

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'K(SMC)' BENCH, MUMBAI**

श्रीमती बीना पिल्लई , माननीय न्यायिक सदस्य एवं  
श्री ओम्कारेश्वर चिदरा, माननीय लेखा सदस्य

**SMT.BEENA PILLAI, HON'BLE JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.2176/MUM/2024  
(निर्धारणवर्ष/ **Assessment Year: 2012-13**)

Anirudh Daga Mumbai PAN : ANHPD9246P	Vs.	Income Tax Officer 23(1)(6) Mumbai
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Dharan Gandhi, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Bhagirat Ramawat, Sr.DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	06/11/2025
घोषणा की तारीख/ Date of Pronouncement	:	03/02/2026

**ORDER**

**PER OMKARESHWAR CHIDARA, AM:**

This appeal is filed by the appellant against the order of the Addl/JCIT(A)-7, Kolkata in DIN & Order No.ITBA/APL/S/250/2023-24/1061592642(1) dated 27.02.2024 arising out of order passed by AO u/s 143(3) r.w.s.147 of the Income Tax Act, 1961 ("the Act") for the A.Y.2012-13.

2. The appeal to ITAT by appellant relates to disallowance of claim of appellant u/s 10(38) and consequent addition made by AO u/s 68 of the Act.

3. At the outset, the Ld.AR of appellant has stated that the profit from sale of scrip "Nouveau Global" is not a penny stock and for that proposition co-ordinate Bench decisions of DCIT Vs. Rajesh Agarwal, ITA No.434/Del/2023 dt.23.10.2024 and some other cases were relied upon. These cases relate to filing of further appeals by Revenue and hence the issue of exceptions to monetary limits arose. The Ld.DR has also pointed that the orders of ITAT relied upon by Ld.AR were recalled by filing M.A. by the Department. Be that as it may, the present appeal is filed by appellant and not Revenue hence there is no need to adjudicate the issue as to whether appeal is maintainable or not due to monetary limits.

4. The appellant filed additional grounds of appeal before the ITAT challenging the reopening of assessment by Ld.AO and argued that the reopening of assessment is invalid/bad in law. The Ld.DR had argued that the assessment was reopened after getting the information that the appellant claimed bogus exempt income through fraudulent means. He relied on the findings of Addl.CIT(A), where it was mentioned that the AO has got prima facie belief of undisclosed income and followed the


procedure laid down by Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd.

4.1. Since there is prima facie belief relating to escapement of income, the action of Ld.AO in reopening the case is confirmed and moreover, the entire procedure laid down by Apex Court was followed by AO, no fault can be found and Bench decides to reject this ground and proceed to adjudicate the case on merits.

5. Coming back to the merits of the case, the main contentions of Ld.AR of appellant is that the shares were purchased by making an account payee cheque, sold the shares on BSE Exchange platform through a registered broker and received the sale proceeds through banking channels and hence the transaction is genuine. In the written submissions filed by appellant, it was also mentioned that there is no SEBI enquiry to show that prices are manipulated nor the scrip is suspended from stock exchange. Several cases-law in favour of appellant were relied upon for the above propositions and it was submitted that the addition made by Ld.AO be deleted. Consequently, the exemption claimed u/s 10(38) is allowable.

6. Per contra, Ld.DR filed written submissions and the same is reproduced :

HEARD ON - 6/11/25

	<b>OFFICE OF THE</b> <b>Jt. Commissioner of Income Tax (Sr.AR), ITAT-10,</b> <b>'K' Bench, CGO Annexe Building, 7th Floor,</b> <b>Mumbai - 400 020</b>
	No. Jt. CIT/(Sr.AR)ITAT/K-Bench/2025-26 <span style="float: right;">Date 13.11.2025</span>

To,  
 The Hon'ble Members,  
 ITAT-10, 'K' Bench,  
 Mumbai.

Respected Sir/Madam,

Sub: Written submission in the case of Shri Anirudh Daga, ITA No. 2176/MUM/2024,  
 A.Y. 2012-13

May it please your Honours

1. Emphatic reliance is placed on the orders of CIT(A) and AO. These submissions are in furtherance of the oral arguments made in the course of the hearing of the matter on 6-11-2025.
2. The brief facts of the case are that on the basis of the information received from the Kolkata Investigation Wing of the Department that the assessee received entry in the form of bogus Long Term Capital Gains (LTCG) by trading in shares of a penny stock M/s Nouveau Multimedia Limited, the assessee's case was taken up for assessment under section 147 of the Income Tax Act (The Act). The order of assessment was passed on 12-12-2019, holding the sale consideration received from disposal of the shares of the impugned scrip as having remained unexplained.
3. In para 4 of the assessment order on page 2 the AO has clearly noted that the reasons recorded were provided to the assessee and even the objections raised were disposed vide separate speaking order dated 22-11-2019. Further on page 3, para 6 the AO also brought out the Modus Operandi for availing such LTCG, as uncovered by the Investigation Wing. On page 6 the AO also reproduced a price movement graph of the scrip making a reasonable case that the price behaviour of the scrip has no rational basis and on the standard of preponderance of probabilities the stock price is manipulated. On page 7 the AO reproduced the financials of the scrip to point out that despite having negligible net worth and very low net profits there was a massive increase in share price within a very short period of time. In top para on page 8 AO clearly pointed out that the company does not have business or fundamentals that would explain such a sharp rise in share price.
4. In the course of the hearing the assessee referred to the judgment of Hon'ble Delhi Bench of ITAT in case of **Suresh Kumar Agarwal vs ACIT reported in [2020] 117 taxmann.com 678 (Delhi-Trib)**, wherein Honble Bench observed that the AO could have taken the following steps to prove bogus long term capital gains-

- Summon the assessee to know about basic facts like business of the company, how assessee came to know about investment credential of the company, history of the investments made by the company
  - Examination of brokers of the assessee, with the screen shot of time and stamp of transactions, liquidity of stock
  - Details of counter parties purchasing these shares
  - Wherefrom in the demat account of assessee the shares entered into
  - The time and date stamp would have shown that the brokers have entered into synchronised transactions
  - The AO should have verified as to from where the assessee purchased the shares
  - The AO should have examined as to whose account is debited for transferring the shares in demat account of the assessee
5. On a perusal of the above observations, Hon'ble Bench appears to have held that the case of AO should leave no scope for doubt whatsoever and that the exact meeting of the minds between the assessee and alleged entry providers must be proven. In this respect the attention is invited to the judgment of *Hon'ble Supreme Court in case of Sumati Dayal vs Commissioner of Income Tax, Bangalore, reported in (1995) 125 CTR (SC) 124*, wherein on the basis of the factors such as appellant's knowledge of racing, jackpot stake in five events on a single day, travelling expenses not recorded in the books, appellant's books not showing any expenses and losses on races, her loss of interest in races subsequent to the event under examination, the assessee was facing the allegation that her winnings in races were not genuine and contrived. In this respect, at first appeal stage, the lower appellate authority i.e. Hon'ble Settlement Commission, having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record reached an inference that the winning tickets were purchased by the appellant after the event. The judgment of Hon'ble Settlement Commission that after considering surrounding circumstances and applying the test of human probabilities, the appellant's claim about the amount being her winning from races is not genuine was challenged. In para 3 it was argued on behalf of the assessee that on submitting the certificates from various race clubs the onus of the assessee was discharged and thereafter the burden lay on the department. It was argued that the department did not adduce any evidence to discharge the said burden. Hon'ble Apex Court noted that the majority decision of Hon'ble Settlement Commission was on the basis of circumstantial evidence and in light of the same the dissenting opinion of Hon'ble President of the Commission was not correct. Hon'ble Apex Court in para 12 noted the following-

"12. This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities. The Chairman of the Settlement Commission has emphasised that the appellant did possess the winning ticket which was surrendered to the Race Club and in return a crossed cheque was obtained. It is, in our view, a neutral circumstance, because if the appellant had purchased the winning ticket after the event she would be having the winning ticket with her which she could surrender to the Race Club. The observation by the Chairman of the Settlement Commission that "fraudulent sale of winning ticket is not an usual practice but is very much of an unusual practice" ignores the prevalent malpractice that was noticed by the Direct Taxes Enquiry Committee and the recommendations made by the said Committee which led to the amendment of the Act by the Finance Act of 1972 whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races, etc. was withdrawn. Similarly the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleger to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn

on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her own statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence."

6. The underlined part clearly indicates that putting the onus of proving the fraud on department is not correct because such arrangements happen in secret and direct evidences would rarely be available. Thus, putting the burden of proving the fraud or direct connivance of the assessee on department cannot be a ground for ignoring the evidence available on record. Hon'ble Apex Court clearly brought out that a judgment has to be arrived at on the basis of surrounding circumstances and on applying the test of Human Probabilities. In the given case the evidence brought on record makes a sufficient case on the standard of preponderance of probabilities.
7. Similarly, Hon'ble Calcutta High Court in case of Pr. CIT-5, Kolkata vs Swati Bajaj in ITAT/6/2022, held the following in para 69-

*"Thus, the legal principle which can be culled out from the above decision is that to prove the allegations, against the assessee, can be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled and when direct evidence is not available, it is the duty of the Court to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded so as to reach a reasonable conclusion and the test would be what inferential process that a reasonable/prudent man would apply to arrive at a conclusion. Further proximity and time and prior meeting of minds is also a very important factor especially when the income tax department has been able to point out that there has been a unnatural rise in the price of the scrips of very little known companies. Furthermore, in all the cases, there were minimum of two brokers who have been involved in the transaction. It would be very difficult to gather direct proof of the meeting of minds of those brokers or sub-brokers or middlemen or entry operators and therefore, the test to be applied is the test of preponderance of probabilities to ascertain as to whether there has been violation of the provisions of the Income Tax Act. In such a circumstance, the conclusion has to be gathered from various circumstances like the volume from trade, period of persistence in trading in the particular scrips, particulars of buy and sell orders and the volume thereof and proximity of time between the two which are relevant factors. Therefore, in our considered view the methodology adopted by the department cannot be faulted."*

8. Thus, that AO should have proven direct nexus with involved brokers or should have proven meetings of minds with any of the entities involved has been held not to be essential requirement under the law and the case has to be considered on the basis of the totality of the surrounding circumstances. On page 5 and 6 of the assessment order the AO has clearly referred to the share price movement and volume. Further, the manipulation in the share price, has also been brought out by an order of SEBI dated 28-01-2022 and same has been discussed in later part of this submission. Thus on the basis of the findings of investigation wing, share price movement completely out of tune with fundamentals of the company, assessee purchasing at bottom of the price (outside the stock exchange) and selling it at almost the top (that too when there is nothing on record to indicate that the assessee was a regular trader in shares or had any significant

knowledge of the share market) and assessee unable to rebut these findings, department has sufficient case to make this addition.

9. Further, the assessee also relied on the judgment of Hon'ble **Delhi Bench of ITAT in case of DCIT v Rajesh Agarwal** in ITA No. 28 of 2021, wherein on page 3 of the order a letter of the concerned Assessing Officer was reproduced as per which in light of the earlier judgments of Hon'ble Bench and low tax effect, the appeal of the department was proposed to be withdrawn. On the basis of the same it was argued that since the said order pertained to alleged bogus LTCG in respect of the same scrip as is the subject matter of the current appeal, on merits department has accepted that the said scrip was not a penny stock. In this respect it is pointed out that in the above case (Rajesh Agarwal before Hon'ble Delhi ITAT) on noticing that the case is covered by one of the exceptions to the tax effect threshold, an MA for restoring the case was filed vide MA No. 28/De//2021. Thus, the very fact that on noticing that one of the exceptions would apply to the facts of the case an effort was made to get the case recalled, indicates that the case was not accepted on merits by the department.
10. In the course of the hearing before Hon'ble Bench, it was argued on behalf of the assessee that it is apparent from the Financial Statements of the said Scrip that the company earned a profit of Rs. 76,17,158/- during the year under examination and hence it cannot be a penny stock since actual profits are being offered for taxation. In this respect it is pointed out that the assessee acquired these shares on 21-07-2009 (the record date for rights issue) and as per details submitted on behalf of the assessee (assessee's PB Page 36 and 37) the assessee was allotted 10,000/- shares for Rs. 1 Lac (i.e. Rs. 10 per share). Further, subsequent to purchase by the assessee there was a 10 for 1 stock split in FY 2011-12, and accordingly what was bought at Rs. 10 per share would now appear as Rs. 1 per share. The assessee disposed these shares at Rs. 18 per share indicating 18 times increase in price. At the end of the year in which the shares were acquired by the assessee (FY 2009-10) the share capital of the scrip was Rs. 20,39,97,612/-. Further there were additional shares issued during the year under examination and the total outstanding shares as on 31-03-2012 were 18,55,30,000 of Rs. 1 each (i.e. 3,12,50,000/- shares of Rs. 1 each were added) and for the same a share premium of Rs. 21,87,50,000/- has also been brought into books. At the market price of Rs. 18 per share the total value of all outstanding shares (18,55,30,000 shares) would be Rs. 333,95,40,000/-. Since only Rs. 25,00,00,000/- (Rs. 3,12,50,000/- of face value for equal number of shares plus Rs. 21,87,50,000/- share premium) of additional capital has been brought in the value added by fundamentals or profit or performance of the company would be Rs. 308,95,40,000/-. The aggregate profits of the scrip in the meantime increased from Rs. 4,97,17,612/- (as on 31-03-2010) to Rs. 6,04,17,822/- (as on 31-03-2012), i.e. an increase of Rs. 1,07,00,210/- (while these profits are there in Annual Report, there is no evidence that any tax has actually been paid on them or whether a part or all of such profits were claimed as exempt). Thus, aggregate profits of Rs. 1,07,00,210/- have added a value of Rs. 308,95,40,000/- i.e. almost 300 times and there is absolutely no way that the profits of the company explain the price behaviour. The department's case is not that penny stocks will never have any profits but that the profit earning behaviour and fundamentals of the stock are so in out of tune with the price movement that on the standard of preponderance of probabilities there is no explanation for this other than price manipulation.

11. In this respect it is pointed out that the assessee acquired these shares on 21-07-2009 (the record date for rights issue) and as per details submitted on behalf of the assessee (assessee's PB Page 36 and 37) the assessee was allotted 10,000/- shares for Rs. 1 Lac (i.e. Rs. 10 per share). It is important to point out here that there is no mention that the shares were purchased on stock exchange and further the letter of allocation (as submitted in assessee's PB Page 30) clearly indicates that the assessee was receiving these shares as an existing shareholder. This clearly indicates that the actual shares were acquired before the claimed date and were acquired outside the stock exchange. It is also important to point out that the actual the allocation of shares has never been disclosed by the assessee till date and acquisition of shares outside the exchange indicates assessee's connivance.
12. In the course of the hearing it was also argued that there is a possibility that the assessee may simply be a trader who noticed a penny stock and tried to benefit from price surge. In this respect it is pointed out that the trades in penny stocks are tightly under the control of the "operators" or the price manipulators and if general public is allowed to participate, the price manipulation would never be possible. These trades happen in circular patterns wherein limited quantities are sold against outstanding orders as per a pre-existing arrangement. It is practically impossible for anyone who is not in the loop of the manipulators, to participate. Further anyone who doesn't already know the arrangement will never participate because the fall in prices (whenever they happen) are extremely rapid and unpredictable (leaving no chances for exit and thereby trapping the investors) and chances of huge losses are massive. Thus, on the standard of preponderance of probabilities, the assessee cannot be an innocent participant or a participant who just wanted to ride the price surge without actual involvement.
13. Further on receiving information from the Income Tax Department, the SEBI conducted independent inquiries in the said scrip covering the period from 1-12-2010 to 28-3-2013. Vide the order dated 28-1-2022, the SEBI Officer concluded that there was clear price manipulation of the scrip price. The following was concluded in para 41-

*"41. On account of aforesaid observations, submissions of Noticee and findings of Hon'ble WTM in order dated March 19, 2021, I conclude that Noticee deliberately entered into repeated premeditated buy trades at a price higher than the last traded price in order to manipulate the price in the scrip of NGVL during the investigation period. the trading behaviour of Noticee vis-à-vis the scrip of Nouveau has been ill motivated, fraudulent and was intended towards manipulating the price of the shares of Nouveau and therefore, the charge pertaining to violation of Regulations 3 (a), (b), (c) and (d), 4 (1), 4 (2) (a) and (e) of PFUTP Regulations by Noticee stands established."*

14. The details of circular trades, price volume analysis over a background of changes to LTP (Last Traded Price) and financials of the company have all been brought out in the SEBI Order and on the basis of the same the price manipulation has been held to have been established.
15. In this respect the reliance is further placed on the judgment of **Hon'ble Kolkata Bench of ITAT in case of Narayan Suppliers Pvt. Ltd. vs ITO in ITA No. 1077 of 2024**, wherein while dealing with the issue of arranging bogus LTCG by trading in the same scrip i.e. M/s Nouveau Global Ventures Limited, Hon'ble Bench held it to be a penny stock. Hon'ble bench in fact held that to be a case of money-laundering and directed the

AO to intimate the concerned authorities. Hon'ble Bench even commended the AO for having done a remarkable job

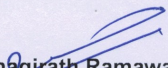
16. It has already been pointed out that the financials of the Scrip do not explain the rise in share price and the rise in share price is almost 300 times of actual value added. In such a scenario, hon'ble courts have held that, when assessee corners almost all of the Capital Gains, department cannot be faulted for holding such gains as contrived or bogus. The reliance is placed on following judgments-

- Hon'ble Bombay High Court in case of Sanjay Bimalchand Jain Vs. PCIT-1, Nagpur [reported in (2018) 89 Taxmann.com 196]
- Hon'ble Delhi High Court in case of Suman Poddar Vs. ITO [reported in (2019) 112 Taxmann.com 329], which was later affirmed by Hon'ble SC in (2019) 112 Taxmann.com 330
- Hon'ble Delhi High Court in Sanjay Kaul vs PCIT in ITA No. 203/2020 dated 29-07-2020
- Hon'ble Calcutta High Court in case of Pr. CIT, Kolkata vs Swati Bajaj in ITAT No 06/2022

17. In above judgments Hon'ble Courts held that when the statements of Entry Providers are supported by the finding that the companies having no financial worth ended up incurring huge capital gains department had an adequate case on the standard of preponderance of probabilities.

18. In light of the above arguments and findings as brought out it is humbly prayed before Hon'ble Bench that the appeal of the assessee may be dismissed.

Yours faithfully

  
(Bhagirath Ramawat)  
Jt. CIT (Sr. AR), ITAT-10,  
"K" Bench, Mumbai

The Ld.DR has placed emphasis on the assessment order and appeal order of First Appellate Authority also.

7. After going through the written submissions filed by both parties and perusing the cases-law relied upon by both parties, the appeal is adjudicated. At the outset, the Bench is of the view that there is no case which is identical to another and each case has to be analysed from its own facts and circumstances. There are several cases all over the country with reference to disallowance made by Revenue u/s 10(38) and cases were adjudicated in favour of Revenue and against Revenue depending on the facts of each case. So this case on hand also being adjudicated based on its facts and circumstances.

7.1. In view of the following discussion/reasoning the Bench is of the opinion that the addition made by Ld.AO is correct and upheld:

7.2. In this case, while filing written submissions before lower authorities, the appellant has argued there is no SEBI order to demonstrate that the prices of scrip in this case are manipulated. But, the Ld.DR has contradicted the same and filed a copy of Adjudication Order No.Order/VV/NK/2021-22/14823 dt. 28.01.2022 and the relevant paras of the order (Para 43 and 49) is reproduced as under :

43. It may also be relevant to refer to the observations of the Honble Securities Appellate Tribunal (SAT) in its order dated 14.7.2006 in Ketan Parekh Vs. SEBI, wherein it was held that: *"When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy /sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations."*

49. During the entire Patch-3 of the Investigation Period, Noticee in various instances sold shares in miniscule quantities at price higher than the ongoing LTP for 12 trading days despite the sell orders for larger quantities of the scrip were available in the market. Also in various instances, Noticee has placed buy orders at a price higher than the corresponding sell orders prices which were already higher than LTP. The quantum of penalty has to be adjudged taking these peculiar facts and circumstances into account viz, the volume of trades executed and percentage of contribution to the LTP by the Noticees and their impact on the price of the scrip of Nouveau. Since, this kind of activity seriously affects the normal price discovery mechanism of the securities market. People who indulge in manipulative, fraudulent and deceptive price rise should be suitably penalized for the said acts of omissions and commissions. However, I note that the impugned transactions by Noticee pertains to the year 2012-2013 and that a considerable amount of time has lapsed since the act of the Noticee taken place and which also is considered as relevant factor while deciding the quantum of penalty against Noticee.

This order of SEBI clearly shows that price manipulations are done in this scrip of Nouveau Global and accordingly, monetary penalty also was levied by SEBI.

7.3. Coupled with the above the reliance placed by Ld.DR on the decision cited by CIT(A) of Apex Court is worth mentioning here :

The Hon'ble Apex Court in Civil Appeal No.1969 of 2011 in the case of SEBI Vs. Rakhi Traders (P) Ltd (with Civil Appeal No.3174- 3177 of 2011 and Civil Appeal No.3180 of 2011) vide its order dated 08.02.18 observed as follows: "considering the reversal transaction, quantum price and time and sale, parties being persistent in number of such huge transaction with huge price variations, it will be too naive to hold that the transactions are through screen based trading and hence anonymous. Such conclusion would be overlooking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the Board's Circular. The impugned transaction are manipulative/ deceptive device to create desired loss and/as profit. Such synchronized trading is violative of transparent norms of trading in securities....."

Although this observation is not in any Income tax case but squarely applicable in all penny stock cases.

7.4. From the above para 43 of Adjudication Order, it is observed that once manipulation of shares is established, it is not necessary nor possible to show who are the beneficiaries. Once they get extraordinary profits, it is deemed that assesseees are in the loop and part of manipulation of shares.

7.5. The Bench agrees with the following arguments of Ld.DR which is most logical and correct considering the facts of the case :

8. Thus, that AO should have proven direct nexus with involved brokers or should have proven meetings of minds with any of the entities involved has been held not to be essential requirement under the law and the case has to be considered on the basis of the totality of the surrounding circumstances. On page 5 and 6 of the assessment order the AO has clearly referred to the share price movement and volume. Further, the manipulation in the share price, has also been brought out by an order of SEBI dated 28-01-2022 and same has been discussed in later part of this submission. Thus on the basis of the findings of investigation wing, share price movement completely out of tune with fundamentals of the company, assessee purchasing at bottom of the price (outside the stock exchange) and selling it at almost the top (that too when there is nothing on record to indicate that the assessee was a regular trader in shares or had any significant

knowledge of the share market) and assessee unable to rebut these findings, department has sufficient case to make this addition.

10. In the course of the hearing before Hon'ble Bench, it was argued on behalf of the assessee that it is apparent from the Financial Statements of the said Scrip that the company earned a profit of Rs. 76,17,158/- during the year under examination and hence it cannot be a penny stock since actual profits are being offered for taxation. In this respect it is pointed out that the assessee acquired these shares on 21-07-2009 (the record date for rights issue) and as per details submitted on behalf of the assessee (assessee's PB Page 36 and 37) the assessee was allotted 10,000/- shares for Rs. 1 Lac (i.e. Rs. 10 per share). Further, subsequent to purchase by the assessee there was a 10 for 1 stock split in FY 2011-12, and accordingly what was bought at Rs. 10 per share would now appear as Rs. 1 per share. The assessee disposed these shares at Rs. 18 per share indicating 18 times increase in price. At the end of the year in which the shares were acquired by the assessee (FY 2009-10) the share capital of the scrip was Rs. 20,39,97,612/-. Further there were additional shares issued during the year under examination and the total outstanding shares as on 31-03-2012 were 18,55,30,000 of Rs. 1 each (i.e. 3,12,50,000/- shares of Rs. 1 each were added) and for the same a share premium of Rs. 21,87,50,000/- has also been brought into books. At the market price of Rs. 18 per share the total value of all outstanding shares (18,55,30,000 shares) would be Rs. 333,95,40,000/-. Since only Rs. 25,00,00,000/- (Rs. 3,12,50,000/- of face value for equal number of shares plus Rs. 21,87,50,000/- share premium) of additional capital has been brought in the value added by fundamentals or profit or performance of the company would be Rs. 308,95,40,000/-. The aggregate profits of the scrip in the meantime increased from Rs. 4,97,17,612/- (as on 31-03-2010) to Rs. 6,04,17,822/- (as on 31-03-2012), i.e. an increase of Rs. 1,07,00,210/- (while these profits are there in Annual Report, there is no evidence that any tax has actually been paid on them or whether a part or all of such profits were claimed as exempt). Thus, aggregate profits of Rs. 1,07,00,210/- have added a value of Rs. 308,95,40,000/- i.e. almost 300 times and there is absolutely no way that the profits of the company explain the price behaviour. The department's case is not that penny stocks will never have any profits but that the profit earning behaviour and fundamentals of the stock are so in out of tune with the price movement that on the standard of preponderance of probabilities there is no explanation for this other than price manipulation.

11. In this respect it is pointed out that the assessee acquired these shares on 21-07-2009 (the record date for rights issue) and as per details submitted on behalf of the assessee (assessee's PB Page 36 and 37) the assessee was allotted 10,000/- shares for Rs. 1 Lac (i.e. Rs. 10 per share). It is important to point out here that there is no mention that the shares were purchased on stock exchange and further the letter of allocation (as submitted in assessee's PB Page 30) clearly indicates that the assessee was receiving these shares as an existing shareholder. This clearly indicates that the actual shares were acquired before the claimed date and were acquired outside the stock exchange. It is also important to point out that the actual the allocation of shares has never been disclosed by the assessee till date and acquisition of shares outside the exchange indicates assessee's connivance.

7.6. Hon'ble Bombay High Court in the case of Sanjay Bimalchand Jain 39 Taxman.com 196, held that where abnormal price rise in a share not in consonance with company fundamentals was there, then addition u/s 68 can be made.

7.7. But, the adjudication order filed by Ld. DR before ITAT was not available to the Department or Assessee at the time of passing the assessment order. In view of the same and subsequent orders passed by various Hon'ble High Courts and Hon'ble Supreme Court, on the issue of penny stock, the Bench decides to remit the issue back to the file of the Ld. CIT(A) for fresh adjudication. Needless to say that the assessee be given an opportunity of hearing before passing the order.

This space is left vacant intentionally

**ITA No.2176/MUM/2024**  
**Anirudh Daga**

7.8. In the result, the appeal of appellant is allowed for statistical purposes.

Order pronounced in the open court on 3<sup>rd</sup> February, 2026.

<b>Sd/-</b> <b>(बीना पिल्लई)</b> <b>(BEENA PILLAI)</b> न्यायिक सदस्य/JUDICIAL MEMBER	<b>Sd/-</b> <b>(ओम्कारेश्वर चिदरा)</b> <b>(OMKARESHWAR CHIDARA)</b> लेखा सदस्य/ACCOUNTANT MEMBER
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Visakhapatnam,  
Dated 03.02.2026.  
L.Rama/SPS

आदेश की प्रतिलिपि □ ग्रेषित/ **Copy of the order forwarded to:-**

<b>1.</b>	निर्धारिती/ The Assessee
<b>2.</b>	राजस्व/ The Revenue
<b>3.</b>	The Principal Commissioner of Income Tax
<b>4.</b>	प्रिभागीय प्रतिनिधि, आयकर □ पीलीय □ धिकरण / DR,ITAT.
<b>5.</b>	The Commissioner of Income Tax
<b>6.</b>	गार्डफ़ाईल / Guard file

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By order

(Asstt. Registrar)  
**ITAT, Mumbai**