

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "B", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1688/MUM/2020  
Assessment Year: 2015-16**

Mr. Navinchandra B. Shah HUF, 601/602 Adarsh Harmony, Off Marve Road, Adarsh Vihar Complex, Malad (W), Mumbai - 400064 PAN: AADHN9711N	<b>Vs.</b>	Pr. CIT – 30, Kautilya Bhavan, 5 <sup>th</sup> Flr, R. No. 540, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (E) - 400051
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Mayur Shah (AR)  
Revenue by : Shri Rahul Raman (CIT DR)

Date of Hearing: 06/05/2021  
Date of Pronouncement: 02/06/2021

**ORDER**

**PER SAKTIJIT DEY, JM**

This is an appeal by the assessee against the order dated 05.03.2020 passed under section 263 of the Income Tax Act, 1961 by the learned Principal Commissioner of Income Tax (PCIT) – 30, Mumbai for the assessment year 2015-16.

2. There is a delay of 70 days in filing the present appeal. The assessee has filed letter dated 29.04.2021 supported by an affidavit seeking condonation of delay. After perusing the averments made in the affidavit and considering the submissions of the learned Authorized Representative of the assessee, we are satisfied that the delay in filing the appeal was due to reasonable cause. Accordingly, we condone the delay and admit the appeal for adjudication on merits.

3. Briefly the facts are, the assessee is a Hindu Undivided Family. For the assessment year under dispute the assessee filed its return of income on 20.07.2015 declaring total income of Rs. 13,68,270/-. Assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 29.11.2017. After completion of the assessment, learned PCIT, in exercise of power under section 263 of the Act called for the assessment record and after examining it was of the view that the assessment order passed by the Assessing Officer (AO) is erroneous and prejudicial to the interest of the revenue. The reason for holding such view was due to the fact the assessee during the year had received an amount of Rs. 34,30,000/- from sale of shares. Whereas, after reducing the purchase value of shares of Rs. 1,03,185/- has offered net long term capital gain of Rs. 33,26,815/-. According to learned PCIT, since, the transaction relating to purchases and sale of shares is of penny stock, hence bogus, the entire sale proceed has to be brought to tax without allowing deduction towards purchases cost. Further, he held, since the assessee had offered long term capital gain for an amount of Rs. 33,26,815/- by making a declaration under Income Disclosure Scheme (IDS), 2016, the AO should have added back the purchase cost of Rs. 1,03,185/- claimed as deduction by the assessee. Accordingly, holding the assessment order passed to be erroneous and prejudicial to the interest of the revenue, learned PCIT set it aside to the AO with a direction to frame the assessment de-novo, keeping in view his direction.

4. The learned Authorised Representative of the assessee submitted, in course of assessment proceedings, the AO has specifically enquired into share transactions of GCM Securities Ltd., the subject matter of dispute in the present proceeding. He submitted, in response to various queries raised by the AO the assessee has furnished all supporting evidences in respect of the aforesaid share transaction. Further, he submitted, the assessee has offered the long-term capital gain arising out of sale of shares of GCM Securities Ltd. under IDS, 2016 and assessee's declaration under the said scheme has also

been accepted. Thus, he submitted, when the AO has made thorough enquiry with regard to the said transaction and has passed the assessment order with proper application of mind, the assessment order cannot be held to be either erroneous or prejudicial to the interest of the revenue so as to invoke the powers under section 263 of the Act. Further, he submitted, while deciding identical nature of dispute arising out of similar share transaction in assessee's daughter in law's case, the Tribunal has quashed the order passed under section 263 of the Act. In this context, he drew the attention of the Bench to order dated 14.10.2020 passed in ITA No. 3001/Mum/2019 in case of Mrs. Manisha Ajay Shah Vs. PCIT. Thus, he submitted, the issue is squarely covered by the aforesaid decision of the Tribunal.

5. Shri Rahul Raman, the learned Departmental Representative, fairly submitted that the issue is covered by the decision of the Tribunal cited before the Bench.

6. We have considered rival submissions and perused the material on record. As far as the factual aspect of the issue is concerned, there is no dispute that during the year under consideration the assessee had received an amount of Rs. 34,30,000/- on sale of shares of GCM Securities Ltd. The assessee computed the net long term capital gain of Rs. 33,26,815/- after reducing the cost of acquisition Rs. 1,03,185/-. Though, initially the assessee claimed the net long term capital gain to be exempt under section 10 (38) of the Act, however, subsequently he offered the aforesaid amount by making a declaration under IDS, 2016, which was accepted by the Department. It is also evident, in course of assessment proceedings the AO, from time to time, has raised a number of queries regarding purchase and sale of shares of GCM Securities Ltd. In response to queries raised, the assessee has also furnished all supporting evidences to substantiate its claim that the share transaction is genuine. In fact, the assessee has furnished even de-mat account as well as bank statements evidencing the share transaction. Even, otherwise also the assessee had offered the net long term capital gain under IDS, 2016.

7. As could be seen, while exercising power under section 263 of the Act, learned PCIT has held the assessment order to be erroneous and prejudicial to the interest of the revenue only because the cost of acquisition of Rs. 1,03,185/- was not added to the income of the assessee. When the AO has conducted thorough enquiry and passed the assessment order after proper application of mind after examining all the evidences brought on record, the assessment order cannot be held to be erroneous. Therefore, one of the preconditions of section 263 is not satisfied. It is further relevant to observe, while considering identical nature of dispute in case of Mrs. Manisha Ajay Shah (supra), the coordinate Bench has quashed the order passed under section 263 of the Act holding as under:

*“4. We have heard the submissions made by ld. Departmental Representative and have examined the material available on record. The PCIT has invoked revisional jurisdiction under section 263 of the Act on the ground that the Assessing Officer has failed to examine the transaction of purchase and sale of shares. Another reason for invoking revisional jurisdiction by the PCIT is, that the assessee in IDS 2016 has only declared long term capital gain on penny stock, whereas, the assessee should have declared gross sale receipt of the shares. The immunity is granted to the assessee to the extent declaration is made under IDS 2016 and not against the entire transaction. The PCIT invoked revisional jurisdiction to tax the difference between gross sale price of the shares Rs.34,30,000/- and Long Term Capital Gains declared by the assessee Rs.32,86,815/-. In other words, the PCIT seeks to tax even the purchase cost of the shares i.e. Rs.1,43,185/- stating it to be a bogus purchase transaction.*

*5. After examining the documents on record we do not concur with the view of the PCIT. The assessee has demonstrated from the bank statement that the amount has been paid for purchase of shares of GCM Securities Ltd. through cheque. This is further corroborated by share application form of GCM Securities at page 22 of the Paper Book and transaction-cum-holding statement in the case of assessee issued by Stock Holding Corporation of India Ltd. at page 19 of the Paper Book. The documents furnished by the assessee clearly indicates that the shares were indeed purchased by the assessee through banking*

*transactions. It is not the case of the Revenue that the amount paid by the assessee for purchase of shares has travelled back to the assessee in the form of cash or any other manner.*

*6. The provisions of section 263 of the Act can be invoked if, the twin conditions mandated under the section are satisfied, i.e: (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If any one of these two conditions is absent, the Commissioner of Income Tax cannot take recourse to section 263 of the Act.*

*7. In the present case, we find that the Assessing Officer has issued a questionnaire wherein specific information was sought on transaction of equity shares and working of short term capital gain/long term capital gain. The assessee furnished a detailed reply to the notice issued under section 142(1) of the Act, wherein the assessee while replying to the query on transaction of shares, informed that a declaration under IDS 2016 has been made in respect of long term capital gain arising on sale of shares to GCM Securities Ltd. Ostensibly, the Assessing Officer after examining the documents accepted the same and made no addition. Merely for the reason that the Assessing Officer has taken a plausible view after examining the records that is not acceptable to the PCIT, would not make the assessment order erroneous. In the present case twin conditions set out in section 263 are not satisfied and hence, the PCIT wrongly assumed revisional jurisdiction. 8. In view of our above finding, we find merit in the appeal of the assessee. The impugned order is quashed and the appeal of assessee is allowed.”*

5. Material facts being identical, the aforesaid decision of the co-ordinate Bench would squarely apply to assessee's case as well. In view of the aforesaid, respectfully following the decision of the coordinate Bench, as referred to above, we quash the impugned order passed under section 263 of the Act. As a natural corollary, the assessment order passed under section 143(3) of the Act is restored. Grounds are allowed.

In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 2<sup>nd</sup> June, 2021.

Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 02/06/2021

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai