

**RECENT IMPORTANT  
DECISIONS AND ISSUES IN  
PENNY STOCKS**

# Aspects dealt with

- Recent decisions of the Tribunal
- Recent decisions in favor of the revenue
- Penny stock – Meaning, modes of purchase and other related aspects, general facts and contentions
- Recent decisions on penny stock – In favour of the assessee
- Recent decisions on penny stock – In favour of the revenue

# Recent decisions of the Tribunal

- 1) **Amartara Pvt. Ltd. – ITA No 6050/MUM/2016 and other** – Provisions of section 45(3) *vis-à-vis* provisions of section 50C of the Act – Both deeming provisions, which prevails?
- 2) **Triumph International Finance India Ltd. – ITA No 6548 /MUM/2016 and others** – In an OTS, the payment made to the bank is to be first adjusted against interest and the balance, if any, against the principal amount
- 3) **GBC Packaging – ITA No 7097/MUM/2016** – Section 2(22)(e)
- 4) **Sameer Dighe – ITA No 1327/MUM/2016** – Benefit match played – Receipts thereof, not chargeable to tax – Capital receipt

# Recent decisions of the Tribunal...Contd

- 5) **John Galt International – ITA No 2155/MUM/2017 – Pr. CIT** did not have the files of the AO and hence, he could not have issued notice under section 263 of the Act
- 6) **NVS Builders (P.) Ltd. – 91 taxmann.com 462 (Del-Tribunal)** – Jurisdictional notice under section 143(2) be served within one year of filing of return by Assessing Officer having jurisdiction over case of assessee

# **Recent decisions of the Tribunal...Contd**

- 7) **Hitesh Shah & Others – ITA No 4756/MUM/2016 and others** – Bogus purchases – Disallowance of alleged bogus purchases estimated at 2% by the Tribunal
- 8) **Anita Agarwal & Others – ITA No 2622/PUN/2016 and others** – Bogus purchases – Entire addition deleted by the Tribunal
- 9) **Shreedham Constructions Pvt. Ltd. – ITA No 3754/MUM/2017 and others** – Section 68 addition – Monies received from cos. alleged to be Praveen Kumar Jain companies – Share application monies and loans – On facts, no addition can be made in the hands of the assessee
- 10) **Minda S M Technocast (P.) Ltd. – 92 taxmann.com 29 (Del-Trib)** – A.Y. 2014-15 – Section 56 of the Act read with Rule 11UA of the Income-tax Rules, 1962 – Value of shares of a co. is to be determined on the basis of book value of its assets declared in balance sheet and not as per market value of assets

# **Recent decisions – In favour of the Revenue**

## **1) Puja Synthetics Pvt. Ltd. – ITA No 440/JP/2017 – Date of decision – 9.3.2018**

Assessment pursuant to search, that is, under section 153A r.w.s 143(3) – Thereafter, the Pr. CIT invoked powers under section 263 to revise the assessment on the basis of information received from the Investigation Wing, Mumbai as regards Mr Praveen Jain, alleged entry provider – Case of lack of enquiry or lack of adequate and proper enquiry by the AO – Revision under section 263 by the Pr. CIT upheld by the Tribunal

# **Recent decisions – In favour of the Revenue...Contd**

2) **Pavankumar Sanghvi – 90 taxmann.com 386 (Guj) – Date of decision – 12.2.2018** – Where assessee received loan from two companies, in view of fact that on date assessee was given loan there was credit entries of almost similar amounts and balance after these transactions was a small amount and moreover assessee failed to produce these lenders for verification, impugned amount was rightly brought to tax under section 68

3) **Sky Light Hospitality LLP – 92 taxmann.com 93 (SC) – Date of decision – 6.4.2018** – Re-assessment notice issued in name of erstwhile company despite company ceasing to exist as it had been converted into LLP would not invalidate re-assessment proceedings as same merely a clerical error which could be corrected under section 292B

# What is the meaning of penny stocks?

Penny stocks is not defined under the Income-tax Act or for that matter in any of the statute books.

The term penny stock as defined in Black's Law Dictionary – *'An equity security that is not traded in established markets, represents no tangible assets, or has average revenues less than required for trading on an exchange. Typically, penny stock is highly speculative and can be purchased for less than \$ 5 a share'*



# Modes of purchase of penny stocks and other related aspects

- 1) Purchase on the stock exchanges
- 2) Off-market purchase
- 3) Purchase through preferential allotment

Lock in period of 1 year as per Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009

## Other aspects

- 4) Purchase could be out of cash-in-hand or cheque or derivatives profit
- 5) Amalgamation or merger
- 6) Split and bonus to increase the volume

# General facts and contentions re penny stocks

1) The assessment orders are mostly very voluminous. Sometimes, it also happens that the scrip in question is X whereas the AO in the assessment order discusses and gives modus operandi of scrip Y, this is because the person allegedly controlling scrip X and Y are the same and the AO has detailed analysis ready with him as regards scrip Y. This cannot be done by the AO

2) In most of the assessments, the AO has issued summons under section 131 and have recorded statement on oath of the assessee. However, the AO has mostly not issued summons to the so called entry provider or to the Directors of the Co.(scrip) which are being dealt in. This again should have been done by the AO

# General facts and contentions re penny stocks...Contd

3) Aspect of cross examination

4) The AO normally would heavily place reliance on order passed by the SEBI.

The sphere in which the two Acts operate are totally different –

The purpose for promulgating the SEBI Act, 1992 –

*An Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto*

whereas the purpose of Income-tax Act, 1961 is –

*An Act to consolidate and amend the law relating to income-tax and super-tax*

# General facts and contentions re penny stocks...Contd

- 5) Stock Exchanges have Surveillance Department that can report instances on regular basis. No such red flag by the Surveillance Department on the price movement of the scrip
- 6) Detailed analysis of the Company is given by the AO, by which he tries to mention that the purchase cost of the share is not commensurate with the intrinsic value – How does one distinguish between a genuine investor and a non-genuine investor?
- 7) Refer the contract note properly
- 8) Cash trail

# Recent decisions on penny stocks

1) **Prem Pal Gandhi – Punjab & Haryana High Court – ITA – 95-2017 – Date of decision 18.1.2018** – Sham share transaction contended by the Department – Purchase cost Rs 11,00,000 whereas sale consideration is Rs 4,23,45,295, within 2 years – Purchase of shares in cash – Purchase prior to the shares in question getting dematerialised – Purchase cost of the shares is not commensurate to the value of the company – Sale of shares not proved – All the above aspects suggesting non genuine transaction

**Per High Court** – The AO has not produced any evidence whatsoever in support of the suspicion. Although the appreciation is very high, the shares are traded on NSE – Reliance is placed on the decision of Hitesh Gandhi which is also of Punjab & Haryana High Court

# **Recent decisions on penny stocks...Contd**

2) **Hitesh Gandhi – Punjab & Haryana High Court – ITA – 18-2017 – Date of decision 16.2.2017 – Sham share transaction contended by the Department – Purchase cost Rs 11,00,000 whereas sale consideration is Rs 2,91,32,850, within less than 2 years – Purchase of shares in cash – Purchase prior to the shares in question getting dematerialised – Purchase cost of the shares is not commensurate to the value of the company – Sale of shares not proved – All aspects suggesting non genuine transaction – Assessment under section 153A r.w.s. 143(3) – Broker from whom shares purchased is in Karol Bagh, Delhi – Purchase out of cash in hand – Dividend of Rs 1,50,000 received on the shares**

# Recent decisions on penny stocks...Contd

**Per High Court** – The AO has merely rejected the contention of purchase on the basis of suspicion arising out of reckless/ casual replies to the various questions raised during the assessment proceedings – Assessee subjected to search did not lead to any incriminating evidence in relation to the transaction – The AO has not progressed beyond the stage of suspicion – STT paid and sale on NSE – Sale is through a registered broker – The AO while working out the addition has allowed indexation on the cost of purchase of shares till the date of sale and has in fact worked out the capital gain only to make the impugned addition – No material on record to controvert the findings of the Tribunal

# Recent decisions on penny stocks...Contd

3) **Pooja Agarwal – Rajasthan High Court – Income Tax Appeal No 385/2011 – Date of decision 11.9.2017** – Department contending bogus share transaction through one Mr P.K. Agarwal, alleged entry provider from Calcutta – The assessee in her deposition during survey denying having made any share transactions in last 5 years – Shares on which STCG earned are of Konark Commercial Limited and Limtux Investment Limited – Konark Commercial Limited was never listed on Calcutta Stock Exchange and the assessee was never its shareholder – Other share transactions also undertaken – Broker is P.K. Agarwal & Co., DP is with Alankrit Assignment Ltd. –

**Per High Court** – There is no evidence that cash has gone back – *Prima facie* the transaction is supported by documents appear to be genuine transactions – AO has failed to prove through any independent inquiry



# Recent decisions on penny stocks...Contd

4) **Meghraj Singh Shekhawat – ITA No 443 and 444/JP/2017 – Date of decision – 7.3.2018** – Purchase of shares by preferential allotment – The AO has not disputed the genuineness of the letter of allotment issued by the co. to the assessee – Purchase by banking channel – *Locus standi* of the alleged entry provider questioned – All details produced – Retraction by the alleged entry provider – Decision of Sanjay Bimalchand Jain discussed and distinguished

5) **Pramod Jain and others – ITA No 368/JP/2017 and others Date of decision – 31.1.2018** – Investigation Wing of Kolkata searched an entry provider – Purchase of shares by banking channel – Merger theory – All the details are filed – Period of sale – Cross examination – No allegation by the alleged entry provider that the assessee ever approached him for any bogus long-term capital gains

# Recent decisions on penny stocks...Contd

6) **Meenu Goel – ITA No 6235/DEL/2017 – Date of decision – 19.3.2018** – All the shares are not sold at one go – The transaction cannot be treated to be bogus if the documents and evidences cannot be faulted, the nature of transaction does not change because there is an investigation – Volume of shares – Decision of Sanjay Bimalchand Jain discussed and distinguished

7) **Mohit Hora (HUF) – ITA No 410/DEL/2018 – Date of decision – 12.3.2018** – All documentary evidences in support of purchase and sale filed

# Recent decisions on penny

## stocks...Contd

8) **Manish Kumar Baid and Other – ITA No 1236/KOL/2017 – Date of decision – 18.8.2017** – Purchase off-market from a corporate – Amalgamation of the co. (scrip) which is purchased – Sale on different dates – Gain of almost 3805% in a span of 24 months – Detailed analysis by the AO as regards the financials of the co. (scrip) which is dealt in – Split – Bonus – Statement of one Mr Sunil Dokania recorded under section 131 where he has given the *modus operandi* of the co. in question – SEBI order – Tribunal deleted the addition

**Other recent decisions on penny stocks –**

9) **Vijay Pal Singh – ITA No 21/BIL/2013 – Date of decision – 15.1.2018**

10) **Kedar Agarwal – ITA No 117/RPR/2014 – Date of decision – 2.2.2018**

11) **Rakesh Saraogi & Sons (HUF) and Others – ITA Nos 93/RPR/2014 and others – Date of decision – 16.4.2018**

# **Recent decisions on penny stock – In favour of the Revenue**

1) **Sanjay Bimalchand Jain – Income Tax Appeal No – 18/2017** – Purchase of shares by cash – Shares of two cos. bought, both the cos. having the same address – Authorised signatory of both the cos. is the same person – Purchase through broker and address of the broker is also same as that of the cos. – Purchase of shares of the two cos., thereafter their merger with another co., did not qualify for investment but is an adventure in the nature of trade – Purchase and sale through broker in Kolkata – Broker did not respond – Finding of Tribunal is a finding of fact, the findings do not give rise to any substantial question of law

2) **Ritu Sanjay Mantry – ITA No 2003/MUM/2017 – Date of decision – 9.2.2018**

**THANK YOU**

**Advocate Neelkanth R. Khandelwal**