

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA R. KAMBLE, JUDICIAL MEMBER

**ITA No. 657/Ahd/2023
Assessment Year: 2012-13**

Shripal Sheshmal Jain HUF, A-6, Maskati Market, Sakar Bazar, Ahmedabad-380002 PAN : AAHHS 7762 L	Vs	Income Tax Officer, Ward-1(2)(4), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Aseem L. Thakkar, AR
Revenue by :		Shri Aashish Rajesh Revar, Sr DR

सुनवाई की तारीख/**Date of Hearing** : 24/01/2024
घोषणा की तारीख /**Date of Pronouncement** : 31/01/2024

ORDER

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 27.07.2023 passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Assessment Year (AY) 2012-13.

2. The Grounds of appeal are as under :-

"1. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the action of the AO in issuing notice u/s 148 of the I.T. Act, 1961 and reopening the assessment.

2. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the addition of Rs.39,77,209/- made by the Assessing Officer as alleged unaccounted business income.

3. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the addition treating the sale proceeds of shares as unexplained cash credits u/s 68 of the Act ignoring the fact that the shares have been treated as stock in trade and business income has been offered to tax by the appellant.

4. The learned Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming the addition made by the Assessing Officer relying on the decision in the case of Swati Bajaj reported in 446 ITR 56 (Cal) where assessee had earned LTCCG as sale of shares as against business income declared on trading of shares."

3. The assessee filed return of income for AY 2012-13 on 21.07.2012 declaring total income of Rs.2,36,390/-. After receiving the information, it was observed that VAS Infrastructure Ltd. is a penny stock which has been used to provide accommodation entry of bogus Long Term Capital Gain (LTCG)/loss to the beneficiaries. As per the information, the assessee is one of the beneficiaries/members of this accommodation entry syndicate. The assessee has not furnished the details of transaction; therefore, the case was reopened u/s. 147 of the Act. Notice u/s 148 of the Act was issued on 23.03.2019 after recording reason and obtaining necessary approval from the competent authority. In response to the said notice, the assessee filed return of income on 08.04.2019 declaring total income of Rs.2,36,390/-. Notice u/s 143(2) of the Act was issued on 12.04.2019. The reason recorded for reopening the assessment was provided on 16.04.2019. The notice u/s 142(1) r.w.s. 129 of the Act was issued on 09.09.2019 along with a questionnaire. In response to the said notice, the assessee did not file the required details as mentioned in the assessment order, but the assessee furnished the details on 01.11.2019 and stated that income from share trading activity - both delivery based and non-delivery based - are shown in the profit and loss account of the assessee and all the said income form part of total income as disclosed by the assessee in his return of income for the period under consideration. The assessee also furnished the demat account. After taking cognizance of the same, the Assessing Officer made addition of Rs.39,77,209/- in respect of sale of VAS Infrastructure Ltd. and treated the same amount as unaccounted business income.

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 has not claimed Short Term Capital Gain or Long Term Capital Gain in respect of the sale of scrip i.e. "VAS Infrastructure Ltd." The ld. AR further submitted that the assessee has given all the details related to the purchase of the said scrip and further submitted that the assessee has purchased the sale stock of 37,788 equity shares through M/s. Rajvi Stock Brokers Pvt. Ltd. and

sold the said scrip at Rs.39,76,803/-, which resulted the net profit of Rs.9,204/- and the same was duly offered to tax by the assessee. The Id. AR submitted that share difference account in the scrip "VAS Infrastructure Ltd." determining the profit at Rs.9,203.82 was properly reflected in the audited books of accounts. The Assessing Officer at no point of time doubted the purchase of the shares as it was the genuine purchase. The Id. AR further submitted that the Assessing Officer merely referred the notice issued u/s 133(6) of the Act, but there was no details upon to whom the notices were issued. As relates to the selling of the said shares, the same was properly done through SEBI registered broker and all the details were before the Assessing Officer as well as before the CIT(A).

6. The Ld. DR relied upon the Assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has made the addition on account of unaccounted business income in respect of selling of the scrip "VAS Infrastructure Ltd.", but in fact the assessee was majorly dealing with trading activities and that was not disputed at any point of time. It is further noticed that the assessee has not claimed any Long Term Capital Gain or Short Term Capital Gain as well as any loss in respect of these trading of shares. From the perusal of purchase and selling of shares/scrip of VAS Infrastructure Ltd., the assessee has given all the details to the Assessing Officer during the assessment proceedings, including the details of brokers, details of transactions, credit notes, D-mat account, transaction details which were not taken into account either by the Assessing Officer or by the CIT(A). The summons issued to Shri Ramesh Ajwani, who is an entry provider as per the Assessing Officer, has nothing to do with the assessee and the said statement was not at all verified by the Assessing Officer as well as the assessee was not given any opportunity of confronting this statement. The assessee has rightly claimed the said trading as business income and, therefore, the decision of Hon'ble Kolkata High Court in the case of Swati Bajaj will not be applicable in the present case. The sale proceeds of shares were properly explained by the assessee through the documentary evidence

which was filed before the Assessing Officer as well as before the CIT(A). Thus, the Assessing Officer as well as the CIT(A) was not right in making/confirming the addition to that effect.

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

Order pronounced in the open Court on this 31st day of January, 2024.

Sd/-

(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 31st day of January, 2024

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

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By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad