

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C', BANGALORE**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

ITA No.2531/Bang/2018
(Assessment year : 2015-16)

Shri Jeetendra Kanunga,
B-05,5th Floor, Solus Jain Heights,
1st Cross, JC Road,
Bangalore-560 027
PAN No.AJYPK6026F

Appellant

Vs

The Deputy Commissioner of Income Tax Officer,
Circle-4(1)(1),
Bangalore

Respondent

Assessee by : Shri H.N.Khincha, CA
Revenue by : Shri Pradeep Kumar, CIT

Date of Hearing : 08-06-2020
Date of Pronouncement : 10-06-2020

ORDER

PER B.R.BASKARAN, AM:

The assessee has filed this appeal challenging the revision order dated 31-07-2018 passed by Pr.CIT, Bangalore for the assessment year 2015-16. The assessee is challenging the validity of the revision order passed by the Pr.CIT u/s 263 of the IT Act, 1961. The assessment in the hands of the assessee for the year under consideration was completed by the AO on 31-08-2017 u/s 143(3) of the IT Act, 1961.

2. The assessee is a dealer in iron, steel, ferros and non-ferros metal. On examination of the assessment record, the Id.Pr.CIT, noticed that the return of income of the assessee was selected for scrutiny, inter-alia for

the reasons that the assessee has entered into 'suspicious sales transaction in shares and exempt long term capital gains shown in return (penny stock tab in ITS). However, it was noticed that the AO has failed to conduct enquiries regarding the above issue and has failed to bring correct income into tax. Hence, the ld.Pr.CIT initiated 263 proceedings before the ld.Pr.CIT. The assessee submitted that he has purchased 25,000 shares of M/s Lifeline Drugs & Pharma Ltd., for a consideration of Rs.15.00 lakhs on 01-10-2012. The said shares were sold in the financial year 2014-15 relevant to assessment year 2015-16 for a consideration of Rs.6.17 Crores which resulted in long term capital gains of Rs.6.01 Crores. It was submitted that the entire transaction was carried out through M/s Reliance Securities Ltd., and the entire consideration was received through banking channel. It was also submitted that the assessee has furnished copies of contract notes, ledger statement, demat statement and bank statement before the AO in reply to the notice u/s 142(1) of the Act on 14-08-2017 issued by AO. Accordingly, the assessee by placing reliance on host of case laws contended that the assessee has taken a plausible view in the matter and hence, the revision proceedings do not lie in the instant case. Accordingly, the assessee prayed the proceedings may kindly be dropped.

3. The ld. Pr.CIT was not convinced with the contention of the assessee. He expressed the view that the AO should have subjected to thorough verification especially when the case is selected for scrutiny on the issue of 'suspicious sales transaction' in shares and exempt long term capital gains. The ld.Pr.CIT has taken the view that the AO has completed the assessment without making proper enquiries and verification which should have been made on the facts of the case. The ld. Pr.CIT also took support of clause(a) of Explanation-2 to sec.2363 of the Act. The Pr.CIT also noted the fact that the prices of share price of M/s Lifeline Drugs & Pharma Ltd., has gone up from Rs.60 to 2,410/- within a span of less than two years which results in an increase of 3916% which is abnormal for an unknown company hence, the AO has

not examined the issue in an appropriate manner in the above said factual context and also not analysed the real nature of transaction. The Pr.CIT took the view that the impugned assessment order is erroneous and prejudicial to the interests of revenue and accordingly he set aside the impugned order and directed the AO to examine the above said issue and re-do the assessment afresh as per law after affording reasonable opportunity of being heard to the assessee.

4. The assessee is aggrieved by the decision of ld. Pr.CIT.

5. The ld. AR submitted that the AO conducted due enquiries during the course of assessment proceedings with regard to long term capital gains declared by the assessee. He invited our attention to two notices issued by the AO u/s 142(1) of the IT Act which are placed at page-37 of the paper book filed by the assessee. The ld. AR submitted that the AO has called for complete details of the long term capital gains in the second notice issued u/s 142(1) of the IT Act and in response to the same the assessee has furnished copies of contract notes, ledger account copies, demat account copies and bank account copies. Accordingly, the ld. AR submitted that the AO has applied his mind on this issue and accepted the claim of the assessee and hence, the impugned revision order is liable to be quashed as per decision rendered by the Hon'ble Supreme Court in the case of CIT Vs Nirav Modi (2017) 77 Taxmann.com 78(SC) and also Malabar Ind.Co.Ltd., Vs CIT 243 ITR 83.

6. The ld. AR further submitted that it is imperative on the part of the Pr.CIT(A) to conduct enquiries before issuing any direction to the ld. CIT(A). He submitted that in the instant case, ld. Pr.CIT has not conducted any enquiries with regard to the issue relating to long term capital gains and hence, ld. Pr.CIT should not have passed the impugned revision order without satisfying himself on the alleged point in the revision order. In support of his preposition, the ld. Ar placed reliance on the following two case laws:

1. *M/s Sasken technologies Ltd Vs JCIT, Spl.Range-6, Bangalore*
2. *M/s Amira Pure Foods Pvt.Ltd., Vs The Pr.CIT, Central, Gurgaon*

7. On the contrary, ld. DR submitted that the AO has taken up the return of income filed by the assessee for scrutiny *inter-alia* for the reasons that the assessee has indulged in 'suspicious sales transaction in shares and claimed long term capital gains arising there from as exempt. However, the AO restricted his enquiry with regard to long term capital gains to the evidences furnished by the assessee in the form of contract notices and bank statements. The AO has not conducted enquiry with regard to suspicious nature of transaction and genuineness of long term capital gains for which the return of income was taken up for scrutiny. The ld. AR submitted that a new Explanation-2 has been inserted in sec.263 of the Act by the Finance Act 2015 with effect from 01-06-2015 and as per clause-(a) of the said Explanation, if the assessment order is passed without making enquiry or verification which should have been made, than the said assessment order shall be deemed to be erroneous insofar as it is prejudicial to the interest of revenue.

8. The ld. DR submitted that the ld. Pr.CIT has rightly invoked the provisions of sec.263 of the IT Act since the AO did not make any enquiry or verification which should have been made in respect of long term capital gains as declared by the assessee.

9. The ld. DR further submitted that the ld. Pr.CIT also conducted enquiry with regard to long term capital gains and the Pr.CIT has discussed the same in para-4.1 of his order wherein she has recorded that the share prices of M/s Lifeline Drugs & Pharma Ltd. has went up from Rs.60 to 2,410/- within a span of less than two years and the said increase works out to 3916% which is abnormal for an unknown company and such increase should have cost further probe. Accordingly,

ld. DR submitted that ld. AR was not correct in stating that the ld. Pr.CIT has not conducted any enquiry.

10. We have heard the rival contentions and perused the records.

10.1 It is an admitted fact that the assessee has declared the long term capital gains on sale of 25,000/-shares of M/s Lifeline Drugs & Pharma Ltd., and earned the long term capital gains of Rs.6.01 Crores. The assessee has claimed the same as exempt u/s 10(38) of the IT Act. It is also an admitted fact that the return of income filed by the assessee was taken up for scrutiny *inter-alia* for the reasons that the assessee has indulged in suspicious sales transaction in penny stock and claimed exemption of long term capital gains arising there from.

11. Though, ld. AR submitted that the AO has conducted due enquiries with regard to long term capital gains declared by the assessee yet, we notice that the AO has restricted his enquiry or verification with regard to quantum of long term capital gains declared by the assessee by calling for copies of contract notices, ledger accounts, demat accounts and bank statements. The AO has not conducted any enquiry with regard to suspicious sales transaction particularly in view of the fact that M/s Lifeline Drugs & Pharma Ltd. Shares have been declared as penny stock even though, the return of income filed by the assessee was taken up for scrutiny for examining the genuineness of share transaction. This action of the AO would show that that there was no application of mind on the part of the AO and hence, in our view the ld. Pr.CIT was justified in holding that the assessment order is erroneous insofar it is prejudicial to the interests of revenue.

12. The ld. DR has rightly demonstrated that the ld. Pr.CIT also conducted necessary enquiry with regard to increase in share prices of M/s Lifeline Drugs & Pharma Ltd., which was considered by her as abnormal for an unknown company. Hence, as stated in Explanation-2(a) to sec.263 of the IT Act, the AO has failed to make enquiry or verification

which should have been done by him. Accordingly, we uphold the revision order passed by Id.Pr.CIT.

13. In the result, the appeal filed by the assessee is dismissed.

Pronounced in the open Court on 10-06-2020

Sd/-
(N.V.VASUDEVAN)
VICE PRESIDENT

Bangalore

Dated : 10-06-2020

*am

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

By order
Asst. Registrar

