

आयकर अपीलीय अधिकरण, कोलकाता  
पीठ 'A, कोलकाता  
IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA

समक्ष : श्री राजपाल यादव, उपाध्यक्ष  
श्री मनीष बोरड, लेखा सदस्य  
Before : SRI RAJPAL YADAV, VICE PRESIDENT  
&  
SRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील संख्या/ I.T.A. No.155/कोल/2021  
निर्धारण वर्ष/Assessment Year: 2015-16

**Sandeep Saraf-HUF** ..... (अपीलार्थी/*Appellant*  
[PAN: AAJHS 1452F]

**Vs.**

**PCIT-15, Kolkata** .....(प्रत्यर्थी)/*Respondent*

Appearances by:

*Sh. Rajeeva Kumar, Advocate, Ld.AR &  
Md. Ghayas Uddin, CIT, (D/R)*

सुनवाई की तिथि/

Date of the hearing : Aug 30<sup>th</sup>, 2022

Date of pronouncing the order : Oct. 31, 2022

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2015-16 is directed against the order passed u/s 263 of the Income Tax Act, 1961 (in short the "Act") by Id. Pr. Commissioner of Income-tax-15, Kolkata [in short Id. "PCIT"] dated 22.06.2020 which is arising out of the assessment order framed u/s 143(3) of the Act dated 25.05.2017.

2. Registry has informed that the appeal is time barred by 247 days. Condonation application has been filed by the assessee( which is available on record). Perusal of the same shows that the delay was on account of COVID-19 restrictions. We, therefore, in view of the judgment of The Hon 'ble Supreme Court vide Miscellaneous Application No. 21 of 2022 find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period. Since the period of limitation in the case of the assessee falls during this period, the same deserves to be excluded and we, therefore, condone the delay of 247 days and admit the appeal for adjudication.

3. The assessee has raised the following grounds of appeal:-

*“1. That under the facts and in the circumstances of the case, the Ld. PCIT, Kolkata-15 erred in treating the LTCG of Rs.72,30,7151- claimed on the sale of shares of CCL International Ltd to be bogus and therefore setting aside the order dt.25.05.2017 u/s.143(3) of the Income Tax ct, 1961 passed by the AO holding the same to be erroneous so far as it was prejudicial to the interest of revenue in terms of Section 263 of the Income Tax Act,1961. The order, so passed, is bad in law and therefore need to be quashed.*

*2. The assessee craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing.*

4. Brief facts of the case as culled out from records are that the assessee is an individual. Income at Rs. 10,18,260/- declared in e-return filed on 10-08-2015 pertaining to AY 2015-16. In the return the assessee has also claimed exemption u/s. 10(38) of the I.T Act, 1961 ( in short, the 'Act) of Rs. 72,30,715/- on sale of equity shares of M/s. CCL International Ltd. After the case being selected for scrutiny the

assessment under CASS followed by serving of notice u/s. 143(2) and 142(1) of the Act. The Id. AO assessed assessee's income at Rs. 11,65,540/- after making additions/disallowance u/s. 14A (Rs.87,377/-) and addition on account of personal/household drawing (Rs.60,000/-).

5. On perusal of assessment records the Id. PCIT invoked the provisions of section 263 of the Act alleging that the Id. AO failed to conduct adequate and proper enquiry regarding examination of claim of exemption u/s. 10(38) of the Act and also not considering the information received from Directorate of Income Tax (Investigation), Kolkata as per which the said company, M/s. CCL International Ltd was found to be a penny stock company and that the alleged long term capital gain of Rs. 72,30,715/- is a bogus claim. The Id.PCIT held that since the Id. AO has not examined these details about such transaction, the assessment order u/s. 143(3) dt. 25.05.2017 is erroneous so far as pre judicial to the interest of the revenue.

6. Aggrieved, the assessee is now in appeal before this Tribunal.

7. During the course of hearing the assessee was asked as to why not the judgment of the Hon'ble Jurisdictional Calcutta High Court in the case of *PCIT Vs. Swati Bajaj dt. 14-06-2022* may be applied against it since the facts of the instant case are similar to the facts adjudicated by the Hon'ble Jurisdictional High Court in the case of *Swati Bajaj (supra)*. However, the Ld. Counsel for the assessee failed to controvert.

8. Per contra, the Ld. Departmental Representative vehemently argued supporting the order of the Id.PCIT and also stated that ratio laid down by the Hon'ble Jurisdictional Calcutta High Court in the case of *Swati Bajaj supra* is squarely applicable against the assessee and revenue deserves to succeed

9. We have heard the rival contentions and perused the material placed on record before us. The impugned order passed u/s. 263 of the Act is in challenge by assessee, wherein Id. PCIT has held the assessment order u/s. 143(3) dt. 25-05-2017 *as erroneous and prejudicial to the interest of the revenue*, as the Id. AO failed to examine the correctness and genuineness of claim of long term capital gain(LTCG) u/s. 10(38) of the Act from sale of equity shares of a penny stock companies.

10. We observe that during the assessment year 2015-16 the assessee earned exempt income of Rs. 72,30,715/- from sale of equity shares of M/s. CCL International Ltd. Perusal of paper book shows that the share price of M/s. CCL International Ltd witnessed a drastic and sharp increase in a very short span of time without having sufficient financials. In the impugned order Id. PCIT referred to the information from Directorate of Income Tax (Investigation), Kolkata, which had unearthed a large economic scam of tax evasion in July 2013 conducting search and seizure operations. It was also found that the share brokers and entry operators were involved in manipulation of market price of such penny stock. The Hon'ble Jurisdictional High Court in the case of *Swati Bajaj supra* under similar set of facts considering report of Directorate of Income Tax (Investigation), Kolkata and also poor financials of the penny stock companies but having sharp, drastic and abnormal increase in share price, held such long term capital gain from sale of such shares as bogus and confirmed the addition made by the Id. AO u/s. 68 of the Act and also confirmed the order passed u/s. 263 of the Act, thereby treating the assessment order as erroneous and so far as prejudicial to the interest of the revenue.

11. We, therefore, are of the considered view that since the ratio laid down by the Hon'ble Jurisdictional High Court in the case of *Swati Bajaj supra* is squarely applicable on the issue raised by the assessee in the instant appeal and Id. Counsel for the assessee having failed to controvert this finding by placing any other binding precedence of Hon'ble Supreme Court in its favour we fail to find any infirmity in the finding of the Id. PCIT holding the assessment order u/s. 143(3) of the Act dt. 25-05-2017 as erroneous and so far as prejudicial to the interest of the revenue. Therefore, we confirm the finding of the Id.PCIT given in the impugned order. Thus, ground no. 1 raised by the assessee is dismissed. Ground no. 2 raised by the assessee is general in nature, which needs no adjudication.

परिणामतः निर्धारिती की अपील खारिज की जाती है।

12. In the result, the appeal of the assessee is dismissed

आदेश खुले न्यायपीठ में दिनांक on...31-10-2022 को उद्घोषित।

Order pronounced in the open court 31-0-2022

Sd/-

राजपाल यादव, उपाध्यक्ष

[Rajpal Yadav]

Vice President

Sd/-

मनीष बोरड, लेखा सदस्य

[Manish Borad]

Accountant Member

दिनांक/ Dated: 31 -10-2022

**\*\*PP (SPS)**

*Copy of the order forwarded to:*

1. Sandeep Saraf-HUF Satyanarayan Park, A.C Market, Upper Basement, D-120/143, 141 Cotton Street, Kolkata-700 007.
2. PCIT-15, Kolkata.
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar