

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI

**Before Shri Sanjay Garg, Judicial Member &
Shri Om Prakash Kant, Accountant Member**

I.T.A. Nos.1184,1185&1186/Mum/2021
Assessment Years: 2011-12, 2012-13 & 2013-14

Vimla Babulal Khandelwal.....Appellant
Narayan Plaza, 135, Ram Mandir Road,
Oshiwara, Nr. Singh Industrial Estate,
Goregaon (W) Mumbai-400104.
[PAN: ADOPK3702A]

vs.

PCIT, Mumbai-17.....Respondent

Appearances by:

None appeared on behalf of the appellant.

Shri Achal Sharma, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 12, 2022

Date of pronouncing the order : May 19, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The captioned are the three appeals filed by the assessee for different assessment years against the separate orders dated 25.03.2021, 16.03.2021 & 27.03.2021 respectively passed by the Principal Commissioner of Income Tax, Mumbai-17 [hereinafter referred to as 'PCIT'] exercising his revision jurisdiction u/s 263 of the Income Tax Act (hereinafter referred to as the 'Act'). Since the facts and issues involved in all three appeals are identical hence, all the three appeals are taken together for adjudication.

2. No one has put in appearance on behalf of the assessee despite notice, therefore we proceed to decide the appeals after hearing the ld. DR and after going through the records.

3. The assessee's appeal in ITA No.1184/Mum/2021 for Assessment Year 2011-12 is taken as the lead case for narration of facts.

4. ITA No.1184/Mum/2021 – The assessee in this appeal has assailed the revision order dated 25.03.2021 passed by the ld. PCIT u/s 263 of the Act on the following grounds:

“1. The Learned Principal Commissioner of Income Tax failed to appreciate that the Assessing Officer carried out an Independent enquiry himself and decided to tax the net capital gain earned by the appellant and Nil fictitious expenditure therefore the additions proposed by the Commissioner of Income Tax under section 263 is unjustified and is liable to the rejected.

2. The Principal Commissioner of Income Tax failed to serve a proper notice to the appellant. Very limited time is given to appellant for reply. The Principal Commissioner of Income Tax erred in counting the time limit for passing the order under section 263(2) of the Act as should be counted from the end of the Financial Year 2010-11 in which the original assessment order was passed. Therefore the additions proposed are unjustified and Liable to be rejected.

3. The Principal Commissioner of Income Tax has failed to appreciate that the case is reopened under section. 147 therefore the facts of the case are already verified by the Commissioner of Income Tax while reopening. The addition of the alleged commission expense and purchase price of shares was not the/ one or the subject matter(s) of reassessment proceedings under section 143(3) r.w.s 147 hence review of the case once again is highly unjustified and is liable to be rejected.

4. The Principal Commissioner of Income Tax Proposing additions on gross amount and fictitious expenditure without any verification of facts thereby violating the principles of natural justice, therefore the proposed additions are highly unjustified and Liable to be rejected.

The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”

5. The brief facts of the case are that the assessee had filed Return of Income for the A.Y. 2011-12 on 17/01/2012 declaring total income at Rs.2,62,320/-. On the basis of information received from DGIT, Kolkata, the case was reopened. Accordingly total income of Rs.35,64,680/- was assessed U/s 143(3) r.w.s. 147 on 30.11.2017 making an addition of Rs.33,02,340/- as a bogus Long Term Capital Gains (LTCG) U/s 68 of the Act on the basis that the assessee had traded in penny stock i.e. scrip "M/s Nouveau Multimedia Ltd." having total sale consideration 35,31,200/- and resulting total LTCG of Rs. 33,02,340/- which was claimed by the assessee as exempt U/s 10(38) of the Act. As the Scrip traded by the assessee was found to be one of the bogus brokers, operators and entry providers as per the evidence gathered by the DIT(Inv.), Kolkata, hence the A.O disallowed LTCG of Rs. 33,02,340/- and added back to the total income of the assessee.

6. Pursuant to the above reassessment order passed by the Assessing Officer, the ld. PCIT invoking his jurisdiction u/s 263 of the Act examined the assessment records and observed that the Assessing Officer had erred in adding only the long-term capital gain

on sale of penny stock and not entire sale proceeds on the ground that the underlying transaction itself was not genuine. The Id. PCIT further observed that the Assessing Officer had not made any addition in respect of the expenditure that might have been incurred by the assessee in arranging the bogus long-term capital gains. He, therefore, held that the assessment order passed by the Assessing Officer u/s 147 of the Act was erroneous and prejudicial to the interest of Revenue. He, therefore, set aside the assessment order passed u/s 147 r.w. section 143(3) of the Act and further directed the Assessing Officer to conduct requisite enquiries and frame the order of assessment de novo.

7. Being aggrieved by the aforesaid order of the Id. PCIT, the assessee has come in appeal before us.

8. We have gone through the records and heard the Id. DR on this issue. In this case, the addition of long-term capital gains was made by the Assessing Officer on the basis of improbability in sharp increase in the share price of the relevant scrips and considering that the financials of the company were very poor and that no prudent man would have invested in such a company. It was also observed by the Assessing Officer that the shares were rigged on the stock exchange by manipulation. The Assessing Officer, therefore, held that the long-term capital gain shown by the assessee as bogus. However, so far as the purchase price of the shares was concerned, the case of the assessee was that the cost of the shares amounting to Rs.22860 was paid through account payee cheque and fully accounted in books of account. The Id. PCIT even in the impugned order has not disputed that the investment for the purpose of purchase of shares were made by the assessee out of his accounted income. The Assessing Officer had added the amount which as per the Assessing Officer was introduced by the assessee as bogus long-term capital gains. Since the shares were purchased out of the known source of income, therefore, the Assessing Officer rightly did not make addition of the purchase price. The findings of the Id. PCIT that only the sale transaction is to be looked into and corresponding purchase transaction is to be ignored, in our view, has no merit. Only the amount which as per the Assessing Officer was introduced by the assessee on account of

bogus long-term capital gains was to be added back and therefore, there was no error in the assessment order on this account.

Even there is no evidence on the file that the assessee had paid any commission in respect of the aforesaid transaction. The addition has been made on the basis of improbabilities of such a capital gain. The findings of the Id. PCIT that the assessee might have paid some commission in respect of aforesaid transactions is based on assumptions, however, in the absence of any evidence on file in this respect, it cannot be said that the order of the Assessing Officer is erroneous for not adding the commission expenditure. In view of the above observation, the Id. PCIT, in our view, has wrongly exercised his revision jurisdiction in setting aside the assessment order. In view of the above discussion, revision order passed by the Id. PCIT is quashed. The appeal of the assessee stands allowed.

9. ITA No.1185&1186/Mum/2021 – Since the facts and issues involved in these appeals are identical to that have discussed above and in view of the observations made above, the revision order passed u/s 263 in these appeals are also quashed. These appeals also stands allowed.

10. In the result, all the three appeals filed by the assessee are allowed.

Mumbai, the 19th May, 2022.

Sd/-
[Om Prakash Kant]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated:19.05.2022.

RS

Copy of the order forwarded to:

1. Vimla Babulal Khandelwal
2. PCIT, Mumbai-17
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar,
Mumbai Benches