

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 3207/Mum/2022  
(A.Y.2015-16)**

Piyush R Shah 1301, Piroj Palace, 152, L.N. Road, Matunga Maharashtra - 400014	Vs.	PCIT-8 Room No. 610, 6 <sup>th</sup> Floor, AaykarBhavan, M.K. Road Maharashtra - 400020
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AABPS3962N		
Appellant	..	Respondent

Appellant by :	PradipKapasi
Respondent by :	K.C. Selvamani

Date of Hearing	25.05.2023
Date of Pronouncement	31.05.2023

**आदेश / O R D E R**

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi dated 31.03.2022 for A.Y. 2015-16. The assessee has raised the following grounds before us:

**“GROUND NO. 1: INVALID ORDER U/S. 263**

- (a) The Ld. CIT-8, Mumbai erred in law and on facts in passing an order U/s. 263 for revising the Assessment Order passed U/s. 143(3) Dt. 20.12.2017.
- (b) Your appellant strongly submits that Assessment Order U/s. 143(3) Dt. 20.12.2017 was passed after adequate enquiry and consideration of all facts and in the law on the subject, which order was neither erroneous nor prejudicial to the interest of the revenue.
- (c) Your appellant pleads that the said order passed U/s. 263 by the Ld. CIT-8, Mumbai be quashed and set aside as it is bad in law.

**GROUND NO. 2: ORDER U/S. 263 WITHOUT JURISDICTION**

- (a)(i) *The Id. CIT-8, Mumbai erred in law and on facts in revising the Assessment Order Dt. 20.12.2017 passed U/s. 143(3) ignoring an important fact that the said Assessment Order was substituted by an order Dt. 30.10.2019 passed by the Assessing Officer U/s. 154 of the IT Act.*
- (ii) *The Id. CIT-8, Mumbai erred in law and on facts in revising the Assessment Order Dt. 20.12.2017 passed U/s. 143(3) ignoring an important fact that an appeal is pending before CIT(A) against the said order Dt. 20.12.2017.*
- (b) *Your appellant strongly submits that no order of revision could have been passed by Ld. CIT-8, Mumbai for revising an order which was substituted by afresh order and also an appeal is pending before CIT(A) against order passed U/s. 143(3)*
- (c) *Your appellant pleads that an order passed without jurisdiction for revising an order which has ceased to exist be declared null and void.*

**GROUND NO. 3: SERIOUS VIOLATION OF NATURAL JUSTICE**

- (a) *The Id. CIT-8, Mumbai, erred in law and on facts in denying the adequate opportunity of hearing and further erred in not appreciating and considering the detailed submissions made in response to show cause notice Dt. 08.03.2021 of revision issued U/s. 263.*
- (b) *Your appellant submits that the adequate opportunity was not provided and submissions made by the appellant were brushed aside or ignored without adequate enquiry and application of mind. (c) Your appellant pleads that an order passed in violation of the provisions of natural justice be quashed.*

*Your appellant craves for leave to add, alter or to modify any of the foregoing grounds of appeal if required.*

*All the above grounds are independent and without prejudice to each other.”*

2. Fact in brief is that return of income declaring total income of Rs.2,58,730/- was filed on 29.09.2015. The assessment u/s 143(3) was made on 20.12.2017 assessing the total income at Rs.5,83,76,716/- after making addition on account of disallowance of bogus long term capital gain earned on penny stock of the shares u/s 68 of the Act. Subsequently, the Id. Pr.CIT on perusal of the assessment record noticed that as against addition of Rs.5,81,17,897/- made by the assessing officer by treating the long term capital gain as bogus u/s 68 of the Act, the AO should have added the whole sale proceeds of Rs.5,93,67,987/- u/s 68 of the Act

as unexplained credit. The ld. Pr.CIT held that the entire amount of cash credit should have been added to the income of the assessee and not only the exempt income claimed u/s 10/38 of the Act. Therefore, the ld. Pr. CIT held that AO has failed to make necessary inquiry and bring on record all facts necessary for determining the true character and nature of the income. Accordingly, held that order passed u/s 143(3) is erroneous and prejudicial to the interest of the revenue and same was set aside as per observation mentioned above with direction to revise the order by also including Rs 12,50,000/- as a disallowance u/s 68 of the Act.

3. During the course of appellate proceedings before us the ld. Counsel contended that in the order u/s 263 the ld. Pr.CIT has questioned the cost of acquisition of shares which were Rs.12,50,000/- and held that same should also be added to the total income disallowed by the Ld. AO as a part of sale proceed of the stock of Maa Jagdamba Shares. In this regard, the ld. Counsel submitted that this cost of Rs.12,50,000/- was not pertained to the year under consideration since the same was incurred in assessment year 2013-14 on the acquisition of shares duly reflected in the account of the assessee, therefore, the same cannot be disallowed in the assessment year 2015-16.

On the other hand, ld. D.R supported the order of lower authorities.

4. Heard both the sides and perused the material on record. The Pr.CIT in the revision order u/s 263 of the Act stated that AO should have disallowed the entire sale proceeds of the shares of penny stock as discussed supra without reducing the cost of acquisition of shares of Rs.12,50,000/-. As per working of long term capital gain the assessee has shown gain of Rs.5,81,17,987/- after reducing the cost of

acquisition of such shares to the amount of Rs.12,50,000/-. The AO Specifically stated that claimed long term capital gain of Rs 5,81,17,987/- was pre-arranged in connivance with operators to evade taxes. Further we find that the shares were acquired in assessment year 2012-13 and the cost of acquisition of shares was not the issue of addition and it was only bogus long term capital gain of Rs.5,18,17,987/-, which was treated as bogus, therefore, we find that decision of the Id. CIT(A) in treating the cost of acquisition pertaining to assessment year 2012-13 in the year under consideration is not justified therefore we set aside the order passed by the Id. Pr.CIT u/s 263 on the issue of making further addition of Rs.12,50,000/- in the case of the assessee. Accordingly, this ground of appeal of the assessee is allowed.

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

Order pronounced in the open court on 31.05.2023

Sd/-

(Amit Shukla)  
Judicial Member

Place: Mumbai

Date 31.05.2023

Rohit: PS

Sd/-

(Amarjit Singh)  
Accountant Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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