any independent inquiry, cross-verification, or corroborative evidence, and are therefore liable to be deleted in law.
8. That the learned CIT(A)-NFAC erred in upholding the denial of the Appellant's claim of carried forward business loss of Rs. 28,94,299/- despite no specific finding against the genuineness or allowability of such loss.
9. That the assessment and appellate orders are in violation of principles of natural justice inasmuch as no opportunity for cross-examination of any adverse material or person relied upon was granted to the Appellant.
10. That the Appellant craves leave to add, amend, or withdraw any of the foregoing grounds of appeal at the time of hearing and to submit such further pleadings and documents as may be necessary for the just adjudication of the appeal.

11. In light of the above, the Appellant respectfully prays that the Hon'ble Tribunal may be pleased to:

- Delete the additions made under sections 68 and 69C;
- Allow the business loss of Rs. 28,94,299/- to be carried forward;
- Grant such other reliefs as may be deemed just and proper.”

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1. The Ld. CIT(A) - NFAC has erred in law and in facts in confirming the addition of Rs. 2,93,53,035/- u/s 68 of the Act treating the Appellant's genuine share transactions as bogus penny stock transactions, without bringing any direct or cogent evidence on record.

2. The Ld. CIT(A) - NFAC has failed to appreciate that the Appellant is a genuine trader dealing in more than 1500 scrips and the impugned transactions form a minuscule portion of the total volume.

3. The Ld. CIT(A) NFAC erred in upholding the action of the AO relying solely on generalized investigation wing reports, without independently examining the Appellant's demat statements, trade confirmations, and broker records, which prove the genuineness of transactions.

4. The Ld. CIT(A) - NFAC has erred in upholding the addition of Rs. 93,035/- u/s 69C towards alleged commission paid, without any material evidence, merely based on assumptions and conjectures.

5. The Ld. CIT(A) -NFAC has failed to follow the principle of consistency by ignoring the earlier relief granted by CIT(A)-45 in Appellant's own case for the same year involving similar facts and identical issues.

6. The Appellant prays that the entire addition of Rs. 2,94,46,070/- may kindly be deleted and the loss claimed in the return be allowed to be carried forward.

7. The Appellant craves leave to add, amend, alter or withdraw any ground at the time of hearing.

8. In light of the above, the Appellant respectfully prays that the Hon'ble Tribunal may be pleased to:

- Delete the additions made under sections 68 and 69C;
- Allow the business loss of Rs. 3,00,75,120/- to be carried forward;
- Grant such other reliefs as may be deemed just and proper.”

For A.Y. 2012-13

3. The brief fact of the case are that the assessee filed return declaring loss of Rs. 28,94,299/- for A.Y. 2012-13. This case was

selected for scrutiny and assessment u/s. 143(3) was completed on 13.03.2015 at the returned loss.

Reassessment proceedings were subsequently initiated on 28.03.2019 after receipt of information from the Investigation wing regarding accommodation entries taken by the assessee from purchase and sale of shares of a penny stock company viz. M/s. VAS Infrastructure Ltd. Ld. AO disallowed the loss of Rs. 70,49,121/- from the sale of shares of M/s. VAS Infrastructure Ltd. u/s. 68 of the Act and a further expense of 3% on account of brokerage (amounting to Rs. 2,11,474/-) was also added u/s. 69C of the Act.

Aggrieved, the assessee preferred an appeal before ld. CIT(A). However, assessee's appeal was dismissed by ld. CIT(A) vide order dated 03.06.2025. The assessee has now filed an appeal before the Tribunal against the order of Ld. CIT(A).

4. Before us, ld. AR has submitted that the assessee is a regular trader in scrips on the stock exchange through a recognized broker, a fact that has been noted even by the ld. AO in the order u/s. 143(3) r.w.s 147 of the Act.

It has further been submitted that the assessee did not show loss on the transactions relating to shares of M/s. VAS Infrastructure Ltd., instead profit of Rs. 1301/- has been shown on the purchase and sale of 69654 shares of M/s. VAS Infrastructure Ltd.

Further, the assessee submitted complete information regarding impugned transactions made through a registered stock broker. Both the purchase and sale transaction have been made on the stock exchange through assessee's demat account and these are reflected in his trading portfolio.

It is argued by ld. AR that the reopening as well as assessment order have been made on incorrect facts without application of mind.

It is reflected that the assessee has neither shown any windfall gains nor loss on trading of impugned shares but infact a meagre profit of Rs. 1301/- has been shown as part of business income which has been set off against loss in the trading of other scrips.

5. Ld. DR, on the other hand, has strongly relied on the orders of the lower authorities. He has pointed out that detailed investigation was carried out by the Investigation wing, Kolkata and 84 bogus scrips were identified which included M/s. VAS Infrastructure Ltd. Hence the reopening was based on specific information received regarding assessee's transactions in penny stock of M/s. VAS Infrastructure Ltd.
6. We have heard the rival submissions and perused the material placed on record. Evidently, the assessee has entered into the purchases and sale transactions in respect of shares of M/s. VAS Infrastructure Ltd. on the stock exchange through a registered stock broker. The transactions have been made from the assessee's demat account.

Further, there is no unusual profit or loss shown from the impugned transaction to support the ld. AO's claim that the transactions were made as per a preconceived scheme to procure long term capital gains/losses. Infact the assessee has shown nominal profit of Rs. 1301/- from these transactions.

6.2 After careful consideration of the facts of the case, we are of the considered opinion that ld. AO has not made out a case of bogus accommodation entries taken by the assessee and has simply relied on the report of the investigation wing. In view of the fact that both the purchase and sale of impugned shares has been made on the stock exchange through a registered broker and payments were also made/received in assessee's demat account, we are of the view that there is no justification for making the impugned addition.

We accordingly, delete the addition made by Ld. AO of Rs. 70,49,121/- u/s. 68 of the Act. Consequent addition of brokerage of Rs. 2,11,474/- is also hereby deleted.

7. In the result, assessee's appeal is allowed.

For A.Y. 2011-12 (ITA No. 4343/Mum/2025)

8. In this appeal, the grounds raised are similar to A.Y. 2012-13.

8.2 Brief facts are that the ld. AO made an addition of Rs. 2,93,53,035/- u/s. 68 by treating the share transaction made in the scrips of M/s. VAS Infrastructure Ltd., and 5 other companies as bogus on account of these entries being penny stock companies.

The total consideration received from these companies was as under:

Sr. No.	Name of Company	Total Sale Value (A)	Intra Day Sales (B)	Net Consideration Received (A-B)	Profit Received Intraday trades (D)	Total Consideration
1.	KCL Infra Ltd.	7,42,500/-	0	7,42,500/-	Nil	7,42,500/-
2.	Gemstone Invt. Ltd.	2,06,069/-	0	2,06,069/-		2,06,069/-
3.	Action Financial Services Ltd.	6,87,109/-	3,540/-	6,83,569/-	109/-	6,83,678/-
4.	Sword Edge Ltd.	1,24,330/-	0	1,24,330/-		1,24,330/-
5.	Vax Housing Ltd.	2,17,986/-		2,17,986/-		2,17,986/-
6.	Vax Infrastructure Ltd.	7,74,40,769/-	5,00,62,725/-	2,73,78,044/-	(93,935/-)	2,72,84,109/-
	Total	7,94,18,763/-	5,00,66,265/-	2,93,52,498/-		2,93,34,342/-

8.3 on the basis of information received from the Investigation wing, the assessee's case was reopened a second time and assessment was completed at an income of Rs. 2,94,46,070/- (after making above addition of Rs. 2,93,53,035/- u/s. 68) vide order u/s. 143(3) r.w.s 147 dated 26.12.2018. The assessee's appeal was dismissed by ld. CIT(A) vide order dated 06.05.2025, with the following observations:

“8.2 In view of the above discussion, I am of the considered view that share transactions leading to Loss on sale of share of these scrips by the appellant are sham transactions entered into for the purpose of evading tax. Accordingly, it is held that the AO has rightly added the receipt on sale of shares of various penny stocks M/s Kadamb Construction Ltd., M/s Gemstone Investments Ltd. (GIL), M/s Action financial Services (India) Ltd., M/s Rotam Comm., M/s Vax Housing Ltd., M/s VAS Infrastructure Ltd. and SVC Resources Ltd. of Rs. 2,93,53,035- u/s 68 of the Income Tax Act, 1961 as income of the appellant and the same is hereby confirmed. Further the addition on commission paid of Rs. 93,035/- to the entry providers is also confirmed. Thus, grounds of appeal 1 and 2 are dismissed.”

8.4 As the facts and circumstances in this year are similar to the A.Y. 2012-13, above decision in ITA No. 4344/Mum/2025 will apply mutatis mutandis to this year also.

Accordingly, the addition u/s. 68 of Rs. 2,93,53,035/- made by the ld. AO u/s. 68 and the addition of Rs. 93,035/- u/s. 69C, on account of commission on these transaction are hereby deleted.

9. In the result, both the appeals of the assessee for A.Y. 2011-12 & A.Y. 2012-13 are allowed.

Order Pronounced in Open Court on 16.10.2025

Sd/-
(PAWAN SINGH)
(JUDICIAL MEMBER)

Sd/-
(RENU JAUHRI)
(ACCOUNTANT MEMBER)

Place: Mumbai

Date 16.10.2025

Anandi.Nambi/STENO

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.