

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4057/Del/2018  
(Assessment Year: 2014-15)

Pooja Gupta, 82, Surya Niketan, Delhi PAN: AHGPA2193K	Vs.	Pr. CIT, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri C. S. Anand, CA
Revenue by:	Shri Samar Bhandra, CIT DR
Date of Hearing	13/12/2018
Date of pronouncement	31/01/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id Pr. CIT, New Delhi dated 27.03.2018 for Assessment Year 2014-15 passed under section 263 of the income tax act holding that the order passed by the income tax officer, Ward – 55 (1), New Delhi under section 143 (3) of the income tax act dated 1/4/2016 is erroneous so far is prejudicial to the interest of the revenue.
2. The assessee has raised the following grounds of appeal:-
  1. *That the order passed by the Id. Pr. CIT, Delhi-19, New Delhi u/s 263 of the I.T. Act 1961 is bad on various factual & legal grounds.*
  2. *That the order passed by the Id. Pr. CIT, Delhi-19, New Delhi u/s 263 is liable to be quashed because the Id. Pr. CIT, Delhi-19, New Delhi had passed the impugned order, without properly appreciating the peculiar facts of the case and the submissions made during the course of proceedings u/s 263 vide letter dt. 06.03.2018.*
  3. *That the order passed by the Id. Pr. CIT, Delhi-19, New Delhi u/s 263 is liable to be quashed because the allegation that "the assessing officer had not properly examined the main issue on which the case was picked up for scrutiny i.e. Suspicious transaction relating to Long Term Capital Gain on shares", levelled by the Id. Pr. CIT is baseless and incorrect, in as much as during the course of assessment proceedings (i) the Id. A.O. had raised a specific query as to why the shares (which were sold during the year) be not treated as Short Term*

*Capital Asset as against the Long Term Capital Asset claimed by the assessee; and (ii) the Id. A.O. had also made direct inquiries from M/s Shri Parasram Holdings Pvt. Ltd. by issuing notice u/s 133(6).*

4. *That the order passed by the Id. Pr. CIT, Delhi-19, New Delhi u/s 263 is liable to be quashed because the Id. Pr. CIT had failed to justify as to how the assessment order passed by the AO on 01.04.2016 for A.Y. 2014-15 was erroneous in so far as it is prejudicial to the interests of revenue.*
  5. *That the order passed by the Id. Pr. CIT, Delhi-19, New Delhi u/s 263 is liable to be quashed because the Id. Pr. CIT had failed to bring on record any evidence to disprove the evidences furnished by the assessee, or to bring on record any evidence to support her baseless assumptions / presumptions.*
  6. *That the order passed by the Id. Pr. CIT, Delhi-19, New Delhi u/s 263 is liable to be quashed because the Id. Pr. CIT had set aside the assessment order dt. 01.04.2016, with a direction to pass a fresh assessment order after making due verification and inquiries.”*
3. Brief facts of the case shows that assessee is an individual whose case was selected for scrutiny through computer-aided scrutiny system (CASS) and only issue to be verified was “ Suspicious Transaction relating to long term capital gain on shares” . Notice under section 143 (2) was issued to verify the return of income filed on 30/7/2014 declaring total income of INR 368040/- . The assessee is deriving income from salary and other sources and assessee has also earned long-term capital gain of INR 9535400/- which is declared at nil u/s 10 (38) of the act . The learned assessing officer passed an order u/s 143 (3) of the income tax act determining the total income of the assessee at INR 368500/- wherein only addition was of INR 455/- u/s 14 A of the income tax act.
4. On perusal of the records the learned principal Commissioner of income tax, Delhi-9, New Delhi found that assessing officer has not properly examined the main issue on which the case was picked up for scrutiny which is suspicious transactions relating to the long-term capital gain on sales. The learned Principal Commissioner Of Income Tax noted that assessee has shown investment in shares on 8/2/2012 and sold them on 18/2/2014 and 19/2/2014 after booking huge long-term capital gain of INR 9535400 against the investment of just INR 100,000/- . According to the Principal CIT, it created a suspicion regarding these transactions and perusal of the record showed that the AO had not examined the issue in light of information received from the investigation wing; Kolkata regarding these

transactions and proper enquiries were not made. Therefore notice under section 263 of the Income Tax Act was issued on 19/2/2018. The assessee submitted her reply on 6/3/2018 stating that assessment order has been passed after making proper enquiries. Assessee also submitted what inquiries have been made by the AO. However the learned Principal Commissioner Of Income Tax rejected the explanation of the assessee and stated that assessment order has been passed without making due verification and inquiries and therefore it is erroneous insofar as it is prejudicial to the interest of the revenue. The learned principal Commissioner of income tax referred to the fact that case was selected for scrutiny only to verify suspicious transaction of long term capital gain earned by the assessee and AO has not enquired anything from that angle and has merely relied up on the documents submitted by the assessee. It was stated that the abnormal price rise in the share of the company in deviation to the percentage rise in the Sensex during the period created a doubt regarding the genuineness of the said transaction, AO has not investigated from the angle that it is a colourable device when specifically it is selected for scrutiny stating that LTCG claim of the assessee is suspicious, AO has not taken note of the investigation wing prepared on this specific aspect etc. The learned principal Commissioner also noted that the assessing officer has not made any inquiries regarding the assets, net worth and turnover of the company in which the assessee invested and earned huge capital gain. He further noted that the AO had also not drawn any conclusion regarding the genuineness of the steep rise in the price of the shares of the said company. Therefore the entire transactions of earning huge long-term capital gain under section 10 (38) appears to be a colorable device to give the color of genuineness to these transactions through which assessee brought back her own unaccounted cash into her books without the need to pay any tax. He further referred to the Kolkata investigation directorate which has undertaken investigation into shares of 84 stocks and had given detailed findings indicating bogus long-term capital gain and short-term capital loss entries claimed by the large number of the beneficiaries. Accordingly he set aside the assessment order passed by the learned assessing officer directing the AO to pass fresh assessment order

after making due verification and inquiries into the genuineness of the said transaction of the company in which the assessee made investment after using the information and material passed on by the Calcutta investigation directorate for such verification and inquiries. Accordingly the order u/s 263 of the income tax act was passed on 27/3/2018. Hence, assessee, aggrieved is in appeal before us.

5. The learned authorised representative submitted that during the course of assessment proceedings detailed enquiry was made by the learned assessing officer with respect to the bank statement of the assessee showing the payment of INR 100,000 for the allotment of 10,000 shares of the company which were transferred into the demand account of the assessee on 22/2/2012 with the DCB Bank. Further on 06/02/2014 the above shares were converted into the amalgamated company's shares as shown by the demand account. He further referred to the letter dated 18/1/2016 of the assessing officer where long-term and short-term capital gain was enquired by the learned assessing officer. He further referred to the letter dated 23/2/2016 submitted by the assessee before the assessing officer where details of the long-term capital gain of INR 9535400 under the head exempt income was submitted before the assessing officer. He further referred to the letter dated 15/3/2016 where the details of the order of the honourable Bombay High Court sanctioning the scheme of merger and amalgamation between the Trinity trade links private limited and Omni Tech petroleum Ltd was also shown. The assessee also submitted on a specific query by the learned assessing officer that assessee has purchased the shares on 7/2/2014, the assessee submitted that it has not purchased the shares as on 7/2/2014 but has purchased the shares on 8/2/2012 in Trinity trade links private limited which later on merged with the another company and therefore the learned assessing officer is noting the date of the merger of the one company with the another company. He therefore submitted that the assessee is a holding a capital asset for more than 12 months. The assessee further submitted the copy of account of the broker and also the transaction Ledger of the broker wherein the details of shares purchased and sold are shown. In view of this the submission of the learned authorised representative was that the assessing officer has made

the detailed enquiry during the course of assessment proceedings. He further stated that the order of the learned Commissioner of Income Tax does not give any finding that how the order of the learned AO is erroneous and what enquiry he should have made which has not been made by the assessing officer. He further referred to the finding of the learned Principal Commissioner Of Income Tax stating that there are certain references made to the Calcutta investigation report however no such investigation report was ever confronted to the assessee by the assessing officer or by the learned principal CIT has stated but has not referred that material at all which speaks about the manner of earning of the long-term capital gain by the assessee. In view of this he submitted that the order passed by the learned Commissioner of income tax under section 263 of the income tax act is not sustainable and should be quashed.

6. The Learned Commissioner Of Income Tax Department Representative supported the order of the learned CIT stating that the case of the assessee was selected for the purpose of verification of the suspicious long-term capital gain earned by assessee and same has not been verified completely by the assessing officer with respect to the various investigation report as well as the suspicious transaction and increase in share price of the company in which assessee earned LTCG. He further stated that the learned AO has also not enquired into the assets and net worth of the company in which the assessee has earned long-term capital gain. He further stated that the above transaction is purely a penny stock bogus capital gain transaction which has not been verified by the learned assessing officer with due perspective and therefore the learned assessing officer passed an order without verification; hence it is erroneous and prejudicial to the interests of the revenue. He further referred that if the inquiries which should have been made by the assessing officer is not made it makes the order passed by the AO as erroneous and prejudicial to the interest of the revenue. He therefore submitted that the learned principal Commissioner of income tax has correctly assumed jurisdiction under section 263 of the income tax act and has directed the learned AO to pass a speaking order after making due enquiries and confronting the assessee with various investigation report.

7. We have carefully considered the rival contention and also perused the orders of the lower authorities. During the year the assessee has earned the long-term capital gain of INR 95 lakhs from Trinity Trade Link Limited company where assessee allegedly purchased 10,000 shares on 12/2/2012 for Rs 1,00,000/- of Trinity Trade Link for which cheque no 619395 on 22/2/2012 through DCB Bank Limited. Those shares were transferred in demat account of the assessee with Depository Parasram Holdings P Ltd with NSDL. Subsequently, Trinity Holdings Limited Got amalgamated with Omnichem Petroleum Limited and assessee got 10000 shares of amalgamating company in amalgamated company. Subsequently name of Omnichem Petroleum Limited was changed to Sharp Trading and finance Limited. On 26/2/2014 assessee sold these 10000 shares @ 963.54 per share. Therefore assessee has shown that she has sold the shares of the company which has been bought by her on 22/2/2102 @ Rs. 10/-per share has been sold by her on 26/2/2014 within a span of almost two years at the astronomical price of Rs 963.54 per share resulting in to a gain of almost 96 times of the original investment. On these facts in case of the assessee, case was selected for scrutiny for the reason that suspicious transactions relating to long-term capital gain on shares is required to be verified.
8. During the course of assessment proceedings the assessee submitted following details :-
- a. bank statements showing payment of INR 100,000 to Trinity trade Link through cheque numbers 619395 for allotment of 10,000 shares
  - b. Demat account transaction statement for a period from 01/04/2012 to 31/03/2012 issued by the Parasram Holdings private limited to show that shares of the Trinity trade Link private limited transferred in the demat account of the assessee
  - c. financial statement and the detailed transaction Ledger issued by Parasram Holdings private limited ( broker) showing that the gross sale consideration of 10,000 shares of INR 9 635400/- has been credited to the account of the assessee and there from the payment has been made by the broker of INR 9 622913 to the assessee after

deduction of the transaction charges securities transaction tax and service tax

d. Assessee also explained that Trinity trade Link private limited was amalgamated with Omnichem petroleum private limited and the name of that company later on changed to Sharp trading and Finance Co Ltd.

9. On the basis of the above information submitted by the assessee, learned assessing officer has accepted the above long-term capital gain as genuine though for the purpose of the scrutiny the case of the assessee was selected stating that it is a suspicious transaction relating to long-term capital gain on shares. The assessment order was passed on 1/4/2016. The learned CIT has passed an order under section 263 of the income tax act stating that AO Should have enquired the above claim of exempt long-term capital gain earned by the assessee on the basis of suspicious transaction. The learned principal Commissioner has revised the order on the following counts holding it to be erroneous and prejudicial to the interest of the revenue:-

- i. The learned assessing officer has not drawn any conclusion about the steep rise in the price of the share in which assessee has earned long-term capital gain.
- ii. The learned AO has not investigated the issue from the angle that it is a colourable device to evade taxes
- iii. AO has not taken note of information received from Calcutta investigation wing (Directorate ) regarding the investment in penny stock
- iv. The company in which the assessee has earned long-term capital gain is part of stock investigated by the revenue and AO has not made any inquiries regarding that.

10. It is interesting to note that central board of direct taxes has issued instruction vide letter dated 16/03/2016 containing detailed instruction to the assessing officer to enquire such kind of transactions. The letter issued is as under :-

**LETTER F.NO.287/30/2014-IT (INV.II)-VOL-III, DATED  
16-3-2016**

REF : EFS Instruction No.53 of Directorate of Systems dated 08.03.2016

Kind attention is invited to the above referred EFS Instruction issued by the System Directorate regarding handling cases of Penny Stocks (suspect Long Term Capital Gains/ Short Term Capital Loss etc).

**2.** It is informed that the said instruction is in the context of investigation conducted by Kolkata Investigation Directorate in respect of large number of penny stock companies, whose share prices were artificially raised on the Stock Exchanges in order to book bogus claims of Long Term Capital Gains or Short Term Capital Loss by various beneficiaries. Extensive investigation, including search and seizure/survey action on entry providers, riggers, beneficiaries etc. was conducted by the Investigation Directorate in such cases. Based upon outcome of such investigation and analysis of the data, the Systems Directorate has now uploaded details of such information in respect of individual assesseees who have made transactions in such penny stocks.

**3.** Vide EFS Instruction under reference a new button 'Penny Stock' has been added on Individual Transaction Screen (ITS) to display information related to penny stock, now enabled on the screen of the Assessing Officers (AOs). Available information regarding the manipulative transactions has been captured in the functionality, including the investigation report of the Kolkata Investigation Directorate. The functionality also contains a guidance note for the Assessing Officers. Such details are visible to the AOs of those assesseees whose particulars have emanated out of the investigation report of Kolkata Investigation Directorate and whose cases have been considered actionable, at this stage. The details are also visible to supervisory officers of such AOs.

**4.** In case of any difficulty in viewing the information on ITS, Shri Vipul Agarwal, JDIT (Sys) 2(1) could be contacted on 0120-2770052 or email at vipul.agarwal@nic.in

**5.** The undersigned is directed to request that necessary directions may kindly be issued to the officers working under your jurisdiction to access this functionality and ensure that information available in the 'Penny Stock' functionality which may be useful for the purpose of cases presently under scrutiny, is examined and considered while finalizing assessments and considering reopening of cases under section 148 of the IT Act, 1961.

**6.** This issues with the approval of Member (Inv), CBDT.

11. Along with this the central board of direct taxes has also issued a detailed standard operating procedure (SOP) for investigation of the penny stock issues. There are several action points listed for the assessing officer and what need to be proved by the assessing officer when
  - a. assessee is purchasing share of a company which is devoid of any fundamental of investment and earning long-term capital gain in such listed company which does not have any business as seen from its last profit and loss account and do not have any fixed assets or plant and machinery.
  - b. When the price movement of the scrip is bell shaped that means huge rise in price over a short span of time and in sharp decline in price of those shares and it does not match with the overall movement of the share market in general and movement of other scrip in the same line of business.
  - c. Price movement of the scrip upwards and downwards done mainly through thin volume.
  - d. Mostly the long-term capital gain is resulting only from few scripts in most cases 1 or 2 and the long-term capital gain as many times the purchase value.
  - e. Typically holding period shown is just more than one year in case of long-term capital gain matching with the period of crystallization of extraordinary income.
12. Further there are certain parameters also specified to identify the bogus long-term capital gain. According to the instructions there are several information to be collected from the assessee such as the copy of the Demat account, history of assessee in share transaction in earlier years, crystallization of extraordinary income and try to match the same with the purchase of shares, normal business of the assessee or family or firm in which the assessee is a major stake holder to trace the source of unaccounted cash in case of long-term capital gain or use of unaccounted cash generated from long-term capital gain, statement of assessee which can be taken at any stage by pointing out his inefficiency for dealing in shares and questioning his wisdom about investment in penny stocks as companies are devoid of any financial worth, and the source of purported

initial investment shown whether in cash or cheque and the date of transfer of money from bank account of the assessee to the bank account of the broker. The assessing officers are further directed to gather certain information from other sources such as copy of contract notes and how the order was placed, share transactions from the broker of the assessee and copy of the demat account, documents given for Know your customer identification, copy of contract notes, trading account ledger etc. The sample letters are also provided for the purpose of making enquiry. Further the information is required to be obtained from the stock exchanges such as Bombay stock exchange and National stock exchange about all the trades done of specified scripts for all purchases and sales including broker detail, purchase and sale party wise and for which also the simple letters are provided. The AO must also check for any punitive action on any of such brokers by SEBI. In short after making all such enquiry the assessing officer must collect all the information and then summon assessee about knowledge about share market in general, knowledge about the script in specific, why and how investment was made, how brokers were instructed, how well the assessee knows the brokers its office and its employees, how his decision to purchase shares of scripts is devoid of financial wisdom, statement of entities specific if any, laying all the facts before him which proves that the transaction is not normal. After that the learned assessing officer is directed by that instruction to issue a show cause notice. In the present case before us the learned assessing officer has merely accepted what is submitted before him without making any enquiry or obtaining the statement of the assessee about all these parameters. As the assessing officer has neither carried out any enquiry with the 3<sup>rd</sup> parties such as the broker, stock exchanges, and most importantly the learned AO has not examined the assessee about the share transactions as directed by the CBDT.

13. It is rather surprising that despite the case of the assessee was selected for verification of the suspicious transaction entered into by the assessee the learned AO has not carried out any enquiry and merely believed on the documents submitted by the assessee. There is complete lack of inquiry with the perspective for which case is selected for scrutiny. The Id PCIT in

his order has also given the issues on which ld AO has not made any inquiry. Further according to Explanation 2 to section 263 of The Act, any order passed without making due inquiries which should have been made is an order erroneous and prejudicial to the interest of revenue. Therefore we do not find any infirmity in the order of the learned PCIT in assuming jurisdiction under section 263 of the income tax act and directing the assessing officer to make the necessary enquiry. Hence, we do not find any merit in the appeal of the assessee and the order passed by the learned CIT under section 263 of the income tax act is upheld.

14. In the result appeal of the assessee is dismissed.

Order pronounced in the open court on 31/01/2019.

-Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 31/01/2019  
Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi