

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.57/RPR/2022
(Assessment Years: 2012-2013)

Yogesh Goyal, Nawagaon Road, Dhamtari	Vs	Pr.CIT, Raipur-1, Raipur
PAN No. :AGVPG 1837 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Praveen Khandelwal & Praveen Goyal, CAs
राजस्व की ओर से /Revenue by	:	Shri V.K.Singh, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	03/07/2023
घोषणा की तारीख/ Date of Pronouncement	:	10/07/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The assessee has filed this appeal against the order passed by the Pr.CIT, Raipur-1, dated 16.03.2022 for the assessment year 2012-2013, on the following grounds:-

1. *That on the facts and in the circumstances of the case and in law, the order passed by the Id. Pr. CIT-1, Raipur u/s 263 of the Act dated 16/03/2022 is illegal and void ab initio.*
2. *That on the facts and in the circumstances of the case and in law, the Id. Pr. CIT-1, Raipur has erred in holding that the LTCG earned by the appellant is not genuine by totally ignoring the documentary evidences submitted by the appellant during the course of assessment proceedings and revision proceedings.*
3. *That on the facts and circumstances of the case and in law, neither the Id. Pr. CIT-1, Raipur nor the Id. A.O. had been able to prove by bringing any document on record in order to establish their allegation that the appellant is beneficiary of accommodation entry in trading of penny stock.*
4. *The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings.*

2. Brief facts of the case are that the assessee filed his return of income on 07.03.2013 declaring total income at Rs.1,89,950/-. Thereafter

the AO completed the assessment u/s.143(3) of the Act assessing total income of the assessee at Rs.1,89,950/-. Subsequently on the basis of certain information, the AO found that the assessee has escaped assessment accordingly notice u/s.148 of the Act was issued in response to which the assessee has filed his return showing total income as was declared original i.e. Rs.1,89,950/-. During the course of re-assessment proceedings, the AO observed that the assessee is an individual and during the year under consideration the assessee has shown income from salary, house property, business /profession and is also having income from other sources. Accordingly, the AO assessed the total income of the assessee at Rs.1,89,950/-.

3. Subsequently, the Id. Pr.CIT, invoking his powers u/s.263 of the Act, called for the assessment records and found that the AO has conducted inadequate enquiries on the issues and also non-application of mind for reaching any conclusion which would lead to hold the assessment order passed by the AO erroneous and prejudicial to the interest of revenue. Accordingly, the Id. Pr.CIT set aside the assessment order to frame the assessment afresh.

4. Against the above order of the Id.Pr.CIT, the assessee is in appeal before the Tribunal.

5. Ld. AR started his arguments with his legal ground regarding the assumption of jurisdiction by the Id. Pr.CIT in invoking the provisions of Section 263 of the Act against the assessee by issuing a notice dated 22.02.2022. The impugned notice for revisionary proceedings against the

assessee was based on the reason as mentioned in the notice, which reads as under :-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Raipur-1

To, YOGESH GOYAL NAVAGAON ROAD DHAMTARI, NAVAGAON ROAD NAVAGAON ROAD DHAMTARI 493773, Chhattisgarh India	
---	--

PAN/TAN: AGVPG1837C	AY: 2012-13	DIN & Notice No : ITBA/REV/F/REV1/2021- 22/1039981231(1)	Dated: 22/02/2022
------------------------	----------------	--	----------------------

NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year 2012-13.

In this regard, a hearing in the matter is fixed on **04/03/2022** at **11:30 AM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

On examination of your Income Tax records for the above assessment year, I find that the order passed u/s 143(3) r.w.s 147 on 26.12.2019 of the Income tax Act, 1961 is erroneous in so far as it is prejudicial to the interest of revenue in the following manner:

2. As per the information received from DDIT(Inv.), Unit-2(1), Kolkata to the office of A.O vide letter in F. No. DDIT (Inv.)/Unit-2(1)/Kolkata/DLS Export/2018-19/5658-6094 dated 07.03.2019, the assessee is the beneficiary of accommodation entries of Rs. 30,50,206/- in trading in penny stock company namely M/s DLS Export Pvt Ltd. Accordingly, necessary approval was obtained from the Hon'ble Pr. CIT-1, Raipur and notice u/s 148 of the Act was issued which was duly served upon the assessee.

3. You have filed the return of income in response to the notice u/s 148 of the Act. During the course of assessment proceeding, You were required to justify the claim of exempted income shown in the return of income filed for A.Y. 2012-13. In response you had furnished the copy of purchase bill of shares of Sarathi Dealers

Note: If digitally signed, the date of digital signature may be taken as date of document.
CENTRAL REVENUE BUILDING, RAI02, RAI03, RAI04, RAIPUR, Chhattisgarh, 492001
Email: RAIPUR.PCIT1@INCOMETAX.GOV.IN,

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
* DIN- Document Identification No.

AGVPG1837C- YOGESH C
AY
ITD/REV/F/REV/2021-22/1000081231

Pvt. Ltd. where he had purchased 450 shares of the said company. You further stated that the said company was amalgamated with the 21st Century (India) Ltd. and later you sold the shares of 21st Century (India) Ltd. for Rs. 54,40,133/- and claimed the income exempt u/s 10(38) of the Act. Since, no details regarding the shares of M/s DLS Export Pvt. Ltd. mentioned neither in your submission nor any exempted income was claimed there from in the return of income filed by you and also no amount was found credited in the bank accounts of the assessee from the trading of scrip M/s DLS Export Pvt. Ltd., therefore, notice u/s 133(6) of the Act was issued to the M/s DLS Export Pvt. Ltd., however no reply was furnished by the said party. Thereafter, copy of reason recorded for reopening the case u/s 147 of the Act was provided to you on your request and in response, you had filed the objection stating that the very basis for reopening the case u/s 147 of the Act is not correct as he has not traded in any scrip of M/s DLS Export Pvt. Ltd. and in support he has furnished the copy of capital account, balance sheet and bank account statement for the period 01.04.2011 to 31.03.2012. In the meantime, you have also filed an application u/s 144A of the Act before the Jt. CIT, Range-2, Raipur stating that as very basis of the reason is not correct, therefore, the proceeding should be dropped. Thereafter, the assessment order was passed u/s 143(3) read with section 147 of the Act on 26.12.2019 treating the returned income as assessed income keeping in view the direction u/s 144A of the Act given by the Hon'ble Jt. Commissioner of Income Tax, Range-2, Raipur vide letter in F. NO. JCIT/R-2/RPR/144A/2019-20 dated 24.12.2019.

4. On verification of record, it is found that the DDIT (Inv), Unit-2(1), Kolkata has sent another information stating that the assessee is beneficiary of accommodation entry in trading in a penny stock company namely M/s 21st Century (India) Ltd. This point was overlooked during assessment proceedings. Thus, the assessment order passed u/s 143(3) read with section 147 of the Act on 26.12.2019 is erroneous & prejudicial to the interest of the revenue.

5. Therefore, in exercise of the powers conferred on me by section 263 of the I.T.Act, 1961, I propose to suitable revise the order u/s 263, which may include setting aside the order as such. Accordingly, an opportunity is being extended to explain your case along with details, documents and necessary evidences. An absence of any submission or reply shall lead to the conclusion that you have no objection for the proposed action and the proceedings shall be finalized accordingly.

6. Your submission / reply may kindly be sent through the e-mail on or before 04/03/2022.

7. If you wish to appear personally or through your authorized representative, personal hearing may kindly be availed on 04/03/2022 at 11:30 am in the office of



AGVPG1837C-YOGESH G
A T
ITDA/REV/F/REV/2021-22/1030081231

Pvt. Ltd. where he had purchased 450 shares of the said company. You further stated that the said company was amalgamated with the 21st Century (India) Ltd. and later you sold the shares of 21st Century (India) Ltd. for Rs. 54,40,133/- and claimed the income exempt u/s 10(38) of the Act. Since, no details regarding the shares of M/s DLS Export Pvt. Ltd. mentioned neither in your submission nor any exempted income was claimed there from in the return of income filed by you and also no amount was found credited in the bank accounts of the assessee from the trading of scrip M/s DLS Export Pvt. Ltd., therefore, notice u/s 133(6) of the Act was issued to the M/s DLS Export Pvt. Ltd., however no reply was furnished by the said party. Thereafter, copy of reason recorded for reopening the case u/s 147 of the Act was provided to you on your request and in response, you had filed the objection stating that the very basis for reopening the case u/s 147 of the Act is not correct as he has not traded in any scrip of M/s DLS Export Pvt. Ltd. and in support he has furnished the copy of capital account, balance sheet and bank account statement for the period 01.04.2011 to 31.03.2012. In the meantime, you have also filed an application u/s 144A of the Act before the Jt. CIT, Range-2, Raipur stating that as very basis of the reason is not correct, therefore, the proceeding should be dropped. Thereafter, the assessment order was passed u/s 143(3) read with section 147 of the Act on 26.12.2019 treating the returned income as assessed income keeping in view the direction u/s 144A of the Act given by the Hon'ble Jt. Commissioner of Income Tax, Range-2, Raipur vide letter in F. NO. JCIT/R-2/RPR/144A/2019-20 dated 24.12.2019.

4. On verification of record, it is found that the DDIT (Inv), Unit-2(1), Kolkata has sent another information stating that the assessee is beneficiary of accommodation entry in trading in a penny stock company namely M/s 21st Century (India) Ltd. This point was overlooked during assessment proceedings. Thus, the assessment order passed u/s 143(3) read with section 147 of the Act on 26.12.2019 is erroneous & prejudicial to the interest of the revenue.

5. Therefore, in exercise of the powers conferred on me by section 263 of the I.T.Act, 1961, I propose to suitable revise the order u/s 263, which may include setting aside the order as such. Accordingly, an opportunity is being extended to explain your case along with details, documents and necessary evidences. An absence of any submission or reply shall lead to the conclusion that you have no objection for the proposed action and the proceedings shall be finalized accordingly.

6. Your submission / reply may kindly be sent through the e-mail on or before 04/03/2022.

7. If you wish to appear personally or through your authorized representative, personal hearing may kindly be availed on 04/03/2022 at 11:30 am in the office of

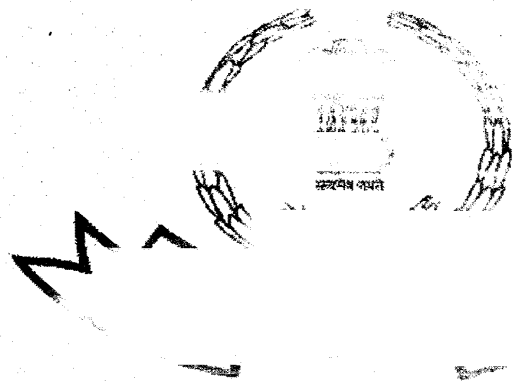


AGVPG1837C- YOGESH 15014
A.Y. 2012-13
ITBA/REV/F/REV1/2021-22/1039981231(1)

PCIT-1, Central Revenue Building, Civil Lines, Raipur.

OM PRAKASH VAISHNAV
PCIT, Raipur-1

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)



This document is digitally signed
Signer: OMPRAKASH VAISHNAV
Date: Tuesday, February 22, 2022 12:12:12
Location: BHOPAL, India

6. Ld. AR further drew our attention to the copy of the reasons recorded for reopening of the case of the assessee u/s.148 of the Act dated 22.12.2019, the same is extracted as under :-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD DHAMTARI

12

To, YOGESH GOYAL NAWAGAON ROAD DHAMTARI ,NAVAGAON ROAD NAVAGAON ROAD DHAMTARI 493773,Chhattisgarh India	
---	--

PAN: AGVPG1837C	Assessment Year: 2012-13	Dated: 22/12/2019	Letter No : ITBA/AST/F/17/2019-20/1022864457(1)
--------------------	-----------------------------	----------------------	--

Sir/ Madam/ M/s,

Subject: Providing of reason for reopening of the case u/s 147 of the Act for A.Y. 2012-13-reg-

Please refer to the above and your letter uploaded on ITBA portal wherein you have requested to provide the reasons recorded for re-opening/re-assessment of the case under section 147 of the I.T. Act for the aforementioned year. In this regard, the extract of the reason recorded for escapement of income is as under:

"Assessee had filed return of income for the A.Y. 2012-13 in ITR-4 on 07.03.2013 declaring total income of Rs. 1,89,950/-. The return of the assessee was selected for scrutiny u/s 143(3) of the Act and the order u/s 143(3) of the Act was passed on 23.09.2014 at the total assessed income at Rs. 1,89,950/-. On the basis of information received from credible sources, it is learnt that total credit in the bank account (A/c. No. 083705001511, ICICI bank Ltd.) of M/s DLS Export Pvt. Ltd. during the period of 01-01-2012 to 28-02-2012 was Rs.224.99 crores out of which Rs.219.78 crores by transfers mainly from linked accounts and total debit is Rs.224.84 Crores out of which Rs. 211.44 Crores is transferred mainly to linked accounts and Rs.12.95 crores is remitted through RTGS to different entities. Large value cash were deposited in several individual/proprietorship concerned followed by transfer immediately to other linked accounts. The financial analysis of the M/s. DLS Export Pvt. Ltd. for the F.Y. 2011-12 relevant to the A.Y. 2012-13 is as under:-

Name of the company	Turnover	Share capital	Fixed asset	Profit before taxes(PBT)	Profit af taxes(PA)
DLS Export Pvt. Ltd.	1,57,94,84,901	--	2,65,518	1,75,04,480/-	--

Note: If digitally signed, the date of digital signature may be taken as date of document.
INCOME TAX OFFICE, SHANKARDAN ROAD, VILLAGE HARAFTARAI, DHAMTARI, DHAMTARI, Chhattisgarh, 493773
Email: DHAMTARI.ITO@INCOMETAX.GOV.IN.

AGVPG1837C- YOGESH GOYAL
A.Y. 2012-13
ITBA/AST/F/17/2019-20/1022864457(1)

13

Further, summon issued to the company was returned un-served by the department of post, hence, money trail was prepared and on analysis of money/fund transfer following facts came to notice:-

1. On perusal of return filed by above entities/companies and intermediate companies, it is learned that most of these entities are either non-filer or filed their ITR showing meager income.
2. These companies were running on papers only and their bank accounts were used for layering of funds.

During the course of investigation, several other accounts were founds wherein large value cash were deposited. The details of funds which are deposited in cash are as follows:

Sl No.	Name	Proprietor Name	PAN	Cash Deposited in Cash in F.Y. 2011-12	A/c No.
1	A B Trading Co.	Amit Shaw	EKBPS1492D	1,49,90,300.00	627905500543, ICICI BANK
2	RIDDHI SIDDHI ENTERPRISES	Prakash Pathisia	BSGPP6505G	12,22,52,059.00	105605500089, ICICI BANK
3	A T Trading Co.	Ashish Thakur	AOLPT2374P	49,90,300.00	0359102000012111, IDI BANK
4	RIDDHI SIDDHI ENTERPRISES	Prakash Pathisia	BSGPP6505G	1,66,90,000.00	0359102000009911, IDI BANK
5	Balaji Textile	Sonu Singh		3,11,80,000.00	019084100000171, YES BANK
6	Gupta Traders	Raj Gupta	AZQPG4297C	12,93,39,511.00	As per cash Trail Shee
7	Ganesh Enterprises	Niraj Kumar Ray	ATKPR6524K	28,82,63,295.00	As per cash Trail Shee
8	Siddhi Enterprises	Rakesh Kumar Singh	BGHPS9385L	15,27,50,320.00	As per cash Trail Shee
9	Vinayak Enterprises	Ajit Goswami	ARQPG7646B	16,21,04,024.00	As per cash Trail Shee
10	Gupta Enterprises	Manoj Gupta	ALPPG4591A	9,13,52,976.00	As per cash Trail Shee

The analysis of Returns of income of these intermediary companies for the A.Y 2012-13 & 2013-14 are as under:-

[Handwritten Signature]

AGVPG1837C- YOGESH GOYAL
AY 2012-13
100 VASTI...

S. No	Name of the Company	PAN	CURRENT STATUS	AY	TURNOVER	FIXED ASSET	RENT PAID	PBT
1	CHITRAKSHVINTRADE (P) LTD.	AAECC4442P	STRIKE OFF	2012-13		0	0	0
				2013-14	0	0	0	0
2	D L S EXPORT PVT LTD	AABCD7671C	STRIKE OFF	2012-13	1,57,94,84,901	2,65,518	0	1,75,04,480
				2013-14	NON FILER			
3	DARUKA TRADING PVT LTD	AADCDB8751H	STRIKE OFF	2012-13	75,26,31,842	2,03,686	0	1,00,85,267
				2013-14	90,27,05,398	1,72,042	0	1,21,86,523
4	GAMINI DISTRIBUTOR PVT LTD	AAECG3394A		2012-13		0	0	-7,000
				2013-14		0	0	-5,544
5	HITENDRA COMMERCIAL PVT LTD	AACCH6712R	STRIKE OFF	2012-13		0	0	0
				2013-14		0	0	0
6	IDEAL STOCK ADVISORY P LTD	AACCI2156G		2012-13	No return			
				2013-14	No return			
7	JIGNESH TRADING	AAC CJ5218Q	STRIKE	2012-	No return			

AGVPG183/C- YOGESH GOYAL
A.Y. 2012-13
ITBA/AST/F/17/2019-20/1022864457(1)

	PVT LTD		OFF	13				
				2013-14	No return			
	METALLITE FINANCIAL ADVISORY 8 PVT LTD	AAGCM3375H	STRIKE OFF	2012-13	No return			
				2013-14	No return			
	Mortal Commotrade pvt 9 ltd	AAGCM5924L	STRIKE OFF	2012-13	No return			
				2013-14	No return			
	SUKALYAN COMPLEX 10 PVT LTD	AARCS2977C	STRIKE OFF	2012-13	No return			
				2013-14		0	0	0
	SUKALYAN INFRATOWERS PVT 11 LTD	AARCS2966F	STRIKE OFF	2012-13	No return	0	0	0
				2013-14		0	0	0
								-4,100

From the above details it is clear that above companies were not carrying out any business activity and were only paper companies.

In the return of income filed for the year under consideration assessee had shown salary income of Rs. 1,20,000/-, Income from house property of Rs. 42,000/- & Income from other sources of Rs. 3,63,469/-. The return of income filed by the assessee for the year under consideration was processed u/s. 143(1) of the Act and regular assessment u/s 143(3) of the Act has been done. From the information received it is very much clear that assessee had received huge fund i.e. Rs. 30,50,206/- from paper companies i.e. M/s DLS Export Pvt. Ltd. having no financial credentials and carrying out no business activity. Further from the details available on record and enquiries made by the Department it has been found that assessee had brought back its unaccounted money through the above mentioned shell/ paper company without payment of income tax. Thus, on the basis of above details it is clear that assessee had not correctly disclosed its return of income for the year under consideration. On the basis of information available on record and return of income filed for the year under consideration by the assessee and

AGVPG1837C- YOGESH GOYAL
A.Y. 2012-13
ITBA/AST/F/17/2019-20/10228644/7(1)

detailed discussion as above, I have reason to believe that income of the assessee to the tune of Rs. 30,50,206/- has escaped assessment."

MANOJ KUMAR PANDEY
WARD DHAMTARI

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)



Handwritten signature

This document is digitally signed
Signer: MANOJ KUMAR PANDEY
Date: Sunday, December 22, 2019 1:5:
Location: BHOPAL, India

Page 5 of 5

7. On the basis of the aforesaid documents, it was submitted by the Id. AR that on perusal of the reasons recorded u/s.147 of the Act, it is stated that the assessee is one of the beneficiaries of accommodation entry in trading in penny stock company namely, M/s DLS Exports Pvt. Ltd.. The assessee has also vide his letter dated 26.12.2019 filed objection to the reasons recorded that the assessee has not undertaken any trading in shares of M/s DLS Exports Pvt. Ltd., which were duly responded by the Id. AO. Before the Id. AO during the reopening of assessment proceedings, the assessee has also submitted that he had purchased 450 shares of Sarathi Dealers Pvt. Ltd., which was later on amalgamated with M/s 21st Century India Pvt. Ltd. And had received 17100 shares of 21st Century (India) Ltd. During the year under consideration, the assessee has sold those shares of 21st Century (India) Ltd. And in support of such

submissions, the assessee has furnished following documents before the

Id. AO :-

- a. *Copy of purchase bill and copy of share certificate of shares of Sarthi Dealers Pvt Ltd.*
- b. *Copy of bank statement from where payment has been made against the shares purchased.*
- c. *Copy of audited financials of share trading business*
- d. *Copy of contract note of sale of shares of 21st Century India Limited,*
- e. *Copy of Demat account statement for the year under consideration.*

8. It was further stated by the Id. AR that the AO after considering the written submission and documents filed by the assessee, passed the assessment order u/s 147 r.w.s. 143(3) of the Act dated 26/12/2019 and accepted the returned income. It was further stated by the Id. AR that the Id. Pr.CIT subsequently has observed that the DDIT (Inv). Unit-2(I), Kolkata has sent another information stating that the assessee is beneficiary of accommodation entry in trading in a penny stock company namely M/s 21st Century (India) Ltd. Further it is mentioned that the information was overlooked during assessment proceedings. It was the submission of the Id. AR that during the course of assessment proceedings u/s.147 r.w.s.143(3) of the Act, has submitted all the documentary evidence with regard to trading in shares with M/s 21st Century (India) Ltd. And the AO in both the assessment proceedings had considered those submissions and documents and passed the assessment order by accepting the returned income. It was the submission of the Id. AR that the assessee is a regular trader/investor in the stock market, who undertakes regular transactions as per the

technical rules and regulations through the regulatory agencies with the respective regulator. The assessee is not involved in any dubious transaction and neither caused any prejudice to the revenue, therefore, the assessee has requested the Id. Pr.CIT to drop the proceedings by invoking the provisions of Section 263 of the Act. Ld. AR further submitted that the Id. Pr.CIT has not convinced with the submissions of the assessee and has set aside the matter to the files of AO along with directions to examine the issue afresh and to pass a fresh assessment order. It is the submission of the Id. AR of the assessee that since the issue on the foundation of which reassessment proceedings u/s.147 of the Act was started but after satisfaction, no addition could have been made by the AO, therefore, as per the settled legal position, the revisionary proceedings u/s.263 of the Act cannot be invoked on a different issue which was never a part of the initial reasons to believe. Ld. AR place reliance on the judgment of the Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd., reported in [2011] 331 ITR 236 (Bombay), wherein the Hon'ble High Court in para 16 has held as under :-

16. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No. 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the

substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

9. According to the principle of law laid down by the Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd.(supra), Id. AR submitted that since there was no addition on the basis of reasons to believe initially formed by the Id. AO, shows that there was no escapement of income, however, there was a different ground or reason to believe based on which Id. Pr.CIT has initiated the proceedings u/s.263 of the Act which is not permissible since even in an assessment u/s.147 of the Act if there is a different issue other than the issue on the basis of which the reason to believe was formed, no addition can be made if the revenue intends to assess such income independent of the issue based on which 147 proceedings were initiated, it can be done only by issuing a fresh notice u/s.148 of the Act, it is not the case in the present matter and, therefore, the AO who had not made any addition of an income which is alleged to be an income escaped assessment, which was not the subject matter of initial reason to believe, thus, the Id. AO has no authority or jurisdiction to examine an issue or make an addition on the basis of such issue which was never recorded in the reasons to believe that income escaped

assessment, therefore, the order of the Id. AO was well with application of mind, cannot be said to be overlooking of any aspect which was part of reasons recorded and thus, cannot be said to be an order erroneous in the eyes of law. It might be prejudicial to the interest of revenue but not at all erroneous. Since there was no error in the order of the Id. AO u/s.147 r.w.s.143(3) of the Act, the revisionary proceedings initiated against such order deeming the same as erroneous insofar as it is prejudicial to the interest of revenue, are bad in law and deserves to be set aside.

10. Contrary to the submission of the Id. AR, Id. CIT-DR relied on the orders of the Id. Pr.CIT and vehemently supported the same.

11. We have considered the rival submissions perused the material available on record and the case laws placed before us in support of the contentions by the Id. AR. Apparently, the revisionary proceedings initiated by the Id. Pr.CIT u/s.263 of the Act were on an issue which was not forming a belief of the revenue that there was some escapement of income on the basis of sch reason. The original issue forming the reason to believe that the escaped assessment was relating to certain transactions with M/s DLS Exports Pvt. Ltd. from which the assessee had received huge funds of Rs.30,50,206/- as per the report of the DDIT, Kolkata, the said DLS Exports Pvt. Ltd. was a paper company having no financial credentials and carrying out no business activities. It was the belief of the AO while recording the reasons u/s.148 of the Act that by indulging in such transactions, the assessee had brought back its unaccounted money through the above-mentioned shell/paper company

without payment of income tax. With recording of such reasons, the Id. AO stated that on the basis of such details, the assessee had not correctly disclosed its return of income for the year under consideration and, therefore, there was a reason to believe that income of the assessee to the tune of Rs.30,50,206/- has escaped assessment. The issue was discussed during the assessment u/s.147 of the Act, questionnaires were issued, details were furnished by the assessee along with the submissions and finally the assessment was culminated without making any addition on the basis of reasons to believe recorded by the AO. Subsequently, Id. Pr.CIT has examined the assessment records and also on receipt of certain information from DDIT (Inv.) Unit-2(1), Kolkata that the assessee is a beneficiary of accommodation entries in trading in a penny stock company namely, M/s 21st Century Ltd., Id. Pr.CIT has observed that the transactions with M/s 21st Century were overlooked during the assessment proceedings u/s.143(3) r.w.s.147 of the Act and, therefore, the order passed by the Id AO dated 26.12.2019 was erroneous and prejudicial to the interest of revenue.

12. Now, the question before us is as to whether in a case where the income escaped according to the reasons recorded u/s.147 of the Act was not considered as income escaped assessment and no addition was made on the basis of the same, can the AO make an independent addition of some other income or can the AO is open to bring in some other income on the basis of some independent information came to his knowledge within the scope of assessment proceedings u/s.147 of the

Act? In this aspect, the Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd. (supra) has categorically held that, "*Whether, however, if after issuing a notice under section 148, he accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; if he intends to do so, a fresh notice under section 148 would be necessary, legality of which would be tested in event of a challenge by assessee*". In view of such a categorical finding by the Hon'ble Bombay High Court, in the present case, since no fresh notice u/s.148 of the Act in the proceedings initiated by the AO, the AO was confined to assess the issue in reopening assessment proceedings u/s.147 of the Act, which was forming reason to believe and any issue prompting from an information beyond the reasons recorded, cannot be assessed by the AO. Thus, there was an embargo on the issues which are not the basis to form the reasons to believe to be assessed by the Id. AO during the proceedings u/s.147 of the Act. Ld. Pr.CIT has held the order of the AO u/s.147 r.w.s.143(3) of the Act as erroneous and prejudicial to the interest of revenue on the basis of a fresh issue which was never a part of the reasons to believe for which reopening assessment u/s.147 of the Act was initiated. We, therefore, respectfully following the principle of law laid down by the Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd. (supra), are of the considered opinion that since the AO was confined to assess the issues only which were

recorded in the reasons to believe, no fresh issue was open as a prerogative of the AO to touch upon, therefore, the order of the Id. AO cannot be said to be erroneous, may it be prejudicial to the interest of revenue, but since it is not erroneous, provisions of Section 263 of the Act for initiating revisionary proceedings in absence of one of the mandatory conditions out of two that the order of the AO should be erroneous as well as prejudicial, cannot be invoked. Accordingly, the revisionary proceeding started u/s.263 of the Act by the Id. Pr.CIT was without proper assumption of jurisdiction in exercise of powers conferred under Section 263 of the Act. Thus, we quash the impugned order passed by the Id. Pr.CIT u/s.263 of the Act dated 16.03.2022 on account of invalid assumption of jurisdiction.

13. Since, we have quashed the order of the Id. Pr.CIT u/s.263 of the Act, therefore, we refrain ourselves from adverting to the other contentions advanced by the Id. AR and the same are left open.

14. In the result, appeal of the assessee is partly allowed in terms of our observations hereinabove,

Order pronounced in the court on 10/07/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 10/07/2023

Prakash Kumar Mishra, Sr.P.S(on tour)

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur