

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI B. R. BASKARAN, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.987/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2017-18)

Satguru Iron & Steel Company Pvt. Ltd. 205, Sujata Chambers Off, Katha Bazar Masjid (W), 2 nd Floor, 1/3 Abhichand Gandhi Marg, Mumbai- 400009.	बनाम/ Vs.	PCIT-8 Room No. 611, 6 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AALCS0501Q		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Vijay Mehta
Revenue by:	Shri Manoj Kumar (DR)

सुनवाई की तारीख / Date of Hearing: 04/10/2022

घोषणा की तारीख /Date of Pronouncement: 10/11/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax-8 [hereinafter referred to as the "PCIT"], Mumbai dated 11.03.2022 for assessment year 2017-18 passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The assessee has assailed the decision of the Ld. PCIT invoking revisional jurisdiction u/s 263 of the Act mainly finding fault of the AO not inquiring into the purchase of share at Rs.1002/- per share and sale of the same @ of Rs. 18/- per share of M/s. Morya Erectors Pvt. Ltd.



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3. Regarding the main reason for his interference, the Ld. PCIT alleges non-inquiry on the part of AO about purchase and sale of shares of M/s. Morya Erectors Pvt. Ltd, the Ld. AR pointed out that *purchase of this shares happened in AY 2015-16* whereas relevant assessment year is AY. 2017-18 and only sale took place in this AY 2017-18, so according to him, the AO cannot be faulted for not enquiring about the purchases which took place in AY. 2015-16. For supporting such a contention [*about the fact of purchase of shares of M/s Morya*]the Ld. AR drew our attention to page no. 21 of the P.B wherein the fact is discernable from the table [*in respect of loss on sale of investment has been shown*] which is reproduced here under for easy reference: -

SATGURU IRON & STEEL COMPANY PRIVATE LIMITED							
ASSESSMENT YEAR 2017-18							
ANNEXURE-4- WORKING OF LOSS ON SALE OF INVESTMENTS							
Date of purchase	Name of Investment	No of shares	Amount	Date of sale	No of shares	Amount	Profit/loss
31.03.2015	Morya Erectors Pvt. Ltd.	49,169	4,92,91,923	28.03.2017	49,169	9,26,205	- 4,83,65,718
	Total	49,169	4,92,91,923		49,169	9,26,205	- 4,83,65,718

4. Drawing our attention to the date of purchase of the shares in question i.e. M/s. Morya Erectors Pvt. Ltd, the Ld. AR pointed out that the date of purchase was on 31.03.2015 i.e. AY. 2015-16. In the light of the said fact, according to the Ld. AR, the Ld. PCIT could not have found fault with the action of the AO not to have inquired into the purchase of shares made by the assessee on 31.03.2015 i.e. AY. 2015-16 whereas the AO while passing the assessment order on 27.11.2019



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was concerned with assessment for AY. 2017-18. Therefore, according to him, the AO's action was confined to the events taking place during the AY 2017-18 only [i.e. with regard to sale of share which happened on 28.03.2017]. Therefore, according to him, in the aforesaid facts and circumstances, the AO cannot be found fault for not examining the action of the assessee on the issue of purchase of the share of M/s. Morya Erectors Pvt. Ltd. on 31.03.2015 without disturbing the AY. 2015-16. According to the Ld. AR as per the Hon'ble Supreme Court decision in the case of ITO Vs. Ch. Atchiah (1966) 218 ITR 239 (SC) the Hon'ble Supreme Court has held *"Under the present Act, the Income Tax Officer has no option like the one he had under the 1922 Act. He can, and he must, Tax the right person and the right person alone. By "right person" is meant the person who is liable to be taxed, according to law, with respect to a particular income. The expression "wrong person" is obviously used as the opposite of the expression "right person". Merely because a wrong person is taxed with respect to a particular income, the Assessing Officer is not precluded from taxing the right person with respect to that income. (see PP. 243G, H, 244A)."*

5. Therefore, the Ld. AR said that the AO could have only taxed the right person, right year and the right income. And therefore, AO's action of not inquiring into the purchase of shares of M/s. Morya Erectors Pvt. Ltd. made in the earlier year (AY. 2015-16) could not have been found fault with the PCIT without disturbing the assessment of AY. 2015-16. Per contra, the Ld. CIT-DR supported the impugned



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action of Ld. PCIT and does not want us to interfere with the order of Ld. PCIT.

6. We have heard both the parties and perused the records. We note that the AO in his assessment order u/s 143(3) of the Act dated 27.11.2019 has noted that the assessee has declared total loss of Rs.5,33,85,790/- and the AO has accepted the same by framing the assessment u/s 143(3) of the Act. According to the Ld. PCIT, the assessee has claimed Long Term Capital Loss (LTCL) of Rs.4,83,65,718/- on transaction of purchase and sale of share of M/s. Morya Erectors Pvt. Ltd. wherein the assessee has purchased share @ 1002/- per share and sold the of shares @ 18/- per share. According to the Ld. PCIT, the AO has failed to inquire into the purchase of this share by the assessee at Rs.1002/- per share which was evident from the fact that no details were called for by the AO. In such a scenario, according to Ld. PCIT, the assessee has not discharged the primary burden to prove the nature and source of credit in its accounts of LTCL on the scrips sold by the assessee. According to the Ld. PCIT, the assessee's investment in un-listed shares of M/s. Morya Erectors Pvt. Ltd. was in the nature of unexplained investment in the books of assessee in view of Section 69 of the Act. And therefore, according to Ld. PCIT, Rs.4,92,91,923/- was required to be added back to the total income of assessee being unexplained investment. Therefore, according to him since the AO has not taxed the said amount the assessment order of AO was erroneous as well as prejudicial to the revenue.



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7. After hearing both sides, we find that the assessee company has purchased of 49,169/- shares of M/s Morya Erectors Pvt. Ltd, on 31.03.2015 (i.e. AY. 2015-16) for a consideration [purchase] of Rs.4,92,91,923/- which incident happened undisputedly on 31.03.2015, which falls in AY 2015-16 and so, not in this relevant AY 2017-18. Therefore, the Ld. PCIT's finding fault of the AO not bringing to tax this amount of Rs.4,92,91,923/- which pertains to AY. 2015-16; and not in the relevant assessment year under consideration i.e. AY. 2017-18. Therefore, the error pointed out by the Ld. PCIT itself is found to be un-sustainable in law in this relevant assessment year under consideration. Therefore, the assessee succeeds in its appeal. So it is allowed and we quash the impugned order of Ld. PCIT.

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

Order pronounced in the open court on this 10/11/2022

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 10/11/2022
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**