

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH 'DB', JABALPUR**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 16/JAB/2019: Asstt. Year: 2014-15

Smt. Tejal Jugal Kishore, Rajdeep Campus, Rewa Road, Satna, M.P	Vs	The Pr.CIT-2, Jabalpur, MP
(APPELLANT)		(RESPONDENT)
PAN No. ADEPV 2880 J		

**Assessee by : Sh. K.P Dewani, Adv.
Sh. B K Nema, Adv.**

Revenue by : Sh. Sharvan Kumar Gotru, CIT-DR

Date of Hearing: 29.11.2023	Date of Pronouncement:01.12.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id. PCIT-2, Jabalpur dated 22.02.2019.

2. The assessee has raised the following grounds of appeal are as under:-

1. *The order passed u/s 263 of I.T. Act 1961 by Hon'ble Pr. CIT, Jabalpur is illegal, invalid and bad in law.*
2. *The Pr. CIT, Jabalpur erred in holding that A.O. had not conducted proper inquiry and thus order passed by A.O. is erroneous and prejudicial to the interest of revenue and in setting aside the assessment to be done afresh.*
3. *The Hon'ble Pr. CIT erred in applying provisions of Explanation -2 of section 263 of I.T. Act 1961 for the assessment year under consideration.*
4. *The order passed by A.O. u/s 143(3) of Income Tax Act 1961 being after proper examination and verification ought to have been held that it is neither erroneous nor prejudicial to the interest of revenue.*

3. Heard the arguments of both the parties and perused the material available on record.

4. The assessee filed return of income on 29.03.2015 declaring total income of Rs. 20,02,290/- which has been assessed u/s. 143(3) accepting the returned income.

5. Subsequently, the Id. Pr.CIT passed an order u/s. 263 annulling the assessment directing the AO to re-examine and the issue of earning of long term capital gains and to re-frame the Assessment Order.

6. The reasons given by the Id. Pr.CIT are as under:-

- The assessee purchased Rs. 33,500/- equity shares of M/s. Comfort Fincap Ltd. @ Rs. 18 per share on 28.06.2011.
- These shares were sold in January 2014 @Rs. 308 per share
- These shares were not purchases by the assessee through Demat account but was opened 16 days after the purchase of the shares.
- After selling these shares, the same was purchased by some buyers and in what rate these were purchased has not been enquired by the AO.
- The information received by the Department with regard to bogus LTCG was not enquired into by the Assessing Officer.
- The shares namely Comfort Fincap Ltd. has been found to be a penny stock involved in bogus LTCG.

- The Assessing Officer has not conducted due enquiries with regard to the sale of shares transaction.

7. Against in these allegations/observations of the Id. Pr.CIT the factual matrix available on the record has been examined diligently. It reveals

- The AO has issued notice u/s. 133(6) to the Comfort Securities Ltd. calling for information with regard to the transaction of the assessee with M/s. Comfort Fincap Ltd.
- The Comfort Securities Ltd. replied in detailed about the transactions entered by the assessee with them pertaining to the shares of M/s. Comfort Fincap Ltd.
- The SEBI has not barred trading of the shares of M/s. Comfort Fincap Ltd.
- The AO has issued notice u/s. 131 to the assessee and obtained all the detail.
- The details of the share transactions of purchase of sale have been obtained by the assessee through notice u/s. 131 and 133(6).
- The share has been purchased on 28.06.2011 and the amount of purchase of these shares of Rs. 6,03,000/- has been paid on 13.05.2021 vide cheque no. 034998 which has been duly encashed and reflected in the bank statement of the assessee.
- The entire shares and subsequent sale has been duly reflected in the demat account.
- The entire events prove that the assessee has genuinely purchased shares on 28.06.2011 and sold in 2014 earning long term capital gain.

- Further the Assessing Officer has clearly mentioned in his office note that *"all the required verification on this issue has been done to check the identity of M/s Comfort Fincap Ltd, genuineness, creditworthiness of the assessee and knowledge of the assessee about Share trading. The information has been called from the M/s Comfort Fincap Ltd, Mumbai and the assessee was also summoned u/s 131 of the Act. The assessee has purchased 33500 shares of M/s Comfort Fincap Ltd on 27.06.11, which were sold in January 2014 for sale consideration of Rs. 1,03,13,014/-. The assessee is a dentist by profession and the source of investment was said to have made from her professional income. Thorough investigation/verification in this regard has been made to cover all the issues. All these transactions were found through bank transaction. No enquiry or evidence could indicate that the assessee was in condition to influence the prices of these shares. All the relevant documents are obtained, verified and placed on record"*.
- The Id. Pr.CIT observation that "after selling these shares, the same was purchased by some buyers and in what rate these were purchased has not been enquired by the AO." These shares have been sold online through BSE and further sale by these purchaser is not relevant to be verified by the AO.

8. Thus, ongoing through the factual matrix we find that the AO has made independent verification in respect to transaction of shares and has collected evidence to verify the transaction of share of assessee of M/s. Comfort Fincap Ltd. The transaction of share of assessee was examined on the basis of various judicial precedents available and submitted by assessee before A.O. The Assessing Officer after considering the entire details and on being satisfied as to genuineness of transactions of share has accepted the exemption claimed u/s 10(38) of I.T. Act 1961. On the other hand, the Id. Pr.CIT has not brought anything tangible, perceptible evidence on record to prove that

the order of the AO is erroneous so far as it is prejudicial to the interest of the Revenue. Hence, the order of the Id. Pr.CIT is hereby quashed.

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

Order Pronounced in the Open Court on 01/12/2023.

Sd/-
(Yogesh Kumar U.S)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Jabalpur Dated: 01/12/2023

NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT JABALPUR