

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI ABY T. VARKERY, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 445/Chny/2022
निर्धारण वर्ष / Assessment Year: 2012-13

Shri. Vinod Bansal,
651, T.H. Road,
Tondiarpet,
Chennai – 600 081.

[PAN: ABRPV-7290-B]

Pr. Commissioner of Income-
tax,
v. Central -1,
Chennai – 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. S. Senthil Kumaran, CIT

सुनवाई की तारीख/Date of Hearing

: 20.03.2023

घोषणा की तारीख/Date of Pronouncement

: 22.03.2023

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax, Central-1, Chennai, passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), dated 28.03.2022 and pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:

"1. The order of the learned Principal Commissioner Of Income tax, (Central-I), Chennai is wrong, illegal and is opposed to law and facts of the case.

2. The learned Principal Commissioner Of Income tax, Central-I, Chennai, ought to have seen that the order of assessment is neither erroneous nor prejudicial to the interest of the revenue and that the learned CIT can assume jurisdiction under section 263 only if the twin condition of the assessment order being erroneous and pre-judicial to the interest of the revenue is satisfied.

3. The learned Principal Commissioner Of Income tax ought to have seen that while invoking power under revisionary jurisdiction it is not permissible under law to substitute the view of the learned CIT by the view of the Assessing Officer.

4. The learned Pr CIT ought to have seen that the assessing officer acting in accordance with law makes certain assessment, the same cannot be branded as erroneous by the Commissioner simply because according to him the order should have been written more elaborately. This section does not visualize a case of substitution of judgment of the Commissioner for that of the ITO, who passed the order, unless the decision is held to be erroneous.

5. The learned Principal Commissioner Of Income tax ought to have seen that the original assessment passed by the assessing officer under section 153A r.w.s 153C of the Income Tax Act was re-opened under the same pretext under which the assessment order is subjected to revision and that the learned AO after duly examining the documentary evidence filed by the assessed has considered the transaction in shares as genuine in nature.

6. The learned Principal Commissioner Of Income tax ought to have seen that the possible view taken by the AO cannot be sought to be disturbed merely because the CIT was of a different view. This was nothing but the CIT trying to substitute his view over the view

taken by the AO in the revisionary jurisdiction u/ s 263 of the Act, which was not permissible as per law.

7. The learned Principal Commissioner Of Income tax ought to have seen that there is a distinction between lack of enquiry and inadequate enquiry. The learned PCIT ought to have seen that if there was any enquiry, even inadequate that would not by itself give occasion to Ld. Pr. CIT to pass orders u/ s 263, merely because he has different opinion in the matter. It is only in cases of "lack of enquiry" that such a course of action would be open for the Ld. Pr. CIT.

For these and other grounds that may be rendered at the time of hearing it is most humbly prayed that the Hon'ble Tribunal may be pleased to quash the 263 order dated 28.03.2022 by allowing the appellants appeal and thus render justice."

3. The brief facts of the case are that, the assessee filed her return of income for the assessment year 2012-13 on 19.11.2013, admitting total income of Rs. 38,56,200/-. The assessment has been completed u/s. 143(3) r.w.s. 153A of the Act, on 31.03.2015 and assessed taxable income of Rs. 38,56,200/-. The case has been subsequently re-opened u/s. 147 of the Act, for the reasons recorded as per which information received by the Assessing Officer shows that, the assessee is one of the beneficiary of bogus long term capital gains derived from sale of certain shares through M/s. Onkar Supply Pvt Ltd. The assessment has been completed u/s.

143(3) r.w.s. 147 of the Act on 02.12.2019 and assessed total income of Rs. 38,56,200/-.

4. The case has been subsequently taken up for revision proceedings by the PCIT, Central-1, and show cause notice u/s. 263 of the Act, was issued and called upon the assessee to explain as to why the assessment order passed u/s. 143(3) r.w.s. 147 of the Act dated 02.12.2019 should not be revised. In response, the assessee submitted that the assessment order passed by the AO is neither erroneous nor prejudicial to the interests of the revenue, because the purpose of re-assessment proceedings was to verify capital gain transactions declared by the assessee from sale of certain shares, and during the course of assessment proceedings, the assessee has filed all information in relation to investigation carried out by the IT Department, Kolkata and also filed necessary evidences. The AO, after considering necessary evidences has held that the assessee has never transacted with M/s. Onkar Supply Pvt Ltd and thus, accepted income declared by the assessee.

5. The PCIT, after considering relevant submissions of the assessee and also taken note of certain judicial precedence, opined that assessment order passed by the AO is erroneous in so far it is prejudicial to the interests of the revenue. In so far as the issue of bogus long term capital gains derived from sale of certain shares through certain companies, it is evident from the fact that Shri. Ashok Kumar Kayan, the broker acted as an entry operator in providing accommodation entries in long term capital gains through various companies. In his sworn statement, he has admitted the fact that, the assessee is one of the beneficiary of such bogus transactions. Therefore, rejected arguments of the assessee and set aside assessment order passed by the AO u/s. 143(3) r.w.s. 147 of the Act dated 02.12.2019, and directed the Assessing Officer to carry out necessary enquiries and to decide the issue in accordance with law. The relevant findings of the PCIT are as under:

"9. I have considered the submissions and also carefully perused the materials on record.

10. At the outset, it is seen that the following material information was with the AO:

(a) Sworn Statement of Beni Prasad Lahoti that he had provided accommodation entries through various shell companies managed and controlled by him. The list of such companies included the names of Bakra Prathisthan Ltd and M/s. Dhanlab Merchandise Ltd.

(b) Sworn Statement of Ashok Kumar Kayan that he had provided accommodation entry in the form of bogus long term capital gain in various penny scrips and in the list of beneficiary, the following names were mentioned :

Name of beneficiary	Code	PAN
Vinod Bansal	SH004	ABRPV72908
Mukesh Agarwal	SH045	AAFPK6968E
Pankaj Agarwal	SH044	AFLPA1767N
Rita Agarwal	SH046	AAGPR4368A
Shoba Agarwal	SH047	AAXPC8430H
Bimla Devi	SH054	AADPD8240L

(c) Investigation report from the ADIT(Inv) that Shri Ashok Kumar Kayan provided entries in the form of bogus long term capital gain and that in his sworn statement gave the names of beneficiary with details of PAN and amount of such bogus TCG.

The investigation report also refer to M/s. Onkar supply Ltd as one of the shell companies controlled and managed by Shri Beni Prasad Lahoti and its bank account used for providing accommodation entry to beneficiaries.

11. From the above, it is cogently clear that the assessee had obtained bogus accommodation entry for claiming long term capital gain exemption from its transaction in the shares of Dhanlab Merchandise merged with M/s. Bakra Pratisthan Ltd. The AO had not examined any of these aspects while completing the assessment.

12. I find that the assessee was communicated the reasons to believe recorded by the AO, vide letter dated 24.06.2019, the contents of which are extracted hereunder:

1. "Consequent to search conducted u/s 132 of Income Tax Act, 1961 on 18/12/2012 in the residential premises of Shri Mukesh Agarwal, notice u/s. 153C was issued after recording necessary satisfactory note in the case of Smt. Rita Agarwal. The assessee Smt. Shobha Agarwal declared Rs.7,87,460/- as her total income for the A. Y-2012-13. Assessment for the A.Y 2012-13 was completed u/s153C r.w.s 153A on 31/3/2015 determining assessed income at Rs. 7,87,460/-.On perusal of records , available, it is seen that during the FY 2011-12 the assessee had conjoined with a syndicate of shell companies / entry operators through trading in bogus penny scrips, which

amounts to tune of Rs.26,43,225/- Details of the case are mentioned in the following paras:

1. During the course of survey proceedings by the department on various M/S Onkar Supply Pvt Ltd, it was found that it was involved in providing accommodation entry in the form of bogus long term capital gains in connivance with entry operators. M/S Onkar Supply Pvt Ltd is a Kolkata based company, had opened a current account with Dhanlaxmi bank, Howrah branch on 05/01/2011. After total credit transaction of more than RS. 25.54 crores, the company closed its account on 19/10/2012. On verification it was observed that the current account of the company was credited by transfer of funds through cash as well as non cash components from various entities and was immediately debited to the accounts of the other entities. Financial date of the company for the FY 2011-12 was gathered, which clearly signifies that the company was not doing any actual business. Further, the name of the company appears in the database of the shell companies controlled and managed by Shri. Beni Prasad Lahoti. Thus, it was justa shell/paper company which facilitates ccommodation entries to beneficiaries in the form of long term capital gain. It has also been observed that trading is done in a syndicate which comprises of promoter of the company/stock, broker, entry operators of the scrip. The transactions held in bank account are nothing but the routing of the fund for ultimate purpose to provide accommodation entry to beneficiaries.

2. Further, it is seen from the fund transaction of M/s Onkar Supply Pvt Ltd that major amnount of the fund were credited to the account of the Shri. Ashok Kumar Kayan, whose name appears in the departmental database of long term capital gains as entry operator. Statement under Oath u/s 131 was recorded from Shri. Ashok Kumar Kayan, wherein he accepted his role in providing accommodation entries to beneficiaries the form of LTCG through trading in bogus penny scrips and amounts transacted through the current account of M/ Onkar Supply Pvt Ltd are nothing but accommodation entries in the form of bogus LTCG. He further provided the list of all beneficiaries along with the bogus LTCG arising out of these transactions.

3. Name of the Smt. Shobha Agawal appears in the beneficiaries list provided by the Shri. AshokKumar Kayan and corresponding total bogus LTCG is to the tune of Rs.26,43,225/-. As the assessee is involved in such transaction

related to such scrip in the F.Y 2011-12 pertaining to A. Y.2012-13 and that has introduced unaccounted cash into books of accOunts by way of accommodation entries and circular trading provided by the broker. The assessee has entered in the trading of the said script of M/s Onkar Supply Pvt Ltd and traded shares of the said Company to the tune of Rs.26,43, 225/-. The assessee has not brought the amount of Rs.26,43,225/- to tax in ts books of accounts.

13. The above has been acknowledged by the assessee in his reply filed before the AO, where the entire reasons recorded was reproduced. A careful perusal of the same would reveal that the information recorded by the AO comprise –

(a) M/s Onkar Supply Pvt. Ltd. was engaged in providing accommodation entry in connivance with entry operators.

(b) M/s Onkar Supply Pvt. Ltd. is one of the shell companies controlled and managed by Shri Beni Prasad Lahoti, entry operator.

(c) Shri Ashok Kumar Kayan, a broker acted as an entry operator in providing accommodation entries for long term capital. gains through trading in bogus penny scrips.

(d) As per sworn statement of the broker Shri Ashok Kumar Kayan the assessee is one of the beneficiaries of such bogus transaction.

(e) The assessee has introduced unaccounted cash into the books by way of accommodation entries provided by the broker.

(f) Assessee had entered in the trading of M/s. Onkar Supply Pvt. Ltd. and traded shares of the said scrip of M/s Onkar Süpply Pvt. Ltd. and traded shares to the tune of Rs.26,43,225/- and the assessee had not brought the amount of Rs.26,43,225/- to tax in its books of account.

14. Thus, it could be seen very early that the AO was in possession of information and evidence that the assessee had benefitted from bogus long term capital gains transaction from the accommodation entry provided by the broker Shri Ashok Kumar Kayan, who is a known bogus entry operator. The said Ashok Kumar Kayan had deposed that the assessee was a beneficiary from the bogus accommodation entries provided. However, while completing the assessment, the AO did not make any inquiry to verify the genuineness of the transaction

in regard to shares of M/s Dhanlabh Merchandise Ltd which merged into M/s Bakra Prathistan Ltd; and the genuineness of the transaction done with Mr. Ashok kumar kayan. The AO also did not apply his mind on the information with him and the evidence in the form of sworn statements of the entry operator Beny Prasad Lakhoti that M/s Dhanlabh Merchandise Ltd and M/s Bakra Prathistan Ltd were few of the many shell companies managed and controlled by him for providing accommodation entries; and of Ashok Kumar Kayan that he had provided bogus Long term capital gain entry to the assessee and that the share transfer transaction was bogus. Despite having specific information that M/s. Dhanlabh Merchandise Ltd. is a shell company and the deposition of Ashok Kumar Kayan that the assessee was a beneficiary of the accommodation entries provided by him through bogus entries, and that the assessee had shown long term capital gain from sale of share of M/s. Dhanlabh Merchandise Ltd. which merged with M/s. Bakra Prathistan Ltd., the AO did not attempt to make any inquiry or verification over the information and evidence with him. The AO had not even attempted to cross check the information with the reasons recorded and the submissions made before him. There is no discussion in the assessment order on the various matters recorded in the reasons to believe and his inferences on them. It could be seen that the in the reasons recorded that here are various information and evidence. The AO without examining any of the said information and evidence, assumed that the bogus transaction related to sale of share of M/s Onkar Supply Pvt Ltd and as the assessee had replied that it had not dealt with the shares of M/s Onkar Supply Pvt Ltd further assumed that the share transactions on Bakra Prathistan Ltd was a genuine one. The information that M/s Dhanlabh Merchandise was a shell company and the evidence in the form of sworn deposition of Mr. Ashok Kumar Kayan, that the assessee was a beneficiary of bogus long term capital gain transaction was not considered and examined at all while making the decision. In this regard, it is relevant to refer to the principle laid down by the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. Commissioner of Income-tax [2000] 243 TTR 83 (SC)2000] 109 Taxman 66 (SC) that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The Gawhati High Court Full bench in the case of CIT v Jawahar

Bhattacharjee 341 ITR 434 (Gau) (FB) held that, Jurisdiction under section 263 can be exercised whenever it is found that the order of assessment was erroneous and prejudicial to the interests of the Revenue. Cases of assessment order passed on wrong assumption of facts, or incorrect application of law, without due application of mind or without following the principles of natural justice are not beyond the scope of section 263 of the Act." Further, it is relevant to refer to the decision of the Honourable Calcutta High Court. in the case of CIT Vs Maithan International 56 taxmann.com 283 (Calcutta) where in it " When the requisite enquiry was not made, the order is bound to be If the relevant enquiry was observed, erroneous and prejudicial to the interest of the revenue was not made, it may in appropriate cases amount to no enquiry and may also be a case of non-application of mind.t is not the law that the Assessing Officer occupying the position of an investigator and adjudicator can discharge his functions by perfunctory or inadequate investigation. Such a course is bound to result in erroneous and prejudicial orders. Where the relevant enquiry was not undertaken, as in this case, the order is erroneous and prejudicial too and therefore revisable Investigation should always be faithful and fruitful. Unless all truthful areas of enquiry are pursued the enquiry cannot be said to have been faithfully conducted." In Rajmandir Estates Pvt Ltd v Pr CIT, the Calcutta High Court held that where the AO did not apply his mind to certain pieces of evidence which should have provoked him to make further investigation but not made would be a justifiable reason to invoke jurisdiction under sec. 263 of the IT Act.

15. In this regard, it is relevant to refer to the Explanation 2 to sec. 263 which reads as under:

Explanation 2. -- For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner-

- (a) the order is passed without making inquiries or verification which should have been made;*
- (b) the order is passed allowing any relief without inquiring into the claim;*
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under*

section 119; or 3 ITA No. 2644/Del/2016Gurvinder Singh Suri

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

16. The Hon'ble Supreme Court in the case of Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/I2017) dated 29.11.2017 upheld the view that the CIIT is justified in invoking sec.263 if the AO did not make any proper inquiry while making the assessment.

17. I find that the AO had not made any inquiry much less relevant inquiry to verify the genuineness of share transfer transaction. Admittedly, the assessee had done share transfer transaction with the broker Mr. Ashok Kumar Kayan. The AO was very much having the sworn deposition of the share broker Mr. Ashok Kumar Kayan that he had only provided accommodation entries and that the assessee was one among the beneficiaries of long term capital gain. But without inquiry and without application of mind, the AO had accepted the transaction and failed to make addition, though prima facie evidence on record showed that the transaction was bogus. Thus, the order passed by the AO without making any inquiry and verification, without considering the evidence available with him; on wrong assumption of certain facts and non-application of mind over the information and evidence with him makes the assessment order erroneous and prejudicial to the interests of revenue.

18. It would also be relevant to refer to the decision of the the Hon'ble Madras High Court in the case of Smt. Tharakumari, TTO upheld the addition on account of bogus sale of shares under section 68 of the I.T. Act. Further, in the case of Pr.CIT v Prabha Jain dated 15th September 2021 (indiarnkanoon.org/doc/697648699/), the Court upheld the addition made u/s.68 in respect of claim of exemption from bogus capital gain u/s.10(38) of the I.T. Act. In this case also, the subject sale for claiming bogus capital gain exemption pertained to sale of shares of M/s. Dhanlabh Merchandise Ltd. merged with M/s. Bakra Prathisthan Ltd.

19. M/s Bakra Prathisthan Ltd. has been reported as suspected shell company in the Corporate Affairs in its letter in 331

companies identified by the Ministry of F.No.03/73/2017-CL-II dated 09.07.2017.addressed to the Securities and Exchange Board of India for initiating necessary action.

20. Now coming to the pleas raised, it is totally incorrect to contend that the sole basis for invoking sec. 263 was the error in stating the reasons recorded. The proceedings under sec. 263 was initiated as the assessment order was erroneous as the AO did not make any inquiry to verify the genuineness of the alleged share facie material information to show transfer transaction, even though there was primate that the alleged share transfer transaction was bogus. Besides, various incriminating information and evidence formed the basis for the reopening of the assessment. Mere error in one piece of information recorded by the AO do not affect its validity, as all the other information and evidence directly prove prima facie the non-genuineness of the transaction. The failure of the AO to make any inquiry in respect of any of this information made the assessment erroneous and prejudicial to the interests of Revenue. The assessee's nexus is very evident from the sworn deposition of Ashok Kumar Kayan that he had provided accommodation entries to the assessee for claiming benefit of exemption of long term capital gains.

21. It was contended that the CIT cannot revise the reassessment for the mistakes in the reasons recorded which was with the approval of the CIT. The argument is totally misleading. The functions performed by the CIT in giving approval under sec. 147 and in invoking the jurisdiction under sec. 263 are entirely different. While giving approval for the purpose of reopening the assessment under sec. 147 it is necessary that the AO has reasons to believe that income has escaped assessment. On the other hand, the power of revision is exercised by the CIT over the assessment order passed by the AO; and the pre-requisite conditions for the exercise of such jurisdiction is the satisfaction of the twin conditions that the order was erroneous and prejudicial to the interests of the revenue. The reassessment order passed by the AO is erroneous as he had not made the relevant inquiry to verify the genuineness of the share transfer transaction, even though there was information with the AO that M/s Dhanlabh Merchandise Ltd, and M/s Bakra Prasisthan Ltd were shell companies, and sworn deposition of the broker Ashok kumar Kayan that he had only provided accommodation entries to the assessee to claim long term capital gain benefit. The

typographical error in the reasons recorded, admitted by the assessee, does not affect the exercise of jurisdiction under sec. 263 when the pre-requisite conditions are satisfied. Therefore, there is no merit in these pleas and it does not in any manner affect the principles of natural justice. Nor is it arbitrary, as the jurisdictional functions are to be exercised within the confines prescribed by the statute.

22. In view of the foregoing discussion, the assessment order dated 02.12.2019 passed u/s 143(3) r.w.s 147 for the AY 2012-13 in the assessee's case is held to be erroneous and prejudicial to the interest of revenue and the same is set-aside u/s 263 of the Income tax Act to the file of the Assessing Officer with a direction to make assessment, after carrying unnecessary inquiries to verify the genuineness of the alleged share transfer transaction conducted through the broker Mr. Ashok kumar kayan in respect of shares Ms Dhanlabh Merchandise Ltd, merged with M/s Bakra Prathisthan Ltd and to examine the genuineness of the claim of exemption of long term capital gains after affording sufficient opportunity of hearing to the assessee. Further, it is noted that in response to the notice u/s. 148, the assessee had filed return of income declaring total income of Rs. 32,76,920/-, however, the Ao while completing the assessment had taken the total income at Rs. 7,87,460/-. This discrepancy may also be examined by the AO while completing the set aside proceedings."

6. The Id. Counsel for the assessee, submitted that the Ld. PCIT erred in setting aside the assessment order in exercise of his powers conferred u/s. 263 of the Act, without appreciating fact that while invoking power under revisionary jurisdiction, the PCIT must satisfy himself about erroneous order passed by the AO which caused prejudice to the interests of the revenue. In this case, the sole purpose for re-opening of assessment is to verify information received from Income-tax Department, Kolkata and during the re-assessment proceedings the

assessee has filed all possible evidence and explained to the Assessing Officer that long term capital gains declared for the relevant assessment year is nothing to do with transactions with M/s. Onkar Supply Pvt Ltd, a Kolkata based company operated by Shri. Ashok Kumar Kayan. The AO, after considering relevant facts has rightly concluded the assessment without there being any addition towards capital gains and thus, it cannot be said that assessment order passed by the AO is erroneous and prejudicial to the interests of the revenue. In this regard, he relied upon the decision of Hon'ble Delhi High Court in the case of PCIT vs Laxman Industrial Resources Ltd [2017] 397 ITR 106 (Del).

7. The Id. DR, on the other hand supporting the order of the PCIT submitted that, the PCIT has elaborately discussed the issue in light of sworn statement recorded from Shri. Ashok Kumar Kayan, where he had categorically admitted that assessee is one of the beneficiaries of accommodation entries in the form of long term capital gains through various companies. The PCIT, had also discussed the issue in light of modes of operating employed by entry providers and also linked bogus long term capital gains declared by the assessee

to said operations, and thus rightly held that assessment order passed by the AO is erroneous in so far it is prejudicial to the interests of the revenue. He, further referring to the assessment order dated 02.12.2019 submitted that no doubt the assessee has submitted written submissions on the issue and enclosed certain information. But, fact remains that the AO has not carried out required enquiries he ought to have been carried out in light of explanation (2) to section 263 of the Act. Therefore, the PCIT has rightly assumed jurisdiction and set aside the assessment order and their order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The provisions of section 263 of the Act, confers powers to PCIT to revise the assessment order, in case PCIT satisfies himself that the order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue. In other words, in order to invoke jurisdiction u/s. 263 of the Act, twin conditions embedded therein must be satisfied. Further, even if the order passed by the AO is erroneous but not prejudicial to the interests of the revenue and vis-à-vis, the

PCIT cannot invoke Jurisdiction and set aside order and this legal proportion is laid down by various courts including Hon'ble Supreme Court in the case of Malabar Industries Co vs CIT [2000] 243 ITR 83 (SC). In this legal background, if you examine facts of the present case, the PCIT has set aside the assessment order passed by the AO u/s. 143(3) r.w.s. 147 dated 02.12.2019, on the sole issue of long term capital gains declared by the assessee u/s. 10(38) of the Act. The PCIT, has discussed the issue in light of information received from Income-tax Department, Kolkata and more particularly statement recorded from One Mr. Ashok Kumar Kayan, claimed to be entry provider for various companies. As per said sworn statement of Shri Ashok Kumar Kayan, it was noticed that the assessee is one of the beneficiary of bogus long term capital gains of accommodation entries by the entry operator. Therefore, the PCIT came to the conclusion that although the assessment has been re-opened for specific purpose of examination on information received from Income-tax Department, Kolkata, but the AO simply completed re-assessment by accepting explanation furnished by the assessee without carrying out required enquiries he ought to have been carried out in terms of explanation (2) to section

263 of the Act, which rendered the assessment order as erroneous and prejudicial to the interests of the revenue.

9. We have carefully considered the reasons given by the PCIT to set aside the assessment order passed by the AO u/s. 143(3) r.w.s. 147 of the Act dated 02.12.2019, in light of facts brought on record by the Assessing Officer and arguments advanced by the Id. Counsel for the assessee and we ourselves do not subscribe to the reasons given by the PCIT, for simple reason that sole purpose of re-opening of assessment u/s. 147 of the Act is to tax escaped income on account of bogus long term capital gains declared by the assessee, and said reasonable belief has been drawn by the AO on the basis of information received from Income-tax Department, Kolkata. If you go by reasons recorded for re-opening of assessment, the AO noticed that during the course of survey proceedings by the Department on M/s. Onkar Supply Pvt Ltd, it was found that said entity was involved in providing accommodation entries of bogus long term capital gains in connivance with entry operators. It was further noted that Shri. Ashok Kumar Kayan, in his oath u/s. 131 of the Act had admitted his role in providing accommodation entries in bogus penny stocks and

amounts transacted through the current account of M/s. Onkar Supply Pvt Ltd. During the course of reassessment proceedings, the AO on the basis of said information examined the case of the assessee in light of detailed submissions filed by the assessee and after examining details filed by the assessee, the AO came to the conclusion that long term capital gains declared by the assessee from sale of certain shares is nothing to do with scripts dealt by M/s. Onkar Supply Pvt Ltd and thus, concluded assessment by accepting explanation furnished by the assessee. From the above, it is very clear that during re-assessment proceedings, the issue of long term capital gains declared by the assessee u/s. 10(38) has been thoroughly examined by the AO in light of various details filed by the assessee along with information received from Income-tax Department and concluded that capital gains declared by the assessee is genuine in nature, but not bogus. Therefore, we are of the considered view that the PCIT is completely erred in assuming the jurisdiction u/s. 263 of the Act and set aside the assessment order passed by the AO u/s. 143(3) r.w.s. 147 of the Act, dated 02.12.2019 on the very same issue of long term capital gains declared by the assessee from sale of certain shares. From the reasons given by the PCIT, it

is abundantly clear that the sole basis for the PCIT to invoke his jurisdiction is information received from Income-tax Department, Kolkata on the survey conducted in case of M/s. Onkar Supply Pvt Ltd and statement recorded from Shri. Ashok Kumar Kayan, a broker acted as an entry operator in providing accommodation entries of long term capital gains. Since, the issue is a subject matter of re-assessment proceedings from the Assessing Officer, it can be safely concluded that the AO has verified the issue in light of relevant facts under right perspective of law and concluded that long term capital gains declared by the assessee is genuine and thus, we are of the considered view that there is no scope for the PCIT to set aside the assessment order u/s. 263 of the Act. No doubt in case where there is complete lack of enquiries, the PCIT is having powers to set aside the assessment order. However, in a case where there is an enquiry, even if said enquiry is inadequate there is scope for the PCIT to step into revise the assessment order. In this case, on perusal of facts available on record, at best it can be said that it is not a case of lack of enquiry, but may be case of inadequate enquiry. Therefore, the powers exercised by the PCIT u/s. 263 of the Act is not in accordance with law.

10. At this stage, it is relevant to refer to the decisions relied upon by the Ld. Counsel for the assessee in the case of PCIT vs Laxman Industrial Resources Ltd (supra), where the Hon'ble Delhi High Court has considered an identical issue on bogus long term capital gains, in light of report of investigation wing and after considering relevant facts, the Hon'ble High Court clearly held that the AO cannot come to the conclusion on the basis of report of investigation wing that transactions of the assessee are bogus in nature, unless he conducts necessary enquiries to ascertain correct facts with regard to nature of transactions. The relevant findings of the Delhi High Court are as under:

"It is argued by the Revenue that the ITAT should have taken appropriate steps and remitted the matter, not merely confirming the CIT(A)'s opinion since the Investigation Wing's report confirmed unequivocally that the assessee was beneficiary to bogus transactions whereby the genuineness of identity of the shareholders, the genuineness and identity of the share applicants and the genuineness of transactions was suspect.

This Court notices that the assessee had provided several documents that could have showed light into whether truly the transactions were genuine. It was not a case where the share applicants are merely provided confirmation letters. They had provided their particulars, PAN details, assessment particulars, mode of payment for share application money, i.e. through banks, bank statements, cheque numbers in question, copies of minutes of resolutions authorizing the applications, copies of balance sheets, profit and loss accounts for the year under consideration and even bank statements showing the source of payments made by the companies to the assessee as well as

their master debt with ROC particulars. The AO strangely failed to conduct any scrutiny of documents and rested content by placing reliance merely on a report of the Investigation Wing. This reveals spectacular disregard to an AO's duties in the remand proceedings which the Revenue seeks to inflict upon the assessee in this case. No substantial question of law arises. The appeal is dismissed."

11. From the above, it is very clear that report of investigation wing is not sacrosanct, but what is necessary to decide the issue is whether said transactions are genuine or not, is independent enquiry in light of available materials. In this case, the evidences filed by the assessee before the AO during the re-assessment proceedings clearly shows that long term capital gains declared u/s. 10(38) of the Act is nothing to do with survey conducted in the case of M/s. Onkar Supply Pvt Ltd and statement recorded from Shri Ashok Kumar Kayan. Therefore, we are of the considered view that capital gains declared by the assessee from sale of certain shares cannot be considered as bogus only on the basis of report of Income-tax Department.

12. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that assessment order passed by the AO is neither erroneous nor prejudicial to the interests of the revenue, on the issue of long

term capital gains declared u/s. 10(38) of the Act. Therefore, we are of the considered view that the PCIT is completely erred in assuming his jurisdiction and revised assessment order u/s. 263 of the Act. Thus, we quashed order passed by the PCIT u/s. 263 of the Act.

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

Order pronounced in the court on 22nd March, 2023 at Chennai.

Sd/-
(एबी टी. वर्क,)
(ABY T VARKEY)
न्यायिकसदस्य/Judicial Member

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 22nd March, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/PCIT |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |