

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAIPUR” BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A. Nos.51 & 52/RPR/2021
(निर्धारण वर्ष / Assessment Year : 2012-13 & 2013-14)**

Satya Power and Ispat Ltd., First Floor, V R Plaza, Link Road, Bilaspur-495001 (CG)	बनाम/ Vs.	Deputy Commissioner of Income-Tax, Central Circle-2, Raipur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHCS 4472 N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से /Appellant by :	Shri Amit Maloo Jain, CA	
प्रत्यर्थी की ओर से/Respondent by :	Shri P.K. Mishra, CIT-DR	
सुनवाई की तारीख / Date of Hearing	30.07.2021	
घोषणा की तारीख/Date of Pronouncement	29.09.2021	

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the assessee against the revisional orders of the Principal Commissioner of Income Tax (Central) (“PCIT” in short), Bhopal of even dated 30.03.2021 passed under Section 263 of the Income Tax Act, 1961 (“the Act” in short) whereby the assessment orders passed by the Assessing Officer (“AO” in short) dated 28.12.2018 under Section 153A r.w.s. 143(3) of the Act concerning Assessment Years (“AY” in short) 2012-13 & 2013-14 were sought to be set aside for reframing the assessment in terms of supervisory jurisdiction.

2. As per its grounds of appeal, the assessee has challenged the revisional action of the PCIT whereby the AO was directed to pass the assessment order *de novo* after making inquiries on the points set out in the notice which is stated to have already been examined

and considered during the original assessment proceedings concerning AYs 2012-13 & 2013-14. The assessee has challenged the assumption of jurisdiction by the PCIT under Section 263 of the Act essentially on the ground that the Assessment Order under revision is neither erroneous nor prejudicial to the interest of the revenue.

3. The relevant facts, in brief, are that the return of income filed by the assessee for Assessment Years 2012-13 was subjected to scrutiny assessment under Section 143(3) of the Act vide order dated 24.02.2015. Similarly, the return of income filed for Assessment Year 2013-14 was processed under Section 143(1) of the Act and stood concluded on 30.09.2014 in the absence of issuance of notice under Section 143(2) of the Act. Subsequently, after both the returns stood concluded, a search was conducted in the premises of the assessee on 08.02.2017. Assessment was consequently carried out under Section 153A r.w.s. 143(3) of the Act vide order dated 28.12.2018 for both the assessment years in question.

4. Subsequently, the revisional authority, i.e. PCIT, called for the assessment records and opined that the assessment so passed under Section 153A of the Act suffers from the vice of being erroneous insofar as prejudicial to the interest of the revenue. Consequently, show-cause notice dated 10.03.2021 was issued under Section 263 of the Act for both the assessment years. In terms of the show-cause notice, it was alleged that the Assessing Officer has failed to make inquiries and verifications that should have been made to ascertain the legitimacy of the Long Term Capital Gain (LTCCG) claimed as exempt under Section 10(38) of the Act in the wake of the fact that such LTCCG was earned by purchase and sale of

shares of Regency Trust Ltd. which is branded as penny stock company. The capital gains arose on such transactions of Regency Trust Ltd. amounts to Rs.49,35,753/- and Rs.2,55,650/- for Assessment Years 2012-13 and 2013-14 respectively. In response, the assessee explained that specific queries were raised in the course of search assessment in this regard and after verification of the relevant details, bills, bank payments etc., the transaction giving rise to the LTCG was accepted as bonafide. It was thus contended before the PCIT that provisions of Section 263 is not attracted in the factual matrix. The PCIT, however, did not agree with the contentions of the assessee towards legitimacy of the LTCG in question and held that the assessments for Assessment Years 2012-13 and 2013-14 in question are erroneous insofar as prejudicial to the interest of the revenue. He consequently set aside the assessments carried out under Section 153A with reference to the above said issue for proper verification. Aggrieved, the assessee preferred an appeal before the Tribunal.

5. When the matter was called for hearing, the learned Counsel for the assessee, at the outset, adverted our attention to the additional ground taken by the assessee and claimed that jurisdiction exercised by the revisional authority with reference to impugned order under Section 153A in itself is time barred under Section 263(2) of the Act.

6. The issue being fundamental and goes to the root of the matter, the additional ground so raised is admitted for adjudication.

7. The learned Counsel, in support of the additional ground, pointed out that the assessments in the instance case were earlier stood concluded either under Section 143(1) or under Section 143(3)

of the Act prior to search. Consequently, in the search assessment under Section 153A, it was incumbent upon the Assessing Officer to divulge the details of incriminating material connected to the issues involving additions/disallowances. It is an admitted position that no incriminating documents were found in the course of search in relation to purchase and sale transactions of Regency Trust Ltd. The contract notes, the mode of payments etc. were already recorded in the books and duly assessed at the previous occasion. Hence, the impugned issue towards legitimacy of the LTCG arising from purchase and sale of certain shares in a concluded assessment is prohibited in the wake of judicial precedents. Thus, where the Assessing Officer himself was not authorized in law to make additions/disallowances on the score, the PCIT could not have directed further inquiries on the basis of revisional powers conferred under Section 263 of the Act. The only recourse available to the PCIT in the instant case was to seek revision with reference to the original assessment already concluded. It was thereafter pointed out that, when seen with reference to the original assessment, the time limit available under Section 263(2) of the Act stands already expired at the time of issue of notice. The issuance of notice under Section 263(1) is thus time barred and the entire subsequent proceedings are *non est* in law. The revisional order passed in consequence of such *non est* notice is thus bad in law. The learned Counsel for the assessee made reference to the decision of the Hon'ble Supreme Court in the case of CIT vs. Alagendran Finance Ltd (2007) 293 ITR 0001 and the decisions of Hon'ble High Court in the case of CWT Vs. A.K. Thanga Pillai (2001) 252 ITR 260 (Mad); CIT Vs. Kanubhai Engineers (P.) Ltd. (2000) 241 ITR 665 (Cal) for the proposition that an issue which is not the subject matter of the assessment order under revision could not be revised

under Section 263 of the Act and the period of limitation provided under Section 263(2) of the Act would begin to run from the date of the order of the original assessment and not from the subsequent order of reassessment or search assessment.

8. On merits, it was contended that a specific query was raised for sale of shares and the assessee has given reply corroborated with documentary evidences in this regard; and, therefore, the action of the Assessing Officer is after due application of mind followed by approval thereof by the JCIT under Section 153D of the Act. The learned Counsel thus submitted that the notice issued under Section 263 of the Act does not stand the test of legitimacy both on account of being barred by limitation and also on merits. He thus urged for cancellation of revisional order passed in consequence of a *non est* show-cause notice.

9. The learned Departmental Representative, on the other hand, relied upon the contents of the revisional order under challenge.

10. We have carefully considered the rival submissions. We straight away notice the facts narrated above and find that in the absence of incriminating documents shown to have been found in the course of search, the Assessing Officer was precluded from making any additions/disallowances on the issue in the search assessment under Section 153A of the Act where both the assessments in question stood concluded and remained unabated at the time of search. The position of law on this point is well settled and does not require elaboration. Thus, we find merit in the plea of the assessee that limitation period in such case will have to be reckoned from the original assessment and not with reference to the subsequent post search assessment which is sought to be revised.

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When seen with reference to the original assessments for the respective assessment years, apparently the limitation period for issuance of notice prescribed under Section 263(2) of the Act stood expired. The show-cause notice issued under Section 263(1) of the Act is thus, at the threshold, time barred and thus *non est*. The consequential revisional order under Section 263 for both the assessment years giving directions to the Assessing Officer for revision of the impugned assessment orders passed under Section 153A of the Act thus cannot survive. The revisional orders so passed are thus quashed.

11. In the result, both the appeals of the assessee are allowed.

Pronounced on 29.09.2021 as per Rule 34(4) of the Income Tax Appellate Tribunal Rules,1963.

Sd/-

(N. K. CHOUDHRY)
JUDICIAL MEMBER

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

BT

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर / DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

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By order

Assistant Registrar
Income Tax Appellate Tribunal
Raipur Bench, Raipur