

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI  
BEFORE SHRI SHAMIM YAHYA (ACCOUNTANT MEMBER) AND  
SHRI KULDIP SINGH (JUDICIAL MEMBER)**

**ITA No. 501/MUM/2021  
(Assessment Year: 2011-12)**

ANIL M. GOYAL  
C-2601 Oberoi Garden, Thakur  
Village, Kandivali (East),  
Mumbai – 400 101

Vs. Pr. Commissioner of Income Tax,  
City-5, 515, 5<sup>th</sup> Floor,  
Aaykar Bhavan, M.K. Road,  
Mumbai 400 020

**PAN No. ABLPG4889M**

**(Assessee)**

**(Revenue)**

Assessee by : Shri Prakash Jhunjhunwala, A.R  
Revenue by : Shri Ms. Shailja Rai, D.R

Date of Hearing : 6&7/12/2021  
Date of pronouncement : 07/12/2021

**ORDER**

**PER KULDIP SINGH, J.M:**

1. Appellant Anil M. Goyal, hereinafter referred to as the assessee by filing the present appeal sought to set-aside the impugned order passed by Principal Commissioner of Income Tax (for short 'the Pr.CIT'), dated 15.03.2021 on the grounds inter alia that:

- "1. On facts and circumstances of the case and in law, Ld. Pr. CIT erred in passing the revision order u/s.263 without allowing adequate opportunity of being heard and violated the principle of natural justice since only 2 working days were allowed to furnish the reply to e-notice u/s 263 of the Act;
2. On facts and circumstances of the case and in law, Ld. Pr. CIT erred in passing the revision order u/s.263 though the re-assessment order passed u/s. 143(3) r.w.s. 147 is not erroneous and in so far is not prejudicial to interests of the revenue since Ld. AO had already made the addition of entire long term capital gain of Rs. 4,52,57,410/- which is subject matter of appeal;
3. The Ld. Pr. CIT erred seriously in revising the order u/s.263 on the basis of assumption and surmise and in absence of contrary evidence to examine the unclaimed commission allegedly paid to obtain the accommodation entries.

The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing.”

2. Briefly stated, the facts is necessary for adjudication of the controversy in hands are: assessment in this case was framed by the assessing officer at total income of Rs.459,48,030/- u/s 143 r.w.s 147 of the Income Tax Act, 1961 (for short 'Act').

3. The Id. Pr.CIT taking note of the fact that in the assessment framed u/s 143(3) r.w.s. 147 by the A.O the claim of Long Term Capital Gain ('LTCG') amounting to Rs.452,57,410/- on sale of shares of M/s Shreenath Commercial and Finance Ltd. has been added to the total income of the assessee, however no disallowance/addition on account of commission paid was made in the assessment order. Consequently, the Id. Pr.CIT invoked the provisions contained u/s 263 of the Act by way of issuance of notice dated 04.03.2021. Finding the assessee having not availed of the opportunity by putting the appearance or by filing submissions, the Id. Pr.CIT proceeded to conclude that since disallowance of commission expenses incurred for obtaining the said bogus LTCG has not been made by the A.O by making proper inquiries, the assessment order is erroneous insofar as it is prejudicial to the interest of the revenue u/s 263 of the Act and thereby set-aside the impugned order and directed the A.O to pass fresh assessment order.

4. Feeling aggrieved, the assessee has come up before the Tribunal by way the filing the present appeal challenging the impugned order passed by the Id. Pr.CIT u/s 263 of the Act.

5. We have heard the Id. Authorised Representatives of both the parties to the present appeal, perused the order passed by Id. lower revenue authorities in the light of the argument addressed and law on the issue in controversy.

6. At the very outset, it is brought to the notice of the bench by the Id. A.R for the assessee that the assessee has never been provided with an adequate opportunity of being heard by Pr.CIT before passing impugned order u/s 263 of the Act. Providing adequate opportunity of being heard to the assessee by a quasi judicial authority is a sine-qua-non for passing legally sustainable order. The impugned order by Id. Pr.CIT has failed to withstand the judicial scrutiny on account of violation of rule of natural justice, hence liable to be set-aside. Consequently, appeal filed by the assessee is allowed for statistical purpose directing the Id. Pr.CIT to pass a de novo order u/s 263 after providing an adequate opportunity of being heard to the assessee.

7. The appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 07.12.2021

Sd/-  
(Shamim Yahya)  
Accountant Member

Sd/-  
(Kuldip Singh)  
Judicial Member

Place: Mumbai

Date 07.12.2021

**आदेश की 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 DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.**