

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No.3755/DEL/2018
Assessment Year 2014-15

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| Pooja Mittal, H. No. 18, Pocket-4 & 5, Sector-23, Rohini, Delhi. | Vs. | Pr.CIT-13, New Delhi |
| TAN/PAN: AGCPM9510H | | |
| (Appellant) | | (Respondent) |

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| Appellant by: | Shri Mayank Patwari, CA Shri Kalrav Mehrotra, Adv. | | |
| Respondent by: | Shri T. Kipgen, CIT-DR | | |
| Date of hearing: | 21 | 02 | 2023 |
| Date of pronouncement: | 12 | 05 | 2023 |

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the revisional order of the Id. Pr.CIT, Delhi-13 ('Pr.CIT' in short) dated 28.02.2018 wherein order passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) dated 14.03.2016 concerning AY 2014-15 was held to be erroneous in so far as prejudicial to the interest of the revenue within the meaning of Section 263 of the Act.

2. Briefly stated, the assessee, an individual filed return of income at Rs.5,56,730/- for Assessment Year 2014-15 in question. The assessee *inter alia* declared income under the head 'business income', 'Capital Gains' and 'Income from Other Sources' etc. A scrutiny assessment was carried out under Section 143(3) of the

Act for AY 2014-15 in question whereby the total income was also assessed at Rs.5,56,730/- as returned by the assessee.

3. The assessment carried out by the Assessing Officer was, however sought to be revised by the Pr.CIT. A show cause notice dated 19.12.2017 was issued to this effect.

“Show cause notice under Section 263 of the Income Tax Act for A.Y. 2014-15- reg.

The Assessment for the A.Y. 2014-15 in your case was completed on 14.03.2016 u/s. 143 (3) of I.T. Act accepting the return income of Rs.5,56,730/-. It is seen from the records that the AO did not make proper enquiries, nor did investigate/verify various details filed and even omitted issues especially with respect suspicious transactions relating to Long Term Capital Gain on shares, rendering the assessment so made to be erroneous, so far as it is prejudicial to the interest of revenue. I therefore intend to revise the order passed on 14.03.2016 u/s. 143(3) of the I.T. Act for A.Y. 2014-15.

You may attend on 28.12.2017 at 4:00 PM, in person or through your Authorized Representative and show cause why the order u/s. 143(3) of the IT. Act dated 14.03.2016 for AY 2014-15 should not be revised.

Yours faithfully,

*Pr. Commissioner of Income Tax-13,
New Delhi.”*

4. The Pr.CIT eventually set aside the assessment order framed under Section 143(3) and directed the Assessing Officer to redo the assessment in terms of observations made in revisional order.

5. Aggrieved by the revisional order, the assessee preferred appeal before the ITAT seeking to challenge the revisional order.

6. When the matter was called for hearing, the Id. counsel for the assessee adverted to the solitary show cause notice and submitted that the show cause notice broadly alleges failure of the Assessing Officer to investigate/verify details filed in respect of

suspicious transactions relating to Long Term Capital Gain on shares rendering the assessment so made to be erroneous in so far as it is prejudicial to the interest of the revenue.

6.1 In this regard, the Id. counsel for the assessee submitted that the case was selected for scrutiny mainly on the grounds of suspicious transactions of Long Term Capital Gains. The Id. counsel adverted to the replies and submitted that the specific replies were placed before the AO with regard to the Long Term Capital Gains of Rs.47,97,000/- earned by the Assessee. The assessee *inter alia* filed the proof of acquisition of shares, copy of share certificates, dematerialization request form etc and also the relevant contract notes towards sale of shares. Copy of statement of Demat account and copy of ledger account were also submitted before the Assessing Officer to vindicate the *bona fides* of the transactions of shares. Therefore, the assessee, on its part, has provided all material facts to the Assessing Officer as called upon by the AO in the course of the assessment proceedings and hence, the onus placed upon the assessee stood discharged and AO did not see any perceptible reason which may call for extended enquiry. The income was assessed accordingly. On the other hand, the Pr.CIT in the supervisory proceedings, has attempted to place impossible burden on the assessee to satisfy the suspicion of the Pr.CIT reflected in the revisional order by a very generic observations without pointing out any substantive error in the material placed. The observations of the Pr.CIT about non production of demat account is contrary to the contents of reply placed before the Assessing Officer. The Id. counsel next contended that the allegation of suspicious transaction in penny stock is totally unfounded. As submitted, the term 'Penny Stock'

has not been defined under any enactment currently in force. There is no justifiable reason to attribute *mala fides* on the assessee merely because the Pr.CIT considers a transaction in particular stock to be penny stock. As further stated, the transactions have been carried out through the platform of the Stock Exchange and that too in 15000 number shares only. The shares were transacted through the intermediaries / Stock Brokers duly registered with the SEBI. The Pr.CIT has given undue considerations to the so called abnormal increase in the price by wrongly invoking the principles of preponderance of probabilities. It is trite that the degree or standard of proof required to establish a fact cannot be defined precisely. The drastic increase or decrease in the price of large number of shares in a given year is an ordinary phenomenon in the stock market where price discovery happens depending on host of uncertain factors both internal and external. The SEBI is the watchdog for any manipulative actions in the stock market. The assessee has entered into meager transactions of sale of mere 15000 shares held by it and no adverse SEBI report is available implicating the assessee for any concerted or manipulative action which may give rise to any kind of suspicion of any fictitious gains. As further asserted, the AO in its own wisdom has taken a plausible view in discharge of his quasi-judicial function based on facts available to him. The view taken by the Assessing Officer thus cannot be outrightly rejected and branded as erroneous *per se* within the sweep of supervisory jurisdiction by invoking doctrine of preponderance of probabilities.

6.2 The Id. counsel thus contended that the Assessing Officer has taken a fair view in the totality of circumstances which is not

capable of casual displacement by a set aside action in the absence of any cogent material in the possession of the Pr.CIT. The Pr.CIT has sought to dislodge a quasi-judicial action in a casual manner simply because in his opinion a greater inquiry in the issue was needed. The Id. counsel submitted that expecting an Assessing Officer to examine each and every item of income or expenditure or other transactions to the hilt is fraught with serious constraints and is neither feasible nor desirable. It was finally contended that quasi-judicial action of Assessing Officer cannot be lightly struck down without showing any definite error resulting in prejudice to the revenue. The Assessing Officer has concluded the issue having regard to the totality of facts and thus cannot be branded as erroneous in the name of alleged inadequacy of inquiry.

6.3 The Id. counsel further contends that while the show cause notice does not make any reference to the introduction of capital of Rs.53,00,961/- and receipt of gift of Rs.5 lakh from his brother, no preliminary inquiries were made by the Pr.CIT himself even at the revisional proceedings. The assessee was having no opportunity to deal with the observations of Pr.CIT towards independent verification of two items. Notwithstanding a total lack of opportunity to address the issue before Pr.CIT, the issue was not overlooked but a reasonable inquiry was made by the Assessing Officer in this regard too. In response to queries raised, in the course of the assessment proceedings, the Assessee had filed all material particulars in respect of such introduction of capital and gift. The ledger of the assessee placed at page no.78 shows that the introduction of capital mainly comprises of the capital gain arising on the sale of shares already in discussion. Likewise, the gift was received from brother. Therefore, exercise

of supervisory jurisdiction is wholly unjustifiable on the issue without making reference to circumstances which warrants necessity of verifications. The Id. counsel thus urged for setting aside the revisional order of the Pr.CIT in question and restoration of the assessment order.

7. The Id. DR for the Revenue, on the other hand, relied upon the revisional order and contended that the Assessing Officer has not exercised the due diligence expected of him while examining the issues involved which the Assessing Officer has failed to perform. It was submitted that the AO has merely accepted the documents placed before him without requisite enquiry thereon. The Id. DR referred to and relied upon the decision of the Tribunal in the case of *Smt. Sudha Eashwar vs. ITO in ITA No.2342/Chny/2019 order dated 02.01.2020*. The Id. DR accordingly submitted that the revisional commissioner has acted within four corners of law and consequently revisional action on the assessment order does not call for any interference.

8. We have carefully considered the rival submissions and perused the revisional order passed by the Pr.CIT under Section 263 of the Act as well as other materials referred to and relied upon by the respective parties and case laws cited.

8.1 Supervisory jurisdiction vested under Section 263 of the Act enables the concerned Pr.CIT/CIT to review the records of any proceedings and order passed therein by the AO. It empowers the Revisional Commissioner concerned to call for and examine the records of another proceeding under the Act and if he considers that any order passed therein by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, then he may (after

giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary), pass such order thereon as the circumstances of the case justify, including the order enhancing or modifying the assessment or cancelling the assessment and directing afresh assessment. Thus, the revisional powers conferred on the Pr.CIT/CIT under s.263 of the Act are of wide amplitude with a view to address the revenue risks which are objectively justifiable.

8.2 In the instant case, the substantive issue that emerges for adjudication is whether the Pr.CIT under the umbrella of revisionary powers is entitled to upset the finality of assessment proceedings before the Assessing Officer where the Assessing Officer has allegedly committed error in passing assessment order without proper verification of the propriety of LTCG transactions, introduction of capital and gift received from brother during the year. Implicit in the question, in the context of facts and circumstances of the case, is thus scope of powers of revisional commissioner in the event of alleged inadequacy of inquiry into various aspects of an issue.

8.3 On perusal of the show cause notice (SCN) issued by the Revisional Commissioner proposing to set aside the assessment order passed by the Assessing Officer under Section 143(3) of the Act, we notice that the Pr.CIT is essentially dissatisfied with the degree of enquiry made in respect of Long Term Capital Gain (LTCG) arising to the assessee on sale of shares of Turbotech Engineering Ltd. which is alleged to be a penny stock. No questions are alleged to have been raised by the Pr.CIT in the course of revisional proceedings towards veracity of capital increased or gift received either by way of initial SCN or in the

course of subsequent revisional proceedings.

8.4 To appreciate the issues in perspective, we notice that specific queries were raised by the AO on both counts namely LTCG arising on sale of share of Turbotech as well as introduction of capital and gift received by the assessee during the year. The assessee in compliance of the inquiries so made by the Assessing Officer is stated to have filed the details and the evidences such as the proof of acquisition of shares, share certificates, contract note towards sale of shares and the demat account showing transfer of shares etc. giving rise to LTCG. It is also the case of the assessee that shares were transferred on the platform of the stock exchange through authorized brokers and no adverse report of the SEBI was confronted to the assessee either before the Assessing Officer or by the Pr.CIT in the revisional proceedings. The Assessing Officer did not find any reason to doubt such documents to launch further verifications which the Pr.CIT thinks, ought to have been done. Pertinently, the law does not necessarily require to stretch enquiries and verifications to the extent which may, at times, tantamount to oppression and harassment of a tax payer. The Assessing Officer, in the instant case, has arrived at a conclusion after collecting requisite evidences of external nature and in the absence of any adverse material *per se*, came to a conclusion which is plausible for a reasonable person instructed in law. The object of revisional power is not to impinge upon the powers of the Assessing Officer to frame the assessment and interfere therewith in all cases merely on account of some inadequacy in manner and extent of enquiry.

8.5 As regards introduction of capital and gift from brothers, the case of assessee are two folds (i) No opportunity was given to

Assessee in clear violation of natural justice expressly provided in Section 263 and thus revisional action could not be taken at first place (ii) the introduction of capital was pre-dominantly by way of LTCG of Rs.47.50 lakh and reversal of some expenses entries. The fact of gift from brother Rs.5 lakh was also made available to Assessing Officer and is otherwise exempt from tax under Section 56(2). The assessee contends that primary details are available on the records of Assessing Officer and such information only has caused revisional action.

8.6 In the absence of any perceptible error in the action of the Assessing Officer pointed out in the revisional order, the explanation offered on behalf of the assessee appears plausible. The Assessing Officer, in the instant case, has specifically examined all the issues raised by the Pr.CIT *albeit* not probably in the manner in which the Pr.CIT would have liked but this cannot be the *sacrosanct* ground for assumption of jurisdiction under Section 263 of the Act. The Assessing Officer did raise the questions on points in issue and there appears to be active application of mind by the Assessing Officer although, did not meet the expectation of the Pr.CIT.

8.7 Under the circumstances, one cannot possibly say that the Assessing Officer had sleepwalked on the issues involved. Noticeably, the Pr.CIT himself has not entered into any minimal inquiry on the issues himself, if so considered expedient and there is not even *prima facie* demonstration of fallacy in the action of the Assessing Officer which rendered the order erroneous and which also simultaneously caused prejudice to the revenue. Merely because the expectations of the Revisional Commissioner are purportedly not met, it should not, in our opinion, necessarily

trigger revisional action under Section 263 of the Act in every case.

8.7 On a broader reckoning of the peculiar facts of the case, we concur with the plea raised on behalf of the assessee that allegations in the revisional order are not justified and there is no systematic effort on the part of the Pr.CIT to support the allegations. A reference made on behalf of the Revenue in the case of *Sudha Eashwar (supra)* is governed by its own set of facts. The applicability of Section 263 was not the subject matter of controversy therein. The order of co-ordinate Bench does not tend to remove the fetters placed on the scope of Section 263 under consideration in the present case. Some inadequacy will not render each and every order erroneous on the touchstone of Section 263 of the Act where the extent of inquiry has been questioned by the Revisional Commissioner. The issue requires to be looked in the context and setting of facts in each case. We do not find any overriding reasons subsisting in the facts of present case. We thus find that the foundation in the exercise of revisional jurisdiction is missing in the present case.

9. Resultantly, the impugned order of the Pr.CIT passed under Section 263 of the Act is set aside and cancelled and the order of the Assessing Officer under Section 143(3) is restored.

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

Order pronounced in the open Court on 12/05/2023.

Sd/-

**[YOGESH KUMAR US]
JUDICIAL MEMBER**

DATED: /05/2023

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**