

**IN THE INCOME TAX APPELLATE TRIBUNAL,
“B” BENCH
MUMBAI
BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
ITA No.1982/MUM/2021
(A. Y.:2012-13)**

Smt. Nayna I. Mantri, 1601, Daffodil Tower, Nr. Chinchpoli Fatak, S.V. Road, Malad West, Mumbai-400064	Vs.	Principal Commissioner of Income Tax-30, 540, 5 th Flr. Kautilya Bhavan, C-41 to C-43, G Block, BKC, Bandra East, Mumbai-400051
Pan No.AAOPM2589C		
Appellant		Respondent

Appellant by	Shri.Nishit Gandhi.AR
Respondent by	Shri.Mahesh Akhade.DR

Date of Hearing	22.09.2022
Date of Pronouncement	29.09.2022

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed an appeal against the order of Principal Commissioner of Income Tax (Pr.CIT)-30 passed under Section 263 of the Income Tax Act, 1961[in short “the Act”].

2. At the time of hearing, the Ld.AR has submitted the application for condonation of delay in filing the appeal before the Hon'ble Tribunal and explained the reasons due Covid-19 Pandemic and the filling was delayed and relied on the decision of Hon'ble Supreme Court in respect of extension of period of limitation. We find the registry has issued defect notice to the assessee mentioning the delay of 541 days in filling the appeal. On application of the ratio of decision of the Honble Supreme court in respect of extension of limitation period the delay can be condoned and the Ld.DR has no specific objections. Further we are satisfied with the reasonable cause explained for delay in filling the appeal and accordingly we condone the delay and admit the appeal.

The assessee has raised the following grounds of appeal.

1..1 In the facts and circumstances of the case and in law, order dated 05.03.2020 passed by the Learned Principal Commissioner of Income Tax - 30, Mumbai["the PCIT"] u/s 263 of the Income Tax Act, 1961 ["the Act"for short] is bad in law and void being passed in gross violation of principles of Natural Justice

1.2 In the facts and circumstances of the case and in law the entire revision proceedings and the consequential

order u/s 263 directing a fresh assessment are bad in law and deserve to be quashed since the Ld. PCIT while invoking action u/s 263 failed to appreciate that:

(i) The assessment order u/s 143(3) r.w.s. 147 of the Act dated 30.06.2017 was itself a nullity being non-est in the eyes of law since the same has never been served upon the Assessee and as such, a non-est order could not have been revised u/s 263 of the Act;

(ii) The amount of gain of Rs. 12,49,740/- made by the Appellant was already offered to tax by way of a declaration made under the Income Disclosure Scheme, 2016 ["IDS"] after paying applicable taxes at the rate of 45% of the said gain and the Ld. PCIT has himself accepted the said declaration under IDS;

(iii) Even otherwise, no prejudice is caused to the revenue since the tax paid on the total gain of Rs. 12,49,740/- at Rs.5,62,400/- under IDS is more than the tax on the entire sale value of Rs. 14,03,250/- at Rs.4,76,965/- (inclusive of surcharge and education cess) under the normal provisions of the Act; and;

(iv) In any case, it appears that the Ld. Assessing Officer has in passing the assessment order dated 30.06.2017 merely arrived at the correct taxable income, a course permissible in law and hence such an order taking a legally permissible view could not have been revised.

1.3 Without prejudice to the above, the Ld. PCIT grossly erred in not appreciating that even otherwise, the purchase cost of shares (Rs.1,53,510/-) is deductible from the total sale value of shares (Rs.14,03,250/-) in order to arrive at the correct taxable income and in any case, the Ld. PCIT has not disputed the fact that the Assessee has actually spent the said amount and hence the assessment order sought to be revised is neither erroneous nor prejudicial to the interests of the revenue and could not be revised.

2. The appellant craves leave to add, amend, alter, modify or delete all or any of the grounds raised in the appeal.

3. The brief facts of the case are that the assessee has filed return of income for the assessment year 2012-13 on 26.07.2022 disclosing a total income of Rs.2,23,491/- and the assessee has claimed exemption of long term capital gains under Section 10(38) of the Act of sale of shares of Karma Industries Ltd and as per the ITS reports, available on the ITD system, the assessee is one of the beneficiary of bogus LTCG. Therefore, the Assessing Officer (A.O.) has reason to believe that the income has escaped assessment and notice under Section 148 of the Act was issued. The assessee has opted for IDS -2016 scheme on the profit on sale of shares and paid the taxes. Subsequently, the A.O has accepted the returned income and granted relief under Section 10(38) of the Act and passed the order under Section 143(3) r.w.s.147 of the Act dated 26.02.2017.

4. The Pr.CIT on perusal of the facts and the record, find that the assessee against the long term capital gains(LTCG), has declared the same amount under income declaration scheme (IDS)2016 and paid the taxes. Whereas, the Pr.CIT has observed that the total sale value of the shares is Rs.14,30,250/- after deducting purchase value of Rs.1,53,510/- the assessee has declared the long term capital gains of Rs.12,49,740/- Therefore, the Pr,CIT is of the opinion that the assessee should not be allowed deduction for purchase price of shares as it was purchased from undisclosed income and the entire sale proceeds should have been declared

by the assessee under IDS 2016 and the AO has not made any enquiry on these aspects. With these observations the Pr.CIT was not satisfied with the order passed under Section 143(3) r.w.s. 147 of the Act as it is erroneous and prejudicial to the interest of the revenue and directed the AO to frame assessment de nova after providing adequate opportunity of hearing to the assessee and passed the order under Section 263 of the Act dated 05.03.2021. Aggrieved by the order, the assessee has filed an appeal before the Honble Tribunal.

5. We heard the rival submissions and perused the material on record. The Ld.AR submitted that the Pr.CIT has erred in overlooking the facts that the order passed under Section 143(3) r.w.s. 147 of the Act does not satisfy the twin conditions erroneous and prejudicial interest of the Revenue and the Ld.DR supported the Pr.CIT order. The contention by the learned AR that the assessee has brought to the knowledge of the AO that the assessee has opted for ICDS Scheme and further the Ld. AR also substantiated the submissions referring to the Form.no. 4 issued by the income tax department placed at Page 12 of the paper book. We find on the identical issue Hon'ble Tribunal in the case of Mrs. Manisha Ajay Shah vs. Pri.CIT in ITA No. 3001/M/2019 dated 14.10.2020 has observed at Page 3 Para 4 to 9 read as under:

4. *We have heard the submissions made by Id. Departmental Representative and have examined the material available on record. The PCIT has invoked revisional jurisdiction under section 263 of the Act on the ground that the Assessing Officer has failed to examine the transaction of purchase and sale of shares. Another reason for invoking revisional jurisdiction by the PCIT is, that the assessee in IDS 2016 has only declared long term capital gain on penny stock, whereas, the*

assessee should have declared gross sale receipt of the shares. The immunity is granted to the assessee to the extent declaration is made under IDS 2016 and not against the entire transaction. The PCIT invoked revisional jurisdiction to tax the difference between gross sale price of the shares Rs.34,30,000/- and Long Term Capital Gains declared by the assessee Rs.32,86,815/-. In other words, the PCIT seeks to tax even the purchase cost of the shares i.e. Rs.1,43,185/- stating it to be a bogus purchase transaction.

5. *After examining the documents on record we do not concur with the view of the PCIT. The assessee has demonstrated from the bank statement that the amount has been paid for purchase of shares of GCM Securities Ltd. through cheque. This is further corroborated by share application form of GCM Securities at page 22 of the Paper Book and transaction-cum-holding statement in the case of assessee issued by Stock Holding Corporation of India Ltd. at page 19 of the Paper Book. The documents furnished by the assessee clearly indicate that the shares were indeed purchased by the assessee through banking transactions. It is not the case of the Revenue that the amount paid by the assessee for purchase of shares has travelled back to the assessee in the form of cash or any other manner.*

6. *The provisions of section 263 of the Act can be invoked if, the twin conditions mandated under the section are satisfied, i.e:*

(i) the order of the Assessing Officer sought to be revised is erroneous;

and

(ii) it is prejudicial to the interests of the revenue.

If any one of these two conditions is absent, the Commissioner of Income Tax cannot take recourse to section 263 of the Act.

7. *In the present case, we find that the Assessing Officer has issued a questionnaire wherein specific information was sought on transaction of equity shares and working of short term capital gain/long term capital gain. The assessee furnished a detailed reply to the notice issued under section 142(1) of the Act, wherein the assessee while replying to the query on transaction of shares, informed that a declaration under IDS 2016 has been made in respect of long term capital gain arising on sale of shares to GCM Securities Ltd. Ostensibly, the Assessing Officer after examining the documents accepted the same and made no addition. Merely for the reason that the Assessing Officer has taken a plausible view after examining the records that is not acceptable to the PCIT, would not make the assessment order erroneous. In the present case twin conditions set out in section 263 are not satisfied and hence, the PCIT wrongly assumed revisional jurisdiction.*

8. *In view of our above finding, we find merit in the appeal of the assessee. The impugned order is quashed and the appeal of assessee is allowed.*

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

6. We considering the facts, circumstances and the ratio of the judicial decision which is identical to the assessee's case and the A.O. has verified the facts of sale of shares and the IDS2016 opted by the assessee and took a possible view. We respectively follow the judicial precedence and find that the order passed by the Pr.CIT

cannot be sustained and is quashed and allow the grounds of appeal of the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on day of 29th September 2022.

Sd/-

(BASKARAN BR)

ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Mumbai, Dated: 29/09/2022

M. Sonavane

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt.Registrar)ITAT,
Mumbai