

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.185/Kol/2022
Assessment year: 2011-12

Shri Fateh Chand Chindalia.....Appellant
4A, Sayed Sally Street,
Kolkata-700073.
[PAN: ADFPC9919G]

vs.

ITO, Ward-40(1), Kolkata.....Respondent

Appearances by:

Shri Sunil Surana, AR, appeared on behalf of the appellant.

Shri Subhrajyoti Bhattacharjee, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 24, 2023

Date of pronouncing the order : March 16, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 19.03.2021 of the Principal Commissioner of Income Tax -1, Kolkata [hereinafter referred to as the 'PCIT'] exercising his revision jurisdiction u/s 263 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the ld. PCIT erred in invoking the provisions of section 263 when the assessment completed u/s 143(3)/147 on 26.12.2018 was neither erroneous nor prejudicial to the interest of revenue.

2. For that the assessment for the impugned assessment year which was completed u/s 143(3)/147 on 26.12.2018 was reopened for specific reasons which were explained to the AO and therefore the provisions of section 263 were not applicable to the said assessment.

3. For that the impugned assessment proceeding which was completed u/s 143(3)/147 on 26.12.2018 was itself bad in law since it was reopened without fulfilling the requirements of section 147 and hence all consequential proceedings are bad in law.

4. For that the Ld. AO erred in invoking the provisions of section 263 when the AO made enquiries on the issues involved for completion the assessment and there was no lack of enquiry.

5. For that on the facts and in the circumstances of the case the order u/s 263 is not maintainable.”

3. The brief facts of the case are that the original assessment proceedings were completed in the case of the assessee by way of scrutiny assessment u/s 143(3) of the Act vide order dated 26.02.2014. Thereafter, the assessment was reopened u/s 147 read with section 148 of the Act on the report of the investigation wing that the assessee has made investment in penny stock shares of Global Capital Markets Ltd. on 18.11.2010 for a total consideration amounting to Rs.7,50,000/-. The said investment was not reflected in the return of income and that prima facie, this amount was treated as unexplained investment. During the reassessment proceedings, the assessee explained the source of the aforesaid investment in the shares and the Assessing Officer accepted the explanation that the source of the investment in the said shares was from the bank account of the assessee. Therefore, the Assessing Officer completed the reassessment u/s 147 read with section 143(3) of the Act vide order dated 28.12.2018. Thereafter, the ld. PCIT invoked his revision jurisdiction u/s 263 of the Act and held that apart from the investment in Global Capital Markets Ltd., the assessee during the year

had shown capital gains from the sale of shares of M/s Tuni Textiles Ltd. also, which the Assessing Officer did not examine during the original assessment proceedings u/s 143(3) of the Act and further that the same was not subject matter of investigation under the reassessment proceedings u/s 147 of the Act. The ld. PCIT, therefore, held the order dated 28.12.2018 passed u/s 147/143(3) of the Act was erroneous and prejudicial to the interest of revenue and the Assessing Officer has failed to examine the transaction relating to capital gains in the scrip of M/s Tuni Textiles Ltd.

4. Being aggrieved by the said order of the PCIT, the assessee has come in appeal before us.

5. We have heard the rival contentions and gone through the record. At the outset, the ld. counsel for the assessee has submitted that firstly the reassessment order passed u/s 147 of the Act was itself bad in law as the reopening in this case was done after four years from the end of the relevant assessment year. That since the original assessment was carried out u/s 143(3) of the Act, the reopening could not have been done by the Assessing Officer in the absence of any failure on the part of the assessee to disclose fully and truly of material facts necessary for assessment. That in this case, all the investments made by the assessee in the Global Capital Markets Ltd. were duly disclosed by the assessee and there was not any failure on the part of the assessee to fully and truly disclose all the material particulars, therefore, the reopening itself was bad in law. However, during the reassessment proceedings, the assessee duly furnished the source of investment in the said Global Capital Markets Ltd., and hence, the Assessing Officer did not make any

addition in this respect. The ld. counsel has further relied upon the decision of the Hon'ble Bombay High Court in the case of 'CIT vs. Jet Airways Ltd. 331 ITR 236 (Bom)', wherein, the Hon'ble High Court has held that where income originally believed by the Assessing Officer to have escaped assessment, but ultimately found to not to have escaped assessment, then it is not open to the Assessing Officer to independently assess other incomes. Therefore, even otherwise, reassessment order of the Assessing Officer cannot be held to be erroneous on the ground that the Assessing Officer did not examine the other income relating to the capital gains in the scrip of M/s Tuni Textiles Ltd. when the Assessing Officer did not make any addition in respect of reason/subject-matter for which the reopening was done in the case of the assessee.

6. Further, in this regard, the ld. CIT-DR has produced on record the comments of the ld. PCIT dated 13.07.2022, whereby, the ld. PCIT has recorded that there was a revenue audit objection that the transaction made by the assessee in respect of shares of M/s Tuni Textiles Ltd. were not duly examined in the assessment carried out u/s 143(3) vide order dated 26.02.2014 and further that this transaction was not part of the reasons recorded in the reopened assessment proceedings.

7. The aforesaid comments of the PCIT vide letter dated 13.07.2022 itself reveals that the PCIT has not applied his independent mind rather the impugned revision proceedings have been initiated on the basis of revenue audit objection. In our view, the audit party has no right to interfere in the quasi-judicial proceedings to make an objection as to in what mode or manner, the Assessing Officer should pass an assessment order and what examination ought to be carried out by him in the

assessment proceedings. Moreover, the original assessment proceedings u/s 143(3) stood completed on 26.02.2014 itself. Even the transaction relating to shares of M/s Tuni Textiles Ltd. was not the subject-matter of the reassessment proceedings. Therefore, the revision order passed by the PCIT u/s 263 is otherwise time-barred. Reliance can be placed on the decision of the Hon'ble Supreme Court in the case of 'CIT vs. Alagendran Finance Ltd. [2007] 293 ITR 1(SC)', wherein, the Hon'ble Supreme Court has categorically held that where the Commissioner has sought to revise only that part of the assessment order, the subject-matter of which had nothing to do with that item of income. In such a case doctrine of merger did not apply and the period of limitation would commence from the date of original assessment and not from the reassessment since the latter had not anything to do with the said item of income. Even otherwise, when in the reassessment proceedings, no addition has been made by the Assessing Officer in respect of the subject-matter/item of income for which the Assessing Officer had formed reasons to believe of escapement of income and finally found that the income of the assessee has not escaped income in respect of that issue/item. Then, in view of the decisions of the Hon'ble Bombay High in the case of CIT vs. Jet Airways Ltd. (supra), it was not open to the Assessing Officer to make addition in respect of other item of income. Even otherwise, when the reassessment was made to examine a particular investment and the assessee duly explained the source of the said investment and the Assessing Officer has accepted the said source then the order of the Assessing Officer cannot be said to be erroneous and exercise of revision jurisdiction u/s 263 of the Act in respect of said order, cannot be held to be justified. In view of the above discussion, the

impugned order passed by the PCIT is not sustainable in the eyes of law and the same is accordingly quashed.

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

Kolkata, the 16th March, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 16.03.2023.

RS

Copy of the order forwarded to:

1. Shri Fateh Chand Chindalia
2. ITO, Ward-40(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches