

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.3432/Del./2019
Assessment Year 2014-2015

Smt. Manita, 830, South Civil Lines, Muzaffarnagar, Uttar Pradesh. PAN <u>ALCPM3125D</u>	vs.,	The Pr. CIT, Muzaffarnagar, Uttar Pradesh.
(Appellant)		(Respondent)

For Assessee :	Ms. Rano Jain, And Shri Venkatesh Chaurasia, Advocates
For Revenue :	Shri Sanjay Shivam, CIT-D.R.

Date of Hearing :	09.07.2019
Date of Pronouncement :	12.07.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. Pr. CIT, Muzaffarnagar, Dated 18.03.2019, under section 263 of the I.T. Act, 1961, for the A.Y. 2014-2015.

2. Brief facts of the case are that assessee is an individual and nature of business as shown in the assessment order is “Income from Long Term Capital Gains on Shares”. In this case, return of income was filed on 31.03.2005 showing income of Rs.5,25,960/-. The case was selected for scrutiny under CASS for reasons of suspicious long term capital gains on shares. Statutory notices were issued time to time. Assessee attended the proceedings before A.O. filed written submissions along with copy of computation of income, audit report, Trading & Profit & Loss Account & Balance-sheet. The A.O. noted that in response to the notice issued, assessee has furnished written submissions along with copy of Demat A/c, source of investment in shares, bank account, copy of share certificates, copy of account of Mathiyani Construction and same is taken on record. The A.O. after discussing the case with the Assessee’s Counsel, completed the assessment at returned income vide Order dated 22.12.2016 under section 143(3) of the I.T. Act, 1961.

3. The Ld. Pr. CIT on examination of the record found that A.O. has completed the assessment without examining the case properly. Therefore, notice under section 263 of the I.T. Act was issued on 29.01.2019 [PB-45] which is also reproduced in the impugned order in which it was stated that assessee has earned long term capital gains of Rs.70,90,508/- on sale of 4200 shares of M/s. Turbotech Engineering Ltd., in assessment year under appeal which is claimed exempt under section 10(38) of the I.T. Act. The A.O. failed to make enquiries from share broker, bank etc., and the Company for whom shares were purchased. The A.O. also did not make any enquiry with regard to investment of Rs.72,00,000/- with M/s. Mohit Ispat (P) Ltd., and A.O. has also failed to examine the issue of incurring of Rs.10,78,472/- towards construction of home. Ld. Pr. CIT, therefore, found the assessment order to be erroneous and prejudicial to the interests of the Revenue. The explanation of assessee was called for. The assessee filed detailed written submissions before Ld. Pr. CIT which is reproduced in the impugned order in which the assessee

highlighted that detailed replies along with documentary evidences were filed before A.O. on the issues time to time which have been examined by the A.O. Therefore, there is no case of failure to make any enquiry at the assessment stage. The assessee relied upon several decisions in support of the contention. Ld. Pr. CIT, however, found that Order have been passed without making proper enquiry on the above issues despite case was selected for scrutiny. Hence, the case is covered by Clause (a) of Explanation-2 of Section 263(1) of the I.T. Act. Ld. Pr. CIT also noted that report of Investigation Wing were not utilised by the A.O. Further, A.O. did not make any enquiry on the issues stated in the notice. Therefore, assessment order was set aside with a direction to the A.O. to pass assessment order afresh in accordance with the provisions of Law.

4. The assessee is in appeal challenging the impugned order under section 263 of the I.T. Act. Learned Counsel for the Assessee reiterated the submissions made before the Ld. Pr. CIT. Learned Counsel for the Assessee submitted that all the three issues on which proposed

action under section 263 have been taken, all these issues have been duly examined by the A.O. and assessment order have been rightly made. The assessee has given details of sale and purchases in the return of income on the issue of capital gains earned on sale of shares. The A.O. issued questionnaire on the issue which is duly replied by assessee supported by bank statements and other materials. The assessee also filed details and evidences, sale and purchase of shares, supported by copy of the receipt for purchase of shares, copy of account in the books of the broker through whom the sales were made, copy of contract note and certificate of the broker. The assessee also filed reply supported by cash flow statement and cash book to prove source of construction, copy of the Demat account was also filed along with copy of account in Mathiyani Construction in which the assessee is a partner to prove the source of purchases on shares. In the cash flow and cash book of the entries of investment with M/s. Mohit Ispat (P) Ltd., and amount incurred towards construction have been explained. The assessee also filed copy of the share certificates, bank

accounts and other details to show that all the three issues have been examined by the A.O. with reference to the evidences and material on record. Learned Counsel for the Assessee submitted that since due enquiries have been made by the A.O. but the Pr. CIT is trying to impose her view on the plausible view taken by the A.O. which is not permissible under the Law. She has relied upon CIT vs. Sunbeam Auto Ltd., [2011] 332 ITR 167 (Del.). Learned Counsel for the Assessee also relied upon Judgment of Hon'ble Bombay High Court in the case of Gabriel India Ltd., [1993] 203 ITR 108 (Bom.). She has also submitted that Ld. Pr. CIT has invoked Explanation-2 to Section 263 of the I.T. Act which cannot be invoked in the case of inadequate enquiry and also this Explanation is applicable w.e.f. A.Y. 2015-2016 and hence, not applicable to assessment year under appeal. Learned Counsel for the Assessee also submitted that Ld. Pr. CIT has failed to point out any error in the order of the A.O. and she herself did not make any enquiry, therefore, impugned order cannot be sustained in Law. She has relied upon decision in the case

of ITO vs. D.G. Housing Projects Ltd., [2012] 343 ITR 329 (Del.). Learned Counsel for the Assessee, therefore, submitted that impugned order is liable to be set aside.

5. On the other hand, Ld. D.R. relied upon the impugned order of the Ld. Pr. CIT passed under section 263 of the I.T. Act and also submitted that A.O. did not examine all the above issues and passed a brief order. The report of Investigation Wing have not been considered by the A.O.

6. We have considered the rival submissions and perused the material on record. The A.O. in this case passed the assessment order under section 143(3) because the case was selected for scrutiny for the reasons of suspicious long term capital gains on shares. The A.O. called for explanation of assessee and assessee filed reply time to time which are part of the record. The explanation of assessee is supported by all the evidences and material on record as to how the assessee has entered into sale and purchase of shares and how the sale consideration have been received by assessee through banking channel. The transaction was conducted through the Demat account. The A.O. after making a deep

investigation into the issue of long term capital gains also noted in the assessment order that written submissions of the assessee along with copies of Demat account, source of investment in shares, bank account, copies of share certificates, copy of account of Mathiyani Construction are placed on record. It would, therefore, prove that A.O. examined the issue of long term capital gains with reference to sale of shares at assessment stage in the light of evidence and material on record. Thus the reasons for which the case was selected for scrutiny have been satisfied by the A.O. Learned Counsel for the Assessee has pointed out several documents in the paper book to show that on the issue of long term capital gains, A.O. raised a query to the assessee which is duly responded by assessee supported by all the documentary evidences. The assessee also filed copies of bank statement, cash flow and cash book to prove availability of funds with the assessee to make investment with M/s. Mohit Ispat (P) Ltd., and expenses incurred for construction of home. All these documentary evidences were before A.O. Thus, it is not a case of even inadequate enquiry

or improper enquiry as is alleged in the show cause notice under section 263 of the I.T. Act. It is merely stated in the notice under section 263 of the I.T. Act that A.O. failed to make enquiry on these aspects. However, the record produced before us shows all the three issues have been explained by assessee before A.O. supported by documentary evidences. When similar submissions were made by the assessee before the Ld. Pr. CIT, nothing adverse have been pointed out in the impugned order as to how the A.O. has not made enquiries at assessment stage on all these issues. PB-13 is cash flow statement of assessee for assessment year under appeal in which all the above items have been mentioned on which proposed notice under section 263 have been issued. All these facts were before A.O. at the assessment stage and all the details of sale and purchase of shares on which long term capital gains exemption was claimed have been mentioned in the return of income itself. Thus, there was no reason to believe that the A.O. did not examine this issue at the assessment stage. Further, the case was selected for scrutiny because the

suspicious long term capital gains earned by assessee. This information must be based on information received from Investigation Wing. Therefore, Ld. D.R. was not justified in contending that report of Investigation Wing have not been considered by the A.O. Since it was the sole reason for completing the scrutiny assessment, therefore, it could not be believed that A.O. would not have gone through the material available before him on record. May be the A.O. has not discussed the details in the assessment order but it would not give right to the Ld. Pr. CIT to hold that no investigation or enquiry have been made at assessment stage. It appears that A.O. has taken one of permissible view in the matter as per Law and if the Ld.Pr. CIT does not agree with the view of the A.O, the assessment order could not be treated as erroneous in so far as it is prejudicial to the interests of the Revenue. Considering the totality of the facts and circumstances noted above in the light of material on record, we are of the view that it is not a case of inadequate or no enquiry, thus, Explanation-2 to Section 263 of the I.T. Act would not be attracted in the matter. In this view of the

matter, the assessment order could not be held to be erroneous in so far as it is prejudicial to the interests of the Revenue. We, accordingly, set aside the impugned order under section 263 of the I.T. Act and restore the assessment order.

7. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 12th July, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.