

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.542/Mum/2022
(Assessment Year :2015-16)**

Shri Mukesh Bhoormal Jain 9/23, Kotwala Niwas 3 rd Ketwadi Mumbai – 400002	Vs.	PCIT-19, Room No.228, 2 nd Floor Matru Mandir Tardeo Road Mumbai-400007
PAN/GIR No.AAAPJ7585K		
(Appellant)	..	(Respondent)

Assessee by	Shri Vimal Punmiya
Revenue by	Shri Vivek Anand Ojha
Date of Hearing	27/07/2022
Date of Pronouncement	25/08/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.542/Mum/2022 for A.Y.2015-16 preferred by the order against the revision order of the Id. Pr. Commissioner of Income Tax-Mumbai-19, u/s.263 of the Act dated 26/02/2021 for the A.Y. 2015-16.

2. At the outset, the registry has issued defect notice to the assessee stating that the appeal filed by the assessee is delayed by 326 days. We find that the period of delay squarely falls in Covid -19 pandemic times and hence in view of the relaxation issued by the Hon'ble Supreme Court,

we are inclined to condone the delay in filing of appeal and admit the appeal of the assessee for adjudication.

3. The only issue to be decided in this appeal is 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.

4. We have heard the rival submissions and perused the materials available on record. We find that the assessee is carrying real estate business in his proprietary concern under the name and style of 'Savitri Constructions'. The assessee had filed his return of income for the Asst Year 2015-16 on 24.9.2015 declaring total income of Rs Nil. The assessee earned interest on capital account, interest income on loans apart from commission and brokerage income. The same was sought to be set off with the loss incurred in Savitri Constructions, thereby resulting in net loss from business. Apart from this, assessee earned dividend income, savings bank interest, rental income, long term capital gains on sale of shares, etc. The assessment was completed u/s 143(3) of the Act on 28.12.2017 determining total income of the assessee at Rs 5,65,51,916/- after making addition u/s 68 of the Act in respect of long term capital gains on sale of penny stock shares and addition u/s 69C of the Act . The Id. AO in para 2 of his order had stated that the assessee had submitted requisite details from time to time which were test checked by the Id. AO before completion of assessment. The assessee had preferred an appeal before the learned Commissioner of Income Tax (Appeals) which was dismissed vide order dated 18.7.2019. Against this order, the assessee had preferred an appeal before this tribunal and the Tribunal had allowed the appeal of the assessee.

5. The assessment framed by the Id. AO on 28.12.2017 was sought to be revised by the Id. PCIT by assuming revision jurisdiction u/s 263 of the Act on the ground that the assessee had received huge unsecured loans for which necessary enquiries were not carried out by the Id. AO. Hence in the opinion of the Id. PCIT, the order of the Id. AO is erroneous and prejudicial to the interest of the revenue. The Id. PCIT issued show cause notice u/s 263 of the Act on 9/3/2020 stating that as per Form 3CD of the assessee, the assessee had received unsecured loans from 62 parties totaling to Rs 7,46,21,368/- for which loan confirmations or creditworthiness of lenders are not on record. Accordingly, the Id. PCIT concluded that the Id. AO while framing the assessment had not carried out any enquiry / investigation in respect of the said unsecured loans. We find that the Id. AO in the course of assessment proceedings issued notice u/s 142(1) of the Act dated 27.1.2017 together with a detailed questionnaire. In the said questionnaire, a specific query was raised by the Id. AO vide Question No. VIII, seeking details of unsecured loans received by the assessee. The relevant question is reproduced below:-

“VIII. Details of unsecured loans along with supporting evidences for the subsequent payment (complete address, PAN of the parties providing the loan should be submitted). You are requested to provide ITR, Bank statement, confirmation, Balance Sheet/Audit Report of the lender providing the unsecured loan.”

6. We find that the assessee vide his authorized representative letter dated 20/7/2017 submitted the complete list of unsecured loans received from 62 parties which includes opening balance of loans and fresh loans received during the year. In the said reply, the assessee furnished a statement of unsecured loans containing opening balance, fresh loans taken during the year, repayments made during the year, interest on loans together with TDS thereon, closing balance of loan in tabular form. The assessee furnished before the Id. AO the copies of loan confirmations

from all the lenders together with their ITR acknowledgements, PAN, name and address of the lenders, purpose of loan, date of receipt of loan, whether the lender is a related party to assessee or not, utilization of loan received by the assessee and the mode of receipt of unsecured loans. These documents are enclosed in pages 82 to 303 of the paper book filed before us. This goes to prove beyond reasonable doubt that the Id. AO had indeed carried out adequate and necessary enquiries with regard to the unsecured loans received by the assessee in the assessment proceedings itself. We further find that the Id. PCIT had assumed revisionary jurisdiction u/s 263 of the Act in the instant case on incorrect assumption of fact that loan confirmations and creditworthiness of the lenders were not furnished by the assessee before the Id. AO. From the perusal of the various details contained in the paper book which were duly furnished by the assessee before the Id. AO himself and the same being part of assessment records, it could be safely concluded that the Id. PCIT had grossly erred in stating that no details were furnished by the assessee before the Id. AO. We hold that adequate enquiries were made by the Id. AO in the instant case before completing the assessment and hence we hold that this is not a fit case for invoking revision jurisdiction u/s 263 of the Act by the Id. PCIT.

7. We further find that all the details that were filed before the Id. AO were again filed before the Id. PCIT also by the assessee, which were not looked into by the Id. PCIT. We find that when adequate enquiries were carried out by the Id. AO in the assessment proceedings, the said assessment cannot be treated as erroneous by the Id. PCIT. Our views are further fortified by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Nirav Modi reported in 390 ITR 292 (Bom) wherein it was held as under:-

“6. It is a settled position in law that powers under Section 263 of the Act can be exercised by the CIT on satisfaction of twin conditions viz. the Assessment Order should be erroneous and prejudicial to the Revenue. By erroneous is meant contrary to law. Thus, this power cannot be exercised unless the CIT is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the Revenue. Thus where there are two possible views and the Assessing Officer has taken one of the possible views, no occasion to exercise powers of Revision, can arise. Nor can Revisional power be exercised for directing a fuller inquiry to find out if the view taken is erroneous, when a view has already been taken after inquiry. This power of Revision can be exercised only where no inquiry as required under the law is done. It is not open to enquire in cases of inadequate inquiry.

*7. Firstly, the Revenue contends that the exercise of powers under Section 263 of the Act is justified as in this case, as no inquiry in respect of the gifts received during the subject years was done by the Assessing Officer for the Assessment orders for Assessment Years 2007-08 and 2008-09. This according to the Revenue is evident from the Assessment Orders dated 31st December, 2009 and 30th December, 2010 which does not even make a mention of the gifts received much less discuss and/or deal with the same. This issue is no longer res integra as this Court in *Idea Cellular Ltd. v. Dy. CIT [2008] 301 ITR 407 (Bom.)* has held that if during Assessment proceedings queries were raised and the assessee responded to the same, then even if an Assessment order does not mention the same, it does not mean that the Assessing Officer has not applied his mind to the issues. It would be well-nigh impossible for an Assessing Officer to complete all assessments assigned to him under Section 143(3) of the Act if he is required to deal with all issues which arose during the Assessment Proceedings. Thus, the Assessment Order primarily deal with only those issues in respect of which the Assessee has not been able to satisfy him and give reasons for his conclusion. This would enable the Assessee to challenge the same, if aggrieved. In fact the Gujarat High Court in *CIT v. Nirma Chemical Works Ltd. [2009] 309 ITR 67/182 Taxman 183* has observed that if an assessment order were to incorporate the reasons for upholding the claim made by an assessee, the result would be an epitome and not an assessment order. In this case, during the assessment proceedings for both the Assessment Years, the Assessing Officer issued a query memos to the assessee, calling upon him to justify the genuineness of the gifts. The Respondent-Assessee responded to the same by giving evidence of the communications received from his father and his sister i.e. the donors of the gifts along with the statement of their Bank accounts. On perusal, the Assessing Officer was satisfied about the identities of the donors, the source from where these funds have come and also the creditworthiness/capacity of the donor. Once the Assessing Officer was satisfied with regard to the same, there was no further requirement on the part of the Assessing Officer to disclose his satisfaction in the Assessment Order passed thereon. Thus, this objection on the part of the Revenue, cannot be accepted.*

8. It is next submitted that the donor had not been examined by the Assessing Officer. It is not in every case that every evidence produced has to be tested by cross examination of the person giving the evidence. It is only in cases where the evidence produced gives rise to suspicion about its veracity that further scrutiny is called for. If there is nothing on record to indicate that the evidence produced is not reliable and the Assessing Officer was satisfied with the same, then it is

not open to the CIT to exercise his powers of Revision without the CIT recording how and why the order is erroneous due to not examining the donors. Thus, this objection to the impugned order by the Revenue is also not sustainable.

9. It was next submitted that no enquiry was done by the Assessing Officer to find out whether the donor Mr Deepak Modi (father) had received money from M/s. Chang Jiang as claimed. Nor any inquiry was done to find out whether the sister had in fact earned amounts on account of Foreign Exchange Transactions as claimed by her. We find that this enquiry of a source of source is not the requirement of law. Once the Assessing Officer is satisfied with the explanation offered on inquiry, it is not open to the CIT in exercise of his revisional powers direct that further enquiry has to be done. At the very highest, the case of the Revenue is that this is a case of inadequate inquiry and not of "no enquiry." It is well settled that the jurisdiction under Section 263 of the Act can be exercised by the CIT only when it is a case of lack of enquiry and not one of inadequate enquiry. This view has been taken by this Court in the matter of CIT v. Shreepati Holdings & Finance (P.) Ltd. [ITA 1879 of 2013 dated 5th October, 2013], by the Delhi High Court in CIT v. Vikas Polymers [\[2012\] 341 ITR 537/194 Taxman 57](#) and in D.G. Housing Projects (supra). In fact the Delhi High Court in D.G. Housing Projects (supra) while so holding placed reliance upon the decision of this Court in Gabriel (India) Ltd. (supra). It is very important to note that the CIT in his order under Section 263 of the Act has recorded the fact that there has been no adequate inquiry. Thus, this is not a case of no inquiry, warranting order under Section 263 of the Act. Thus, this objection on the part of the Revenue, is also not sustainable.

10. The Revenue placed reliance upon the decision of the Delhi High Court in D.G. Housing Projects Ltd., (supra) that as the Assessing Officer had not enquired into the source of the source of the gifts received by the Assessee, the Assessment Order is erroneous. The aforesaid decision holds that the power of Revision under Section 263 of the Act would normally be exercised in case of no enquiry and not in cases of inadequate enquiry. However, even in case of inadequate enquiry by the Assessing Officer, the order of the Assessing Officer could be erroneous in two classes of situation. The first class would be where orders passed by the Assessing Officer are ex facie erroneous i.e. a decision rendered ignoring a binding decision in favour of the Revenue or where enquiry is per se mandated on the basis of the record available before the Assessing Officer and that is not done. In the second class of cases, where the order is not ex facie erroneous, then the CIT must himself conduct an enquiry and determine it to be so. The Court held that it is not permissible to the CIT while exercising power under Section 263 of the Act to remit the issue to the Assessing Officer to re-examine the same and find out whether earlier order of Assessment is erroneous. It is the CIT who must hold that the order is erroneous, duly supported by reasons. In the present facts, the CIT in exercise of its powers under Section 263 of the Act has merely restored the Assessment to the Assessing Officer to decide whether the gifts were genuine and, if not, then the Assessment could be completed on application of Section 68 of the Act. In this case, the order passed by the Assessing Officer is not per se erroneous and further the CIT has not given any reasons to conclude that the order is erroneous. In fact, he directs the Assessing Officer to find out whether the order is erroneous by making further enquiry. This the decision of the Delhi High Court in D.G. Housing Projects Ltd. (supra), clearly negates. In the above view, the decision of

Delhi High Court in D.G. Housing Projects Ltd. (supra) would not assist the Revenue in the present facts.

11. Further, reliance is placed upon by the Revenue upon the decision of the Apex Court in Amitabh Bachchan (supra) to impugn the order of the Tribunal. In the facts of the Supreme Court decision, the Respondent-Assessee had filed a revised return, claiming additional expenses. During the Assessment Proceedings, the Assessing Officer called upon the Assessee to furnish the details with regard to the expenses claimed to be incurred. The Assessee therein pointed out that the payments for expenses had come out of cash balance available with him. When the Assessing Officer commenced enquiry in respect of the claim of expenditure out of cash balance available, seeking to invoke Section 69C of the Act and treat the expenditure claimed as unexplained expenditure, the Assessee therein withdrew his revised return of income. Once this was done, the Assessing Officer accepted the same and did not make any further enquiry. The CIT in exercise of its powers under Section 263 of the Act noticed that the Assessee had after having pressed his claim for expenditure in cash, withdrew the claim by withdrawing the revised return of income. This was done only after the enquiry had commenced. This withdrawal of revised income and consequent claim for cash expenditure was contrary to the stand of the Assessee himself. This change on the part of the Assessee on commencement of enquiry, made further enquiry into his claim for cash expenditure necessary. In the above facts, the CIT while exercising his powers under Section 263 of the Act found that the facts on record per se mandated an enquiry to be made into the claim of the Assessee and not doing the same resulted in the order being erroneous. Thus, the Bachchan's case was a case where once the claim was withdrawn, then enquiry which was to be conducted, was aborted by the Assessing Officer. Therefore, a case of non-enquiry. It may have been different, if the Assessing Officer had enquired into the cash expenditure and its source as claimed, to come to his own conclusion and even accepted the stand of the Assessee. In such a case, even if the CIT would have taken a view that the satisfaction of the Assessing Officer is not correct, he would not have been able to exercise his powers of Revision under Section 263 of the Act.

12. In the present facts, the Assessing Officer was satisfied, consequent to making an enquiry and examining the evidence produced by the Assessing Officer, establishing the identity and creditworthiness of the donor as also the genuineness of the gift. The CIT in his order of Revision, does not indicate any doubts in respect of the genuineness of the evidence produced by the Assessee. The satisfaction of the Assessing Officer on the basis of the documents produced is not shown to be erroneous in the absence of making a further enquiry. It is made clear that our above observations should not be inferred to mean that it is open to the Assessing Officer to enquire into the source of source for the purpose of the present facts. This is a case where a view has been taken by the Assessing Officer on enquiry. Even if this view, in the opinion of the CIT is not correct, it would not permit him to exercise power under Section 263 of the Act. In fact, the Apex Court in Amitabh Bachchan (supra) has observed that there can be no doubt that where the view taken by the Assessing Officer is a possible view, interference under Section 263 of the Act, is not permissible.

13 In view of the above, the questions as framed stands concluded by the decision of this Court in Gabriel (India) Ltd. (supra). Thus no substantial questions of law arises for our consideration.

14. Accordingly, Appeals dismissed. No order as to costs.”

8. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we hold that the order of the Id. AO is neither erroneous nor prejudicial to the interest of the revenue warranting revision u/s 263 of the Act. Hence we hold that the revision order u/s 263 of the Act passed by the Id. PCIT is hereby quashed. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 25/08/2022 by way of proper mentioning in the notice board.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 25/08/2022
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