

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

BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)

I.T.A. No. 7544/Mum/2025

Assessment Year: 2011-12

Rasila Lalitkumar Cholera 29/363, R D Bhatia Niwas Opp. Thakurdwar Post Office J.S.S. Road Mumbai - 400002 [PAN: AEDPC1432R]	Vs.	Income Tax Officer
(Appellant)		(Respondent)

Assessee by	Shri Chandresh Parekh, A/R
Revenue by	Shri Limbasiya Kavan Nareshkumar, Sr. DR

Date of Hearing	05.02.2026
Date of Pronouncement	13.02.2026

ORDER

Per Smt. Beena Pillai, JM:

The present appeal arises out of the order dated 12/09/2025 passed by the ACIT/JCIT(A)-4, Bengaluru [hereinafter referred to as 'the Ld.CIT(A)'] for A.Y. 2011-12 on the following grounds of appeal:-

"1. On the facts and circumstances of the case, appellate order dated 12.09.2025 passed by Hon'ble Commissioner of Income Tax, Appeal, ADDL/JCIT (A)-4, Bengaluru ("CITA") is passed without rejecting the documentary evidence / submissions made and by merely relying on the decision of Apex Court is bad in law and is against the principal of natural justice and is liable to be quashed.

2. CITA has erred in dismissing the appeal of Your Appellant and confirming the reopening of the assessment u/s. 147 of the Act which was without following the due process of the law.

3. CITA has erred in dismissing the appeal of Your Appellant by confirming the reopening of the assessment even though Learned AO has not provided copy of the report based on which reopening was made u/s. 148 of the Act.

4. CITA has erred in confirming the disallowance of genuine long term capital gain of Rs. 5,37,649.11 earned on long term investment transactions.

5. CITA has erred in confirming the addition of Rs. 6,15,496/- as Unexplained Credit u/s. 68 of Act being gross receipts (sale proceeds) received from Registered Broker by account payee cheques.

6. CITA has erred in confirming the addition of Rs. 12,309/- as Unexplained Expenditure u/s. 69 of the Act.

7. Without prejudice to above, the CITA has erred in confirming the taxing of total gross sales proceeds as Unexplained Cash Credit U/s.68 of the Act even though records of Broker and Bank are in place.

8. CITA has erred in confirming the action of the learned AO in adding Unexplained Expenditure under section 69C without giving any third party confirmation from stock exchange or broker or seller or purchaser of subject equity shares.

9. Your appellant craves your honors leave to add, amend and/or omit any of the grounds of appeal as the occasion may arise or demand on or before the finalization of the appeal.”

2. Brief facts of the case are as under:

The assessee filed its original return of income for the year under consideration on 28/07/2011 declaring total income of ₹470/-. The case was selected for scrutiny and the return was processed u/s 143(1) of the Act. Subsequently, based on the information in possession of the Department, it was gathered that the assessee purchased and sold shares of SVC Resources Ltd., which was considered to be a penny stock involved in providing bogus accommodation entries of long-term capital gain/short-term

capital loss/business loss. The Investigation Wing observed that the value of the shares of the said penny stock was negligible and beneficiaries had been provided accommodation entries after introduction of cash by the broker as per the advice of the entry operator. Accordingly, the assessment was reopened u/s 147 by issuing notice after recording reasons for escapement of income vide notice dated 31/03/2018. In response to the notice, the representative of the Assessee appeared before the Ld. AO and filed objections to the reopening of the assessment. The Ld. AO disposed of the objections raised by the Assessee vide letter dated 02/11/2018.

2.1. In the course of the assessment proceedings, the assessee was called upon to furnish various details in respect of the sale and purchase of shares of SVC Resources Private Ltd. The Assessee for the year under consideration purchased 3,200 shares on 21/01/2008 at ₹24.17/- per share for a total consideration of ₹77,486/-. It was noted that within a period of three years from the purchase of the shares, the same were sold for a consideration of ₹6,15,496/-. The Ld. AO noted that the shares were sold for almost eight times higher than the purchase price. After considering the *modus operandi* adopted by entry operators in cases of penny stocks, the Ld. AO came to the following conclusion:-

“10. Thus, it is clear conclusion that the entire transaction was part of accommodation entry, is not merely based on fact that these shares were sold at a very high price in a short period of time. Rather this conclusion is based on the statement of the accommodation entry providers which is corroborated by detailed analysis of the financials of the company

suggesting that the shares could not have command such high price along with the abnormal price movements over the stock exchange. Hence the earlier decisions of the ITAT on the issue are distinguishable on facts.

11. In the case of these type of accommodation entries cash is received from the beneficiaries which after passing through a multiple layers of concerns controlled by him, was returned in the form of sale price of shares to the beneficiaries of the accommodation entry. The value of sale consideration claimed is Rs.6,15,496/- whereas the cost of purchase shown by the assessee is Rs.77,486/- which is given by cheque to show the purchases as genuine purchases. The sale price received as accommodation entry is nothing but the return of amount in lieu of cash that the assessee would have paid to hawala operators over and above Rs.77,486/- paid by the assessee by cheque at the time of purchase of penny stock in F.Y.2007-08. Therefore the entire sale consideration of Rs. 6,15,496/- shown to have been received by the assessee would represent the value of cash which has been laundered in the form of bogus profit on sale of shares. Therefore the sum of Rs. 6,15,496/- represents the unexplained investment u/s.68 made by assessee in cash to obtain the equivalent amount as bogus purchase of shares. Alternatively, it can also be concluded that the sum of Rs. 6,15,496/- represents income from other sources and not the income in the nature of capital gain. Looked in whatever manner, the basic fact remains that the sum of Rs. 6,15,496/- is taxable income of the assessee and not in nature of short term capital gain/loss and taxed accordingly u/s.68 of I.T. Act, 1961. Penalty proceedings u/s. 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961, are separately initiated for furnishing inaccurate particulars of income.

12. Further, it has been admitted by various hawala operators in similar kind of cases that they were providing the accommodation entries to beneficiaries by charging commission @ 2% of amount of accommodation entry; accordingly the payment of commission would also have been given in cash over and above the cash of Rs. 6,15,496/- paid by assessee to the Hawala Operator. This amount comes to Rs.12,309/-. Since this cash commission paid is also from unexplained sources, the same would be unexplained expenditure u/s 69C of the I.T, Act which is being added to the income of the assessee. Penalty proceedings u/s. 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961, are separately initiated for furnishing inaccurate particulars of income.”

Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld.CIT(A).

3. Before the Ld.CIT(A), the assessee submitted that all details regarding the purchase and sale of shares were filed during the assessment proceedings. It was submitted that the said shares were purchased through the market and that contract notes, depository receipts, bank statements and broker confirmations were available with the Ld. AO. It was further submitted that the assessee had sold the shares after a period of more than three years and had nothing to do with the scrip being considered a penny stock, as the assessee was a genuine investor. The assessee submitted that during the assessment proceedings, the Ld. AO did not rely on any evidence which could lead to the conclusion that either the broker of the assessee or the assessee was directly involved in rigging the prices of the shares. It was also argued that none of the statements recorded from third parties alleged the involvement of the assessee in price rigging. The Ld.CIT(A), however, confirmed the additions made by the Ld. AO by observing as under:-

“5.1.3 On perusal of the assessment order, it is noted that the AO had information with regard to tax evasion on share transactions involving one M/s SVC Resources Limited during the relevant period, justifying the issuance of notice under Section 148. The AO described the appellant's modus operandi, noting unusual stock price increases without financial basis and conducted investigations, including issuing summons and recording sworn statements under Section 131. On perusal of the sworn statement, it is noted that the appellant has stated that she had invested only in one share during the relevant period. Considering the facts and circumstances mentioned in the assessment order and also written submissions of the appellant, it is understood that the share transactions are not genuine. The share price movements were deemed commercially unreasonable. Relying on the Hon'ble Supreme Court precedent in the cases of Durga Prasad More v. CIT(1971) 82 ITR 540 and Sumati Dayal v. CIT (1995) 214 ITR 801, the claim of the Appellant could not be accepted and the facts presented, the appellant's grounds for appeal are dismissed as unsubstantiated as the presence of supporting documents alone could

not prove genuineness when the surrounding circumstances clearly suggested otherwise, it is held that the transactions were not genuine investment activity but part of a pre-arranged scheme to convert unaccounted money into exempt LTCG. In view of the facts mentioned above, the addition made by the AO is hereby sustained. Hence, the appeal on Grounds 1 to 6 is dismissed. Aggrieved by the order of the Ld.CIT(A), the Assessee is in appeal before the Tribunal.”

4. The Ld. AR submitted that, Assessee had purchased the shares of SVC Resources Limited through the market and had sold the shares after paying the necessary STT through banking channels. It was submitted that merely because the scrip was held to be one of the penny stocks, the addition cannot be made in the hands of the Assessee, who is a genuine investor in the said scrip. The Ld. AR drew our attention to various evidences regarding the purchase and sale of shares to submit that the entire transaction was carried out through the Demat account of the Assessee and the proceeds were routed through banking channels. Accordingly, the Ld. AR submitted that the transaction entered into by the Assessee was genuine and, therefore, the addition cannot be sustained u/s 69A and 69C of the Act.

4.1. The Ld. DR, on the contrary, relied on the orders of the authorities below.

I have perused the submissions advanced by both sides in the light of the material placed on record before the *Tribunal*.

5. Admittedly, assessee purchased shares of SVC Resources Ltd., during the year under consideration and claimed exemption u/s 10(38) of the Act on the gains arising from the said transactions.

The Ld. AO relied on the investigation report wherein the shares of the said company were held to be penny stock. Based on such information, the assessment was reopened. It is noted that the reason for making the addition in the hands of the Assessee was that the price of the scrip was jacked up within a short span of time and that the financial performance and fundamentals of the company did not support such an increase in share price. The Ld. AO, in the assessment order, elaborately referred to the *modus operandi* adopted by penny stock companies for converting unaccounted cash. However, the Ld. AO failed to record any specific finding incriminating the Assessee so as to establish involvement in rigging the prices of the shares. On the contrary, the Assessee established, by way of documentary evidence, the genuineness of the transactions, which has not been controverted by the authorities below. It is further noted that no specific defect or deficiency has been pointed out by the Ld. AO in respect of the evidence furnished by the Assessee.

5.1. It is a settled position of law that suspicion, however strong, cannot take the place of proof. Mere inclusion of a scrip in an investigation report as a penny stock, in the absence of any material demonstrating the Assessee's involvement in price manipulation or accommodation entry arrangements, is insufficient to justify an addition. The burden cast upon the Assessee to establish the genuineness of the transaction stands duly discharged by the documentary evidences placed on record, and the Revenue has failed to rebut the same with any cogent material.

5.2. In view of the foregoing facts and circumstances, I am of the opinion that, the additions made by the Ld. AO u/s 69A and 69C of the Act are not sustainable in the eyes of law. The authorities below have proceeded on generalized assumptions without bringing any specific adverse material against the Assessee. **Accordingly, the additions so made are directed to be deleted and grounds raised by assessee are allowed.**

In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 13/02/2026

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai
Dated: 13/02/2026
SC Sr. P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

(Asstt. Registrar)
ITAT, Mumbai