

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.564/M/2021
Assessment Year: 2015-16**

Smt. Nisha Shantaram Pokle, 42, Dattashram, 62, Sir Bhalchandra Road, Mumbai – 400 014 PAN: AEEPP8998N	Vs.	Pr. CIT-8, Room No.611, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya, A.R.
Revenue by : Shri Vinay Sinha, D.R.

Date of Hearing : 13.10.2021
Date of Pronouncement : 05.01.2022

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 24.03.2021 of the Pr. Commissioner of Income Tax) [hereinafter referred to as the PCIT] relevant to assessment year 2015-16.

2. The only issue raised in the grounds of appeal by the assessee is against the revisionary jurisdiction exercised by the Ld. PCIT under section 263 of the Act.

3. The facts in brief are that the assessment u/s 143(3) of the Act was framed vide order dated 19.12.2017 by making an addition of Rs. 5,96,25,721/- in respect of sale consideration of

shares u/s 68 of the Act and Rs. 35,77,543/- on account of commission paid for taking accommodation entries. The Ld. PCIT after examining the assessment records came to the conclusion that AO has not examined the unsold shares of 10,46,400 of M/s. Greencrast Financial Services Ltd. while the shares sold during the year of Rs. 5,96,25,721/- were duly disclosed in the return of income. Accordingly, the Ld. PCIT, exercising revisionary jurisdiction by issuing notice under section 263 of the Act dated 15.03.2021 giving a show cause to the assessee as to why the assessment framed under section 143(3) of the Act vide order dated 19.12.2017 should not be revised as the order is erroneous and prejudicial to the interest of the revenue. The show cause notice was replied by the assessee by submitting that whatever shares were sold during the year by the assessee were duly disclosed in the return of income. The assessee submitted that the long term capital gain of Rs.5,67,41,214/- was calculated on the said shares and was duly disclosed in the return of income and AO in the assessment order in para 4 to 9 at page No.2 discussed the issue in detail. The assessee submitted that the AO added a sum of Rs.5,96,25,721/- towards the bogus sales consideration on account of sale of 9,53,600 equity shares of M/s. Greencrast Financial Services Ltd. and thus the remaining unsold 10,46,400 shares were continued to be shown in the balance sheet. The Ld. PCIT, after considering the reply of the assessee, passed the revisionary order revising the assessment under section 143(3) of the Act by directing the AO to examine the issue afresh and frame the assessment accordingly.

4. The Ld. A.R. submitted before us that the jurisdiction under section 263 of the Act has been invalidly exercised by the Ld. PCIT as the issue proposed to be raked up in the notice issued under section 263 of the Act has already been discussed in detail in para 4 to 9 and an addition of Rs.5,96,25,721/- was made as undisclosed income. The Ld. A.R. submitted that the remaining unsold shares of 10,46,400 which were remaining unsold at the financial year end were duly disclosed in the balance sheet and were sold in the subsequent year. The Ld. A.R. submitted that in view of the above facts, the issue is already examined by the AO and only possible view taken in the assessment order, therefore the assessment order can not be termed as erroneous and prejudicial to the interest of the revenue and may kindly be quashed.

5. The Ld. D.R., on the other hand, relied on the order of Ld. PCIT by submitting that no prejudice to be caused to the assessee in case the assessment order is revised as the assessee is being given fresh opportunity to explain his case before the AO. Accordingly, the Ld. D.R. prayed before us that the appeal of the assessee may please be dismissed.

6. After hearing both the parties and perusing the material on record, we find that the assessee has sold 9,53,600 shares during the year for the consideration of Rs.5,96,25,721/- of M/s. Greencrast Financial Services Ltd and calculated long term capital gain accordingly which was claimed as exempt under section 10(38) of the Act. In the assessment proceedings, the AO was of the view that the shares sold by the assessee

belonged to penny stock company and thus treated the same as non genuine and bogus accommodation entry and also added the same to the income of the assessee by framing assessment under section 143(3) of the Act dated 19.12.2017. We note that unsold shares 10,46,400 were shown in the closing balance at the year end and were sold in the subsequent year. The Ld. PCIT invoked the revisionary jurisdiction on the ground that the AO has not examined and verified the remaining 10,46,400 shares. However, we find that AO during the course of assessment proceedings has examined in details all these purchase and sale of shares from para No.4 to 9 in almost more than 20 pages. We have failed to understand as to how the Ld. PCIT has invoked this jurisdiction to revise the assessment in order to verify the unsold shares. In our opinion, the issue has been examined by the AO at great length and almost the entire assessment order has been dedicated on this issue only. Under these circumstances, we are of the considered opinion that the jurisdiction invoked by the Ld. PCIT is invalid as the Ld. PCIT has failed to demonstrate as to how the order of AO is erroneous and what prejudice has been caused to the revenue when there is no sale of shares as observed by the ld PCIT. Besides the AO after examining the share transactions has taken a possible view and made addition in respect of entire sales consideration resulting from shares sold during the year and also made addition in respect of commission on accommodation entries as the entire sales consideration was treated as bogus. Under these facts and circumstances, we are inclined to hold that the revisionary jurisdiction of the Ld. PCIT is invalid and accordingly the order passed by Ld. PCIT is hereby quashed.

7. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on 05.01.2022.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 05.01.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.