

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.147/Ahd/2021**  
**Asstt.Year : 2011-12**

Mohsin Zulfikar Koradia C/o.Gujarat Food Industries 4324 Phase IV GIDC Vatva Ahmedabad 382 445 PAN : HTPK 0799 C	Vs	The Pr.CIT-3 Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri S.N. Divatia, AR
Revenue by :	Shri Jamesh Kurian, CIT(DR)

सुनवाई की तारीख/Date of Hearing : 29/08/2022  
घोषणा की तारीख /Date of Pronouncement: 11/11/2022

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

The present appeal has been filed by the assessee against the order passed by the ld.Pr.Commissioner of Income-Tax-3, Ahmedabad [hereinafter referred to as "Pr.CIT"] dated 30.3.2021 passed under section 263 of the Income Tax Act, 1961 ("the Act" for short) pertaining to Asst.Year 2011-12.

2. The grounds raised in appeal are as under:

"1.1 The order passed u/s. 263 On 30-03-2021 for A.Y.2011-12 by Pr. CIT A'bad-3 revising the order of assessment passed u/s 143(3) r.w.s. 147 On 20-11-2018 by AO on the ground that the AO had failed to correctly observe facts on record or refer to DDIT report etc in relation to the

*transaction of share of VAS Infrastructure Ltd is wholly illegal, unlawful and against the principles of natural justice.*

*1.2 The Ld. Pr.CIT A'bad-3 has grievously erred in law and or on facts in exercising the powers u/s 263 since the assessment made by AO was neither erroneous nor prejudicial to interest of Revenue nor satisfied other conditions of Sec 263 of the Act, so that the entire action on part of Pr, CIT was illegal and unlawful.*

*2.1 The Ld. Pr. CIT has grievously erred in law and on facts in holding that the order of assessment passed u/s 143(3) r.w.s. 147 On 20-11-2018 by AO was erroneous and prejudicial to interest of Revenue in as much as the AO had failed to correctly observe facts on record or refer to DDIT report etc in relation to the transaction of share of VAS Infrastructure Ltd.*

*2.2 That in the facts and circumstances of the case as well as in law, the Ld. Pr. CIT has grievously erred in law and on facts in holding that the order of assessment passed u/s 143(3) r.w.s. 147 On 20-11-2018 by AO was erroneous and prejudicial to interest of Revenue.*

*2.3 That in the facts and circumstances of the case as well as in law, the Ld. Pr.CIT has grievously erred in holding that the transaction of VAS Infrastructure Ltd shares was penny stock and engaged in providing accommodation entry so that the entire sale price of Rs.71,81,699/- was undisclosed income of the appellant in.”*

3. As transpires from order of the ld.Pr.CIT the order passed by the Assessing Officer u/s 143(3) of the Act for the impugned year, i.e A.Y 2011-12, was found to be erroneous causing prejudice to the Revenue on account that the AO had not made proper inquiry and investigation regarding alleged penny stock scrip traded by the assessee during the year despite the AO being in possession of information regarding the same.

4. In the impugned case, reassessment proceedings had been initiated on the assessee on the basis of information that the assessee had traded in scrips of penny stock company viz. M/s. Vas Infrastructure Ltd. (“VIL” for short) amounting to Rs.41,78,568/-. Thereafter case of the assessee was reopened and during the assessment proceedings, the assessee filed revised

return declaring capital gain on sale of 69,191 shares of VIL which was accepted by the AO.

5. As per the Id.Pr.CIT this act of acceptance of short term capital gain returned by the assessee on shares traded of VIL without making any inquiries and considering the information in the possession of the AO, from the Investigation wing of the department ,that these scrips traded were mere penny stock, tantamounted to the assessment order being erroneous. As per the Id.Pr.CIT the entire amount received on the trading of this scrip of VIL i.e. Rs.71,81,699/- should have been treated as income of the assessee as opposed to short term capital returned on it amounting to Rs.32,19,933/- which was accepted by the AO, and thus, as per Id.Pr.CIT the assessment order was erroneous and prejudicial to the interest of Revenue on account of the AO not having made necessary inquiries vis-à-vis genuineness of the transaction of trading in the scrips of VIL despite being in possession of the information that the these shares were penny stock.

6. We have heard both the parties. The contentions of the Id.counsel for the assessee against the exercise of revisionary power in the present case is that reopening had been resorted to in the case of the assessee for precisely this information being in possession of the AO that the shares of VIL was penny stock; that due inquiries were made during the assessment proceedings; that the AO raised specific query relating to these shares for determining their genuineness; that due reply was also filed by the assessee and adequately substantiated with evidences, thus

enabling the AO to be satisfied with the explanation of the assessee and for taking plausible view that it was not transactions relating to the penny stock, but was genuine short term capital gain transaction entered into by the assessee. In this regard, he drew our attention to the notice issued by the AO during the assessment proceedings under section 142(1) of the Act dated 19.9.2018 raising specific queries with regard to the trading in scrip of VIL reproduced at paper book page no.12 and 13 as under:

*"1) Details of all bank account with copy of bank-pass book/ bank statement for the period from 01/04/2010 to 31/03/2011 i.e. F. Y. 2010-11, relevant to A.Y. 2011-12.*

*2) Copy of all bill pertains to "Short Term Capital Gain" and "Long Term Capital Gain".*

*3) Ledger a/c. of profit from sale of share Rs. 3,29,111/91.*

*4) Details of exempted LTCG on share/securities u/s. 10(38) for Rs. 8,31,362/- in the following format:-*

Sr. No	Script   Qty.	(Purchase		Sale		[Holding period	(Capital Gain
		Date	Rs.	Date	Rs.		
	I	I	I	I	I	I	I

*5) In the case purchase/sale of "VAS Infrastructure Ltd.", give following details:-*

*(A) In the case of purchase:-*

*a) Whether "Vas Infrastructure" was listed on BSE/NSE on the date of purchase?*

*b) Whether payment of purchase was made by cheque/DD ? If, No. Give reason*

*c) Whether purchase was made through "Recognized Stock Exchange" ? If No, Give reason*

*(B) In the case of sale:-*

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- a) Whether "Vas Infrastructure Ltd." was listed on BSE/NSE on the date of sale?
- b) Whether sale consideration was received by cheque/DD ? If, No. Give reason
- c) Whether sale was made through "Recognized Stock Exchange" ? If No, Give reason.

(C) Other details:

- a) Reason for sale of "VAS Infrastructure Ltd." share/securities.
- b) Details of dividend received from "VAS Infrastructure Ltd."
- c) Respective financial year wise ledger ales, of "VAS Infrastructure Ltd." from of purchase to date of sale.

You are requested to please furnish the above details along with documentary evidences so as to reach this office on or before 26/09/2018 at 11.00 A.M.to this office.

VINODCHANDRA GANESHBHAI SOLANKI  
WARD 3(2)(8), AHMEDABAD

7. He thereafter drew our attention to the reply filed before the AO in response to the notice under section 142(1) dated 25.10.2018 and 15.11.2018 along with evidences of which were placed before us from paper book page no.11 to 48. Referring to the same, the ld.counsel for the assessee pointed out that it had been pointed out to the AO that in response to the query of the AO whether shares of VIL were bought and sold in the BSE through cheques, the assessee had answered in the affirmative stating that these shares were listed in BSE and NSE both on the date of purchase and sale of shares. The payments for the both transactions were made by cheques and both purchases and sales were made through registered stock exchange. Evidences with regard to the above facts were placed before the AO by way of:

- copy of ledger account of the broker through whom the transactions had been conducted i.e. ASE Capital Markets Ltd., placed page no.19 to 31 of the PB,

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- the investor report from BSE regarding trading of shares carried out by the impugned broker i.e. ASE Capital Markets Ltd. for the assessee i.e. Mohsin Zulfikar Koradia for the impugned financial year i.e. 1.4.2010 to 31.3.2011 placed at page no.32 and
- corresponding invoices issued by the BSE with regard to the said transaction placed at page no.32 to 39.
- Bank statement of the assessee through which payments were made for the impugned transaction was also placed before us at page no.40 to 48.

8. Referring to the above, the ld.counsel for the assessee pointed out that before the AO, the assessee had adequately shown that 69,191 shares of VIL had been purchased and sold during the year itself. Purchases being made from 1.4.2010 to 1.11.2010 including purchases made in the months of May, July, August, September, October and November 2010. Corresponding sales also being made in various months of year i.e. April, May, October and November; that it was not case of any single transaction of the assessee, but it had been demonstrated to the AO that multiple transactions had taken place. It had also been demonstrated that there was no long term capital gain earned by the assessee, and entire scrip had been traded during the year itself, within a period of 12 months resulting in short term capital gain and not any long term capital gain which could be claimed exempt under section 10(38) of the Act; that accordingly, short term capital gain was returned to tax and tax thereon was paid. The ld.counsel for the assessee also pointed out that subsequently

in the month of November, the assessee had purchased shares of VIL at rates of Rs.135.35 and 136.91 per share. He therefore stated before us that it had been adequately demonstrated to the AO that trading in VIL shares was not one off transactions of the assessee in the nature of accommodation entry, since it had been continuously trading in these shares and even holding on to these shares at a very high rate at the end of the year. He therefore contended that the AO was sufficiently convinced that the assessee did not indulge in any accommodation entry vide any alleged penny stocks traded and accordingly allowed claim of the assessee.

9. The ld.DR on the other hand supported the order of the ld.Pr.CIT stating that despite being in know that these shares were penny stocks, on the basis of information received from the Investigation Wing, the AO did not care to make adequate inquiry. In this regard he drew our attention to para 8 to 13 of the order.

10. We have heard contentions of both the parties. We find that the allegations of ld.Pr.CIT is that the AO was in possession of the information that the shares of VIL traded in by the assessee during the year is nothing but penny stock and a modus operandi for bringing in his own unaccounted money in its books by way of returning profits on these bogus shares as long term capital gain exempted under section 10(38) of the Act. Undoubtedly, the assessee had demonstrated that he had not earned any long term capital gain on these shares; that in fact short term capital gain was earned amounting to Rs.32,19,932/- which was returned for taxation and taxes also paid thereon by the assessee. The

assessee, we have noted, had also demonstrated that it was not one of the transactions of trading in these shares, but in fact purchase and sales took place throughout the year and variation in the rate of purchase and sales was not very vast. In fact the entire capital gain primarily arose on account of a lot of 33,353 shares sold on 23.11.2010. Out of total shares transacted during the year of 69191, this is almost half shares, which were sold for Rs.41,72,231/- i.e. almost at a rate of Rs.125/- per share; while these shares were purchased during the year at rate varying from Rs.41.15 as at the beginning of the year to Rs.91.81 per share as on 1.11.2010. The sale of 33,353 shares took place on 23.11.2010. Subsequently also on 25.11.2011 and 26.11.2011, the assessee has purchased shares of this very same company at the rate of 135.35 and Rs.136.91 per shares. All these facts lead to a reasonable conclusion that the assessee's act of trading in shares of VIL did not fit into *modus operandi* adopted by for taking accommodation entries through trading in penny stock. As per the Pr.CIT also *modus operandi* adopted by the assessee was by one of trade/transaction in the penny stock scrip, returning long term capital gain thereon and claiming the same as exempt. But in the present case, it is not that the assessee has returned long term capital gain claimed as exempt u/s 10(38) of the Act, but on contrary has returned short term capital gain and paid taxes thereon. Further, it is not case where purchases had been made at a very small price and sale made at a very large price, thus enabling unaccounted money from being introduced in the books of assessee. In the present case, in fact the margin of gain varies from shares – bought at the rate of Rs.50/- being sold



at Rs.100/- almost hundred percent margin throughout the year with numerous transactions being taking place; that even in the last sale of VIL shares at very high rate of Rs.125/- per share is demonstrated to be genuine by the fact that the assessee subsequently purchased these shares at this very high rate and held on to them. If the assessee was indulging in taking accommodation entry, he would not have subsequently purchased these shares at a very high rate, because, that would have defeated the purpose of introducing his own unaccounted money into his own books of accounts.

11. Based on the evidence that were furnished before the AO, we find that the AO had taken a plausible view that the impugned transaction was not a penny stock trading, but in fact was a genuine trading transactions of VIL shares and accordingly allowed the claim of short term capital gain returned by the assessee.

12. The Id.Pr.CIT has not controverted any of the facts which the assessee has demonstrated before the AO in support of its claim of genuineness of the transactions. In fact, he does not even point out what exact information was there with the AO which he should have used against the assessee. He merely makes general reference to the investigation report of the Department stating to have contained information regarding these shares. With the assessee having sufficiently demonstrated genuineness of the transaction of trading in shares of VIL and also that it was not a mere penny stock traded in, and the Id.Pr.CIT having not pointed out insufficiency in the explanation and the evidence filed by the

assessee, and also not specifying what information was there with the AO against the assessee, there could be no finding of error at all in the order of the AO accepting the assessee's claim of the transactions being genuine. The order passed by the ld.Pr.CIT therefore, we hold, is without any basis and is therefore set aside. The grounds of appeal of the assessee are allowed.

13. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 11<sup>th</sup> November, 2022 at Ahmedabad.**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 11/11/2022

**TRUE COPY**

*vk\**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad