

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.754/Mum/2021
(Assessment Year : 2011-12)**

| | | |
|--|-----|---|
| Aishwarya Rai Bachchan Prateeksha, 10 th North South Road, JVPD Scheme, Juhu, Mumbai-400 049 | Vs. | The Pr. CIT-8 Room No.611, 6 th Floor Aayakar Bhavan M.K.Road, Mumbai-400 020 |
| PAN/GIR No.ADLPR3537P | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|--------------------------|
| Assessee by | Shri Mani Jain |
| Revenue by | Shri Shekhar L. Gajbhiye |
| Date of Hearing | 27/01/2022 |
| Date of Pronouncement | 25/02/2022 |
| | |

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.754/Mum/2021 for A.Y.2011-12 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-8, Mumbai u/s.263 of the Act for the A.Y.2011-12.

2. Though the assessee has raised several grounds before us, we deem it fit to address the preliminary issue as to whether the Id. PCIT had validly assumed revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that the return of income for the A.Y.2011-12

was filed by the assessee on 13/03/2013 declaring total income of Rs.21,07,41,014/-. The assessment was completed u/s.143(3) of the Act on 31/03/2014. Later this assessment was sought to be reopened by the Id. AO u/s.147 of the Act on the ground that assessee had not offered profit earned to tax on surrender of purchase of pension policy from Bajaj Alliance Insurance Company. The Id. AO in fact recorded the detailed reasons in support of the same before issuance of notice u/s.148 of the Act. In the said reasons, the Id. AO stated that income to the tune of Rs. 11,55,330/-representing the accretion amount on policy had escaped assessment and the same is taxable u/s.56 of the Act. Similarly, the Id. AO also recorded yet another reason that assessee had invested Rs.27 Crores in HDFC Mutual Funds and also had gross redemption of Rs.29.32 Crores He recorded in the reasons that this aspect needs to be further investigated. The Id. AO also stated in the reasons that there was failure on the part of the assessee to disclose true and full facts necessary for the purpose of assessment and accordingly issued notice u/s.148 of the Act on 30/03/2018. In response to the said notice, the assessee filed the return on 24/11/2018 declaring total income of Rs.21,07,41,014/-. In the said re-assessment proceedings, the Id. AO examined in detail all the aspects that were subject matter of reasons recorded. The assessee also gave detailed reply by filing the complete details of Bajaj Alliance Insurance Company unit linked pension policy surrendered during the year during the course of re-assessment proceedings before the Id. AO. The Id. AO on examining the same, accepted the returned income of Rs.21,07,41,014/- by observing as under:-

“On perusal of the submission made by assessee, it is seen that 20 policies were surrendered by the assessee and on surrender there was a total loss of Rs. 65,24,979; and the loss has been claimed against exempt gain u/s. 10(38) of the Act. This loss has been arrived at after setting of gains on surrender of 3 policies mentioned in the reasons recorded for reopening u/s. 147 of the IT Act against the loss from

surrender of other policies. The assessee had not claimed loss of Rs. 65,24,979/- as deduction from any other heads of income.”

3.1. The re-assessment was completed u/s.143(3) r.w.s. 147 of the Act on 12/12/2018 accepting the return of income of the assessee. This assessment was sought to be revised by the Id. PCIT on the ground that assessee had debited on the ground that assessee had debited an amount of Rs.28,86,355/- as 'investment transaction fees' which is prima facie capital in nature and ought to have been disallowed by the Id. AO while computing business income of the assessee. Since, this was not done by the Id. AO in the re-assessment proceedings completed on 12/12/2018, the re-assessment framed by the Id. AO was treated as erroneous and in as much as it is prejudicial to the interest of the Revenue. The Id. PCIT also justified the stand of the Revenue by stating that though the reasons recorded by the Id. AO were in respect of surrender of pension policy by the assessee, there was no prohibition for the Id. AO to look into other aspects. Since, the Id. AO confined his examination only with regard to the pension policy, his order had become erroneous and prejudicial to the interest of the Revenue, warranting revision u/s.263 of the Act by the Id. PCIT.

4. Aggrieved by this, assessee is in appeal before us. Before we get into the aforesaid issue, it would be relevant to address the primary facts hereinbelow. In page 1 & 2 of the paper book, the assessee has enclosed the computation of total income for the A.Y.2011-12. In the said computation, we find that assessee had voluntarily made disallowance of Rs.19,61,448/- u/s.14A of the Act as expenditure incurred for earning exempt income. We find that in the original assessment completed u/s.143(3) of the Act dated 31/03/2014, the Id. AO sought to invoke the computation mechanism provided in Rule 8D(2)(iii) of the Income Tax

Rules and computed the disallowance u/s.14A of the Act at Rs.73,25,345/- and after reducing the voluntary disallowance made by the assessee in the sum of Rs.19,61,448/-, the final disallowance figure of Rs.53,63,897/- was made by the Id. AO. This disallowance was contested by the assessee before the Id. CIT(A). The Id. CIT(A) vide his order dated 30/12/2016 in para 6.3.1 had categorically recorded that assessee had voluntarily disallowed security transaction tax of Rs.9,26,543/- separately in the computation of income apart from making voluntarily disallowance u/s.14A of the Act of Rs.19,61,448/-. He also mentioned that assessee had not given the break-up of expenses considered for the disallowance of Rs.19,61,448/- u/s.14A of the Act. The Id. CIT(A) on perusal of the P & L account of the assessee observed that assessee had incurred "investment transaction fees" of Rs.28,86,355/- which was also directly attributable to investment activity undertaken by the assessee and which alone should have been disallowed u/s.14A of the Act. Ultimately, the Id. CIT(A) restricted the disallowance u/s.14A of the Act r.w.r. 8D(2)(iii) of the Rules to Rs.28,86,355/- being the investment transaction fees. He specifically mentioned in para 6.3.2. of his order that since assessee had voluntarily disallowed Rs.19,61,448/- u/s.14A of the Act, only the remaining sum of Rs.9,24,907/- (Rs.28,86,355 – Rs.19,61,448/-) is required to be disallowed u/s.14A of the Act. In effect, the entire investment transaction fees was subject matter of disallowance and confirmation by the Id. CIT(A) u/s.14A of the Act for A.Y.2011-12. We find the very same transaction was sought to be considered and added by the Id. PCIT in his revision proceedings u/s.263 of the Act. It is also pertinent to note that the order passed by the Id. CIT(A) had become final in as much as there was no appeal preferred by the assessee before this Tribunal against the said order of the Id. CIT(A). To this effect, the statement was made by the Id. AR from the Bar. Correspondingly, the

Revenue had preferred the appeal before this Tribunal against the CIT(A)'s order, which was dismissed by this Tribunal on account of low tax effect. Hence, it could be safely concluded that the issue which is sought to be revised by the Id. PCIT in Section 263 proceedings was already considered and decided by the Id. CIT(A) in the hands of the assessee for A.Y.2011-12. As per the provisions of Clause (c) of Explanation to Section 263(1) of the Act, the matter which has already been considered and decided by the Id. CIT(A) cannot be the subject matter of revision by the Id. PCIT u/s.263 of the Act. Even though no addition was made by the Id. AO in Section 147 assessment dated 12/12/2018 in line with order of Id. CIT(A), still in our considered opinion, there would be no prejudice that would be caused to the Revenue as the additional disallowance contemplated by the Id. CIT(A) u/s.14A of the Act in the sum of Rs.9,24,907/- would be made in either case by the Id. AO in the order giving effect proceedings to the Id. CIT(A). Hence, there is absolutely no prejudice that would be caused to the interest of the Revenue. Hence, one of the pre-requisite of invoking Section 263 of the Act fails.

4.1. One more excruciating fact that needs to be addressed in the instant case is that the Id. PCIT herein is only seeking to revise the order passed by the Id. AO u/s.143(3) r.w.s. 147 of the Act dated 12/12/2018. In the said re-assessment proceedings, the Id. AO had not even made any addition despite the fact that he had reason to believe that income of Rs.11,55,330/- had escaped assessment in the hands of the assessee which was sought to be taxed u/s.56 of the Act as per the reasons recorded. Hence, when the very basis of reasons recorded by the Id. AO was ultimately not added by the Id. AO in the re-assessment proceedings, then the primary reason to believe that income of the assessee had escaped assessment fails and such re-assessment cannot be treated as a

valid order in the eyes of law. The same is to be declared as *void ab initio*. Reliance in this regard was rightly placed on the decision of the Hon'ble Jurisdictional High Court in the case of Jet Airways reported in 331 ITR 236. When an assessment framed by the Id. AO is unsustainable in the eyes of law, the said invalid and illegal order cannot be subject matter of section 263 proceedings. On this count also, the revision order passed by the Id. PCIT u/s.263 of the Act deserves to be quashed.

4.2. In view of the aforesaid observations, we have no hesitation in quashing the revision order passed by the Id. PCIT u/s.263 of the Act for more than one reason as detailed supra. Accordingly, the grounds raised by the assessee are allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced on 25/02/2022 by way of proper mentioning in the notice board.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 25/02/2022

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai