

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

I.T.A. No. 612/Mum/2021
(Assessment Year 2016-17)

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| NagjiKeshavji Rita Room No.104, Devikrupa S K Patil Lane, Dafftary Road Malad(East), Mumbai-400 097 AADPR47934H | vs | Pr.CIT, Mumbai Room No.120, 1 st Floor, KautilyaBhavan, C-41 to C-43, G Block BandraKurla Complex, Bandra(E) Mumbai-400 051 |
| APPELLANT | | RESPONDENT |

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|---------------------------|----------------------------|
| Assessee represented by | ShriSurji D Chheda, CA |
| Department represented by | Shri Mahesh Akhade –CIT DR |

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| Date of hearing | 01/01/2023 |
| Date of Pronouncement | 19/01/2023 |

ORDER

PER OM PRAKASH KANT (AM):

This appeal by the assessee is directed against revision order dated 25/03/2021 passed by the Ld. Principal Commissioner of Income-tax -17, Mumbai (in short, 'the Ld.PCIT') for Assessment Year 2016-17 raising following grounds:-

'LIMITED SCRUTINY ASSESSMENT

1. In the facts and in the circumstances of the case, the learned Pr. CIT has erred in initiation of proceedings u/s 263 of the Income Tax Act, 1961 on issues which are outside the Limited scrutiny assessment proceedings specially when there is nothing to show prima facie that the appellant has made wrong claim and nowhere the revision order states that the AO has failed to convert the scrutiny from limited to full scrutiny on the basis of evidences on record.

2. In the facts and in the circumstances of the case, the learned Pr. CIT has erred in not following the judicial prudence when the Coordinated ITAT bench decision should have been followed and when there is no high court order against the above issue.

TAXATION OF WHOLE SALE CONSIDERATION ON SALE OF SHARES AS AGAINST CAPITAL GAIN ON SUCH SALE

3. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of the taxation of whole (full) sale consideration on sale of shares as against capital gain on such sale) and should have been added full u/s 68 of the I.T. Act including cost of acquisition to the extent of Rs.63,07,552/- (Rs.55972000-Rs.49664448) and failed to appreciate that there is adequate inquiry on the same issue and the learned AO has passed the order after application of mind and after considering relevant material and after his satisfaction.

4. In the facts and in the circumstances of the case, the learned Pr. CIT has erred to give the direction for revision u/s 263 on issue when the matter for the same issue is pending before the CIT appeals and the order cannot be revised under section 263 on this issue specially when the issues is the subject matter of appeal

5. In the facts and in the circumstances of the case, the learned Pr. CIT has erred to pass the revision order on the basis that script sold i.e. Inventure Growth and Securities Ltd is a penny stock on the basis of finding by the AO but failed to consider the fact that all the facts stated in revision order for treating the stock as a penny stock was all wrong on the face of it and has passed revision order mechanically without appreciating the facts of the case & The pr cit has erred in passing the order mechanically with pre-determined mind without looking into the facts of the case and specially when observation in Para 6.1 and 6.2 in revision order is completely wrong .

6. In the facts and in the circumstances of the case The learned Pr. CIT has erred in passing revision order when the conclusion drawn by learned CIT was not based upon any material on record but it was purely on a guesswork and probabilities, therefore, such an order under Section 263 should not be upheld.

TAXATION OF ENTRY OPERATOR CHARGES (COMMISSION)

7. The learned Pr. CIT has erred to set aside the assessment order on issue of taxation of entry operator charges (commission) which is never the reason given in the show cause notice.

8. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of the taxation of operator

charges commission) and when it is not based on any finding and in fact on wrong facts

ALLOWANCE OF BROUGHT FORWARD LOSSES

9. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of Allowance of forward losses in spite of the fact that it was a just a mistake apparent from record

APPLICATION OF PROVISIONS OF SECTION 115BBE WITH REGARDS RATE OF TAXATION

10. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of Application of provisions of section 115BBE with regards rate of taxation.

TAXATION OF PROPERTY RIGHTS AND SALE OF PROPERTY

11. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of Taxation of property rights and sale of property in spite of the fact that the learned A. O. had conducted sufficient inquiry and applied his mind.

12. In the facts and in the circumstances of the case The learned Pr. CIT has failed to appreciate that The assessee has been charged with full consideration and even cost has not been allowed as deduction irrespective of head of income and the assessee has been over taxed & The learned Pr. CIT has passed the order mechanically .

13. In the facts and in the circumstances of the case, the learned Pr. CIT has erred to give the direction for revision u/s 263 on issue when the matter for the same issue is pending before the CIT appeals and the order cannot be revised under section 263 on this issue specially when the issues is the subject matter of appeal and failed to appreciate that The issue of not allowing cost of acquisition and head of income has been appealed before cit(a) as apparent from appeal memo and failed to appreciate that The proceedings under section 263 are invalid during the pendency of an appeal as held in *Aerens Infrastructure & Technology Ltd. v. CIT [2004] 271 ITR 15 (Delhi) (HC)*

. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of Genuineness of Unsecured loans and creditworthiness of creditors in spite of the fact that the learned A. O. had conducted inquiry and specially when The learned CIT has not conducted any inquiry nor brought any material to show that order passed by the AO is prima facie erroneous and prejudicial to the interest of revenue on any of the issues

5. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of Genuineness of Unsecured loans and creditworthiness of creditors in general without specifying nay name & when the evidence were on record in respect of the genuineness/identity/capacity of the cash creditors and once this factual finding was on record , then the order under Section 263 cannot be revised on vague grounds.

GENUINENESS OF UNSECURED LOANS AND CREDITWORTHINESS OF CREDITORS

14. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of Genuineness of Unsecured loans and creditworthiness of creditors in spite of the fact that the learned A. O. had conducted inquiry and specially when The learned CIT has not conducted any inquiry nor brought any material to show that order passed by the AO is prima facie erroneous and prejudicial to the interest of revenue on any of the issues

15. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of Genuineness of Unsecured loans and creditworthiness of creditors in general without specifying nay name & when the evidence were on record in respect of the genuineness/identity/capacity of the cash creditors and once this factual finding was on record, then the order under Section 263 cannot be revised on vague grounds.

GENERAL

16. In the facts and in the circumstances of the case, the learned Pr. CIT has erred in initiation of proceedings u/s 263 of the Income Tax Act, 1961 and which was without jurisdiction and the Pr. CIT erred in holding that the assessment order was erroneous and prejudicial to the interest of revenue on all issues discussed in revision order and has erred in setting it aside for fresh assessment on issues discussed in revision order.

17. The Pr. CIT has erred in revising an assessment order on the ground that A perusal of assessment proceedings show that while making the assessment, the Assessing Officer has failed to examine the issues properly and has not applied his mind to facts and circumstances of the case for the purpose of determining the genuineness of the claims and failed to appreciate that It is a subjective finding & subjective satisfaction & not based on any objective material asf apparent from revision order.

18. The learned CIT failed to appreciate the fact that even if there was any inquiry, even inadequate, that would not by itself give occasion to the Commission To " pass orders under section 263 of the Income-tax Act, 1961, merely because he had a different opinion except the inquiry mandated as per law has not been conducted .The learned Pr. CIT failed to appreciate the fact that where the assessment order has been passed by the AO after taking into account the assessee¹ submissions and documents furnished by him and no material what so ever has been brought on record by the Pr. CIT which showed that there was any discrepancy or falsity in evidences furnished by the assessee, the order of the AO cannot be set aside for making deep inquiry only on the presumption and assumption that something new may come out. No material what so ever has been brought on record by the Pr. CIT which showed that the inquiry mandated as per law has not been conducted.

19. The revision order passed mechanically ought to be set aside as The notice issued is mechanically is apparent from the fact that two issues 1) speculation loss of 2) rent of mandvai property, mentioned in show cause notice were. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue Taxation of property rights and sale of property in

spite of the fact that the learned A. O. had conducted sufficient inquiry and applied his mind.

12. In the facts and in the circumstances of the case The learned Pr. CIT has failed to appreciate that The assessee has been charged with full consideration and even cost has not been allowed as deduction irrespective of head of income and the assessee has been over taxed & The learned Pr. CIT has passed the order mechanically .

13. In the facts and in the circumstances of the case, the learned Pr. CIT has erred to give the direction for revision u/s 263 on issue when the matter for the same issue is pending before the CIT appeals and the order cannot be revised under section 263 on this issue specially when the issues is the subject matter of appeal and failed to appreciate that The issue of not allowing cost of acquisition and head of income has been appealed before cit(a) as apparent from appeal memo and failed to appreciate that The proceedings under section 263 are invalid during the pendency of an appeal as held in Aerens Infrastructure & Technology Ltd. v. CIT [2004] 271 ITR 15 (Delhi) (HC)

. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of Genuineness of Unsecured loans and creditworthiness of creditors in spite of the fact that the learned A. O. had conducted inquiry and specially when The learned CIT has not conducted any inquiry nor brought any material to show that order passed by the AO is prima facie erroneous and prejudicial to the interest of revenue on any of the issues

5. The learned Pr. CIT has erred to hold that the assessment order was erroneous and prejudicial to the interest of revenue on issue of Genuineness of Unsecured loans and creditworthiness of creditors in general without specifying nay name & when the evidence were on record in respect of the genuineness/identity/capacity of the cash creditors and once this factual completely wrong and the Pr cit has not discussed this issue at all in the revision order nor the order has been set aside on such issues.

20. In the facts and in the circumstances of the case, the learned Pr. CIT has erred to rely upon EXPLANATION 2 when basis conditions of 263 provisions are not fulfilled."

2. Briefly stated, facts of the case are that the assessee filed its return of income electronically on 08th April, 2017 declaring total income of ₹76,26,110/-. The case of the assessee was selected for 'limited scrutiny' purpose and statutory notices under the Income-tax Act, 1961 (in short, 'the Act') were issued and complied with. The assessment under section 143(3) of the Act was completed on 28/12/2018 wherein the Assessing Officer disallowed interest on loan amounting to ₹41,27,302/-; held long term capital gain amounting to

₹47,28,200/- liable as taxable under the head 'Income from other sources' and added unexplained cash credit arising out of sale of penny stock under section 68 of the Act ₹4,96,64,448/-. In this manner, the Ld.AO assessed total income at ₹6,61,46,060/- against the returned income of ₹76,26,110/-.

3. Thereafter, the Ld.PCIT called for the assessment records and after examination, he was of the view that the assessment order passed by the Assessing Officer was erroneous insofar as prejudicial to the interest of the Revenue and accordingly, he issued show cause to the assessee. After taking into consideration the submissions of the assessee, the Ld.PCIT held the assessment order as erroneous insofar it is prejudicial to the interest of the Revenue, on the following issues:-

- **The taxation of sale consideration of penny stock transaction u/s 68**
- **Allowance of brought forward losses.**
- **Application of provisions of section 115BBE with rega5rds rate of taxation**
- **The taxation of entry operator charges (commission)**
- **Allowance of speculation loss**
- **Taxation of property rights and sale of property**
- **Genuineness of Unsecured loans and creditworthiness of creditors**

4. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as above.

5. Before us, the Ld.Counsel of the assessee has filed a paper book from pages 1 to 127 in two volumes and also filed case laws relied upon.

6. In the grounds raised, the assessee has challenged the impugned order on three issues. **Firstly**, the return of income of the assessee was selected for 'limited scrutiny' and, therefore, Assessing Officer was not authorized to enquire on the issues other than the issue(s) under 'limited scrutiny'. **Secondly**, one of the issues on which Ld. PCIT has revised the assessment order, appeal was already pending before the Ld. first appellate authority and, therefore, Ld. PCIT was precluded from revising the assessment order on that issue. **Thirdly**, already sufficient enquiry was carried out by the Assessing Officer and plausible view was framed on various issues and, therefore, Ld. PCIT was not justified in holding that no enquiry was carried out by the Assessing Officer on those issues.

6. The grounds 1 & 2 of the appeal of the assessee relate to the issue that assessment order can't be revised other than the reason(s) of 'limited scrutiny' assessment. On the issue of limited scrutiny assessment, the finding of Ld.PCIT are reproduced as under

"9. The final contention of the assessee is that this is also a case of limited scrutiny and the order can be revised only for the issue which were before the AO. This contention is also not tenable as detailed below.

Circular No.20/2015 dated 29.12.2015 and Instruction No.5/2016 dated 14.07.2016 are relevant with regards the jurisdiction of assessment proceedings in cases under Limited Scrutiny. It clearly states that even on issues other than selected under CASS, the Assessing Officer has the power to take up the assessment for comprehensive scrutiny with the approval of the Pr.CIT/DIT concerned. Therefore, in the present case also the Assessing Officer could have converted the limited scrutiny assessment into a complete scrutiny assessment by obtaining approval from the Pr.CIT/DIT concerned. The Assessing Officer having failed to convert the limited scrutiny into a complete scrutiny in itself renders the order of the Assessing Officer erroneous and prejudicial to the interest of revenue for invoking the jurisdiction u/s 263 of the IT. Act.

9.1 Section 263 of the Income-tax Act seeks to remove the prejudice caused to the revenue by the erroneous order passed by the Assessing Officer. **It empowers the Commissioner to initiate suo moto proceedings wherever where the Assessing Officer likes a wrong decision without considering the materials available on record or he takes a decision without making an enquiry into the matters, where such inquiry was prima facie warranted. The Commissioner is well within her powers to treat an order as erroneous on the ground that the Assessing Officer should have made further inquiries before accepting the wrong claims made by the assessee. The Assessing Officer cannot remain passive in the face of a claim, which calls for further enquiry to know the genuineness of it. In other words, he must carry out investigation where the facts of the case so require and also decide the matter judiciously on the basis of materials collected by him as also those produced by the assessee before him. The Assessing Officer was statutorily required to make the assessment under Section 143(3) after scrutiny and not in a summary manner as contemplated by Sub-section (1) of Section 143. The Assessing Officer is therefore, required to act fairly while accepting or rejecting the claim of the assessee in cases of scrutiny assessments. The Assessing Officer should protect the interests of the revenue and to see that no one dodged the revenue and escaped without paying the legitimate tax. The Assessing Officer is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts stated and the genuineness of the claims made in the return. The order passed by the Assessing Officer becomes erroneous when an enquiry has not been made before accepting the genuineness of the claim which resulted in loss of revenue.**

9.2 This same question of revision u/s 263 on issues not part of the Limited scrutiny as per CASS was before the ITAT Cochin Bench in *Baby Memorial Hospital Ltd. v. Assistant Commissioner of Income tax, Circle-1 (1), Kozhikode* (111 taxmann.com 189). The Ld. ITAT held that even in a case of limited scrutiny assessment, Assessing Officer is duty bound to make a prima facie enquiry as to whether there is any other item which requires examination and in assessment, potential escapement of income. Thus it has held revision u/s 263 valid in Limited scrutiny cases where the AO did not examine the issues not forming part of CASS selection. It is also noteworthy that in this case, the judgement in *Sonali M Bhavsar Vs. Pr.CIT ITA 742/M/2019*), relied upon by the assessee, has also been considered before giving the judgement."

7. Before us, the Ld.Counsel of the assessee referred to page 99 of the paper book and submitted that the case was selected under 'limited scrutiny' for examination of two issues, **firstly**, whether the deduction against income from

other sources had been correctly shown in the return of income and **secondly**, whether the share capital was genuine and from disclosed sources. The Ld. Counsel of the assessee submitted that In view of those two limited issues available for enquiry by the Assessing Officer, the Assessing Officer was not empowered to carry out enquiries on the other issues including penny stock, brought forward losses, provisions of section 115BBE, taxation of entry operator charges, allowance of speculation loss, taxation of property rights and sale of property and genuineness of unsecured loans and creditworthiness of creditors, which have been raised by the Ld. PCIT. In view of the Ld. Counsel of the assessee, the Ld. PCIT has exceeded in his jurisdiction in holding the assessment order as erroneous insofar as it is prejudicial to the interest of the Revenue. In support of the contention, he relied on the order of the Tribunal, Mumbai Bench in the case of **M/s R&H Property Developers Pvt Ltd in ITA No.1906/Mum/2019 for A.Y. 2014-015** wherein the Tribunal held that revisional jurisdiction cannot be exercised for broadening the scope of the jurisdiction that was vested with the Assessing Officer while framing the assessment. The relevant finding of the Tribunal is reproduced as under:-

"8. We shall now in the backdrop of our aforesaid observations deliberate on the validity of the order passed by the Pr. CIT under Sec. 263. As observed by us hereinabove, the Pr. CIT had held the order passed by the A.O under Sec. 143(3), dated 10.10.2016 as erroneous, insofar it was prejudicial to the interest of the revenue, for the reason, that he had failed to carry out proper investigation as regards the allowability of the expenditure claimed by the assessee to have been incurred for the purpose of its business. We are of a strong conviction that now when the case of the assessee was selected for limited scrutiny for the reason viz. "large investment in property (AIR) as compared to total income", therefore, no infirmity could be attributed to the assessment framed by the A.O on the ground that he had failed to deal with other issues which did not fall within

the realm of the limited reason for which the case of the assessee was selected for scrutiny assessment. In other words, the Pr. CIT in the garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond the jurisdiction that was vested with the A.O while framing the assessment. To sum up, revisional jurisdiction cannot be exercised for broadening the scope of jurisdiction that was vested with the A.O while framing the assessment. As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A.O had aptly confined himself to the issue for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for the reason, that he had failed to dwell upon certain other issues which were clearly beyond the realm of the reason for which the case of the assessee was selected for limited scrutiny as per the AIR information. We thus not being able to concur with the view taken by the Pr. CIT that the order passed by the A.O under Sec. 143(3), dated 10.10.2016 is erroneous, therefore, set aside his order and restore the order passed by the A.O. As we have quashed the order passed by the Pr. CIT under Sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from adverting to and therein adjudicating the contentions advanced by the Id. A.R on the merits of the case, which thus are left open."

8. Further, the Ld. Counsel also relied on the decision of the Delhi Bench of Tribunal in the case of **Pawansut Media Services vs PCIT in ITA No.534/Del./2021 for A.Y. 2015-16** wherein it is held that if the Assessing Officer had made enquiries as per the reasons for which the case was selected for limited scrutiny and the case was not converted to full scrutiny, the Ld. PCIT was not justified in assuming the jurisdiction under section 263 of the Act.

9. The Ld.DR, on the other hand, relied on the order of the lower authorities and submitted that in the case, Ld. PCIT has held the order erroneous in view of the reason that despite being sufficient grounds for converting the case from

'limited scrutiny' to 'full scrutiny', the Assessing Officer did not act upon for referring the matter for converting to full scrutiny and closed his eyes . According to him, therefore, the decisions relied upon by the Ld.Counsel for the assessee are not relevant to the facts of the case.

10. We have heard rival submissions of the parties on the issue in dispute and perused the relevant material on record.The assessee has contended that issue of cash credit from Penny stock is not covered under limited scrutiny , whereas according to the revenue it is part of issue of increase in capital of the assessee , hence part of limited scrutiny case. As far as other issues on which the assessment order has been held erroneous and prejudicial are concerned , according to the Ld.PCIT there is a failure on the part of the Assessing Officer in not converting the limited scrutiny case to full scrutiny case, and due to which the assessment order passed is erroneous in so far as prejudicial to the interest of Revenue.

10.1 The facts relevant to decide these controversies are that as per the notice under section 143(2) of the Act dated 24/07/2017, a copy of which is available at page 99 of the paper book, the case was selected for scrutiny on following two issues:-

"Following issue(s) have been identified for examination:

- i. Whether the deduction against income from other sources has been correctly shown in the return of income.**

ii. Whether the share capital is genuine and from disclosed sources.”

10.1 After commencing the scrutiny proceedings, the Assessing Officer issued notice(s) under section 142(1) on the issue(s) for which the case was selected. The relevant questionnaire issued by the Assessing Officer is available on page 104, for ready reference same is reproduced as under:-

“2. It is observed that the share capital during the year has increased from ₹25,44,02,101/- to ₹21,84,53,176/-. Please justify the increase in share capital with respect to the sources of the said increase, identity and creditworthiness of the persons from whom the said funds have been obtained and genuineness of the said transaction. In this connection you are requested to submit following documents:-

- (i) Financial statements including capital account, P&L account and balance sheet as on 31.03.2015 and 31.03.2016.
- (ii) Confir9rmations of the said parties.
- (iii) Ledger extract of these parties in your Bank Account as on 31.03.2015 and 31.03.2016.
- (iv) Bank statement for the period 01.04.2014 to 31.03.2015 and 01.04.2015 to 31.03.2016.”

10.2 The Assessing Officer further issued reminder by way of notice dated 15/11/2018, a copy of which is available at pages 105 & 106 of the paper book. In response, the assessee filed details, a copy of which is available on pages 26 to 36 of the paper book. The relevant reply on page 34 of the paper book is reproduced as under:-

“RE: NAGJI KESHAVJI RITA-AADPR7934H
SUB: Notice u/s142(1)dt 29/10/2018&dt. 15/11/2018 for AY16-17

In response to your notice No.ITBA/AST/F/142(1)/2018-19/1013387138 (1) dated 29/10/2018& notice No. ITBA/ASST/F/142(1)/2018-19/1013641330 (1) dated 15/11/2018, we submit as under:

1. *Expenses claimed u/s 57 of the Act is with respect to Interest paid to various parties from whom loans have been availed. Details of Interest paid is annexed. Confirmations from the parties to whom interest paid is annexed and marked in the list and serially numbered. Only two confirmations are awaited and will be filed at the earliest.*
2. *Increase in the capital during the year has been detailed in the capital account annexed with the financial statements for the relevant assessment year.*

a For Arbitrage profit of Rs. 80,04,259/-, annexed documentary evidence with copy of ledger account in the books of broker :

b. Details of Interest received statement Annexed.

c. Copy of Global report for LTCG on sale of equity shares along with copy of ledger account in the books of broker is annexed .

d. Details with respect to partnership firm M/s.RoyalLifescape are annexed i.e Copy of CapitalAccount, Computation and acknowledgement of return filed

e Details with respect to partnership firm M/s. MomaiMinechem LLP are annexed i.e Copy of Capital Account, financial accounts & Computation of income

3. *Financial statements including capital account, P&L account and balance sheet as on 31.03.2015 is annexed. For 31.03.2016 , already submitted.*

Bank Statements for the year together with bank book (giving narration of each and every entry) s annexed.

There are certain Interest free family and other loans for which confirmatory letters are annexed.

You are requested the above on record. The balance details will be submitted in due course."

10.3. Thus, by way of above reply in respect of the first issue, the assessee submitted details of the interest paid and claimed as expenses under section 57 of the Act. This issue is not subject matter of the revision proceedings. Regarding the second issue of increase in capital, the assessee explained that one of the sources of increase in capital was by way of the long-term capital gain on sale of equity shares. (i.e. which the Assessing Officer has treated as cash credit on sale of penny stock) The Ld.Assessing Officer further called for information in respect of the long term capital gain which is available on page 37 of the paper book. In response, assessee vide letter dated 20th December, 2018, (a copy of which is available at page 39 of the paper book) submitted evidence in respect of sale of shares of Inventure Growth & Securities Ltd alongwith details of acquisition of the

shares, cost of share, demat statement, etc. The sale of shares of Inventure Growth & Securities Ltd has been held by the Assessing Officer as sale of Penny stock. In view of the above, the contention of the assessee that issue of sale of penny stock was not covered under the scope of limited scrutiny is not justified because long term capital gain on sale of the shares of Inventure Growth & Securities Ltd constitute one of the items of increase in share capital of the assessee which was one of the issues for examination under the limited scrutiny. Hence, we reject the contention of the assessee, that the issue of sale of penny stock or sale of shares of Inventure Growth & Securities Ltd was not part of limited scrutiny assessment.

10.4. As far as issues other than the issue of sale of shares in of Inventure Growth & Securities Ltd, the Ld.PCIT has referred to the Instruction No.20 /2015 dated 29/12/2015 and instruction No.5/2016 dated 14th July, 2016 regarding the jurisdiction of Assessing Officer in assessment proceedings in cases under limited scrutiny and held that the Assessing officer turned a blind eye towards those instructions of CBDT. The relevant Instruction **dated 14th July, 2016** referred by the Ld. PCIT is reproduced as under: -

“Instruction No.5 / 2016

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi, the 14th of July, 2016

Subject: Direction regarding scope of enquiry in cases under 'Limited Scrutiny' selected through CASS 2015 & 2016-reg.-

*Vide Instruction No.20/2015 dated 29.12.2015 in File of even number, Board has laid down Standard Operating Procedure for handling of cases under 'Limited Scrutiny' which were selected through Computer Aided Scrutiny Selection in 'CASS Cycle 2015'. In these cases, it was stated that the general scope of enquiry in scrutiny proceedings should be restricted to the relevant parameters which formed the basis for selecting the case for scrutiny. **However, in revenue potential cases, it was further provided that 'Complete Scrutiny' could be conducted, if there was potential escapement of income above a prescribed monetary limit, subject to the approval of administrative Pr.CIT/CIT/Pr.DIT/DIT.***

2. In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr.CIT/CIT/Pr.DIT/DIT, as prescribed in Para 3 (d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

- a. there exists credible material or information available on record for forming such view;**
- b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and**
- c. there must be a direct nexus between the available material and formation of such view.**

4. It is further clarified that in cases under 'Limited Scrutiny', the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny' and questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to 'Complete Scrutiny' after allowing the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding 'Complete Scrutiny' in such cases.

5. It is also clarified that once a case has been converted to 'Complete Scrutiny', the AO can deal with any issue emerging from ongoing scrutiny proceedings notwithstanding the fact that the reason for such issue have not been included in the Note.

6. To ensure proper monitoring in cases which have been converted from 'Limited Scrutiny' to 'Complete Scrutiny', it is suggested that provisions of section 144A of the Act may be invoked in suitable cases. To prevent possibility of fishing and roving enquiries in

such cases, it is desirable that these cases should invariably be picked up while conducting Review or Inspection by the administrative authorities.

7. *The above Instruction shall be applicable from the date of its issue and would cover the cases selected under CASS 2015 which are pending scrutiny cases as well as cases selected / being selected under the CASS 2016.*

8. *The contents of this Instruction may be brought to the notice of all for necessary compliance.*

9. *Hindi version to follow.*

Sd/-

*(Rohit Garg)
Deputy Secretary to the
Government of India*

(F.No.225/269/2015-ITA.II)”

10.5 Further, the para 3(d) of Instruction dated 29th December, 2015 referred in Instruction dated 14/07/2016, regarding monetary limit and requirement of approval from higher authorities is reproduced as under: -

“Instruction No.5 / 2016

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi, the 29th of December, 2015

Subject:Scrutiny Assessments-some important issues and scope of scrutiny in cases selected through Computer Aided Scrutiny Selection(‘CASS’) –reg.-

1 to
2XX

3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year – one is ‘Limited Scrutiny’ and other is ‘Complete Scrutiny’. The assessee concerned have duly been intimated about their cases falling either in ‘Limited Scrutiny’ or ‘Complete Scrutiny’ through notices issued under section 143(2) of the Income-tax Act, 1961 (‘Act’). the procedure for handling ‘Limited Scrutiny’ cases shall be as under:

a to c XXX

d. During the course of assessment proceedings in ‘Limited Scrutiny’ cases, if it comes to the notice of the Assessing Officer that there is **potential escapement of income exceeding Rs. Five lakhs (for metro charges, the monetary limit shall be Rs. Ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for ‘Complete Scrutiny’ with the approval of the Pr.CIT/CIT concerned.** However, such an approval shall be accorded by the Pr.CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating ‘Complete Scrutiny’ in that particular case. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points(a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, ‘Metro charges’ would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru and Ahmedabad).

4.to 5. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Sd/-
(Ankita Pandey)
Under Secretary to Government of India
(F.No.225/269/2015-ITA.II)”

10.6 In this case, return of income has been filed on 4th April, 2017, and notice under section 143(2) of the Act for selecting the case under 'Limited Scrutiny' was issued on 24/07/2017. The CBDT has further issued directions vide letter dated 28/11/2018 which applies to all pending cases of 'Limited Scrutiny' selected under CASS cycle of 2017. The case of the assessee falls under the category of cases mentioned in the instruction dated 28/11/2018. The relevant part of Instruction is reproduced as under:

**“ F. No. 225/402/2018/ITA.II
Government of India
Ministry of Finance
Department of Revenue (CBDT)
North Block, New Delhi, the 28th of November, 2018
To All Principal Chief-Commissioners of Income-tax/All
Principal Director-Generals of Income-tax
Sir/Madam,**

Subject: Scope of enquiry in Limited Scrutiny cases selected under CASS cycles 2017 and 2018 in the context of information provided by any law-enforcement/ intelligence/regulatory authority or agency -regd.-

Under CASS cycles 2017 and 2018, some of the cases were selected for scrutiny as a 'Limited Scrutiny' case. In 'Limited Scrutiny' cases, Assessing Officer cannot travel beyond the issue(s) for which the case was selected. The idea behind such a stipulation is to enforce checks and balances upon powers of an Assessing Officer to do fishing and roving enquiries in cases under 'Limited Scrutiny'.

2. In this regard, several representations have been received in the Board from the field authorities that in several cases under 'Limited Scrutiny', information pointing out specific tax-evasion for the relevant year, given by any law-enforcement/intelligence/regulatory authority or agency is available with the concerned Assessing Officer, however, in view

of the restrictive nature of enquiry/investigation which can be made in 'Limited Scrutiny' cases, the same presently cannot be acted upon.

3. The matter has been considered by the Board. In order to enable proper enquiry/ investigation in pending 'Limited Scrutiny' cases which were selected through CASS cycles of 2017 and 2018, where credible material or information has been/is provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee, it has been decided by the Board that issues arising from such information can also be examined during the course of conduct of assessment proceedings in such 'Limited Scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT.

*4. It is pertinent to mention that unlike CASS 2015 and 2016 cycles, where consideration of any additional issue lead to the conversion of case to '**Complete Scrutiny**' as laid down in **Instruction No. 5/2016 dated 14.07.16,** the pending 'Limited Scrutiny' cases of CASS 2017 and 2018 cycles would not be taken up for 'Completescrutiny' as the present directive is only to facilitate consideration of those issues wherein specific information of tax-evasion has been furnished by any law-enforcement/intelligence/regulatory authority or agency. Therefore, in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case was flagged for 'Limited Scrutiny' & issue arising from nature of information mentioned in para 2 and 3, above.*

5. The following procedure shall be adopted while examining the additional issue:

- i. The Assessing Officer shall duly record the reasons for expanding the scope of 'Limited Scrutiny' to the extent mentioned in para 2 and 3, above;*
- ii. The same shall be placed before the Pr. CIT/CIT concerned and upon his approval, further issue can be considered during the assessment proceeding;*
- iii. The Assessing Officer shall issue an intimation to the assessee concerned that additional issue would also be considered during the course of pending assessment proceeding;*

iv. To ensure proper monitoring in these cases, provisions of section 144A of the Income-tax Act, 1961 may be invoked in suitable cases. Further, to prevent fishing and roving enquiries in these cases, it is desirable that these cases are invariably picked up for Review/Inspection by the administrative authorities.

6. The above directive shall be applicable from the date of its issue and shall apply to the pending 'Limited Scrutiny' cases which were selected under the CASS 2017 and 2018 cycles. It is reiterated that the grounds mentioned in para 3 above are the only grounds on which a 'Limited Scrutiny' case of CASS 2017 and 2018 cycles can be expanded in its scope and that too only to the extent of the issues referred to by the law-enforcement/intelligence/regulatory authority or agency.

7. It may be brought to the notice of all for necessary compliance.

*Sd/-
(Rohit Garg)
Director (ITA.II), CBDT”*

10.7 In view of above Instructions, which are applicable for conversion of the case from limited scrutiny to complete scrutiny , it is evident that wherever the assessing officer observes scope of potential escapement of income from the records above prescribed monetary limits, he was required to seek approval of prescribed higher authorities. The Ld.PCIT has pointed out that on the issues of brought forward losses, invoking provisions of section 115BBE, allowance of speculation loss, taxation of property rights and sale of property and genuineness of unsecured loan, it was imperative on the part of the Assessing Officer to seek approval of the appropriate higher authorities. According to her, the Assessing Officer has not followed the instruction issued by the CBDT in this regard and, therefore, the assessment order on the issue of not taking up matter for

comprehensive or complete scrutiny has rendered the assessment order erroneous insofar as it is prejudicial to the interest of the Revenue. We find that before us Ld.Counsel of the assessee has only referred to decisions where the dispute was regarding whether the Assessing Officer could carry out enquiries on the issues other than the limited scrutiny issues. The question of authority of the Assessing Officer for considering matter for reference to the higher authorities for seeking approval for extending scope of limited to complete scrutiny , if circumstance so required, was not under adjudication in those decisions and, therefore, those decisions relied upon by the Ld.Counsel for the assessee are distinguishable on facts and the ratio of those decisions cannot be imported to the facts of the instant case. The issue before us is whether the reasons (issues) other than reasons for selection of the case under 'Limited Scrutiny' were so glaring that the Assessing Officer should have considered the matter for converting limited scrutiny to comprehensive scrutiny. We find that Ld.PCIT has observed following issues , which according to her the Assessing officer was expected to examine are, as under:

“1.2 Further, special rate has been calculated on Rs. 58,30,655/- @20% which is incorrect. This income ought to have been taxed as per provisions of section 115BBE.

1.3 Further, It is also seen from the case records that speculation loss of Rs. 75,47,956/- has been shown which has not been examined at all by the AO.

1.4 On perusal of the records, it is seen that rights in property at A-1006 Paramount Properties were sold during the year. This transaction has not been examined from the possibility of under declaration of income u/s 50C. Apparently, the property was not registered in the name of the assessee, in which case the rights were required to be taxed as Short Term Capital Gains. Neither of these issues has been examined by the AO.

1.5 As per capital Account, Short Term Capital Gain has been shown for sale of land at Mandvi. The AO has not examined the details of this transaction for the purpose of correct determination of taxable income.

1.6 During theyear, the assessee has taken unsecured loans, for example, Rs. 16 Lakhs from Shri Vinod Gada. The genuineness of this transaction and the financial capacity of Shri Vinod Gada to give such a loan to the assessee has not been examined by the AO.”

10.8 In view of the above issues pointed out by the LD PCIT , we are of the opinion that an Assessing Officer having entrusted of the duty of scrutinizing the assessment, his investigative skill would have ignited him to believe that those matters prima facia have potential scope of escapement of income, and correspondingly, in view of instructions reproduced above he should have acted upon for converting the case of limited scrutiny to complete scrutiny. These instructions have been issued by the CBDT for guidance of the Assessing Officer and are binding on the Income-tax Authorities concerned. We are of the opinion that there is a clear fault on the part of the Assessing Officer in not referring the matter of converting the limited scrutiny case into complete or comprehensive scrutiny and this inaction is without application of the mind which bring the assessment order under the category of “order erroneous insofar as it is prejudicial to the interest of the Revenue” without enquiring and accepting the claims blindly, which resulted in loss to Revenue. The Grounds 1 & 2 of the appeal of the assessee are accordingly dismissed.

11. Grounds 3,5 & 6 relate to taxation of ‘whole of the sale consideration’ on sale of shares as against ‘long term capital gain’ on such sale of shares or penny stock considered by the Assessing Officer. In ground 4, the assessee has raised

that this issue was pending before the Ld.CIT(A) and, therefore, Ld.PCIT was barred from invoking revisional jurisdiction on this issue.

12. In the case, the assessee sold share of **Inventure Growth Securities Ltd** and received sale proceeds of ₹5,59,72,000/-. On this sale, the assessee declared long term capital gain of ₹4,96,64,448/- which the Assessing Officer treated as unexplained cash credit under section 68 of the Act. According to the Ld.PCIT, the Assessing Officer was required to consider whole of the sale consideration of ₹5,59,72,000/- as unexplained cash credit under section 68 of the Act and, therefore, there is escapement of ₹63,07,552/-. The Ld. PCIT has given detailed finding in para 6.1to 6.5 as to why the Assessing Officer was required to consider whole of the sale consideration instead of only amount of long-term capital gain.

13. Before us, the Ld.Counsel of the assessee submitted that the Assessing Officer has considered cost of acquisition of shares and furnished explanation during assessment proceedings and taken the view for assessing only long term capital gain. This is one of the plausible views and not unsustainable in law. Therefore, action of Ld.PCIT in revising the order on this issue is not valid in law.

14. Contra, the Ld.DR relied on the order of the Ld.PCIT.

15. We have heard rival submissions of the parties on the issue under dispute and perused the relevant materials on record. We have already held in preceding paragraphs that the issue of sale of penny stock is germane to the issue of limited scrutiny of examining increase in capital of the assessee during the year. The Ld PCIT has held that the Assessing Officer has given

erroneous finding on this issue of limited scrutiny. The Ld.Counsel of the assessee has relied on the decision of the Tribunal in the case of **Tanish Dealers Pvt Ltd vs PCIT in ITA No.1153/Kol/23019 (Kolkata) for A.Y. 2014-15** wherein the Tribunal observed that the Assessing Officer had discharged his duty as an investigator as well as an adjudicator and applied his mind on the issue before him and taking into consideration the explanation tendered by the appellant, had taken a reasonable and plausible view to allow the claim of short term capital loss, as made by the appellant in the return of income. In background of those facts, the Tribunal (supra) was of the opinion that while passing the assessment order, the Assessing Officer did not follow a view which can be said to be unsustainable in law. In the case in hand before us, the assessing Officer has treated the amount of long-term capital gain arising from sale of penny stock only as unexplained cash credit for section 68 of the Act, which was computed by way of reducing cost of acquisition of penny stock out of sale consideration of those penny stock. In our opinion, when entire credit from whole of sale consideration of Penny stock was received during the year under consideration, the Assessing Officer is not justified in making addition for only a part of the same and not to make addition for the remaining part. There are no two views on this issue. Either the entire credit is liable for addition or not, there is no middle path. Therefore, the Assessing Officer has committed an error on the issue in dispute. The Ld.Counsel has not pointed out any decision where a part of the credit has been added by the Assessing Officer and part has been left over or not considered for addition without any justifiable reasons. In such circumstances, we uphold the finding of the Ld.PCIT on the issue in dispute that whole of the sale consideration

was required to be assessed by the Assessing Officer instead of only long term capital gain. The order of the Assessing Officer is erroneous to this extent. The Ground Nos. 3,5 &6 of the appeal of the assessee are accordingly dismissed.

16. In ground No.4, the assessee has raised the issue that Ld.PCIT was not justified in revising the assessment order on the issue which was already pending available before the Ld.CIT(A) for consideration. The relevant finding of the Ld.PCIT on this issue is reproduced as under:-

“5. The assessee’s first objection to the assumption of jurisdiction u/s 263 on some issues is that as the matter for the same issue is pending before the CIT Appeals the order cannot be revised under section 263 on this issue in view of the provisions of explanation 1©. However this is gross misreading of the said provision.

Explanation 1(2) to section 263 reads as,

*“where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered **and** decided in such appeal.”*

The conjunction ‘and’ (emphasized above) is very crucial. It is very clear that the matter should not only be considered but also decided by the CIT(A) to preclude the jurisdiction u/s 263. There should be no ambiguity regarding this from the clear reading of the provision. Thus merely filing an appeal before the CIT(A) does not bar the assumption of jurisdiction u/s 263. This has been spelled out in the ITAT, Pune Bench ‘A’ in the case of

Ranka Jewellers v. Additional Commissioner of Income-tax (117 TTJ 522) wherein it was held that,

*"6.1 Reverting back to the question of merger, **Expln. (c) to s. 263 is to be looked into wherein the words "considered" and "decided" are conjoined with a conjunction "and". It means it is not suffice that the matter should only be "considered" by CIT(A) but it is equally necessary that learned CIT(A) should "decide" the matter by giving his appropriate finding. Both the conditions, thus, have to be fulfilled.**" (emphasis provided)*

The decision of Hon'ble Supreme Court in the case of CIT v. Shri Arbuda Mills Ltd. (231 ITR 50) is applicable in such a situation as in this appeal wherein it was held that powers of the CIT shall be deemed to have extended to matters not considered and decided in appeal.

5.1 Secondly, even the issues before the CIT(A) and in the current revision proceedings are different. For eg, while the issue for consideration before the CIT(A) is that the taxation of the Long Term Capital Gain, the issue in the current proceedings is that of taxation of the entire sale consideration because of the underlying transaction itself being bogus.

A similar issue was for consideration before the High Court of Punjab and Haryana Nahar Spinning Mills Ltd vs. Commissioner of Income-tax, (Central), Ludhiana (117 taxmann.com 40). In this case, the Assessing Officer allowed the deduction under section 80-I only qua the manufactured goods exported out of India. Appeal was filed claiming deduction under section 80-I on the export of traded goods contending that labeling and packing of the goods bought from

market tantamount to manufacture and, therefore, deduction under section 80-I be allowed.

In the meantime, notice under section 263 was issued on the ground that the Assessing Officer erred in allowing deduction under section 80-I on duty draw back received on manufactured goods. The contention of the assessee that the said issue was subject-matter of appeal before the First Appellate Authority was rejected. The Hon'ble HC held that the issue whether the assessee was entitled to deduction under section 80-I on duty draw back with regard to goods manufactured and exported was neither considered nor decided in appeal[Para 13].

Similarly in the present case, the issue before the CIT(A) and the revision proceedings u/s 263 are different.

5.2 The Hon'ble Gujarat High Court in the case of CIT v. Panna Knitting Industries [2002] 173 CTR (GuJ) 327 : [2002] 253 ITR 656 (GuJ) have also given the finding on the question of merger and in that case as well, it was held that if part of the claim was considered by CIT(A) and rest of the part remained undecided, then the portion of claim cannot be said to be merged with the order of CIT(A). In this precedent as well, the order of revision was upheld.

5.3 Further, as elaborated in para 1 above, there are several issues for consideration u/s 263 apart from the issues before the CIT(A). Thus the assumption of jurisdiction u/s 263 cannot be challenged on the basis of explanation 1(c) in the present case.”

16.1 We have heard rival submissions of parties on the issue in dispute and perused relevant materials on record. We find that the Ld.PCIT has held that the particular issue will be out of the jurisdiction of the Ld.PCIT if the Ld.CIT(A) has

considered and decided the matter by giving his finding. The Ld.PCIT has relied on the decision cited above in the case of **ITAT, Pune Bench in Ranka Jewellers vs Addl.CIT(supra)** wherein the Tribunal has held that in view of Explanation (c) of section 263, the assessment considered and decided are conjoined with a conjunction and therefore, both the conditions have to be fulfilled. The Ld.PCIT has also referred to the judgement of Hon'ble Gujarat High Court in the case of **Panna Knitting Industries (supra)** wherein it is held that if part of the claim was considered by the Ld.CIT(A) and rest of the part undecided, then portion of the claim cannot be said to be merged with the order of the Ld.CIT(A) and order of the revision in respect of the part which remained undecided was held to be valid. In view of above, we do not find any infirmity in the findings of the Ld.PCIT and hence we uphold the same. Ground 4 of the appeal of the assessee is accordingly dismissed.

17. In the grounds 7 & 8, the assessee has challenged the issue of taxation of entry operator charges.

17.1. The Ld.Counsel of the assessee submitted that this issue was not raised in the show cause notice issued by the Ld.PCIT and, therefore, in the final part of the order he cannot hold the order erroneous insofar as it is prejudicial to the interest of the Revenue on this issue without providing opportunity of being heard.

17.2. We have heard rival submission on the issue in dispute. In our opinion, the submission of the Ld. Counsel of the assessee are justified. Before holding the order of the Assessing Officer as erroneous insofar as it is prejudicial to the

interest of the Revenue on any particular issue, it is sine qua non to issue notice to the assessee and the action of the Ld.PCIT is in violation of the principles of natural justice. To this extent, we are of the opinion that the order of the Ld.PCIT cannot be sustained. The Ground Nos 7 & 8 of the appeal are allowed.

18. The Ground Nos. 8 to 15 relate to the issues which were not covered under limited scrutiny. We are of the opinion that under the mandate of 'Limited Scrutiny', the Assessing Officer was not authorised to enquire on the issues other than the reasons for which it was taken for scrutiny purpose unless approved so by higher authorities. Since no approval was taken for converting the case from 'Limited Scrutiny' to 'comprehensive or complete scrutiny', the Assessing Officer was not authorised for enquiry on the issues challenged by the assessee in ground Nos. 8 to 15. The Ld. PCIT can find fault for not referring the matter of converting 'Limited Scrutiny' case to 'Comprehensive Scrutiny' case, but no such approval has been taken by the Assessing Officer and hence the Assessing is barred from examining those issues under the mandate of limited scrutiny. Thus, the assessment order cannot be held erroneous insofar as prejudicial to the interest of Revenue for not making enquiry on those issues. The relevant grounds of the appeal of the assessee are accordingly allowed.

19. The Ground Nos. 16 to 19 of the appeal relate to the issue challenging the finding of the Ld.PCIT that Assessing Officer has failed to examine the issue properly and applied his mind.

19.1. Before us, the Ld.Counsel of the assessee has referred to various questionnaire issued by the Assessing Officer and, replies / responses submitted

by the assessee. The Ld.Counsel of the assessee relied on the decision of the Coordinate bench of Tribunal (Jaipur Bench) in the case of **Shri Vinay Kumar Sogani in ITA No. 444/JP/2018 for AY 2013-14** ,wherein *it is held that "assessee has produced evidences which establish the genuineness of transaction being holding of shares by the assessee in demat account and purchase of the shares against the consideration paid through banking channel, then in absence of bringing any contrary fact or disapproving the evidence produced by the assessee, the mere setting aside of issue by the Ld.PCIT for de novo consideration was not sustainable.* However, we find that in the instant case, the finding of the Assessing Officer for assessing only the quantum of long term capital gain as against the whole sale consideration is erroneous in law and there are no two possible views on this issue. Therefore, the decisions relied upon by the Ld.Counsel of the assessee is distinguishable on facts. As far as other issues pointed out by the Ld.PCIT for holding the order as erroneous , we have already rejected the finding of the Ld.PCIT in preceding paras.

20. As the finding of the Ld. Assessing on the issue of increase in capital (i.e. the one of the reasons of limit scrutiny) is erroneous and due to consequential revenue loss, the assessment order is erroneous in so far as prejudicial to the interest of revenue to that extent. As far as other issues on which the Ld. PCIT has held the order as erroneous in so far as prejudicial to the interest of revenue are concerned, we have rejected the finding of the Ld PCIT and held that the assessment order is erroneous to the extent that the AO has not followed the instruction of the CBDT. Therefore, it is open for the Assessing Officer during

consequential proceedings to seek approval from the higher authorities in compliance to the instructions of the CBDT (supra) for converting the limited scrutiny case to complete scrutiny.

26. In the result, the appeal of the assessee is accordingly partly allowed.

Order pronounced in the open court on 19 day of January, 2023.

Sd/-

Sd/-

(SANDEEP SINGH KARHAIL)

न्यायिक सदस्य/JUDICIAL MEMBER

(OM PRAKASH KANT)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 19/01/2023

Pavanan, Sr.PS

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai