

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.32/Rjt/2022
(Assessment Year: 2012-13)

Smt. Nisha Haren Doshi, "Illa Villa", Ashapura Road, Rajkot, Gujarat-360001 [PAN No.ADXPD6148C]	Vs.	The Principla Commissioner of Income Tax-1, Rajkot
(Appellant)	..	(Respondent)

Appellant by :	Shri R. D. Lalchandani, Advocate
Respondent by:	Shri Shramdeep Sinha, CIT DR

Date of Hearing	25.07.2023
Date of Pronouncement	04.08.2023

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the assessee against the order passed by the Ld. Principal Commissioner of Income Tax-1 (in short "Ld. PCIT"), Rajkot in Order No. ITBA/REV/F/REV5/2021-22/1039224710(1) vide order dated 31.01.2022 passed for Assessment Year 2012-13.

2. The assessee has taken the following grounds of appeals:-

"1. The Learned Principal Commissioner of Income Tax erred in holding that the order of the Assessing Officer was erroneous and prejudicial to the interest of revenue. The order of the assessment was neither erroneous nor prejudicial to the interest of revenue.

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2. *The Learned Principal Commissioner of Income tax erred in directing the Assessing Officer claim of the Appellant as per law. The Principal Commissioner of Income tax has not pointed out or determined any error in the order of the Assessing Officer.*

3. *Without prejudice ground no. 1 and 2, the claim of the Appellant is as per the Law prevalent in the year of the determination of the loss.”*

3. The brief facts of the case are that the Ld. Principal Commissioner of Income Tax on examination of the records of the case, initiated 263 proceedings to verify the claim of set off of brought forward speculation losses of Rs. 9,36,848/- of Assessment Year 2004-05 against income of the impugned assessment year i.e. A.Y. 2012-13. The Ld. PCIT set-aside the assessment order as being erroneous and prejudicial to the interest of the Revenue with the following observations:-

*“5. In the present proceedings also the assessee has reiterated the same version as earlier before the AO in the assessment proceedings. The assessee has also submitted that the provisions related to carry forward of stipulation losses has been amended w.e.f. 01.04.2006. Since the claim of set off of speculation loss was pertaining to earlier period therefore the **AO is directed to factually verify the said claim of losses from the assessment records of A.Y. 2004-05** and then set off of loss against the speculation profit of the subsequent years in view of the amendment took place w.e.f. 01.04.2006. **In this regard prima facie the case of the assessee appears to be in order but the AO has not factually** verified the claim as per the provisions of law which needs to be done now.*

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Therefore, due to lack of enquiry and investigation in the matter besides in application of law, the assessment completed by the AO needs to be set-aside for fresh assessment.”

4. Before us, the Counsel for the assessee submitted that while setting-aside the assessment order, Ld. PCIT has not pointed out to any specific infirmity in the order of the Assessing Officer and has even observed that “prima facie case of the assessee appears to be in order” and yet, without pointing out to any infirmity in the assessment order, Ld. PCIT has set-aside the assessment order as being erroneous and prejudicial to the interest of the Revenue.

5. In response, Ld. D.R. placed reliance on the observations made by the PCIT in the 263 proceedings.

6. We have heard the rival contentions and perused the facts on record. We observed that in the 263 order, Ld. PCIT has set-aside the assessment order with the following provisions:-

“Since the claim of set off of speculation loss was pertaining to earlier period, therefore, the Assessing Officer is directed to factually verify the said claim of losses from the assessment records of A.Y. 2004-05.....”

7. In the case of **Meerut Roller Flour Mills (P.) Ltd.** **110 taxmann.com 170** (Allahabad), the High Court held that where Commissioner passed a revisional order under Section 263 directing Assessing Officer to examine matter relating to unsecured loans obtained by assessee, in view of fact that in course of scrutiny assessment, Assessing Officer had already made detailed enquiries in respect of loan received by assessee,

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impugned revisional order deserved to be set aside. In the case of **Shergil Harjit Vs. PCIT (ITAT Pune) ITA No. 170/PUN/2021**, ITAT Pune held that initiation of revisionary proceeding under section 263 of the Income Tax Act on a fishing and roving enquiry in the matter without bringing on record any material or evidence is liable to be quashed. In the case of **Dhanraj Chhipa Vs PCIT (ITAT Jodhpur) in ITA Number 83/Jodh/2022**, ITAT held that PCIT cannot initiate 263 proceedings with a view to start fishing & roving enquiries. Therefore, we observe that on a perusal of the 263 order, Ld. PCIT has set-aside the assessment order with a direction to the Assessing Officer to verify the claim of the assessee. Further, PCIT has also observed that “prima facie the case of the assessee appears to be in order”. Therefore, looking into the contents of the 263 order, in our considered view, PCIT is not permitted to initiate 263 proceedings only to carry out further verification, without pointing out to any infirmity in the order passed by the Ld. Assessing Officer. This is more so when the PCIT has also observed that prima facie the case of the assessee appears to be in order. In our view, 263 proceedings cannot be initiated only with a direction / view to carry out further verification of assessment records, without pointing out to any specific infirmity in the assessment order. Accordingly, looking into the facts of the case, the order passed by PCIT is hereby directed to be set-aside.

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

This Order pronounced in Open Court on	04/08/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 04/08/2023
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

TRUE COPY

ITA No.32/Rjt/2022
Smt. Nisha Haren Doshi vs. PCIT
Asst.Year –2012-13

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot