

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए" चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DIVISION BENCH, "A", CHANDIGARH**

**श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य**  
**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND**  
**Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**आयकर अपीलसं./ITA No.878/CHD/2019**

निर्धारणवर्ष / Assessment Year : 2009 - 10

Shri Bikramjeet Singh, SCO 33, Sector 20-D, Chandigarh	बनाम	The PCIT-2, Chandigarh
स्थायीलेखासं./PAN NO: AEEPS9345E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**Hearing through video Conferencing**

निर्धारितीकीओरसे/Assessee by : ShriAjay Kumar Jain, CA  
राजस्वकीओरसे/ Revenue by : Smt. C Chandrakanta, CIT

सुनवाईकीतारीख/Date of Hearing : 15.09.2020  
उदघोषणाकीतारीख/Date of Pronouncement : 28 .10.2020

**आदेश/Order**

**Per Annapurna Gupta, AM:**

The present appeal has been preferred by the assessee against the order dated 31.3.2019 of the Pr. Commissioner of Income Tax -2, Chandigarh [hereinafter referred to as 'PCIT'] passed u/s 263 of the Income Tax Act, 1961 (in short referred to as 'Act') exercising her revision jurisdiction.

2. Briefly stated, the assessee is a trader in shares. For the impugned year, reassessment proceedings u/s 147 of the Act were initiated by the Assessing Officer (AO) on the assessee on the basis of information in his possession

from Asstt. DIT (Investigation) Unit 1(3). Ahmedabad, that the assessee had availed contrived losses in share trading by resorting to Client Code Modification, to the tune of Rs.2,54,500/-, which had resulted in reduction of assessee's income to the said extent. In the assessment order ultimately passed by the Assessing Officer, no addition was made on this account. The Ld. PCIT found the order prima facie erroneous and prejudicial to the interest of the Revenue since, as per her, even though the quantum analysis clearly showed manipulation of profits by the assessee, yet the AO made no addition. Accordingly exercising her revisionary powers u/s 263 of the Act, show cause notice was issued to the assessee and thereafter, after considering the reply of the assessee, the Ld. Pr.CIT held the order passed by the AO u/s 147 of the Act to be erroneous so as to cause prejudice to Revenue and accordingly cancelled the assessment, directing fresh assessment on the issue.

3. The assessee has now come up in appeal before us raising the following grounds challenging the order of the Ld. PCIT.

1. *That the Ld. Pr. Commissioner of Income Tax-2, Chandigarh has wrongly passed order under section 263 of Income Tax Act without jurisdiction over assessing officer who framed the assessment u/s 143(3) r.w.s. 147 of Income Tax Act.*

2. *That the assessment order having been passed by the Assessing Officer after making due enquiry & due application of mind and taking into consideration the various replies, material on record and books of account, the action restored to by the Pr. CIT-2 Chandigarh for imposing her opinion is unwarranted and uncalled for.*

3. *That order of Ld. Principal Commissioner of Income Tax, Chandigarh which warrants initiation of proceedings under Section 263 of the Act was based suspicion & conjecture & without any material evidence on records for reduction of income to the tune of Rs 254500 through process of client code modification without appreciating the fact that the client medication code was done on the same day in order to correct the punching error & which is allowed by the SEBI the regulator of Stock exchanges & also failed to appreciate the quantum of client modification in comparison to quantum of transactions carried by appellant*

4. *That the Ld. CIT has wrongly held that the profit of appellant was much more than the declared in ITR*

5. That the Assessee craves for permission to add, amend, alter or withdraw any grounds of appeal with approval of the hon'ble bench.

4. During the course of hearing before us, the primary contention raised by the Ld. Counsel for the assessee were vis a vis ground Nos. 2 to 4 raised before us. Briefly put the Ld. counsel has challenged the order of the Ld. PCIT on the following counts:-

i) That the exercise of powers by the PCIT u/s 263 of the Act was on identical grounds as on which the Assessing Officer had exercised powers u/s 147 of the Act , therefore how could the order of the AO be held erroneous.

Our attention in this regard was drawn to the reasons recorded by the AO for reopening the case u/s 147 of the Act placed at Paper Book page No.29 and the show cause notice issued by the Ld. Pr.CIT u/s 263 of the Act dated 19-03-2019 placed at Paper Book page no.68-69

ii) That the Assessing Officer had passed order making no addition after making due inquiry & due application of mind, taking into consideration the various replies filed by the assessee ,material on record and books of accounts. Our attention was drawn to documents at Sl. No. 3 to 6 of Paper book which are as under:

Sl. No.	Particulars	Page No.
3.	Copy of Show cause notice dated 09/12/2016 issued by Asstt. Commissioner of Income Tax, Circle 3(1), Chandigarh	30-40
4.	Reply dated 21/12/2016 issued to show cause notice dated 09/12/2016	41-46
5.	Copy of letter dated 27/10/2016 for calling of information given by ACIT, Circle 3(1), Chandigarh to Mansukh Securities & Finance Limited, Chandigarh	47-47
6.	Copy of reply dated 03/11/2016 by Mansukh Securities & Finance Limited to letter dated 27/10/2016 for calling of information given by ACIT, Circle 3(1), Chandigarh.	48-64

That Ld. PCIT by exercising her jurisdiction u/s 263 on the very same issue was trying to impose her view for which purpose the said powers u/s 263 could not be exercised.

iii) That in any case, even on merits, the issue did not call for any addition since the Client Code Modification was an inadvertent punching error which had occurred in few cases out of the innumerable transactions undertaken by the assessee and the error was within the permissible normal

*range of punching errors. Our attention was drawn to the reply filed before the Ld. Pr.CIT placed at P.B page no .70-92 in this regard.*

5. The Ld. DR on the other hand, has relied on the order of the Ld. PCIT.

6. We have heard the parties. We have also carefully gone through the order of the Ld. PCIT and the various documents placed before us in the form of paper book. On going through all the above we find that the Ld. Pr.CIT has exercised the extraordinary powers of revision of order passed by AO, u/s 263 of the Act, in an utmost arbitrary manner, without observing the principles of natural justice and without due application of mind on the facts and evidences before her. The order, therefore, deserves to be quashed. The reason for arriving at the aforestated findings is discussed hereunder.

6.1 As per the findings of the Ld. Pr.CIT, the order of the AO was erroneous since it had been passed without inquiring on the issue in consideration before him in the proceedings u/s 147 of the Act , of the assessee having availed contrived losses by resorting to Client Code Modification(CCM). That, despite specific information in his possession regarding details of transaction where Client Code Modification (CCM) had been resorted and quantitative analysis showing that they were not punching errors alone, the AO had accepted the generic reply of the assessee and not cared to enquire as to under what circumstances such huge number of edits were required to be done in the client codes. That the AO even failed to examine the reply received in response to inquiry conducted from Mansukh Securities & Finance Limited, the brokers of the assessee, which revealed much higher net profit earned by the assessee during the year as opposed to that returned by him. The Ld.Pr CIT's findings to this effect at para 3.2 of her order, while dealing with the contention of the assessee before her that complete enquiries had been made by AO ,are as under:

### 3.2 Regarding Contention-(3)

The AO had made complete inquiries and did not accept the reply of the assessee on face value alone but completed the assessment after receipt of information from the broker, filing of confirmations from the parties and discussion with the assessee after which he did not find any adverse information.

Neither reply of the assessee on assessment folder ( a generic letter in 4 paras ie Taxpayers reply to showcase is placed at Annexure-2 ) nor the one filed during 263 proceedings has touched upon the incriminating evidence confronted by AO vide showcase dated 9-12-2016 nor has the taxpayer discharged its onus in response to this office show cause letter no 6244 dated 19-03-2019 to show cause why the assessment framed vide order dated 29-12-2016 should not be cancelled. Rather the assessee has simply offered a generic explanation which is an articulate corroboration of the inference that the assessee has nothing to offer in terms of an explanation. As the assessee has brought down his taxable income by shifting out profits and shifting in the losses, the onus lay clearly on the assessee to justify the same as the department had already confronted the incriminating evidence and the order had been passed by AO at returned income without making inquiries or verification which should have been made.

The assessee cannot merely shrug away from its responsibility to explain the clear cut data which shows that the profits of the assessee were shifted out. In support of this proposition relating to the responsibility of the assessee, an extract from the decision of Hon'ble ITAT (Mumbai) in the case of Ashok Goyal (HUF) Vs ACIT in Income Tax 4172/Mum-2012 is reproduced hereunder:

"Regarding Client Code Modification (in short „CCM") related allegations of the AO, we find that the NSE has a definite policy in this regard We find the AO made enquiries with the NSE, who replied to the AO vide the letter dated 3.11.2010. The same is extracted at para 4.1 of the Assessment order. On perusal of the same, we find that the language used in the letter varies with the one used and narrated in the actual policy adopted by the NSE on this CCM. As per the policy, the modification if any is not permitted across the board and the same is allowed with restrictions. Only the following types of modifications are permitted by NSE namely, i) similarity of names and code numbers - non repetitive ones and (ii) family codes. Modifications are not permitted as a rule but only as exception to the rule. Therefore, the assessee cannot simply distance himself from this major allegation by stating that the Client Code Modification is the internal matter of the Broker and assessee has not control. The fact that loss is transferred to Client No 31 is to the benefit of the assessee, there is some amount of responsibility on his part to do in the interest of the justice. Assessee being the beneficiary of the impugned loss and the claimer of the deduction by way of set off against the other income, or the Broker, who is party to such generation of loss, needs to demonstrate on what basis the client Codes No.SJ17 and M032 are similar to that of the assessee. Are the names are similar? Are these three clients are part of the assessee's family? How the SJ17 or M032 are akin to MO 31? These are the logical questions which are required to be answered by the claimer of the deduction or generator of the impugned losses."

The assessee did not care to discharge this onus and despite the taxpayer having failed to discharge this onus the AO passed an order without making inquiries or verification which should have been made and the said order is erroneous insofar as it is prejudicial to Revenue.

The AO did indeed accept the reply of taxpayer on face value and disregarded the evidence on record. It was incumbent upon the AO to have made enquiries or verification He neither examined the books or final accounts even though he had called for the same, in fact audited accounts are not placed on the assessment folder and while the computation- mentions profit from Radiant Investments and Excel Trading to be as per Profit and Loss Account but the said Profit and loss account is nowhere on the assessment record or indeed even filed in 263 proceedings.

Not only has the taxpayer failed to discharge its responsibility to explain the clear cut data but there is nothing on record to show how the AO accepted the generic reply of the assessee particularly when the Client Code Modification clearly indicated by the number of edits that these were not genuine errors. As per guidance in the ruling mentioned supra above in Para 8 the assessee should have been asked by the AO to demonstrate

- on what basis the client code 'CE' of the assessee was similar to the codes of the modified clients.
- none of the documents placed on the file indicate how he accepted the explanation of the assessee in the fact of contrary evidence provided to him in the data shared by the Investigation Wing.
- The assessee in its reply filed before A.O. in two pages placed at Annexure-2 has provided only a generic reply and the A.O. without making proper enquiry has accepted the same.
- Even in 263 proceedings before the undersigned dated 25-03-2019, reproduced supra taxpayer has stated that CCM was carried out as a correction of inadvertent errors only and not for any shifting of profit and that these corrections are negligible in numbers and insignificant in amount involved as compared to the crores of transactions carried out by the company during the year under consideration and that as per Commodity Exchange, if client code modification is upto 1% of the total orders, there is no penalty. It is seen that even though no specific reply on the issue was filed by the assessee, in a case where the issue was not whether CCM as per extant regulations was allowed or not, but if this facility of CCM had been used for correcting genuine punching errors or had been misused for tax evasion purposes.
- AO has failed to make the relevant enquiries or even examine the information received in response to his 133(6) notices. The assessee is doing business of trading in shares in several capacities ie individual capacity, also as Proprietor of Radiant Investments and as proprietor of Excel Trading. Although the turnover of the Taxpayer is Rs. 2005383473/- taxable income is only Rs. 6,37,507/- (return attached as Annexure-3) computation furnished by the taxpayers counsel with letter dated 21.12.2016 (attached as Annexure-4) and the Client Code Modifications (CCM) of transactions carried out are of an amount of Rs 2,54,500.
- The AO conducted an enquiries from Mansukh Securities and Finance Limited and it will be seen that the reply of Mansukh Securities and Finance Limited (Placed at Annexure-5) proves details in the case of Bikramjit Singh as Proprietor

Radiant Investments and does not provide detail of actual code no and transactions made as proprietor of Excel Investments.

- The AO failed to even examine the reply received in response to 133(6) enquiry from Mansukh Securities and Finance Ltd . Information furnished by Mansukh Securities and Finance Limited shows net profit of the following order:

Client Code	Name	Net Profit/Loss	Annexure
SRI01	Radiant Investment (ILFS)	- 39280. 23	1
SRI01	Radiant Investment	1158692.40	1 to 12,13
QBS05	Bikramjeet Singh Trading	561539.75	<b>7</b>
ART01	Radiant Investment	8326291.84	4
Total		10046523.99- 39280.23	

Perusal of the above table will show that income has been accepted at returned income of 637507 by AO without even examining the P and L account underlying the declared profits for trading, books or even basic audited accounts particularly when the information collected u/s 133(6) showed that net profits as a result of trading done by the taxpayer was much more (10046523.99-39280.23 ) than reflected in its Income tax Return at 6,37,508.

Information pertaining to above Client Codes is placed on the assessment folder, however the Client Codes mentioned in the covering letter are STFRI01, SRI01, STFBS05 which do not tally with information supplied being SR101, QBS05, or that at annexure to computation being SR101, QR101, QB505. Income being accepted at returned underassessed without even examining even basic audited accounts particularly when the information collected u/s 133(6) showed that net profits as a result of trading done by the taxpayer was much more than reflected in its Income tax Return. "

6.2 Based on these findings ,she had concluded that the order of the AO was erroneous , at page 14 of her order as under:

The facts discussed supra when placed in the perspective of the above jurisprudence and provisions of section 263, inter-alia including Explanation 2(a) make it evident that the queries raised during revision proceeding u/s 263 of the IT. Act, 1961 remain unverified and that the order was passed by AO without making enquiries or verification which should have been made and has resulted in a claim being allowed without enquiring into it. Perusal of the above table will show that income has been accepted at returned income of 637507 by AO without even examining the P and L account underlying the declared profits for trading, books or even basic audited accounts particularly when the information collected u/s 133(6) showed that net profits as a result of trading done by the taxpayer was much more (10046523.99-39280.23 ) than reflected in its Income tax Return at 6.37 lacs.

6.3 But ,we find, that the assessee was never confronted with the aforesaid reason for the order of the AO being erroneous on account of having been passed without making inquiry on the issue involved. The show cause notice issued to the assessee in the impugned proceedings dated 19-03-2019, finds no mention of the same as is evident from a bare perusal of the notice, placed before us at P.B 68-69, the contents of which are under:

*Sub: Proceedings U/s 263 of the I.T. Act, 1961-Assessment Year 2009-10-Reg-*

\*\*\*

*Please refer to the return of income filed by you on 30.09.2009 declaring income of Rs. 6,37,508/- and the assessment order u/s 147/143(3) passed by the Asst. Commissioner of Income Tax, Circle 3(1) [ the Assessing Officer concerned in your case] on 29.12.2016.*

1. *It is brought to my notice that during F.Y. 2008-09, relevant to A.Y. 2009-10, you have availed contrived losses to the tune of Rs. (-) 2,54,500/-, which ultimately resulted in reduction in your income for the year under consideration. The details of quantum analysis clearly shows that you had contrived to manipulate your profit into losses with loss to the revenue to the tune of Rs. 2,54,500/-. However, assessment u/s 143(3) r.w.s 147 of the Income Act, 1961 was completed without making any addition.*

2. *In view of the facts stated above, it appears that the assessment framed u/s 147/143(3) of the Income Tax Act on 29.12.2016 for A.Y. 2009-10 is erroneous in so far as prejudicial to the interest of the revenue in terms of erroneous in so far as prejudicial to the interest of the revenue in terms of provisions of section 263 of the Income Tax Act, 1961 including Explanation 2 inserted by the Finance Act, 2015 w.e.f 01.06.2015. You are, therefore, requested to show cause as to why assessment framed vide assessment order dated 29.12.2016 u/s 147/143(3) of the Income Tax Act, 1961 for A.Y. 2009-10 should not be cancelled by invoking the provisions of section 263 of the Income Tax Act, 1961.*

3. *Your case is fixed for hearing before the undersigned on 22.03.2019 at 11.00 A.M. In case of non-compliance, it would be presumed that you have nothing to say in this regard and order u/s 263 would be passed on merits on the basis of material available on record.*

6.4 As is evident from the above, the show cause notice mentions that it was to the notice of the Ld. Pr. CIT the assessee had availed contrived losses, however despite specific information to this effect no addition was made by the A.O. This, by no means can be read as the A.O. having made no inquiry on the issue, for which reason the Ld. Pr. CIT has held the order passed by the A.O. to be erroneous.



6.5 Further the Ld. Pr.CIT ,has based her conclusion of the AO not having conducted enquiry ,by pointing out, besides other things, that the AO had not looked into the statements of the transactions conducted by the assessee submitted by the brokers during assessment proceedings, which revealed clearly that the assessee had earned huge profits but had actually returned to tax less profits. But the assessee, we find, was never put to notice regarding this. The show cause notice finds no mention of the same. Clearly ,the assessee, was not confronted by the Ld. Pr.CIT with the reason for finding the AO's order erroneous, thus denying him fair opportunity of rebuttal. The entire exercise of the Ld. Pr.CIT of revision of AO's order u/s 263 of the Act, is, therefore ,we hold ,in gross violation of the principles of natural justice .

6.6 Moreover the reason mentioned in the show cause notice for finding the AO's order erroneous, we find is illogical and vague and does not justify the assumption of the extraordinary powers to initiate proceedings for revision of the AO's order u/s 263 of the Act. The AO not making addition despite having specific information, cannot ,by any stretch of logic, make the order passed by him erroneous. Information, howsoever specific, has to be processed as per law; confronted to the assessee, properly investigated and only thereafter after due application of mind a finding arrived thereon. Information alone cannot be the basis of making addition. Further simply mentioning Explanation (2) to section 263 in the show cause notice, which outlines instances where the order of the Assessing Officer is to be deemed to be erroneous, does not meet the requirement in law of confronting the assessee with the error in the order of the AO .

Also , we find, that the findings of the Ld. PCIT that the documents on record with the AO showed that the assessee had actually earned huge profits of crores but had returned to tax profits of only 6 lacs , is not based on proper and correct appreciation of facts before her. The Ld. PCIT's version is based on the net profit figures extracted by her from the details of the assessee's transactions in various accounts ,submitted by his broker, Mansukh Securities

and Finance Ltd., showing net profits as under, as reproduced at page 9 of the order:-

<i>Client</i>	<i>Name</i>	<i>Net Profit / Loss</i>	<i>Annexure</i>
SR101	Radiant Investment (ILFS)	-39280.23	
SR101	Radiant Investment	1158692.40	1 to 12, 13
QBS05	Bikaramjeet Singh Trading	561539.75	1
ART01	Radiant Investment	8326291.84	4
Total		10046523.99- 39280.23	

7. On going through the statements of the broker relating to the said client codes, filed before us at P.B 48-64 , we find that the profit on account of Client Code Modification in account code SR 101of Radiant Investment ,a proprietorship concern of the assessee carrying out share trading transaction, showing Net profit of 1158692.40 from annexure 1 to 12, 13 in the table above, actually has been taken from the mark to market ('mtm') adjustments on trading in Future and Options, being the total of Future Mtm 77,88,893 + option Mtm 37,98,019. Firstly, we find, that the figure has been incorrectly taken as Rs. 11,58,692.40 instead of Rs.1,15,86,912.40. Further the 'mtm' markings are not the profits earned by the assessee on account of trading in futures and options, but represent the daily settlement of the unsold trades at their prevailing market price. Therefore, the Ld. PCIT we find has neither picked up the correct figures from the statement of accounts submitted by the brokers, nor understood what the figures represented and accordingly arrived at an incorrect finding that the assessee had not reflected true profits, running in crores, earned on trading in futures and options.

7.1 The vague and illogical show cause notice, the incorrect interpretation of documents by the Ld. Pr.CIT all show the arbitrary manner in which this extraordinary power to revise the order of the AO has been exercised by the Ld. Pr.CIT.

7.2 Further ,we find, that the issue on which Ld. PCIT has exercised her powers u/s 263 as per the show cause notice, is too trivial, involving income of Rs. 2.54 lacs only, to justify exercise of the extraordinary power of revision u/s 263 of the Act, which has grave and serious consequences, to the prejudice of assesses, of relooking into an already concluded assessment.

8. In view of the above, since we have found the impugned order of the Ld. Pr.CIT u/s 263 of the Act, to have been passed in an arbitrary manner, without confronting the assessee with the error in the order of the AO ,and based on incorrect appreciation of facts, we have no hesitation in setting aside the order of the Ld. PCIT passed u/s 263 of the Act.

9. The appeal of the assessee is accordingly allowed.

Order pronounced on 28/10/2020.

Sd/-

(संजय गर्ग)

(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

**Dated : 28/10/2020**

“आर.के.”/ AG

Sd/-

(अन्नपूर्णा गुप्ता)

(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File