

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 7484/MUM/2025 (AY : 2011-12)
(Physical hearing)

Pooja Babulal Jain 31, Gulalwadi, 2 nd Floor, Kika Street above Sanjay Enterprises, Mumbai, Maharashtra – 400004. [PAN No. AHNPJ3980E]	Vs	ITO, Ward-23(2)(6), Mumbai Piramal Chambers, Mumbai - 400012.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Kushal Jain, CA
Revenue by	Shri B. Laxmikanth, Sr. DR
Date of institution of appeal	18.11.2025
Date of hearing	28.01.2026
Date of pronouncement	28.01.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the assessment order of Id. CIT(A)/ADDL/JCIT(A), Chennai dated 15.05.2025 for Assessment Year (A.Y.)

2011-12. The assessee has raised the following grounds of appeal:

"1. The learned CIT(A) has erred in issuing notice u/s 148 of the Income Tax Act, 1961 and the reasons assigned for doing so are wrong and contrary to the facts and the provisions of the law.

2) The Learned CIT(A) has erred in concluding that the appellant earned exempt capital gains, whereas the appellant had, in fact, earned taxable Short-Term Capital Gains which were duly disclosed and offered to tax.

3) The Learned CIT(A) has erred in not considering the reliance placed by the appellant on the Mumbai ITAT decision in the case of SmtVimladeviParasmal Jain Vs ITO 17(3)(5) [ITA no 5047/Mum/2024] where the Hon'ble Tribunal dismissed the appeal on the basis of wrong facts presented by the Learned AO which is similar to the facts of the case of the appellant

4) The Learned CIT(A) has erred in arriving at the conclusion that the appellant entered in sham transaction and has erred in making addition of Rs 2,03,479/-

on the alleged ground of unexplained cash credit u/s. 68 of the Income Tax Act, 1961 and the reasons assigned for doing so are wrong and contrary to the facts and the provision of the law.

5) The Learned CIT(A) has erred in treating the sum of ₹2,03,479 as unexplained cash credit under section 68 of the Act, despite the fact that the appellant has not maintained any books of account. In the absence of books, the foundational requirement for invoking section 68 is not satisfied, and therefore, the addition is untenable in law.

6) On the facts and under the circumstances of the case and in law, the learned CIT(A) has erred in making addition of 10,173/- on the alleged ground of unexplained expenditure u/s. 69C of the Income Tax Act, 1961 and the reasons assigned for doing so are wrong and contrary to the facts and the provision of the law.

7) On the facts and under the circumstances of the case and in law, the learned CIT(A) has erred in initiating penalty proceeding u/s. 271(1)(c) and the reasons assigned for doing so are wrong and contrary to the facts and the provisions of the law.

8) On the facts and under the circumstances of the case the learned CIT(A) has erred in calculating the interest u/s 234B amounting to Rs 19,716/-.

9) The appellant craves leaves to add, alter, amend, modify or withdraw all or any of the grounds of appeal on or before the date of hearing.

2. The learned Authorised Representative (Id. AR) of the assessee submits that grounds of appeal raised by assessee is covered by the decision of Mumbai Tribunal in Vimladevi Parasmal Jain vs ITO (2025) 171 taxmann.com 547 (Mumbai-Trib). The Id. AR of the assessee while referring the contents of assessment order submits that as per allegation in assessment order, the assessee indulged in the sale of shares of DMC Education, which is penny scrip. As per assessing officer, the assessee has shown exempt income of Rs. 2,03,497/-. However, the assessee has earned only a short term capital gain of Rs. 29,084/-. The short term capital gain is not exempt. During assessment the assessee furnished complete details of opening stock of shares,

purchased during the year and sold and working of gain earned. Such details are recorded in para-7.1 of assessment order. The assessee has earned only Rs.29074/- as short term capital gain. The assessing officer made addition of entire sale consideration without giving set off of cost of acquisition. On similar set of fact, the co-ordinate bench in Vimladevi Parasmal Jain (2025) 171 taxmann.com 547 (Mumbai – Trib) on similar allegation deleted the similar addition. The Id. AR of the assessee submits that assessee has discharged his onus by furnishing evidence about purchases and sale of shares. All the transactions were carried out through banking channel. There is no allegation against the assessee or his share broker. The assessee is regular investor and invested in various scrip like Bharti Airtel Ltd., Bombay Dyeing, Reliance Natural Resource, Reliance Capital, Spice Jet Ltd. and Kotak Mahindra Bank. The Id AR for the assessee also furnished details of various other scrips, which are shown in the investment account. Since, holding of scrips of DMC International was not viable; hence, she sold such scrips. It is not the case of assessing officer that assessee indulged in the single script of DMC International.

3. On the other hand, learned Departmental Representative (Id. Sr. DR) for the Revenue supported the order of lower authorities. The Id. Sr. DR for the Revenue submits that scheme of penny scrip is played in such a way that sham transaction is given a colour of genuine transaction. The assessing officer was having sufficient material in his possession that scrip of share of DMC international is penny scrip company.

4. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I find that assessee in her computation of income has shown short term capital gain of only Rs. 29,074/-. The assessing officer has added Rs. 2,03,479/- on account of unexplained cash credit. The Id. AO also added 5.00% commission on such sale consideration. I find that basis of addition by assessing officer is absolutely baseless. As per para 7-1 of assessment order, the assessee acquired 16000 shares of DMC International on various dated from June 2021 till 16.08.2021 @ Rs. 9.42/- to Rs. 11.89/- per shares for aggregate amount of Rs. 1,72,795/-. The shares were sold from 17.06.2010 till 20.08.2020 @ of Rs. 9.36/- to Rs. 12.05/- per shares at total consideration of Rs. 2,01,869/-. The shares were sold in a different lots and the assessee has received Rs. 2,01,869/-. Resultantly, the assessee has shown short term capital gain of Rs. 2,9074/- only. The short term capital gain is not exempted. Thus, the basis of addition by assessing officer is without any logic when he has not doubted source of investment in the shares, hence, the order of Id. AO as well as Id. CIT(A) is not sustainable and the addition made by assessing officer is deleted.
5. In the result, the appeal of assessee is allowed.

Order pronounced in the open Court on 28 /01/2026.

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 28/01/2026
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai