

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.421/Ahd/2023
Assessment Year: 2012-13**

Shri Dhirubhai Kantilal Sharma, 10, Devi Krupa Co-op. Society, Opp. Ghodasar Kans, Ghodasar, Ahmedabad – 380 050. [PAN – AKQPS 8689 B]	Vs.	Income Tax Officer, Ward – 6(1)(4) now 6(1)(1), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Sulabh, AR	
Revenue by	Ms. Saumya Pandey Jain, Sr. DR	
Date of Hearing	19.07.2023	
Date of Pronouncement	06.09.2023	

ORDER

This appeal is filed by the Assessee against order dated 30.03.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2012-13.

2. The Assessee has raised the following grounds of appeal :-

- “1. *The Learned CIT (Appeals) has erred in passing an ex-parte order and dismissing the appeal of the Appellant without appreciating the facts and circumstances of the case. It is submitted that the responses could not be filed towards notices issued by Learned CIT (Appeals) during the course of Appellate proceeding only due to circumstances beyond the control of the Appellant as mentioned in the affidavit to be filed. In view of this, the lower authorities may please be directed to hear the appellant again and the addition made of Rs.3,33,411/- kindly be deleted after fresh verification of details and evidences in the interest of justice.*
2. *The Learned CIT (Appeals) has erred in law and on facts in confirming the action of A.O. reopening of appellant's case invoking the provisions Section 147 of the Act, as there is no escapement of income on the part of appellant. On facts and circumstances of the case, the whole reopening of assessment is bad in law and void-ab-initio and thus the order passed by lower authorities deserves to be set aside and order passed by Ld AO. u/s 143(3) rws 147 deserves to be quashed.*

3. *The Learned CIT (Appeals) has erred in passing an ex-parte order and confirmed the addition without considering the statement of facts and documentary evidences filed before him at the time of filing of appeal. It is submitted that the documentary evidences such as stock summary showing purchase and sale of various shares made during the year, Audited accounts, Tax Audit Reports, Assessment order for AY 2011-12 etc. were filed along with statement of facts and were on record. It is therefore submitted that the action of Learned CIT (Appeals) confirming the addition made on account of penny stock transaction of Rs.3,33,411/- without consideration of evidences filed is totally incorrect and illegal and thus the impugned addition made of Rs.3,33,411/- deserves to be deleted.*
4. *The learned CIT(A) has erred in law and on facts in confirming the addition made of Rs.3,33,411/- treating sale of shares of VAS Infrastructure Ltd. as penny stock transaction. It is submitted that the whole purchase and sale of shares of VAS Infrastructure Ltd is completely genuine and bona fide and the same has been duly accepted by the department during the Assessment proceeding for AY 2011-12. It is therefore submitted the view once taken by the department shall not altered, unless there is a change in facts and thus sale of shares of VAS Infrastructure Ltd. of Rs.3,33,411/- shall not be treated as penny stock transaction for this year as well in view of natural justice. The same please be held accordingly.*
5. *The Order passed by the learned CIT(A) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.”*

3. As per the information available in the Revenue Department, the scrip of VAS Infrastructure Limited was found to be a penny stock scrip which has been used by beneficiaries for generating bogus long term capital gains/bogus short term capital loss/bogus business loss entries and it was found that the assessee traded in the scrip during the Financial Year 2011-12 for Rs.3,33,411/-. The case was reopened after recording reasons and after getting necessary approval from the Authorities. Notice under Section 148 of the Income Tax Act, 1961 was issued on 29.03.2018 and was duly served upon the assessee. Reason recorded was provided to the assessee on 07.05.2019. The assessee filed return of income on 29.04.2019 declaring total income of Rs.1,99,700/-. During the course of assessment proceedings, the Assessing Officer observed that since the assessee has not complied with the show cause notice by 04.11.2019, therefore, it was stated that the assessee had no explanation to offer. Thus, the Assessing Officer made addition of Rs.3,33,411/- in respect of the said transaction.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee through its letter to the Assessing Officer as well as CIT(A) has requested to provide name of the Broker to which the transaction of VAS Infrastructure Limited was made. Before the CIT(A) also, the assessee was not given opportunity to file the detailed reply and the Assessing Officer as well as the CIT(A) failed to take into account the reply filed by the assessee on 24.05.2019. The Ld. AR submitted that the assessee had disclosed all the transactions in the purchase/sales of shares of VAS infrastructure Limited during the Financial Year 2011-12 in the Audited Accounts and the income earned therefrom was disclosed in the return of income filed under Section 139 and also filed under Section 148 of the Act. The CIT(A) as well as the Assessing Officer failed to take cognisance of sale value of Rs.3,33,411/- from VAS Infrastructure Limited. The Assessing Officer as well as the CIT(A) has not given details regarding date of transaction, name of broker, quantity traded etc. and, therefore, the assessee could not give explanation before the Assessing Officer. The assessee has traded through M/s. ASE Capital Market Limited, BMA Wealth Creation Private Limited and Master Capital Service Limited as his share broker, however the transactions are duly reflected in sales of shares and purchase of shares shown in Audited Profit & Loss Account for the Financial Year 2011-12. The Ld. AR submitted the Tribunal in the case of Genuine Finance Private Limited vs. DCIT, ITA No.221/Ahd/2021 for Assessment Year 2012-13, order dated 28.10.2022 has categorically mentioned that VAS Infrastructure Limited has not been declared as Penny Stock or was not blacklisted by SEBI during the transaction period. The Ld. AR submitted that all the details which were available with the assessee was filed during the assessment proceedings as well as before the CIT(A) but both the Authorities ignored the same.

6. The Ld. DR submitted that since the assessee has not properly responded before the Revenue Authorities as well as before the CIT(A), the Assessing Officer has rightly made the addition. The Ld. DR relied upon the order of the CIT(A) and the Assessing Officer.

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that from the Assessment Order the Assessing Officer has not categorically mentioned as to how VAS Infrastructure Limited script itself was blacklisted from SEBI report or not. Besides this, the Assessing Officer has also not given the details as to how the assessee is involved in manipulation of the bogus Long Term Capital Gain/bogus Short Term Capital Loss/bogus Business Loss entries. The Assessing Officer failed to give the description as to how the assessee is involved in anything related to wrongly calming the Short Term Capital Loss or Long Term Capital Gains. The CIT(A) also failed to give the reasons as to how the transactions of the assessee while dealing with VAS Infrastructure Limited in the present case is a bogus Long Term Capital Gain/bogus Short Term Capital Loss/bogus Business Loss. In fact, the Assessing Officer has also not mentioned as to under which provision of Income Tax Statute the addition has been made. Thus, the Assessing Officer was not justified in making the addition to the extent of Rs.3,33,411/-. Thus, the appeal of the assessee is allowed.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 6th September, 2023.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 6th September, 2023
PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad