

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एम. एल. मीना, लेखा सदस्य एवं डॉ. एस. सीतालक्ष्मी, न्यायिक सदस्य के समक्ष
BEFORE: DR. M.L. MEENA, AM & DR. S. SEETHALAKSHMI, JM

आयकर अपील सं./ITA. No. 148/JP/2022
निर्धारण वर्ष/Assessment Years : 2012-13

Aryan Realmart Private Limited 24 24, Santosh Sagar Colony, Brahmpuri 302002., Rajasthan.	बनाम Vs.	PCIT/ ITO, Ward-5(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHCA 3673 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Gupta (C.A.)
राजस्व की ओर से / Revenue by : Shri Sanjay Dhariwal (CIT)

सुनवाई की तारीख / Date of Hearing : 01/06/2022
उदघोषणा की तारीख / Date of Pronouncement : 16/08/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal by the assessee is directed against the order of the Id. Principal Commissioner of Income Tax, Jaipur-2 [hereinafter referred to as (PCIT)] dated 28.03.2022 for the AY 2012-13.

2. The assessee has raised the following grounds:-

"1. That on the facts and circumstances of the case and in law, the learned PCIT, Jaipur-2 grossly erred in passing revision order without considering the fact on record and wrong assumption.

2. That the humble appellant craves leave to add, amend, alter, modify, substitute, or delete any ground or grounds of appeal on or before the hearing the appeal.”

3. Brief facts of the case are that the assessee company filed return u/s 139(1) dated 25-09-2012 declaring total loss Rs 3,26,484/-. The case of assessee was re-opened on basis of transaction of sale of share in Vandana Knitwear Ltd (earned profit of Rs. 42,80,363/-) and S.V. Electricals Ltd (incurred loss Rs. 44,138/-) which were considered as penny stock and assessment made u/s 147 r.w.s. 143(3) on 20-11-2019 by ITO Ward 5(2), Jaipur. In re-assessment the A.O. made detail enquiry for transaction in share of these companies and found no adverse inference on transaction of share of these companies.

4. The AO assessed u/s 143(3)/147 at loss of Rs. 3,26,484/-. Charged interest as per rules which is as per ITNS-150 issued is forming part of the assessment order. Since the assessee company has filed its return of income u/s 139(1) of the Act within the time given as per Income-tax Act, total loss is assessed at (-) Rs. 3,26,484/-. The assessee will be eligible to carry forward this loss for set off against any income in subsequent years.

5. Being aggrieved by the AO the assessee preferred an appeal before the Id. CIT(A) and the findings are reproduced as under:-

“8. Accordingly, by virtue of powers conferred on the under signed under the provisions of section 263 of the Income Tax Act, 1961, I hold that the order under section 143(3) of the IT Act dated 20.11.2019 for AY 2012-13 passed by the Assessing Officer is erroneous in so far as it prejudicial to the interest of revenue as the said order has been passed

by the Assessing Officer in a routine and perfunctory manner without considering/applying his mind to the information available on record. The order of the Assessing Officer is therefore liable to revision under the clause (a) &(b) of Explanation (2) to section 263 of the Income Tax Act. Hence, the assessment order is set aside as discussed above.”

6. Being aggrieved by the CIT (A), the assessee preferred an appeal before us. Before the Id AR for the assessee has reiterated its arguments in written submission which are as under:-

“1. The Id PCIT passed order u/s 263 with mentioning the basis is that of suspected accommodation entry of bogus gain in one stock and loss in other stock in respect of trading of penny stock of Vandana Knitwear Ltd and Nivyah Infrastructure & Telecom Services Pvt Ltd (S.V.Electric Ltd) was not properly enquired by A.O. which is factually wrong and without considering assessment proceeding available on records. In fact, during the course of re-assessment proceeding, the assessee company submitted all fact related to trading of shares alongwith share in alleged penny stock relevant document to verify the gain and loss arises and all trading in share are in normal course of business.

- Annual financial statement, balance sheet, audit report and computation of income .*
- Copy of Bank statement*
- Copy of ledger account of stock-broker through which share trading made.*
- Global report is all share trading during the relevant period.*
- Scrip wise report of trading in F& O.*
- Contract note of transaction of trading of share in alleged company .*

2. That the assessee company engaged in trading of shares on regular basis. the transaction of purchases and sale made in normal course of business and no any such LTGC/LTCL accommodated by the company. In fact the company made purchases of share and sold through in normal course of business

and whatever profit or loss comes to profit and loss account of company and no any LTGC/LTCL claimed or any kind of exemption claimed.

3. The LD A.O. completely verified the facts from the above documents with all relevant detail in respect of genuineness of transaction as submitted and there is no any other document relevant to the transaction remain to verify hence no question that order of assessment is erroneous. Further from the given transaction, there was net income Rs 4236725 which included in income and expenditure account and no any other exemption or deduction claimed for such transaction. Hence there is no question to determine by Id PCIT that of order is prejudicial to the interest of revenue.

4. For revision of any order u/s 263 there must be two conditions namely that the order of assessment is erroneous and that the order is prejudicial to the interests of the Revenue which must be satisfied before the Commissioner may invoke his powers under Section 263 of the Act. In this case the fact is that all document to verify the transaction called by the A.O during assessment proceeding and also made further enquiry by calling information u/s 133(6) and verified from books of accounts and document submitted by appellant company. Hence revision is not permissible when inquiries on the issue have already been made by the AO before passing the order of assessment. The Id PCIT before conclusion that the order is erroneous, he must himself make an inquiries with available Material/evidence with him. In support, we draw your attention decision of various High Court as under:-

- In the case of CITvs. Vikas Polymers [2012] 341 ITR 537(Delhi)(HC),The Court held that if the AO has made inquiries and replied to by the assessee, then exercise of revisional powers are not warranted. Also, want of evidence cannot be a ground to disturb the findings of the AO or to state that the AO has shirked his responsibility. That the Commissioner should have provided reasons in support of revising the assessment order.*

- ***In the case of ITO vs. DG Housing Projects Ltd[2012] 343 ITR 329(Delhi)(HC) , The Court held that in cases where inquiries have been made by the AO, the CIT must himself make inquiries and come to the conclusion that the order is erroneous, that the order has to be on merits of the result of the inquiry, that the AO acts as an investigator and an adjudicator, that the CIT cannot direct the AO to see if the order is erroneous or reconsider the order, that nothing bars/prohibits the CIT from collecting and relying upon new/additional material/evidence to show and state that the order of the Assessing Officer is erroneous.***

Looking to above facts, Commissioner does not provide adequate reasons in support of his revisional order. Your honour is therefore requested to kindly accept the appeal against order of revision u/s 263 which is against the fact and bad in law.”

7. On the other hand, the ld. CIT-DR relied on the order of ld. CIT(A) and stated that ld. CIT(A) has passed exhaustive order explaining the provisions of the Act.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is noted that the assessee company engaged in trading of shares on regular basis. The contention of Ld AR for the assessee is that the assessee has taken accommodation entry in form of bogus long term capital gain in penny stock is factually incorrect and the ground of re-assessment itself was factually wrong without considering the nature of transaction of purchase and sale made in normal course of business. From the contentions of ld. AR of the assessee, we know that the assessee company made purchase on shares and sold through in normal course of business and whatever profit or loss comes to profit and loss account of company and no any such LTGC/LTCL. During the course of reassessment

proceedings the assessee company submitted all documents and evidences of all facts relating to trading of shares to the relevant year and documents to verify that it has not been any claim of long term capital loss and all trading in shares are no normal course of business. We agree with the averments made by the ld. AR for the assessee that there must be two conditions for revision for any orders u/s 263 of the Act namely that the order of the assessment is erroneous or that the order is prejudicial to the interest of the Revenue. The ld. PCIT erred in passing the order without any justification, the documents which are being produced before AO during the assessment proceedings, all the documents were verified. Further, enquiry by calling information u/s 133(6) of the Act and verified the books of accounts annual financial statement, balance sheet, audit report, computation of income, copy of ledger account of stock broker through which share trading made and global report of all shares trading during the relevant period, Contract note of transaction of trading of share in alleged company, which was in the form of paper books containing at page nos. 111 and the same has been produced before us. Based on evidence produced by the assessee, the ld. AO has rightly passed the orders with the relevant details of transactions business of share. Hence, there is no question that the order passed is erroneous and prejudicial to the interest to the Revenue. We are of the considered view that the revision is not permissible where the enquiries on the issues have already been made by the Assessing Officer before passing the order of the assessment.

9. In support, reliance was placed on the decisions of Hon'ble Delhi High Court in the case of CIT vs. Vikas Polymers (2012) 341 ITR 537 and in case of ITO vs. DG Housing Projects Ltd. (2012) 343 ITR 329 and considering the facts and circumstances of the present case, the ld. PCIT order is erroneous and

alleging that no details of enquiry made by the AO against the order of the revision.

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

Order pronounced in the open Court on 16/08/2022.

Sd/-

(डॉ. एम. एल. मीना)
(Dr. M.L. Meena)

लेखा सदस्य / Accountant Member

Sd/-

(डॉ. एस.सीतालक्ष्मी)
(Dr. S. Seethalashmi)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 16/08/2022.

***Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Aryan Realmart Private Limited, Brampuri.
2. प्रत्यर्थी / The Respondent- PCIT/ITO, Ward-5(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 148/JP/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar