

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

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

**ITA No.987/Mum/2021  
(Assessment Year :2015-16)**

Mrs. Manjudevi Chandanmal Jain Flat No.2201/2202, 22 <sup>nd</sup> Floor, Ashok Tower D-Wing, Dr. B.A. Road Mumbai Maharashtra – 400 012	Vs.	Pr. CIT, Circle-20(2) Room No.418, 4 <sup>th</sup> Floor Piramal Chamber Lalbaug, Parel, Mumbai- 400 012
<b>PAN/GIR No.AAJPJ5077F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rakesh Joshi
Revenue by	Shri T. Shankar
<b>Date of Hearing</b>	<b>25/08/2022</b>
<b>Date of Pronouncement</b>	<b>02 /09/2022</b>

**आदेश / O R D E R**

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

This appeal in ITA No.987/Mum/2021 for A.Y.2015-16 preferred by the order against the revision order of the Id. Pr. Commissioner of Income Tax-Mumbai-20, u/s.263 of the Act dated 12/02/2021 for the A.Y. 2015-16.

2. The only issue to be decided in this appeal is as to whether the Id. PCIT was justified in directing the Id. AO to treat the sale proceeds of

shares as unexplained cash credit u/s 68 of the Act by invoking revisionary jurisdiction u/s 68 of the Act, in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee being an individual had derived income from salary, house property, profits and gains of business and profession and income from other sources. The assessee had filed her original return of income for the Asst Year 2015-16 on 29/10/2015 declaring total income of Rs 1,27,90,100/-. The return was selected for scrutiny. During the course of assessment proceedings, various queries were raised by the Id. AO on various details including the transactions of sale of shares of Vishwajyoti Finance Ltd. All the notices were duly replied by the assessee before the Id. AO. In respect of sale of shares of Vishwajyoti Finance Ltd, the assessee stated before the Id. AO that she had offered the gain on sale of those shares as income from business in the return of income filed for the Asst Year 2015-16. The assessment was completed u/s 143(3) of the Act on 16.11.2017 accepting the returned income of the assessee. This assessment was sought to be revised by the Id. PCIT u/s 263 of the Act by treating the order as erroneous in as much as it is prejudicial to the interest of the revenue , on the ground that the assessee had sold similar shares of Vishwajyoti Finance Ltd in Asst Year 2014-15 wherein claim of exemption u/s 10(38) of the Act was rejected and gain treated as unexplained cash credit u/s 68 of the Act by the Id. AO. In the opinion of the Id. PCIT, similar treatment ought to have been given by the Id. AO in the year under consideration also. Accordingly, the Id. PCIT observed that the gain on sale of shares should be assessed as unexplained cash credit u/s 68 of the Act in the instant case for the year under consideration and directed

the Id. AO accordingly by invoking his revisionary jurisdiction u/s 263 of the Act.

4. It is not in dispute that the Id. AO had made full and complete enquiries regarding the sale of shares of Vishwajyoti Finance Ltd and gain made thereon. The entire computation of gains on sale of such shares were indeed filed before the Id. AO by the assessee. We find that the Id. PCIT does not comment on the aspect of adequate enquiries having already carried out by the Id. AO on the impugned issue despite bringing the said fact to his attention by the assessee in the course of revision proceedings u/s 263 of the Act. We further find that the Id. PCIT nowhere states in his revision order that as to how the gain on sale of shares of Vishwajyoti Finance Ltd which has been offered to tax by the assessee in the return of income as 'income from business' and assessed as such by the Id. AO, is erroneous or wrong. Absolutely no finding given by the Id. AO in this regard. Moreover, the Id. PCIT does not state anywhere in his order as to why the purchase cost of shares would not be allowable as deduction while computing the income thereon. Without mentioning any of these facts, merely by placing reliance on the order passed by the Id. AO for Asst Year 2014-15, the Id. PCIT comes to the conclusion that the similar treatment ought to have been given by the Id. AO for Asst Year 2015-16 also. This in our considered opinion, is not the proper method for assuming revisionary jurisdiction u/s 263 of the Act. We also find that Explanation 2 to Section 263 of the Act has also not been invoked by the Id. PCIT in the instant case and hence we do not deem it fit to get into the applicability of the said Explanation to the facts of the present case before us.

5. We hold that the Id. AO had made adequate enquiries on the gain on sale of shares of Vishwajyoti Finance Ltd during the course of assessment proceedings, on which fact, there is no dispute before us. As stated supra, the Id. PCIT had not brought any evidence on record as to why the cost of such shares would not be allowable as deduction. The Id. PCIT had merely relied on the assessment order framed for the Asst Year 2014-15. We find that the reliance placed by the Id. DR on the decision of Hon'ble Jurisdictional High Court in the case of Belazio Construction P Ltd vs ITO reported in 111 taxmann.com 45 (Bom HC) is not applicable to the facts of the instant case before us as it was rendered in the context of validity of reopening of assessment u/s 147 of the Act based on information obtained in earlier scrutiny assessment year. We hold that the Id. AO on examination of all the details filed before him, had taken a plausible view on the issue. Hence we have no hesitation in quashing the revision order passed by the Id. PCIT u/s 263 of the Act in the facts and circumstance of the instant case. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 02/09/2022 by way of proper mentioning  
in the notice board.

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

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

Mumbai; Dated 02/09/2022  
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**