

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI AMARJIT SINGH, AM**

आयकर अपील सं/ I.T.A. No. 868/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2016-17)

Joynet Developers LLP 101/B, Bellona, Pant Nagar, 90 Feet Road, Ghatkopar East, Mumbai-400075.	<b>बनाम/</b> Vs.	Pr. CIT Room No. 401, 4 <sup>th</sup> Floor, Tower No.6, Vashi Station Complex, Vashi-400703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMFK0186D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Hemant Shah
Revenue by:	Shri Achal Sharma (DR)

सुनवाई की तारीख / Date of Hearing: 17/01/2022

घोषणा की तारीख /Date of Pronouncement: 21/02/2022

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 25.03.2021 passed by the Principal Commissioner of Income Tax(“PCIT”)-27, Mumbai [hereinafter referred to as the “(PCIT)”] in view of the provisions u/s 263 of the Act.

2. The assessee has raised the following grounds: -

*“The following grounds are independent of and without prejudice to one another:*

*1. On the facts and circumstances of the case and in law, the Learned Principal Commissioner of Income Tax, Mumbai-27 has erred in setting aside the Order passed u/s 143(3) of the Act by the Learned*



*Assessing Officer, ITO, Ward 27(2)(1) and thereby erred in passing an order under section 263 of the Act without appreciating that:*

*(a) The details of Share Trading Loss (F & O Segment) of Rs. 3,64,18,504/- and Share Trading Loss (Cash Segment) of Rs. 69,448 along with the certificates issued in Form 10DB by Sanghvi Savla Stock Brokers Limited that clearly reflect the value of transactions entered during the year, had already been provided by the appellant during the course of the assessment proceedings. From the submitted documents. it was evident that STT had been paid as well in both the segments, i.e. F & O and Cash segment. Moreover, a detailed ledger account of the appellant as appearing in the books of Sanghvi Savla Stock Brokers Ltd(Derivative) along with cash bank book, had also been provided by the appellant during the course of the assessment proceedings. Thus all these submissions does not warrant any further investigation since the verification and inquiry (if any) can easily be carried out by cross checking the same with the books of accounts maintained by our client.*

*(b) The confirmation of all the partners along with their respective ledger accounts, i.e., capital and current account along with their respective computation of income and acknowledgement of return of income had already been submitted by the appellant during the course of the assessment proceedings. The verification and enquiry could have been easily done by cross checking the same with the books of accounts maintained by the appellant and the documents submitted that are part of Department records.*



*(c) The confirmation of all the unsecured computation of income and their respective loan along with their respective computation of income and their respective ITR-V had already been the appellant during the course of the assessment Proceedings. Moreover, the tax Audit report filed by the appellant for the year NGS. Moreover, the Tax disclosed details pertaining to loans accepted. The genuineness and creditworthiness can never be questioned by any stretch of imagination.*

*2. The Appellant craves leave to add, to amend, to alter, to withdraw, to modify and/or to substitute any or all the foregoing grounds of appeal and to such statements, documents and papers as may be considered necessary either at or before the appeal hearing.”*

**3.** The brief facts of the case are that the assessee filed its return of income on 30.09.2016 declaring total loss to the tune of Rs.3,65,76,974/-. The case was selected for scrutiny. Thereafter, the assessment was completed on 13.04.2018 assessing the total loss to the tune of Rs.3,65,76,974/- u/s 143(3) of the Act. The PCIT examined the assessment and arrived at this conclusion that the AO failed to verify the following details: -

*(i) The assessee has shown loss in F & O of Rs. 3.65 crore on transactions of Rs. 2213 crore However, no global report and client ledger was called for by the AO from the broker to verify the genuineness of the transactions and the genuineness of loss claimed. No details of margin money was called for. The bank statement of the assessee was not procured to verify the source of transactions.*



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*(ii) The Balance sheet of the assessee shows increase in the current account in the name of partners from Rs. 36.88 lakhs to Rs. 1.80 crore. The source of such increase has not been verified.*

*(iii) The Balance sheet of the assessee shows increase in unsecured loans from Rs. 1.2 crore to Rs. 3.38 crore. The identity of the persons who have extended loans was provided by the assessee but the genuineness and creditworthiness of the loans was not verified. No third party enquiry was made.”*

Notice was given to the assessee and the assessee replied by virtue of letter dated 04.01.2021 and after considering the reply of the assessee. The CIT(A) invoked the revision power on the following reasons mentioned above. Feeling Aggrieved, the assessee has filed present appeal before us.

**4.** We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has argued that the reasons for invoking the revisional power u/s 263 of the Act has already been examined by AO during the time of assessment by virtue of notice u/s 143(3) of the Act to which the reply was also given, therefore, reopening is bad in law. However, on the other hand, the Ld. Representative of the revenue has refuted the said contention and specifically argued that the AO nowhere discussed the issue raised in the order u/s 263 of the Act, therefore, the PCIT has rightly invoked the order u/s 263 of the Act and requested to dismiss the appeal. The PCIT has invoked the revisional power on following grounds: -



*“(i) The assessee has shown loss in F & O of Rs. 3.65 crore on transactions of Rs. 2213 crore However, no global report and client ledger was called for by the AO from the broker to verify the genuineness of the transactions and the genuineness of loss claimed. No details of margin money was called for. The bank statement of the assessee was not procured to verify the source of transactions.*

*(ii) The Balance sheet of the assessee shows increase in the current account in the name of partners from Rs. 36.88 lakhs to Rs. 1.80 crore. The source of such increase has not been verified.*

*(iii) The Balance sheet of the assessee shows increase in unsecured loans from Rs. 1.2 crore to Rs. 3.38 crore. The identity of the persons who have extended loans was provided by the assessee but the genuineness and creditworthiness of the loans was not verified. No third party enquiry was made.”*

**5.** On appraisal of the above mentioned query, the assessee filed the reply dated on 04.01.2021 which lies at page no. 213 to 215 of the paper book. With regard to query no. 1, it is particular submitted by the Ld. Representative of the assessee that at the time of finalizing the assessment, the AO had already issued the questionnaire by virtue of notice u/s 143(2) of the Act dated 27.02.2018 and the assessee replied about all the questions and submitted the copy of Income Tax Return and computation of income for the A.Y.2016-17 and 2015- 16 along with P & L Account, balance sheet and 3CD tax audit report. Audited profit and loss account speaks about the income by sharing job income share jobbing and trading gain/ loss. The details of global for the A.Y 2016 & 17 were reproduced as under:-



**DETAILS OF GLOBAL AY.2016-17**

Brokers Client Code No.	Amount (Rs.)
11K003	2,13,84,978/-
11J032	1,50,33,526/-
Total Rs.	3,64,18,504/-

6. The loss to the tune of Rs.36418504/- in F & O segment along with share trading of Rs.69,463/- in cash segment total to the tune of Rs.3,64,87,967/- has been reflected in the profit and loss account. The said account was substantiated by certificate issued in form 10DB by Sanghvi Savla Stock Brokers Ltd., ledger account of the appellant. The transaction has duly been reflected. So this query has already been raised by the AO at the time of finalizing the assessment year. With regard to query no. 2, the AO asked about the detail of transaction covered u/s 40(A)(2)(b) of the Act. The assessee had already replied that there was no claim u/s 40(A)(2)(b) of the Act. However, the assessee furnished of all the partners along with their respective ledger accounts, i.e Capital Account and Current Account along with their respective computation of income and acknowledge of return of income. With regard to query no. 3, the AO raised the question no. 9 in his notice u/s 142(1) of the Act about furnishing the details of unsecured loans/ deposits and the assessee provide the following details.

Name of Lender	Gross Total Income Returned and Exempt	Ward
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	Income	
Anila D Sanghavi	40,23,778	ACIT-22(1)
Dhiren Sanghavi HUF	50,847	ITO-22(1)(1)
Mitul Sanghavi HUF	1,26,548	ITO-23(2)(4)
Malika K. Sanghavi	40,27,237	ITO-23(2)(4)
Late Kamlesh R sanghavi	62,22,668	ITO-23(2)(4)
Saakshi Sanghavi	5,82,874	ITO-22(2)(3)
Kamlesh Sanghavi HUF	1,91,000	ITO-23(2)(4)
Sweta K Sanghavi	13,03,582	ITO-23(2)(4)
Kantaben R. sanghavi	4,41,852	ITO – 22(1)(3)
Parul H. Sanghavi	3,10,985	ITO-27(2)(5)

7. In pursuance of question no. 2 of the notice u/s 142(1) of the Act. the details were submitted by furnishing the details of creditors i.e. name, address, PAN, amount of deposit/loan taken, squared up, maximum amount



outstanding. All the transaction were through stock exchange platform to which no adverse interference with can be withdrawn.

8. The necessary details were submitted before the PCIT. Accordingly, on the basis of the above facts and circumstances invoking the revisional power by the PCIT is nowhere seems justifiable. In the case of Shrinagar Marketing (P.) Ltd. Vs. PCIT (2021) 128 taxmann.com 199 (Kolkata-Trib) held as under: -

*“Where AO during the course of original assessment verified all transactions of purchase / sales/stock of shares in case of assessee and made disallowance under section 14A read with rule 8D(2), Commissioner having failed to make out that order of AO was erroneous as well as prejudicial to interest of revenue, order passed under 263 was to be set aside.”*

9. We also relied upon the decision in the case of Gitesh Tikmani & Gitesh Tikmani, HUF vs. ITO (IT Appeal Nos. 1-04(Kol) of 2019 dated 20.09.2019 and in the case of Usha Devi Modi Vs. ITO (IT Appeal No.874 (Kol) of 2019 dated 12.01.2021.

6. The only reason has been given by PCIT is that the reply of the assessee is not acceptable. The PCIT has invoked the power in view of the provisions u/s 263 of the Act which seems nowhere justifiable. Since the issue has already been examined. In this regard, we also find support of law decision mentioned as under: -

(i) The Hon’ble Bombay High Court in **CIT Vs. Gabriel India Ltd. (1993) 91 Taxman 585/203 ITR 108**





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(ii) **Malabar Industrial Co. Ltd. Vs. CIT (2000) 109 Taxman 66/243  
ITR 83**

(iii) **Aryan Arcade Ltd. Vs. Pr. CIT (2019) 412 ITR 277 (Guj)**

7. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 21/02/2022

Sd/-  
(AMARJIT SINGH)  
लेखा सदस्य / ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक Dated : 21/02/2022  
Vijay Pal Singh (Sr. PS)

Sd/-  
(AMARJIT SINGH)  
न्यायिक सदस्य/JUDICIAL MEMBER

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

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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