

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

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

**ITA No.926/M/2021
Assessment Year: 2014-15**

Shri Vipul Modi, 66/1, Hansa Villa, Bhaudaji Cross Road, Matunga, Mumbai, Maharashtra- 400 019 PAN: AABPM 1417A	Vs.	Pr.CIT-Circle-8, Room No.611, 6 th Floor, Aayakar Bhavan, M.K. Marg, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Paresh Shaparia, A.R.
Revenue by : Shri T. Kipgein, 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 30.03.2021 of the Pr. Commissioner of Income Tax [hereinafter referred to as the PCIT] relevant to assessment year 2014-15.

2. The only common issue raised in the various grounds of appeal by the assessee is against the order of Ld. PCIT wrongly exercising jurisdiction u/s 263 of the Act holding the assessment framed under section 143(3) read with section 147 of the Act is erroneous and prejudicial to the interest of the Revenue and thereby revising the assessment by ignoring the

fact that the issue has been examined in the assessment framed under section 143(3) read with section 147 of the Act dated 28.12.2017 in great detail by the AO.

3. The facts in brief are that the assessee has filed the return of income on 25.03.2015 declaring total income of Rs.4,09,470/-. The case of the assessee was re-opened under section 147 of the Act by issuing notice dated 29.09.2016 which was duly served upon the assessee. The main reasons recorded for reopening the assessment were that the information has been received from Directorate of Investigation that an organized racket of generating bogus entries of long term capital gain in penny stocks has been unearthed as a result of investigation carried out throughout the country and the beneficiaries have also been identified and assessee is one of the beneficiaries who has claimed exemption under section 10(38) of the Act in respect of long term capital gain. A summon under section 131 of the Act dated 29.09.2016 was issued to the assessee raising a query in respect of long term capital gain on sale of shares of ICVL Chemical Ltd. and the assessee complied with the said summon by filing details vide letter dated 29.09.2016 filed in tapal on 30.09.2016 giving all the details in respect of long term capital gain resulting from scrip of ICVL Chemical Ltd. as stated above. The reasons recorded were also mentioned that information has been received from Directorate of Investigation that assessee is beneficiary of bogus long term capital gain which was claimed under section 10(38) of the Act as exempt. The notice under section 142(1) dated 06.07.2017 was issued to the assessee calling for details of long term capital gain of Rs.2,46,23,023/-

claimed as exempt under section 10(38) of the Act, details of brokers, brokers' notes and details as to sale and purchase besides the bank account, D-mat account of the assessee which were furnished vide written submissions dated 11.08.2017. Thereafter, a notice under section 142(1) of the Act dated 23.08.2017 was issued calling for the same details for the specific period which was supplied vide written submissions dated 11.09.2017 with documentary evidences. Again the notice under section 142(1) dated 03.11.2017 and 15.12.2017 were issued to the assessee calling for the same details which were replied vide written submission dated 18.12.2017 and 20.12.2017. Finally, a show cause notice was issued dated 20.12.2017 as to why the sale consideration of Rs.3,51,91,068/- including long term capital gain claimed as exempt of Rs.2,46,23,023/- should not be treated as non genuine and added to the income of the assessee under section 68 of the Act. The said show cause notice was replied vide written submission dated 26.12.2017. Finally, the assessment under section 143(3) read with section 147 of the Act was framed vide order dated 28.12.2017 accepting the returned income of the assessee. Thereafter, Ld. PCIT on examination of the assessment records came to the conclusion that assessee is beneficiary of bogus entries of long term capital gain as per the information received from Directorate of Investigation and Ld. PCIT also noted that the case of the assessee was reopened under section 147 of the Act on the ground that assessee has claimed bogus long term capital gain as exempt under section 10(38) of the Act resulting from the sale of shares of ICVL Chemical Ltd. and finally came to the conclusion that assessment framed by the AO under section

143(3) read with section 147 of the Act is erroneous and prejudicial to the interest of the Revenue as per explanation 2(a) to section 263 of the Act on the ground that AO did not conduct adequate enquiry into the matter. Accordingly, a show cause notice under section 263 of the Act dated 19.03.2021 was issued and served upon the assessee. The assessee replied to the said notice submitting therein that the revisionary jurisdiction under section 263 of the Act is not applicable to the present case as the issue qua the long term capital gain on sale of shares of ICVL Chemical Ltd. was duly examined by the AO during the assessment proceedings which culminated in the framing of assessment under section 143(3) read with section 147 of the Act vide order dated 28.12.2017. The Ld. A.R. submitted before the Ld. PCIT in reply to the show cause notice issued u/s 263 of the Act that the AO has reopened the case of the assessee for the specific reason to examine the issue of long term capital gain on sale of shares of ICVL Chemical Ltd. and thereafter during the course of assessment proceedings issued various notices under section 142(1) of the Act which were duly replied by filing all the details before the AO comprising the complete history of the purchase and sale of shares, copies D-mat account, contract notes, bank account, details of sale and purchase etc. and after taking into account all these details and written submissions of the assessee, the AO accepted the long term capital gain of the assessee in the assessment framed under section 143(3) read with section 147 of the Act. The reply of the assessee did not find favour with the Ld. PCIT and he accordingly revised the assessment vide order dated 30.03.2021 holding the assessment framed under section 143(3) read with

section 147 of the Act dated 28.12.2017 is erroneous and prejudicial to the interest of the Revenue and directed the AO to make the necessary enquiry to examine the issue again and determine the correct income accordingly.

4. The Ld. A.R. submitted before us that the Ld. PCIT has invalidly exercised the jurisdiction without fulfilling the necessary conditions as envisaged under section 263 of the Act. The Ld. A.R. submitted that the case of the assessee has been reopened on the ground that assessee is beneficiary of long term capital gain on sale of shares of ICVL Chemical Ltd. after the AO received information from Directorate of Investigation that the huge racket of bogus long term capital gain is being operated all over India in an organized manner. The Ld. A.R. submitted that during the course of re-assessment proceedings, the AO examined the issue in great length by referring to the notices issued under section 142(1) dated 06.07.2017, 23.08.2017, 03.11.2017 & 15.12.2017 and show cause notice was issued finally on 20.12.2017 calling upon the assessee as to why the same should not be treated as bogus and added u/s 68 of the Act to the income of the assessee. The assessee replied to the above notices issued u/s 142(1) and show cause notice vide written submission dated 11.08.2017, 11.09.2017, 18.12.2017, 20.12.2017 and 26.12.2017 giving detailed information as desired by the AO. The AO after taking into account the replies of the assessee including reply dated 26.12.2017 which was given in response to show cause notice issued on 20.12.2017 accepted the contentions of the assessee and thus framed the assessment accordingly accepting the returned income. The Ld.

A.R. submitted that this is unequivocally proved that the issue has been examined at great length by the AO and therefore the exercise of revisionary jurisdiction u/s 263 of the Act is wrong and invalid and so is the consequent order passed under section 263 of the Act by Ld. PCIT. The Ld. A.R. therefore submitted that the AO has conducted detailed enquiry and taken a possible and plausible view out of two views. The Ld. A.R. in defense of his arguments relied on the following decisions of the Apex Court.

1. PCIT vs. Sumatichand Tolamal Gouti 111 taxmann.com 287 (SC)
2. PCIT vs. V. Dhana Reddy & Co. 100 taxmann.com 358(SC)
3. PCIT vs. Shree Gayatri Associates 106 taxmann.com 31 (SC)
4. CIT Central-III vs. Nirav Modi 71 taxmann.com 272 (Bombay HC)

4.1 The Ld. A.R. also submitted that the Ld. PCIT can not invoke the jurisdiction under section 263 of the Act to revise the assessment framed by the AO merely on the ground that there is no elaborate discussion in the assessment order by ignoring the fact that during the period of assessment proceedings as many as 4 notices under section 142(1) were issued and thereafter a show cause notice dated 20.12.2017 was issued which were duly replied by the assessee furnishing all the details comprehensively before the AO. The Ld. A.R. submitted that mere fact that there is no elaboration or discussion in the assessment order would not render the assessment as erroneous and prejudicial to the interest of the Revenue. In defense of his argument the Ld. Counsel of the assessee relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Gabriel

India Ltd. 71 taxmann.com 585 (Bombay). The Ld. A.R. also filed before us the copy of assessment order passed under section 143(3) read with section 147 of the Act dated 26.12.2017 for A.Y. 2014-15 in the case of Mr. Leena Vipul Modi who is the wife of the assessee and co-promoter of ICVL Chemical Ltd. and submitted that the AO has accepted the long term capital gain in the hands of the assessee's wife resulting from sale of shares of ICVL Chemical Ltd. of Rs.1,96,92,824/- as genuine under similar facts. The Ld. A.R. submitted that the order of Mrs. Leena Modi was passed after seeking direction under section 144A of the Act from JCIT, Range-20(2), Mumbai and there has been no initiation of revisionary jurisdiction under section 263 of the Act. The Ld. A.R. therefore submitted that in view of these facts the revisionary jurisdiction of the Ld. PCIT and consequent order passed may kindly be passed.

5. The Ld. D.R., on the other hand, relied heavily on the order of Ld. PCIT by submitting that this was a case of organized scam which yielded bogus long term capital gain on sale of shares all over India which has been brought to light by Directorate of Investigation after conducting a detailed enquiry. The Ld. D.R. while admitting that the case of the assessee was reopened under section 147 of the Act on the specific issue of bogus long term capital gain on sale of shares of ICVL Chemical Ltd. and also admitted that the AO has issued as many as four notices under section 142(1) of the Act calling for the details qua the sale of shares and necessary evidences from the assessee in respect of sale of shares of ICVL Chemical Ltd. which were furnished before the AO. However, the Ld. D.R. maintained that

the AO has not conducted adequate enquiry into the issue and therefore the Ld. PCIT has rightly exercised the revisionary jurisdiction under section 263 of the Act. The Ld. D.R. therefore prayed that the appeal of the assessee may kindly be dismissed as no prejudicial is caused to the assessee by the exercise of revisionary jurisdiction by the Ld. PCIT as the assessee is being given another opportunity to present his case before the AO.

6. We have heard the rival submissions and perused the material on record. The undisputed facts are that the case of the assessee was reopened under section 147 read with section 148 of the Act mainly to examine the issue of long term capital gain of Rs.2,46,23,023/- resulting from the sale consideration of Rs.3,51,91,068/- upon sale of shares of ICVL Chemical Ltd. During the re-assessment proceedings the AO issued several notices under section 142(1) dated 06.07.2017, 23.08.2017, 03.11.2017 & 15.12.2017 calling for the details in respect of sale of shares of ICVL Chemical Ltd. and the assessee has duly filed all the details/information/evidences before the AO in respect of sale of shares of ICVL Chemical Ltd. Finally, the AO issued show cause notices dated 20.12.2017 calling upon the assessee as to why the sale consideration including capital gain resulting from sale of shares of ICVL Chemical Ltd. should not be treated as non genuine under section 68 of the Act and added to the income of the assessee which was replied by the assessee vide written submission dated 26.12.2017. The AO after considering the written submission of the assessee accepted the claim of the assessee in respect of long term capital gain of Rs.2,46,23,023/- under section 10(38) of the Act as genuine by accepting the

return of income of the assessee. We note that the Ld. PCIT exercised the revisionary jurisdiction under section 263 of the Act on the ground that the AO has not conducted adequate enquiry into the issue and therefore the assessment so framed under section 143(3) read with section 147 of the Act is erroneous and prejudicial to the interest of the Revenue thereby setting aside and revising the assessment so framed with the direction to conduct the enquiry again and frame the assessment accordingly. We note that in this case the AO has examined the issue of sale of shares and the resultant capital gain accruing therefrom during re-assessment proceedings by issuing various notices under section 142(1) as stated above and the assessee has duly replied and filed all the evidences. We note that assessee has even filed a detailed reply to the show cause notice dated 20.12.2017 as stated above and AO has accepted the claim of the assessee as genuine. Under these circumstances, we do not find any reason as to why the jurisdiction exercised by the Ld. PCIT under section 263 of the Act is valid as the AO, after examining the issue in detail, has taken one of the possible views on the matter. This is not a case of wrong appreciation of facts or wrong application of law by the AO. The case of the assessee is supported by the various decisions as referred before us during the course of hearing. In the case of Ld. PCIT vs. Sumatichand Tolamal Gouti (supra) the Hon'ble Apex Court has dismissed the SLP filed by the Revenue by upholding the order of High Court. The Hon'ble High Court has upheld the order of Tribunal wherein the co-ordinate Bench of the Tribunal has set aside the revisionary order passed by Ld. PCIT by holding that AO has carried out detailed enquiries and

taken a plausible view. Similarly, in the case of PCIT vs. V. Dhana Reddy & Co. (supra) the SLP was dismissed by the Hon'ble Supreme Court. In this case the Hon'ble High Court has opined that AO has treated the renting of godown as integral part of business of the assessee and view taken by the AO was a plausible one and thus the revisionary jurisdiction was not proper and was rightly set aside. In the case of PCIT vs. Shree Gayatri Associates (supra) the Hon'ble Supreme Court has dismissed the SLP of the Revenue. In this case, the Hon'ble High Court has upheld the order of Tribunal whereby the revisionary order passed by Ld. PCIT was quashed on the ground that AO has carried out detailed enquiry into the issue and therefore the revisionary jurisdiction is improperly exercised. Similarly, we find that the mere fact that AO has not elaborated the issue in the assessment order would not entitle the Ld. PCIT to exercise jurisdiction under section 263 of the Act and the case of the assessee is supported by the decision of Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. (supra) wherein the Hon'ble Bombay High Court has held that the PCIT can not invoke the jurisdiction under section 263 of the Act merely on the ground that AO did not discuss the issue in the assessment order which indicated non application of mind as claim of the assessee required to be examined. The Hon'ble Bombay High Court has held that the order of the AO can not be held to be erroneous simply because in his order the AO did not make any elaborate discussion. In view of these facts and the ratios laid down by the Apex Court and the Jurisdictional High Court we hold that the Ld. PCIT has invalidly and improperly exercised the jurisdiction under section 263 of

the Act to hold that the assessment as erroneous and prejudicial to the interest of the Revenue and therefore the revisionary proceedings u/s 263 as well as the consequent aorder passed u/s 263 by the 1d PCIT is hereby quashed.

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