

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.3891/Mum/2019
(Assessment Year : 2014-15)**

M/s. Pioneer Investcorp Ltd., Room No.612, 6 th Floor Aayakar Bhavan M.K.Road, Mumbai – 400020	Vs.	Principal Commissioner of Income Tax-3, Mumbai
PAN/GIR No. AAACP2423R		
(Appellant)	..	(Respondent)

Assessee by	Shri Firoze B Andhwarujina
Revenue by	Shri Awungshi Gimson
Date of Hearing	06/11/2019
Date of Pronouncement	27/11/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.3891/Mum/2019 for A.Y.2014-15 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-3, Mumbai u/s.263 of the Act dated 26/03/2019 for the A.Y.2014-15.

2. The only issue to be decided in this appeal is as to whether the Id. Administrative CIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee company is engaged in the business of providing financial services and had filed its return of income for the A.Y.2014-15 on 22/09/2014 declaring total income of Rs.1,28,70,530/-. The assessment was completed u/s.143(3) of the Act on 25/04/2016 determining total income of the assessee at Rs.2,01,59,042/-. This assessment was sought to be revised by the Id. CIT by invoking revisionary jurisdiction u/s.263 of the Act on the ground that the Id. AO had completed the assessment without verifying the correctness of the total income disclosed by the assessee in respect of sales and purchase of shares and securities. The Id. CIT also mentioned in the show-cause notice that since assessee had traded in shares and purchase and sale of shares during the year, the Id. AO erred in not verifying whether the provisions of Explanation to Section 73 of the Act would be applicable to the facts of the instant case. On these two aspects, the Id. CIT issued show-cause notice u/s.263 of the Act to the assessee as to why the assessment framed by the Id. AO u/s.143(3) should not be treated as erroneous and prejudicial to the interest of the revenue warranting setting aside of the said assessment. The assessee vide written submission dated 13/12/2018 replied that it is an integrated financial service company listed on Bombay Stock Exchange and engaged in (a) Investment Banking (b) Investment Advisory (c) Investment in Shares and Securities (d) Trading in Government Securities and Corporate bonds. The assessee stated before the Id. CIT that during the year under consideration, it had traded only in Government securities and bonds and there was no purchase and sale of shares in trading activity during the year. Accordingly, it was pleaded that provisions of Explanation to Section 73 of the Act per se are not at all applicable to the assessee company. The assessee also submitted that it had derived following income during the year:-

A) Income From Operations:-

a. Investment banking and advisory fees	-	Rs.22,63,75,446/-
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B) Income from Trading in Securities:-

a) Sales (a)	-	Rs.117,83,36,80,226/-
b) Closing Inventory (b)	-	Rs.35,63,77,971/-
c) Purchases (c)	-	Rs.117,45,49,46,807/-
d) Opening Inventory (d)	-	Rs.69,40,58,962/-
		=====
Sub-Total a+b-c-d	-	Rs.4,10,52,428/-
		=====
A+B	-	Rs.26,74,27,874/-

Other Income

Interest Income	-	Rs.30,39,399/-
Net gain on sale of investments	-	Rs. 4,35,312/-
Rent	-	Rs.11,32,506/-
		=====
Total		Rs.46,07,217/-
		=====

3.1. The assessee also submitted the complete details which were filed before the Id. AO wherein a specific query was raised by the Id. AO based on AIR information with respect to transactions reported by Bombay Stock Exchange for contracts of Rs.10 lakhs or above. The reply in this regard was filed by the assessee before the Id. AO vide letter dated 17/03/2016 wherein the entries reflected in the AIR information was duly matched with the transactions recorded in the books of accounts. The assessee also furnished the details of short term gain on sale of investments in respect of sale of shares of Kothari World Finance Ltd., which was invested during the year for Rs.71,67,198/- and sold for Rs.76,02,510/- during the year thereby making short term capital gain on sale of such investments to the tune of Rs.4,35,312/- which has been duly offered to tax under the head 'other income' by the assessee in its

profit and loss account. The assessee also drew the attention of the Id. CIT to the annual report of the assessee as on 31/03/2014 wherein it was categorically stated that there was no purchase and sale of shares in trading activity during the year. The shares of Kothari World Finance Ltd. were held in investment category and were sold during the year. The details of inventories as reflected in note No.14 of the balance sheet clearly depict that the said inventory represents closing stock of Government securities / bonds in the sum of Rs.35,63,77,971/- and opening stock of Rs.69,40,58,962/-. Accordingly, assessee pleaded that the trading activity was carried out by the assessee only in respect of Government Securities and bonds and not in respect of shares. Accordingly, the assessee pleaded that the provisions of explanation to Section 73 of the Act could not be made applicable at all to the facts of the instant case. But the Id. CIT however, did not heed to the contentions of the assessee and observed in his revision order u/s.263 of the Act that in the absence of scrip wise details of sale and purchase of shares and securities, ledger etc., the identification of the transactions of the speculation on gain / loss were neither enquired into nor verified by the Id. AO. Furthermore, the applicability of the Explanation to Section 73 of the Act has not been examined by the Id. AO. The Id. CIT also observed that this enquiry was required to be made by the Id. AO **if there are transaction in shares**. It would be speculative as per Explanation to Section 73 of the Act and after reducing direct cost of Rs.5.75 Crores, there would be speculative loss of Rs.1.65 Crores, which is not liable to be set off from other income. The Id. CIT also pointed out that the Id. AO has not raised any query in respect of purchase and sale of shares and accordingly the said details were also not furnished by the assessee at the time of assessment proceedings. With these observations, the Id. CIT set aside the assessment made u/s.143(3) of the Act dated 25/04/2016

treating the order of the Id. AO as erroneous in as much as prejudicial to the interest of the Revenue by passing the order u/s.263 of the Act.

4. Aggrieved, the assessee is in appeal before us.

5. We have heard rival submissions and perused the materials available on record. The various documentary evidences submitted by the assessee before the Id. AO and before the Id. CIT are not in dispute and hence, the same are not reiterated herein for the sake of brevity.

5.1. At the outset, we find that the Id. CIT had proceeded to revise the order by invoking jurisdiction u/s.263 of the Act on the ground that assessee had during the year under consideration had traded in purchase and sale of shares. From the perusal of the entire audited annual accounts of the assessee and the various details filed by the assessee before the Id. AO as well as before the Id. CIT, we find that the Id. CIT had completely proceeded on incorrect assumption of facts, in as much as there was absolutely no trading in purchase and sales of shares. We hold that the assessee had derived income from trading in securities in the sum of Rs.4,10,52,428/- by dealing in Government securities and corporate bonds and not in shares. It is well settled that for trading in Government securities and corporate bonds, the provisions of Explanation to Section 73 of the Act cannot be invoked. Speculative transactions are applicable only for shares and not for securities and bonds. Hence, there cannot be any error in the order passed by the Id. AO. Hence, we hold that the Id. CIT grossly erred in invoking revisionary jurisdiction u/s.263 of the Act as it was done based on incorrect assumption of facts. We also find that twin cumulative conditions which are pre-requisite for invoking revision jurisdiction u/s.263 of the Act are not satisfied in the instant case.

Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. reported in 243 ITR 83 (SC). We also find from the perusal of the order of Id. CIT that the Id. CIT had merely set aside the assessment in order to make roving enquiries to check whether the provisions of Explanation to Section 73 of the Act could be made applicable to the assessee in the facts and circumstances of the instant case, which is not permissible under law by invoking revisionary jurisdiction u/s.263 of the Act. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of Gabriel India Ltd reported in 203 ITR 108 (Bom). We find that the Id. CIT had not recorded any satisfaction in concrete terms as to whether the provisions of Explanation to Section 73 of the Act was per se applicable to the facts and circumstances of the instant case.

5.2. In view of the aforesaid observations, we have no hesitation in quashing the revision order passed by the Id. CIT u/s.263 and allow the grounds raised by the assessee.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 27/11/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

27/11/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai