

OD-29

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/104/2025
IA NO: GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
VS
NIKUNJ DHANUKA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 18th June, 2025.

*Mr. Amit Sharma, Adv.
...for appellant
Mr. Siddhartha Das, Adv.
Ms. Swapna Das, Adv.
...for respondent.*

The Court : This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) against the order dated 24th June, 2024 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (Tribunal) in ITA No. 345/Kol/2024, for the assessment year 2012-13.

The revenue has raised the following substantial questions of law for consideration :

i) Whether in the facts and circumstances of the case the Learned Tribunal erred in law in deleting the addition made under Section 68 and Section 69C of the Income Tax Act, 1961 made by the Assessing

Officer by ignoring the larger scam of tax evasion by way of bogus capital gain generated in penny stock?

ii) Whether the Assessee is entitled to tax exception under Section 10(38) of the said Act when the records and materials indicate that the alleged income shown as Long Term Capital Gain is result of manipulation and malpractice of an organized tax evasion?

iii) Whether the Learned Tribunal erred in ignoring the fact that the assessee failed to produce documents/evidences to establish the genuineness of the transaction in the penny stock “VMS Industries Ltd.” and direct and circumstantial evidence brought on record by the Assessing Officer to establish that the assessee had indulged in manipulation of the share prices of “VMS Industries Ltd.” with a view to fictitious Long Term Capital Gain of Rs.90,95,000/- claiming the same as exempt from taxation?

We have heard learned advocates on either side.

The Tribunal by the impugned order allowed the appeal filed by the assessee and set aside the order passed by the appellate authority dated 22nd December, 2023 by which the assessment order dated 27th December, 2017 passed under Section 143(3) of the Act was affirmed. The order passed by the first appellate authority was an ex parte order by observing that the assessee did not respond to the notices of hearing issued by the appellate authority. The matter relates to reopening of the assessment under Section 147 of the Act. As could be seen from the assessment order dated 27th December, 2017 the reopening of the assessment was on the basis that specific information has been received from the office of the Principal Directorate of Income Tax (Investigation), Mumbai dated 28th March, 2019 that the assessee has claimed an amount of

Rs.90,95,000/- as exemption under Section 10(38) of the Act having arisen on a scrip called 'VMS Industries Ltd.'. The learned Tribunal has elaborately considered the facts and has pointed out that the information based on which the reopening was done was factually incorrect. The undisputed facts are that the return of income submitted by the assessee was processed under the provisions of section 143(1) of the Act. The appellant had a long term capital gain as per accounts amounting to Rs.41,98,896/- after adjustment of long term capital loss of Rs.4,62,646/- which was claimed as exemption under Section 10(38) of the Act. However, the Assessing Officer reopened the assessment under Section 147 on specific information from the Investigation Wing at Mumbai that the assessee had claimed an amount of Rs.90,95,000/- as exemption under Section 10(38) of the Act which arose in the share scrip called 'VMS Industries Ltd.'. There is nothing on record to indicate as to where from the Assessing Officer received such information that the assessee had a gain of Rs.90,95,000/- which, according to the assessee, is a short term capital gain of Rs.57,46,787/- which was offered to tax in the original assessment itself. Furthermore, it is clear from the records that there has been no long term capital gain by the appellant in the shares of VMS Industries Ltd. as alleged by the Assessing Officer and, therefore, the learned Tribunal was fully justified in holding that the reopening of assessment was not bad in law. When the assessee has not claimed any exemption under Section 10(38) of the Act, the question of reopening would not arise. Therefore, the learned Tribunal after examining the facts has rightly allowed the appeal filed by the assessee and set

aside the order passed by the Assessing Officer as well as the first appellate authority.

Thus, we find no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed.

Consequently, the stay application, IA NO: GA/2/2025 stands dismissed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)