

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.592/AHD/2020

निर्धारण वर्ष/Asstt. Year: 2012-2013

Income-tax Officer, Ward-5(3)(1), Ahmedabad.	Vs.	Shri Champalal Gopiram Agarwal, 1, New Cloth Market, Nr. Mahipatram Ashram, O/s Raipur Gate, Ahmedabad.  <b>PAN: AAPPA7695A</b>
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Revenue by	:	Ms. M.M. Garg, Sr.D.R
Assessee by	:	Shri Vihar Soni, A.R,

सुनवाई की तारीख/**Date of Hearing** : **30/11/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **23/12/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-5, Ahmedabad dated 04/09/2020 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

2. The issue raised by the Revenue is that the Id. CIT-A erred in deleting the addition of Rs. 19,310/- on account of bogus transaction in the scrip of M/s Arya Global Share & Securities Ltd.

3. The facts in brief are that the assessee is an individual and deriving income from business/profession and from investment in shares and from other sources. The assessee for the year under consideration declared taxable income of Rs. 11,25,300/- only and also claimed carry forward of loss of Rs. 43,54,574/- from the activity of sale and purchase of shares & securities.

3.1 The AO received information from the DDIT(Inv.), unit-6(2) Mumbai that the assessee entered into the trading in penny stock namely the scrip of M/s Arya Global Sahres & Securities Ltd (formerly known as Kuvam International Fashion Ltd.) and Vax Housing Finance Corp. Ltd. Thus, income escapement proceedings under section 147 of the Act were initiated by the AO.

3.2 The assessee during the re-assessment proceedings submitted that he has entered into the transaction of purchase and sale of scrip of M/s Arya Global Sahres & Securities Ltd through stock exchange and in the process earned net profit of Rs. 19,310/- only. All the transaction of purchase and sale are duly supported by the bill on which STT has been paid. The profit earned for Rs. 19,310/- was also not claimed as exempted under section 10(32) of the Act.

3.3 The assessee with regard to transaction carried in the scrip of Vax Housing Finance Corp. Ltd submitted that he incurred loss of Rs. 43,54,574/- only. The assessee claimed that such loss is genuine loss incurred in the ordinary course of business of trading in the scrip of Vax Housing Finance Corp. Ltd. The assessee in support following documentary evidences:

- i) *Chart of purchases and sales of shares.*
- ii) *Bills of purchases and sales of shares.*
- iii) *Copy of Demat account of JM financial showing opening balance of 340084 shares of Vax Housing.*

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- iv) *Payment was done through banking channel.*
- v) *All the bills contain STT and all govt. taxes ar duly paid on purchases and sales.*

4. However, the AO disagreed with the contention of the assessee and held that the DDIT in the investigation, found that the impugned scrip of M/s Arya Global Shares & Securities Ltd and Vax Housing Finance Corporation Ltd are penny stocks and managed by the entry operators. The impugned scrip was utilised for providing accommodation entry to several beneficiaries. Therefore, the AO was of the view that income of Rs. 19,310/- made on the sale of scrip of M/s Arya Global Sahres & Securities Ltd was not genuine. Hence, the AO added the same to the total income of the assessee.

4.1 Likewise, according to AO, the loss incurred by the assessee on the scrip of Vax Housing Finance Corporation Ltd is also not genuine for the reason that such scrip found to be penny stock utilised for accommodation entry. Thus the AO disallowed the carry forward of the loss of Rs. 43,54,574/- only.

5. On appeal by the assessee the learned CIT-A deleted the disallowances made by the AO by observing as under:

*As regards ground no.2 it is relating to the disallowance of carried forward loss of Rs.43,54,547/- in the script of Vax Housing Corporation Ltd. I find that AO has disallowed the carried forward loss stating that this was a penny stock. The appellant has filed documents before A.O vide letter dtd.05/12/2019 as under*

- i) *Chart of purchases and sales of shares.*
- ii) *Bills of purchases and sales of shares.*
- iii) *Copy of Denial account of JM financial showing opening balance of 340084 shares of Vax Housing.*
- iv) *Payment was done through banking channel,*
- v) *All the bills contain STT and all govt. taxes are **duly paid on** purchases and sales. A paper book has been filed as per index below:*

<i>Sr. No.</i>	<i>Particulars</i>	<i>Page No.</i>
1.	<i>Written submissions</i>	<i>1-5</i>
2.	<i>Reason for Reopening</i>	<i>6-8</i>
3.	<i>Copy of Return &amp; Computation of income</i>	<i>9-14</i>
4.	<i>Copy of Bill of Vax Housing Finance Corporation Limited</i>	<i>15-43</i>

5.	Copy of Bills of Kuvam International	44-66
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*The above paper book has been examined. The veracity of above documents has not been questioned but the A.O. has made out a full case simply because the transactions are in penny stock script. The investigation department has not named the appellant specifically in its report as having been indulged in bogus purchase or sale of impugned shares. The whole emphasis is on penny stock without negating evidential value of independent evidences such as bank statement etc.*

*In my opinion, all the transactions were done through stock exchange and complete details including purchase and sales bills have been submitted which are STT paid. Further no deduction u/s 10(38) has been claimed. The appellant is regular investor or trader in shares and securities and it is not a case of one big transaction. Under the circumstances, the departmental case is not beyond doubt the decision in the case of Pratik Suryakant Shah v. Income-tax Officer, Ward-10(3), Ahmedabad\* is relevant which states as under :*

***Section 10(38), read with section 147, of the Income-tax Act, 1961 - Capital gains - Income arising from transfer of long-term securities (Bogus transactions) - Assessment year 2006-97 - Assessee purchased 3000 shares of company 'T' through a stock broker - These shares were transferred to assessee's demat account - However, said stock broker submitted before authorities that lie was providing accommodation entries for taking profit or loss by showing purchase or sales of shares and securities commission from beneficiary parties and that assessee was one of beneficiary of Midi accommodation entries - Assessing authorities reopened assessment of assessee - Whether since shares of said company was listed in BSE/NSE and these were also transferred to denial account of assessee, assessee's claim of***

*exemptions of long-term capital gain on sale of shares could not be denied on basis of submission of said broker - Held, yes /Paras 17 and 18j [In favour of assessee]*

*There are a number of cases on this issue wherein a claim of the appellant has been allowed provided the transactions are verifiable through independent evidences such as record of stock exchange and payment of STT etc. Relying on the submission as well as the ratio laid down by various case laws I direct the AO to allow the carried forward loss of Rs. 43,54,574/- as claimed by the appellant. Ground no.2 is **allowed**.*

*As regards ground no.3 it is relating to initiation of penalty u/s.271(1)(c). Initiation of penalty proceedings is procedural and consequential in nature. No prejudice is caused to the interest of appellant at this juncture. In view of the above, this ground is dismissed.*

5. In the result, **the** appeal is partly allowed.

6. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before me.

7. The learned DR before me vehemently supported the order of the AO by reiterating the findings contained in the assessment order.

8. On the other hand, the learned AR before me filed paper book running from pages 1 to 89 and relied on the order of the Id. CIT-A.

9. I have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the income earned by the assessee for ₹ 19,310/- on trading of shares of M/s Arya Global Shares & Securities Ltd, and loss incurred on trading of scrip of M/s Vax Housing Finance Corp. Ltd. was treated as bogus and manipulated, leading to the addition and disallowances of loss to be carried forward for Rs. 43,54,574/- by the AO. The view of the AO was based on certain factors which have been elaborated in the preceding paragraph. However, the Id. CIT-A, subsequently, was pleased to delete the addition/disallowances made by the AO, holding that there was not any adverse material against the assessee.

9.1 From the preceding discussion we note that the entire basis of AO to treat the transaction as bogus was based on the information received from DDIT(Inv.), unit-6(2) Mumbai that the impugned two scrips were penny stock. However, the AO nowhere pointed out any adverse finding in such report against the assessee. We further note that assessee carried out the transaction in impugned scrip namely M/s Arya Global Shares & Securities Ltd and Vax Housing Finance Corp. Ltd at stock exchange through registered broker which was duly supported by the documentary evidences such as bills, Demat account, and bank statements, showing payment were done through banking channel. The AO nowhere found any discrepancies in the documentary evidences. The dominant basis of treating the impugned transaction as bogus was based on assumption of the AO that the impugned scrip was found as penny stock by the DDIT(Inv.), unit-6(2) Mumbai. Thus, it was the onus upon the AO to bring such facts on record before making any allegations against the assessee. In the present case, the learned CIT-A after detailed verification has reached to the conclusion that the transaction carried out by the

assessee was genuine and based on the documentary evidence. At the time of hearing, the learned DR has not brought any iota of evidence against the finding of the learned CIT-A. At the same time, we also note that there was no allegation against the broker through whom the assessee has purchased and sold the impugned script. What has been adopted by the AO for making the addition/disallowances was the mere assumption. To our understanding, the mere assumption, surmises and conjecture cannot be the basis of making the addition or treating the transaction in sale of share of impinged company as bogus until and unless it is supported by the material documents.

9.2 In our view, the income generated by the assessee cannot be held bogus only on the basis of the modus operandi, generalisation, and assumptions of certain facts. In order to hold income earned or loss incurred by the assessee as bogus, specific evidence has to be brought on record by the Revenue to prove that the assessee was involved in the collusion with the entry operator/ stock brokers for such an arrangements. In absence of such finding, no adverse inference can be drawn against the assessee.

9.3 Now the controversy also arises whether a person who genuinely entered into purchase and sale of particular shares at stock exchange which was rigged up by some other person or group of persons, therefore, he enjoyed the windfall from such action of other person, can he be disallowed the benefit of tax exemption or carry forward of loss. To our mind the Justice cannot be delivered in a mechanical manner. In other words, what we see on the records available before us, sometime we have to travel beyond it after ignoring the same. Furthermore, while delivering the justice, we have to ensure in this process that culprits should only be punished and no innocent should be castigated. An innocent person should not suffer for the wrongdoings of the other parties. In the case on hand, admittedly there was no evidence available on record suggesting that the assessee or his broker was involved in the rigging up of the price of the script of M/s Arya Global Shares & Securities Ltd

and Vax Housing Finance Corp. Ltd. Thus, it appears that the assessee acted in the given facts and circumstances in good-faith.

9.4 In holding so we draw support and guidance from the judgment of Hon'ble Delhi High court in case of Pr. CIT vs. Smt. Krishna Devi reported in 126 taxmann.com 80 where it was held as under:

**11.** *On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sense; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under section 10(38), in a preplanned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income-tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the*

*absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.*

*12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent.*

9.5 Respectfully following the judgment of Hon'ble Delhi High Court (*Supra*), we hold that in absence of any specific finding against the assessee, the assessee cannot be held to be guilty or linked to the wrong acts merely on basis of surmises and assumptions. In view of the above discussion, we hold that the income earned by the assessee on the scrip of M/s Arya Global Shares & Securities Ltd and loss incurred on the scrip of Vax Housing Finance Corp. limited cannot be held bogus merely on the basis of some assumption of the AO unless cogent materials are brought on record. Therefore, we don't find any reason to disturb the finding of the learned CIT(A) and direct the AO to delete the addition and disallowances made by him. Hence the grounds of Revenue's appeal is hereby dismissed.

10. In the result, the appeal filed by the Revenue is hereby dismissed.

**Order pronounced in the Court on 23/12/2022 at Ahmedabad.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 23/12/2022

*Manish*

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**आदेश की प्रतिलिपि भेजित/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.

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