

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE  
BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.2183/Bang/2019</b>
<b>Assessment Year : 2015-16</b>

Shri Surendra Kedia, No.143, C-5 Hosur Road, Hebbagodi, Bommasandra Industrial Area, Bengaluru-560 099.  <b>PAN - AEGPK 2874 N</b>	<b>Vs.</b>	The Pr. Commissioner of Income Tax, Bengaluru-5, Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Shri Ajay Rotti, C.A
Respondent by	:	Shri Pradeep Kumar, CIT (DR)

Date of Hearing	:	03-09-2020
Date of Pronouncement	:	08-09-2020

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 06/08/2019 passed by Ld.Pr.CIT-5 under section 263 of the Act for assessment year 2015-16 on following grounds of appeal:

*“1. The order passed by the Learned Principal Commissioner of Income-tax, Bangalore - 5 [PCIT], partly setting aside the order dated December 12, 2017, passed under section 143(3) of the Act, for de novo fresh assessment of income, be struck down as invalid, as the order is bad in law and on facts.*

*2. The Ld. PCIT has erred in law and on in facts in assuming revision on the issues which are the subject matter of the impugned order, despite the AO having examined the issues and not made any adjustments in his assessment order. The Ld. PCIT has erred in ignoring that revision proceedings under Section 263 of the Act are not permissible if relevant material has been placed on record before the AO. Hence, assessment order passed after considering all the facts and information cannot be revised under Section 263 of the Act.*

*3. On the facts and circumstances of the case, the Ld. PCIT has erred in holding that the assessment order framed by the Assessing Officer is erroneous and prejudicial to the interests of revenue by concluding:*

*- That the Appellant was not able to lead enough evidence to show that any inquiry was made by the Assessing Officer.*

*- AO has passed an order based on incorrect assumption of facts, incorrect application of law, without application of mind and without making requisite inquiries.*

*4. On the facts and circumstance of the case, the Ld. PCIT has erred in concluding that with respect to the sale of shares of Manjushree Technopack, the Assessing Officer has obtained only a copy of the demat account and ignoring the fact that the AO has perused all the details with respect to Long Term Capital Gain and the same has been captured in the assessment order.*

*5. On the facts and circumstances of the case, the Ld. PCIT has erred in concluding that the Assessing Officer has not made any enquiry into the identity and creditworthiness of the creditors and the genuineness of the transactions and ignoring the fact that requisite details are submitted to the AO.*

*6. On the facts and circumstances of the case, the Ld. PCIT has erred in concluding that the AO has not enquired the sources of investments of INR 7,86,78,181 in mutual funds/bonds and has also not enquired into taxability of capital gains amounting to INR 28,05,14,905 on account of such investments and ignoring the fact that requisite details were submitted to the AO*

*7. The Appellant prays that directions be given to grant all such relief arising from the preceding grounds as also all reliefs consequential thereto. The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal, at any time before or during the hearing of the appeal.”*

**Brief facts of the case are as under:**

2. Assessee filed its return of income for assessment year 2015-16 on 03/02/2016, declaring total income of Rs.2,75,11,840/-. The case was selected for scrutiny and statutory notices were issued to assessee. In response to statutory notices, assessee appeared before Ld.AO and filed requisite details/documents.

3. Ld.AO observed from details that, in previous year assessee sold 3 lakh shares of M/s PS IT Infrastructure and Services Ltd., against which, capital gains at Rs.1,96,96,398/- was computed and claimed exempt under section 10(38) of the Act. Ld.AO while passing assessment order, disallowed capital gains under section 68 by holding it to be a penny stock.

4. Against addition made by Ld.AO, assessee preferred appeal before Ld.CIT(A) who upheld observations of Ld.AO.

5. Assessee preferred appeal before this *Tribunal* against order passed by Ld.CIT(A). As the appeal was pending before this *Tribunal*, assessee preferred to settle the issue in Vivad se Vishvas Scheme 2020. Assessee accordingly withdrew appeal filed by assessee before this *Tribunal*.

6. Be that as it may, Ld.Pr.CIT initiated proceedings under section 263 of the Act, on 03/08/2018 for following reasons:

*“Your assessment for Assessment Year 2015-16 has been completed by DCIT, Circle-5(3)(1) vide Order dated 31. 12.2017 u/s 143(3) of the I T Act, 1961. The assessment records were called for and examined by this Office. On such Examination, following discrepancies were noticed which evidence that the Assessing Officer, has completed the assessment without making inquiries or verification which should have been mode “*

1. Though the assessment was 'Complete Scrutiny', the Assessing Officer has not examined any other issues in detail, other than exemption claimed for Long Term Capital Gains on Penny Stock, viz. MIs PS IT Infrastructure & Services Limited.

2. More particularly, the Assessing Officer has failed to make any inquiry regarding the claim of exempted Long Term Capital Gain on account of sale of shares of Manjushree Technopack Ltd. Amounting to Rs.24,82,05,2711-.

There is addition to Deposits & Advances of Rs.9,35,72,0001-. In this also, the Assessing Officer has not made any inquiry. Further, you have paid interest on such deposits and advances, but have not charged interest on advances given to family members. This aspect has been totally ignored by the Assessing Officer during the assessment proceedings.

4. The Assessing Officer has not made any inquiry into the sources of investments of Rs.7,86,78,1811- in Mutual Funds / Bonds and has also not inquired into taxability of Capital Gain of Rs.28,05, 14,905/- on account of such investments.

5. It is seen that the Assessing Officer has not initiated the penalty proceedings on any specific ground, but the some has been initiated for concealment of particulars of income and furnishing of inaccurate particulars of such income.

Thus, it is evident that the assessment order is erroneous in so far as it is prejudicial to the interest of the revenue. Hence, you are requested to show cause as to why the assessment order should not be cancelled and direction for fresh assessment should not be issued as per the provisions of section 263 of the I T Act, 1961. For this purpose, you can appear for a personal hearing on 10.08.2018 at 11.00 a.m, in this Office or may be represented by an Authorised Representative on that day."

7. Ld.AR submitted that, assessee filed all details during assessment proceedings, which has been admitted and recorded by Ld.Pr.CIT in para 6 of impugned order. He submitted that, Ld.Pr.CIT is now seeking to review order passed by Ld.AO. He placed reliance on decision of *Hon'ble Kolkota Tribunal* in case of *Price Water House vs ACIT* reported in (2018) 92 Taxmann.com 278.

8. On the contrary, Ld.CIT.DR submitted that, Ld.AO during assessment proceedings only chose to enquire about long-term

capital gain earned by assessee on sale of penny stock viz., M/s.PS IT Infrastructure and Services Ltd., He submitted that, there are 3 more issues which Ld.AO did not enquire and investigate. Ld.CIT.DR referred to and relied on observations recorded in impugned order at page 20, wherein Ld.Pr.CIT categorically mentions that claim of details were submitted before Ld.AO, is factually wrong, and that, all details were submitted for first time during proceedings under section 263. He also recorded that, before Ld.AO, demat statement of chart showing dates and value of purchase and sale have only been submitted by assessee.

9. He thus strongly supported the order passed by Ld. Pr.CIT.

10. We have perused submissions advanced by both sides in light of records placed before us.

10.1 Under Provisions of Section 263 of the Act, Ld.Pr.CIT is empowered to revise assessment order, where assessment order is erroneous and prejudicial to the interest of revenue. It is necessary to examine and call for relevant assessment records and to ascertain either there was no enquiry, or there is insufficient or inadequate enquiry by Ld.AO on particular issues. In the present facts of case, it is discernible from assessment order passed that, Ld.AO enquired about long-term capital gains on penny stock viz., M/s PS IT infrastructure and services Ltd. Further it is not discernible from assessment order that, assessee filed all relevant details in respect of other issues alleged by Ld.Pr.CIT in impugned order. In paper book filed before us assessee has placed notices

issued by Ld.AO dated 4/10/2017 placed at page 68-69 that categorically calls for details pertaining to M/s PS IT infrastructure.

10.2 Ld. AO has not enquired/verified any other issues from details, even assuming that documents/evidences were filed by assessee as has been submitted by Ld.AR. To that extent the assessment order passed by Ld. AO dated 29/12/2017 is erroneous and prejudicial to the interest of revenue. Also that Ld.AR could not file before us any evidence in form of acknowledgment to prove that any details relating to issues alleged by Ld.Pr.CIT were filed before Ld.AO.

10.3. Admittedly, assessee has settled claim of capital gains arising out of penny stock viz., M/s. PS IT Infrastructure and Services Ltd in VSVS 2020. We are therefore of opinion that Ld. AO should not consider capital gains arising out of penny stock viz., M/s. PS IT Infrastructure and Services Ltd., while passing order giving effect to order under section 263. Ld.AO should restrict his enquiries in respect of following issues namely;

*“2. More particularly, the Assessing Officer has failed to make any inquiry regarding the claim of exempted Long Term Capital Gain on account of sale of shares of Manjushree Technopack Ltd. Amounting to Rs.24,82,05,2711-.*

*3. There is addition to Deposits & Advances of Rs.9,35,72,0001-. In this also, the Assessing Officer has not made any inquiry. Further, you have paid interest on such deposits and advances, but have not charged interest on advances given to family members. This aspect has been totally ignored by the Assessing Officer during the assessment proceedings.*

*4. The Assessing Officer has not made any inquiry into the sources of investments of Rs.7,86,78,1811- in Mutual Funds / Bonds and has also not inquired into taxability of Capital Gain of Rs.28,05, 14,905/- on account of such investments.”*

10.4.Ld.AO is directed to pass a reasoned order after considering evidences/documents filed by assessee. Needless to say that proper opportunity of being heard should be granted to assessee in accordance with law.

**Accordingly grounds raised by assessee stands allowed for statistical purposes.**

**In the result appeal filed by assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 8<sup>th</sup> Sept, 2020.

Sd/-

Sd/-

**(CHANDRA POOJARI)**  
**Accountant Member**

**(BEENA PILLAI)**  
**Judicial Member**

Bangalore,  
Dated, the 8<sup>th</sup> Sept, 2020.

/Vms/

**Copy to:**

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

By order

Assistant Registrar,  
Income-Tax Appellate Tribunal.  
Bangalore.

		<b>Date</b>	<b>Initial</b>	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-09-2020		Sr.PS
3.	Draft proposed & placed before the second member	-09-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-09-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-09-2020		Sr.PS/PS
6.	Kept for pronouncement on	-09-2020		Sr.PS
7.	Date of uploading the order on Website	-09-2020		Sr.PS
8.	If not uploaded, furnish the reason	-09-2020		Sr.PS
9.	File sent to the Bench Clerk	-09-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS