

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

**BEFORE SHRI G.S. PANNU, PRESIDENT AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.1971/Mum./2020**  
**(Assessment Year : 2015-16)**

Surplus Finvest Pvt. Ltd.  
5<sup>th</sup> Floor, Sobo Central  
28 Pt. Madan Mohan Malvia Road  
Tardeo, Mumbai 400 034  
PAN-AAFCS0533G

...Appellant

v/s

Principal Commissioner of Income Tax  
Circle-11, Mumbai

.....Respondent

Assessee by : Shri Vipul Joshi, Advocate, a/w  
Ms. Dinkle Haria, Advocate

Revenue by : Shri Ashok Kumar Kardam, CIT - DR

Date of Hearing- 21/07/2022

Date of Order- 14/09/2022

**ORDER**

**PER BENCH**

The present appeal has been filed by the assessee challenging the impugned order dated 05/03/2020, passed under section 263 of the Income Tax Act, 1961 (*the Act*) by learned Principal Commissioner of Income Tax-11, Mumbai, [*learned PCIT*], for the assessment year 2015-16.

2. The present appeal filed before us is delayed by 212 days. In the present case, the impugned order dated 05/03/2020, was received by the assessee on same day. Thus, as per the provisions of section 253(3) of the Act, the assessee was required to file appeal within 60 days from the date of

receipt of order. However, the assessee filed appeal, for the year under consideration, on 02/12/2020. We find that the Hon'ble Supreme Court, vide order dated 10/01/2022, passed in M.A. no.21 of 2022, in M.A. no.665 of 2021, in Suo-Motu Writ Petition (Civil) no.3 of 2020, directed that the period from 15/03/2020 till 28/02/2022, shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial and quasi judicial proceedings. As the due date for filing present appeal was falling within the aforesaid time-period, in view of the order passed by the Hon'ble Supreme Court, there is no delay in filing the present appeal and we proceed to decide the appeal on merits.

3. In this appeal, the assessee has raised following grounds:

"1. BREACH OF THE PRINCIPLES OF NATURAL JUSTICE

*1.1. The Learned Principal Commissioner of Income-tax- 11, Mumbai ["Ld. CIT"] erred in framing the revision order u/s 263 of the Income-tax Act, 1961 [the Act"] by not giving proper, sufficient and effective opportunity of being heard to the Appellant;*

*1.2 It is submitted that in the facts and the circumstances of the case, and in law, the revision order is required to be held as bad and illegal as the same is passed in breach of the principles of natural justice, as well as with non-application of mind to the facts and the contentions brought on record by the Appellant.*

WITHOUT PREJUDICE TO THE ABOVE

2. REVISION ILLEGAL

*2.1 The Ld. CIT erred in passing the order u/s 263 of the Act, revising the assessment order passed by the A.O. u/s 143 (3) of the Act.*

*2.2 It is submitted that in the facts and the circumstances of the case, and in law, the order is bad, illegal and void as necessary pre-conditions for initiating the revision proceeding as well as the completion thereof were not fulfilled.*

*2.3 Without prejudice to the generality of the above, the CIT failed to appreciate that:*

*(i) The assessment order framed was not "erroneous" within the meaning of section 263 of the Act, and*

*(ii) In any case, the assessment order was not "prejudicial to the interest of the revenue" within the meaning of section 263 of the Act;*

2.4 *It is submitted that in the facts and the circumstances of the case, and in law, no revision w/s. 263 of the Act was called for;*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

3. ON MERITS

3.1 *Otherwise also, it is submitted that in the facts and the circumstances of the case, and in law, on merits also, no revision under section 263 of the Act was called for."*

4. The only grievance of the assessee in present appeal is against revision order passed by the learned PCIT under section 263 of the Act.

5. During the course of hearing, learned counsel appearing for the assessee submitted that no order has been passed by the Assessing Officer pursuant to impugned order passed under section 263 of the Act, whereby the assessment order passed under section 143(3) of the Act was set aside with the direction to pass a fresh speaking order. Learned counsel further submitted that the time period provided under the Act for passing the order in pursuance of order passed under section 263 of the Act has also expired in the present case. It was also brought to our notice that on similar issue reassessment proceedings were initiated in the case of the assessee under section 147 of the Act, however, no addition was made by the Assessing Officer and returned income declared by the assessee was accepted vide order passed under section 147 read with section 144B of the Act.

6. On the other hand, learned Departmental Representative could not bring anything on record to controvert the aforesaid submissions made by the learned counsel.

7. We have considered the submissions from both the sides and perused the material available on record. The assessee is a company engaged in the business of investment, financial activities and trading in shares and fabric. For the year under consideration, the assessee e-filed its return of income on 30/09/2015, declaring total income of Rs. 14,86,100. The assessee has shown income of Rs. 32,64,761 under the head income from business and profession, against which it claimed set off of brought forward business losses of Rs. 17,78,665, thereby declaring total income at Rs. 14,86,100. Besides this, the assessee has declared short term capital loss of Rs. 31,31,140, on sale of shares, which has been claimed as current year's loss eligible for being carried forward for future years for set off purposes. The Assessing Officer vide order dated 30/11/2017, passed under section 143(3) of the Act accepted the total income of the assessee as per return.

8. Subsequently, notice dated 28/01/2020, was issued under section 263 of the Act by the learned PCIT on the basis of information received from DIT (Investigation), Kolkata in respect of companies engage in penny stock and providing bogus long term capital gains/short term capital gains to its beneficiaries. As per the said information, M/s Sulabha Engineering was one such company, and in whose shares assessee has transacted and incurred loss amounting to Rs. 31,46,502. Accordingly, the learned PCIT was of the view that the said loss is a bogus short term capital loss and carry forward of

the same should have been disallowed. Accordingly, the assessee was asked to show cause as to why the order passed by the Assessing Officer under section 143(3) of the Act be not set aside as the same was passed without proper verification. The learned PCIT vide impugned order dated 05/03/2020, passed under section 263 of the Act, held that despite selection of assessee's case for complete scrutiny, the Assessing Officer failed to make verification/investigation in respect of the transaction in shares of M/s Sulabha Engineering by the assessee. Accordingly, vide impugned order dated 05/03/2020, learned PCIT set aside the assessment order passed under section 143(3) of the Act and directed the Assessing Officer to make detailed verification/investigation in view of the information received from DIT (Investigation), Kolkata and pass fresh speaking order.

9. It is the plea of the assessee, which has not been controverted by any evidence on record, that no order has been passed by the Assessing Officer, till date, pursuant to the aforesaid directions issued under section 263 of the Act and the statutory time period for passing any such order has since been expired. We find that under section 153(3) of the Act, the statutory time period for passing the order giving effect to the order passed under section 263 of the Act is 12 months from the end of the financial year in which the order under section 263 of the Act was passed. The relevant provisions of section 153 of the Act are as under:

*"(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment or fresh order under section 92CA, as the case may be, in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, or an order under section 92CA, as the case may be, may be made at any time before the expiry of nine months from*

*the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:*

*Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1<sup>st</sup> day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted."*

10. In the present case, the impugned order under section 263 was passed by the learned PCIT on 05/03/2020 i.e. after 01/04/2019, therefore, applying the aforesaid provision of section 153(3) of the Act read along with the proviso, the time limit for passing any order by the Assessing Officer pursuant to impugned order passed under section 263 of the Act was up to 31/03/2021. In this regard, it is also pertinent to note that on account of the then prevailing situation due to Covid-19 pandemic, in exercise of powers conferred by section 3(1) of the Taxation and Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020, the CBDT vide various notifications being No. 93/2020 dated 31/12/2020, No. 10/2021 dated 27/02/2021, No. 20/2021 dated 31/03/2021, and notification No. 74/2021 dated 25/06/2021, extended the due date of passing the order under section 143(3) read with section 263 of the Act up to 30/09/2021. Thus, in the present case, the time limit available with the Assessing Officer for passing the order pursuant to directions issued vide impugned order dated 05/03/2020, passed under section 263 of the Act, was extended up to

30/09/2021, however, no order has been passed by the Assessing Officer till date.

11. We further find that the Assessing Officer initiated reassessment proceedings under section 147 of the Act in the case of the assessee, for the year under consideration, on the basis of very same information received from DIT (Investigation), Kolkata regarding the companies engaged in penny stock and providing bogus long term capital gain/short term capital gains. Copy of the reasons dated 22/03/2021, recorded by the Assessing Officer for reopening the assessment under section 147 of the Act was furnished during the course of hearing. Relevant portion of the aforesaid reasons is as under:

*"3.2 From the perusal of the records of the assessee, it is seen that the assessee had declared short term capital loss of Rs.31,31,140/- on sale of shares, which has been claimed as current years loss eligible for being carried forward to future years for set off purposes. It was noticed from the details of capital gain that assessee had purchased 75,000 equity shares of M/s Sulabha Engg. during the month of January 2014 at a price ranging between 206.26 to 207.63 per share and these shares were sold on 16.12.2014 165.07 per share resulting in short term capital loss of Rs.31,46,502/- and after setting off profit of Rs. 15,361 arising in share transactions in the scrip of Shemaroo Entertainment; net short term capital loss of Rs.31,31,141 was claimed as eligible for being carried forward In this regard it is pointed out that the Directorate of Income Tax (inv), Kolkata had undertaken investigation into penny stocks and had given detailed findings indicating bogus LTCG/STCG entries claimed by large number of beneficiaries. It was found that the promoters, brokers, operators in collusion had rigged the prices of 84 penny stocks to give accommodation entries of LTCG/STCG to the beneficiary and entries of losses to exit providers. The modus operandi involving operators, intermediaries and beneficiaries had been detailed in investigation: report prepared and disseminated by Investigation Wing, Kolkata. It was noticed from the list of 84 penny stocks available in public domain that M/s Sulabha Engg. was one of the stocks included in the list of penny stocks prepared by DIT(Inv), Kolkata. In view of findings of Investigation wing in respect of shares of M/s Sulabha Engg. the loss amounting to Rs.31.46,502/- from sale of shares of M/s. Sulabha Engg is bogus loss and carry forward of same cannot be allowed. The carry forward of the said loss has resulted in escapement of income comprising of short term capital gain of Rs. 15,361/- and excess carry forward of short term capital loss of Rs. 31,31,141/-. Therefore, it can be reasonably be concluded that there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment.*

4. Section 147 of the Act contemplates three primary conditions for the initiation of reassessment proceedings:

- There should be a reason to believe, that
- Income chargeable to tax, has
- Escaped assessment

5. As per explanation 1 of the section 147 of the IT Act 1961, mere production before the AO of account books or other evidence from which material evidence could with due diligence have been discovered by the AO will not necessarily amount to disclosure within the meaning of the foregoing provisions of section 147 of the IT Act. Hence I have a reason to believe that the income chargeable to tax has escaped assessment under the meaning of section 147 of the Income tax Act, 1961.

6. The under signed has carefully applied his mind to the facts and circumstances of the case. The information in possession of the undersigned gives a substantial basis for the formation of a reason to believe to initiate re assessment u/s. 147 of the IT Act, 1961.

7. In view of the above, I have reason to believe that income chargeable to tax amounting to Rs.31,46,502/- (short term capital gain of Rs.15,361/- and excess carry forward of short term capital loss of Rs.31,31,141/-) has escaped assessment in the instant case by reason of the failure of the part of the assessee to disclose fully and truly all material facts necessary for its assessment for AY. 2015-16 within the meaning u/s 147 IT Act 1961. Therefore, this is a fit case for reopening of assessment.”

12. From the copy of assessment order dated 30/03/2022 passed under section 147 read with section 144B of the Act, furnished during the course of hearing, we find that the Assessing Officer accepted the return income declared by the assessee and made no addition on the ground on which the reassessment proceedings under section 147 of the Act were initiated.

13. Since, only the validity of the order passed under section 263 of the Act is under challenge in the present case and in view of the current position of fact that no order has been passed by the Assessing Officer, pursuant to the directions issued vide impugned order, within the time limit provided under section 153(3) read along with the proviso and as extended by various

notifications issued by the CBDT, as referred to hereinabove, the present appeal is rendered academic in nature, in the present case, and therefore, is dismissed as infructuous. However, liberty is granted to both the parties to seek recall of this order, if, at a later point of time, it is found that the order was, in fact, passed by the Assessing Officer pursuant to the directions issued vide impugned order dated 05/03/2020 passed under section 263 of the Act.

14. In the result, appeal by the assessee is dismissed.

Order pronounced in the open Court on 14/09/2022

**Sd/-**  
**G.S. PANNU**  
**PRESIDENT**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 14/09/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai