

## Sale of shares of penny stock cos. at higher rate within yr held as attempt to hedge undisclosed income as LTCG: HC

**Summary – The High Court of Bombay in a recent case of Sanjay Bimalchand Jain, (the Assessee) held that where assessee had purchased shares of penny stocks companies at lesser amount and within a year sold such shares at much higher amount and assessee had not tendered cogent evidence to explain as to how shares in an unknown company had jumped to such higher amount in no time and also failed to provide details of person who purchased said shares, said transactions were attempt to hedge undisclosed income as Long term Capital gain**

### Facts

- The assessee purchased shares of two penny stock companies at very less amount. The payments were made by the assessee in cash for acquisition of shares of both the companies. The address of both the companies was interestingly, the same. The authorized signatory of both the companies was also the same person. The purchase of shares of both the companies was done by the assessee through broker, GSSL and the address of the said broker was incidently the address of the two companies. Both the companies intimated the assessee regarding the merger of the companies with another company, KL and the assessee received the shares of the new company in the ratio of 1:4 of the number of shares of the previous two companies held by the assessee. The assessee sold same of the shares at an exorbitant rate. The shares were sold through another broker, ASBPL. The assessee claimed exemption of sale proceeds under section 10(38).
- The Assessing Officer did not accept the claim of assessee of exemption under section 10(38). He held that the aforesaid transactions of purchase of two penny stock shares for lesser amount the merger of the companies with a new company and the sale of the shares for higher amount fell within the ambit of adventure in the nature of trade and the assessee had profited. The Assessing Officer, therefore, brought the aforesaid amount to tax under the head 'business income'.
- On appeal, the Commissioner (Appeals) as well as the Tribunal also upheld the findings of the Assessing Officer.
- On assessee's appeal to the High Court:

### Held

- The authorities found that the assessee had made investment in two unknown companies of which the details were not known to her, transaction of sale and purchase of shares of two penny stock companies, the merger of the two companies with another company, viz KL did not qualify an investment and rather it was an adventure in the nature of trade. It was held by all the authorities that the motive of the investment made by the assessee was not to derive income but to earn profit. Both the brokers, *i.e.* the broker through whom the assessee purchased the shares and the broker

through whom the shares were sold, were located at Kolkata and the assessee did not have an inkling as to what was going on in the whole transaction except paying a sum of certain amount in cash for the purchase of shares of the two penny stock companies. The authorities found that though the shares were purchased by the assessee at much lesser amount from the two companies in the year 2003, the assessee was able to sell the shares just within a years time at much higher amount. The broker through whom the shares were sold by the assessee did not respond to the Assessing Officer's letter seeking the names, addresses and the bank accounts of the persons that had purchased the shares sold by the assessee. The authorities have recorded a clear finding of fact that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing, the authorities held that the assessee had not tendered cogent evidence to explain as to how the shares in an unknown company worth such less value had jumped to much higher amount in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no economic or financial basis as to how a share of a little known company would jump from lesser amount to higher amount. The findings recorded by the authorities are pure findings of facts based on a proper appreciation of the material on record. The findings do not give rise to any substantial question of law.