

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1245/Mum/2022  
(Assessment Year :2013-14)**

M/s. Reliance Retail Ltd., 3 <sup>rd</sup> Floor, Court House Lokmanya Tilak Marg Dhobi Talao Mumbai – 400 002	Vs.	ACIT CIR 8(1)(1) Room No.670, 6 <sup>th</sup> Floor Aayakar Bhavan M.K.Road, Mumbai-400020
<b>PAN/GIR No.AABCR1718E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Madhur Agarwal
Revenue by	Shri T. Shankar
<b>Date of Hearing</b>	<b>17/08/2022</b>
<b>Date of Pronouncement</b>	<b>17/08/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.1245/Mum/2022 for A.Y.2013-14 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-8, Mumbai u/s.263 of the Act dated 30/03/2021 for the A.Y.2013-14.

2. At the outset, we find that the Registry had pointed out that there is a delay in filing of appeal by assessee by 359 days. We find that the order has been passed by the Id. PCIT u/s.263 of the Act during Covid-19 pandemic period and the assessee's case squarely falls under the

relaxation period granted by the Hon'ble Supreme Court. Accordingly, we condone the delay and admit the appeal of the assessee for adjudication.

3. The only effective issue to be decided in this appeal is as to whether the Id. PCIT was justified in validly assuming revision jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee company is engaged in the business of traders and retailers. The original return of income was filed by the assessee company on 30/11/2013 for the A.Y.2013-14 and revised return was filed on 27/06/2014 declaring total income of Rs.'Nil' and claiming current year losses of Rs.265,55,98,128/-. The assessee filed one more revised return on 26/03/2015 declaring total income at Rs.'Nil' and claiming current year losses at Rs.265,55,79,379/-. In the return, the assessee had claimed loss on sale of investments of Rs.19.41 Crores as 'business loss'. The assessment was completed u/s.143(3) of the Act on 28/12/2016 accepting the returned loss of the assessee as per the revised return filed on 26.3.2015.

3.2. This assessment was sought to be revised by the Id. PCIT by invoking revision jurisdiction u/s.263 of the Act on the ground that tax auditor in the tax audit report in form No.3CD vide Sr. No.17(a) had reported expenditure of capital nature of Rs.37,17,21,367/- which was debited in the profit and loss account. Out of the said amount, the assessee had voluntarily disallowed loss on sale of assets of Rs.17.76 Crores. The remaining loss of Rs.19.41 Crores arising on account of loss on sale of investments was reflected as business loss by the assessee. The Id. PCIT observed that the said loss on sale of investment is expenditure of capital

nature and hence, the same would be liable for disallowance u/s.37(1) of the Act. Accordingly, a show-cause notice was issued by the then Id. PCIT u/s.263 of the Act to disallow the said business loss of Rs.19.41 Crores.

3.3. In response to the said notice, the assessee company vide letter dated 05/12/2017 accepted to the stand of the Id. PCIT by requesting the Id. PCIT to treat the said loss on sale of investments as short term capital loss and allowing it to be carried forward to subsequent years. For the sake of convenience, the letter dated 05/12/2017 filed by the assessee before first revision proceedings before the then Id. PCIT is reproduced hereunder:-

5<sup>th</sup> December, 2017

To  
Principal Commissioner of Income Tax-8,  
Room No 611,  
Aayakar Bhavan, M.K. Marg,  
Mumbai 400 020.

Dear Sir,

Sub: Show Cause notice under section 263 of the IT Act, 1961 for the A.Y. 2013-14  
PAN: AABCR 1718 E

We refer to the above notice issued by you and the discussion our authorized representative had with you on 06.12.2017.

Our submission to the above show cause notice is as under:

The Return of Income filed by the assessee reflected a loss of Rs.265,55,79,379 against the heading business income. It included loss on sale of investments amounting to Rs.19,41,31,408 which should have been rightly reflected under the head Short Term Capital Gain. Therefore, instead of carrying forward the loss of Rs.19,41,31,408 as short term capital loss to subsequent years, it was included in the business loss of Rs.265,55,79,379. This business loss has not been adjusted in subsequent years against the business income even as on date. Hence, it is submitted that there is no loss caused to the revenue in any manner.

Assessment of the assessee company was completed under section 143(3) at an assessed loss of Rs.(265,55,79,379)- under the head business loss and the same was allowed to be carried forward as Business loss which included the short term capital loss of Rs.19,41,31,408.

We would like to mention that the above loss of Rs.19.41 crores has erroneously been included by us under the head business loss while filing the return of income and also assessed as business loss and carried forward to subsequent years which needs to be rectified and re-classified as short term capital loss under the head capital gains and carried forward to subsequent years.

We respectfully submit that the above mistake may be rectified by passing an order section 154 of the Income Tax Act whereby the assessed business loss will be reduced consequently by Rs.19.41 crores to Rs.246.14 crores which will be allowed to be carried forward to subsequent years. At the same time, short term capital loss of Rs.19.41 crores will need to be considered separately and carried forward to subsequent years for set-off.

In light of the above, we request you to drop the proceeding initiated u/s 263 of the Act and advise the assessing officer to rectify the assessment order U/s154 of the Income Tax Act 1961.

We are extremely sorry for the inconvenience caused to you due to our above request.  
We hope our above request will be considered favourably.

Thanking you,

Yours faithfully,  
For RELIANCE RETAIL LIMITED  
(Formerly Reliance Fresh Ltd.)

*[Signature]*  
AUTHORISED SIGNATORY

Reliance Retail Limited

CIN: U01100MH1999PLC120563 Phone: +91 22 67673800

Registered Office: 3rd Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai-400 002, India.  
www.reliance-retail.com

CERTIFIED TRUE COPY

*[Signature]*  
M. NO: 129549.

3.4. The Id. PCIT accordingly set aside the order of the Id. AO dated 28/12/2016 *to make fresh assessment considering the above admission by the assessee company and making appropriate disallowance after giving due opportunity to the assessee company and re-calculating the income tax and interest if any were applicable.*

3.5. The Id. AO accordingly framed an assessment u/s.143(3) r.w.s. 263 of the Act wherein the loss on sale of investments of Rs.19.41 Crores was disallowed under the head 'business' and the same being capital in nature was treated as capital loss by the Id. AO. On this giving effect order, the Id. PCIT sought to invoke revisionary jurisdiction u/s. 263 of the Act on the ground that the Id. AO had not complied with the directions given in the earlier revision order u/s.263 of the Act. The main grievance of the Id. PCIT in the impugned revision order u/s.263 of the Act is that the Id. AO ought not to have treated the loss on sale of investments as short term capital loss and should have merely restricted himself by disallowing the said loss as business loss. This action of the Id. AO, in the opinion of the Id. PCIT, had made the assessment order erroneous in as much as it is prejudicial to the interest of the Revenue warranting revision jurisdiction u/s.263 of the Act.

3.6. We have already reproduced the original directions of the Id. PCIT u/s.263 of the Act dated 09/01/2018 in italics font supra. The said directions categorically stated that the Assessing Officer is directed to make a fresh assessment in the light of submissions made by the assessee. The submissions made by the assessee before the then Id. PCIT in the original 263 proceedings are also reproduced hereinabove. In the said submissions, the assessee had categorically admitted to the fact that it had inadvertently claimed Rs.19.41 Crores representing loss on sale of



	Investment in Equity shares of companies - quoted							
1	Axis Bank Limited	30/03/2012	2,28,232	25,46,15,619	08/01/2013	2,28,232	30,92,73,030	5,46,57,411
2	Canara Bank	30/03/2012	2,67,751	12,21,48,006	06/02/2013	2,67,751	12,04,13,353	{ 17,34,653}
3	Punjab National Bank	30/03/2012	1,80,258	16,44,49,373	06/02/2013	1,80,258	15,65,50,403	(79,18,970)
	Short Term Capital Gain			<b>54,12,12,998</b>			<b>58,62,16,787</b>	<b>4,50,03,739</b>
	Investment in Debentures							
1	Reliance Trade Services Centre Ltd	05/11/2012	1,70,00,000	17,00,00,000	29/12/2012	1,70,00,000	1,70,00,000	(15,30,00,000)
2	Reliance Loyalty A Analytics Ltd	01/10/2012	1,10,00,000	11,00,00,000	29/12/2012	1,10,00,000	1,10,00,000	(9,90,00,000)
	Short Term Capital Loss			<b>2,80,00,00,000</b>			<b>2,80,00,00,000</b>	<b>(25,20,00,000)</b>
	Net Short Term Capital Loss							<b>(19,41,31,408)</b>

3.8. When all the facts are available on record before the Id. PCIT, it becomes bounden duty of the Id. PCIT to consider those facts, examine the submissions made by the assessee and verify the workings for short term capital loss filed before him and also bring on record what is the error in the said submissions and eventually point out how the order of the Id. AO is erroneous. Infact no efforts were taken by the Id. PCIT to bring on record either of the acts in the instant case, as is evident from the perusal of his revision order. Without doing any exercise and without bringing on record as to how the order of the Id. AO is erroneous and prejudicial to the interest of the Revenue, the Id. PCIT directly proceeds to invoke revision jurisdiction u/s.263 of the Act in the instant case. Actually we find that the Id. AO had properly complied with the directions of the Id. PCIT in the original 263 order by duly disallowing the loss on sale of investment of Rs.19.41 Crores under the head 'business' and treating the same as short term capital loss. Hence, in our considered opinion, there cannot be error that could be attributed in the order of the Id. AO. The law is very well settled that for the purpose of invoking

revision jurisdiction u/s.263 of the Act, the cumulative conditions should be satisfied i.e. (i) the order of the Id. AO must be erroneous and (ii) it must be prejudicial to the interest of the Revenue. Even if either one of the conditions is absent, the Id. PCIT cannot invoke revision jurisdiction u/s.263 of the Act. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd., reported in 243 ITR 83.

3.9. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in quashing the revision order passed by the Id. PCIT u/s.263 of the Act in the facts and circumstances of the instant case. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 17/08/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(AMIT SHUKLA)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 17/08/2022  
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,

(Sr. Private Secretary / Asstt. Registrar)  
**ITAT, Mumbai**