

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.301/Ahd/2023
Assessment Year : 2018-19

Lambda Therapeutic Research Ltd. Lambda House, Plot No.38 Survey No.388 S.G. Highway Gota, Ahmedabad. PAN : AAACL 4089 R	Vs.	The Pr.CIT-1 Ahmedabad.
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(Applicant)		(Responent)
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Assesseeby :	Shri Tushar Heman, Sr.Advocate Parimal Sinh B. Parmar, AR
Revenue by :	Shri SudhenduDas,CIT-DR

सुनवाई की तारीख/Date of Hearing : 05/02/2024
घोषणा की तारीख /Date of Pronouncement: 07/02/2024

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the Id.Pr.Commissioner of Income Tax-1,Ahmedabad [hereinafter referred to as "Ld.Pr.CIT"]dated 28.3.2023 passed by invoking provisions of section 263of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short]for the Asst.Year 2018-19.

2. The grounds raised in the appeal is as under:

"1. (a) That in the facts and circumstances of the case and in law, the Hon'ble PCIT has grossly erred in passing an order under section 263 of the

Act without bringing any cogent materials on record and based only on a certain hypothesis.

(b) That on the facts and circumstances of the case and in law, the Hon'ble PCIT has erred in setting aside the Assessment Order without deciding the preliminary objection raised by the Appellant vide letters dated 15.3.2023 and 18.3.2023 in regard to the validity of the notice,

(c) That on the facts and circumstances of the case and in law, the Hon'ble PCIT erred in holding that the assessment order passed is erroneous and prejudicial to the interest of revenue, without considering relevant material and without making enquiry by himself.

2. (a) That on the facts and circumstances of the case and in law, on the issue of Long Term Capital Loss, while holding that the Assessment order is erroneous and prejudicial to the interest of the revenue, the Hon'ble PCIT failed to appreciate that there was no sale of shares with regard to the transaction in question but it is a case of redemption of preference shares of foreign company as submitted by the Appellant in its letter dated 18.3.2023.

(b) That on the facts and circumstances of the case and in law, on the issue of Long Term Capital Loss arising on redemption of preference shares of foreign company, the Hon'ble PCIT has erred in holding that the Assessment order is erroneous and prejudicial to the interest of the revenue as the Appellant failed to furnish necessary supportive evidences with regard to sale of preference shares as to whether such shares have been sold to related parties or not.

(c) That on the facts and circumstances of the case and in law, the Hon'ble PCIT further erred in proceeding on the hypothesis that Appellant failed to submit supportive evidence regarding intimation to ROC for sale of such shares without appreciating that in case of redemption of preference shares of a foreign company, there cannot be any intimation to ROC.

(d) Assuming but not accepting and without prejudice to above, the Hon'ble PCIT failed to appreciate this is a case of inadequate enquiry and not a case of lack of enquiry as during the course of assessment proceedings, the Assessing Officer vide notice dated 30.12.2020 called for details of foreign asset in the nature of financial interest in any entity, which was responded by Appellant vide letter dated 5.1.2021 which inter-alia included details of reduction of investment in preference shares of Lambda Therapeutic Research Inc., Canada.

3. That on the facts and circumstances of the case and in law, the Hon'ble PCIT ought to have appreciated that as per the financials of the Appellant available on record, it clearly emerge that it has only dividend income of Rs.4,45,24,734/-, which has been offered to tax u/s 115BBD of the Act and hence question of Assessment order being erroneous and prejudicial to the interest of revenue does not arise.

4. Without prejudice to above, That on the facts and circumstances of the case and in law, the Hon'ble PCIT ought to have appreciated that it is a settled principle of the law that audit objection cannot be made the basis for revision of an assessment.

5. That on the facts and circumstances of the case and in law, the Hon'ble PCIT has grossly erred in not appreciating that "Faceless assessment scheme in electronic mode", has sufficient checks and balances making it impossible for the Assessing Officer of the Regional assessment Centre to structure in such a way that the order is prejudicial to revenue."

The assessee has raised five grounds in the appeals, which are a blend of descriptive and argumentative in contents, and not in align with Rule 8 of the Income Tax (Appellate) Tribunal Rules, 1963. On perusal of the grounds, it is evident that the primary grievance of the assessee is against the order of the Id.CIT(A) in exercising his revisionary power under section 263 of the Act and thereby setting aside the order of the Id.AO passed under section 143(3) of the Act. Keeping this core issue in mind, with the consent of both the parties, we proceed to adjudicate the issue forthwith.

3. We have heard both the parties, and have also carefully gone through the documents referred to before us. A perusal of the order of the Id.Pr.CIT reveals that he assumed jurisdiction for revision of the assessment order noting that the AO had failed to make proper inquiries with respect to two issues –

- (i) the assessee's claim of loss on sale of preferential shares wherein as per the Id.Pr.CIT the records revealed an anomaly/difference in the value of shares sold by the assessee as reflected in the balance sheet/profit & loss account as opposed to that reflected in the computation of income, and
- (ii) dividend received from foreign company though taxable under the Act but apparently not returned to tax by the assessee and claimed as exempt.

These facts find mention at para 2 and 2.1 of the Ld.Pr.CIT's order as under:

“2. On perusal of Note No.5 of audited balance sheet for FY 2016-17, it is noticed that assessee had shares of ‘Lambda Therapeutic Research Inc. Canada’ of Rs.25,41,93,567/-, however, the assessee has shown the value of such shares during FY 2017-18 relevant to AY 2018-19, of Rs.9,47,54,045/-. Further, on verification of income computation sheet, it is noticed that during the year, assessee has sold some preference shares and claimed long term capital loss of Rs.6,77,68,381/- for the year under consideration. As per audited Balance Sheet, the difference in number of share is 2,92,53,080 (46353080-17100000) and difference in value of the same is Rs.15,94,39,522/-. Therefore, it clearly, shows that during the year assessee has sold shares valued at Rs.15,94,39,522/-. Further, on verification of Income computation sheet of AY 2018-19, it is noticed that assessee has declared sales consideration of ‘Preference shares not listed’ as Rs.14,77,58,824/- and calculated net Long Term Capital Loss of Rs.6,77,68,381/-.

2.1 On perusal of schedule EI, column-5, of ITR for AY 2018-19, it is noticed that assessee has claimed exempt income of Rs.4,45,24,374/- as dividend received from foreign company. However, as per the provisions of section 10(34) dividend income from foreign company is fully taxable in India. It is seen from the assessment records that during the course of assessment proceedings, neither assessee had submitted any explanation on this issue, nor the AO has asked/ enquired regarding the same. However, the AO ought to have added back this amount to the total income for the year under consideration.

In view of the above facts, during the course of assessment proceedings for the year under consideration, the AO ought to have verified/investigated above said issue however on perusal of records it is noticed that the AO has not examined/ verified the above said issue.

4. Further, the order of the Id.Pr.CIT reveals that vis-à-vis both the issues, the assessee offered explanation. He contended that the with respect to the anomaly noted regarding the quantum of preferential shares sold by the assessee during theyear, as reflected in the final accounts of the assessee, and that returned to tax, there was no anomaly as stated and that the figures completely tallied. Also with respect to the dividend income received from foreign company, the assessee categorically pointed out that the same had been returned to tax. The reply of the assessee is reproduced at para-4 of the order as under:

“In connection to the observation of your good honour that while as per Note 5 of audited balance sheet it shows that during the year the Assessee has

sold shares valued at Rs.15,94,39, 522/-, however on verification of Income computation sheet of AY 2018-19, it is noticed that Assessee has declared sales consideration of 'Preference shares not listed' as Rs.14,77,58,824/-; the Assessee most humbly would like to bring to your notice that the difference of Rs. 1,16,80,699 (15,94,39,522 - 14,77,58,824) refers to the realized forex loss on sale of preference shares of Lambda Therapeutic Research Inc, Canada. The said realized forex loss has been recognized in the profit and loss account and forms part of Note 28 Other expenses under the head 'Net foreign exchange (gain)/loss. In support of the same, reference is invited to Note L - Foreign Currency Transactions in Significant Accounting policies provided in the signed financials, wherein it is stated that Exchange differences on settlement are charged to profit and loss Account."

"The said realized forex loss being capital in nature is disallowed while computing the business income and can be verified from the Statement of total income submitted vide Annexure-1 to submission dated 6 February 2020 during course of original assessment proceedings/ Faceless Assessment proceedings. Your Honour may kindly appreciate that even the disallowance shown in the Statement of income categorically mentions that the amount of Rs.1,16,80,699 disallowed is towards disallowance under SEC-37-Expenditure of capital nature-Forex Gain/Loss- Subsidiary-Pref Shares.

The said disallowance can be verified in return of income in form ITR-6 (available on designated e-filing portal) at 'Sr no 7 (a) Expenditure of capital nature [37(1)]' under the head 'Amounts debited to the profit and loss account, to the extent disallowable under section 37' in 'Part A Ol Other Information'.

"At Para 2.1 of the Notice, it is mentioned that the Company has claimed dividend income received from foreign company of Rs. 4,45,24,374 as exempt at Column -5 of Schedule EI, however the same is fully taxable in view of provisions of Section 10(34) of the Act. In this regard, at the outset the assessee submits that the said dividend income from foreign company is duly offered to tax in its return of income as per the provisions of Section 115BBD of the Act. Section 115BBD of the Act refers to taxation of dividend income received by an Indian company from a specific foreign company. The Assessee has received the said dividend income from a specific foreign company, and accordingly, has offered the said income to tax at the rate of 15% under the head Income from other sources. Kindly refer Id, f(v)) in Schedule OS in ITR-6. Reference is also invited to "Schedule SI Income chargeable to tax at special rates", in the ITR-6 (Refer Sr.No 12)

In this respect, your Honour shall kindly appreciate that this inadvertent disclosure error does not have any impact on the determination of total income and taxability thereon since the Assessee has already offered the said foreign dividend income to tax as per the applicable provisions of Section 115BBD of the Act."

5. However, the Id.Pr.CIT was not satisfied with the reply of the assessee, and taking note of the explanation offered by the assessee

with respect to both the issues, he still went on to hold that the assessment was erroneous in having allowed the claim to the assessee without proper inquiry, since he noted that the assessee had not submitted any supporting evidence with regard to the preferential shares sold and dividend received from foreign company. His finding in this regard at para-5 to 6 of his order is as under:

*“5. The submission of the assessee has been considered very carefully but not found tenable. It is noticed that the assessee had sold some preference shares and claimed long term capital loss of Rs.6,77,68,381/- for the year under consideration. As per audited Balance Sheet, the value shares that assessee has sold during the year is of Rs.15,94,39,522/-. However, on verification of statement of income for AY 2018-19, submitted by the assessee, it is noticed that assessee has declared sales consideration of 'Preference shares not listed' as Rs.14,77,58,824/-. The assessee, vide submission filed before me , has explained that the difference in the value of preference shares sold during the year as mentioned above for Rs.1,16, 80, 699/-(15,94,39,522 - 14,77,58,824) refers to the realized forex loss on sale of preference shares of Lambda Therapeutic Research Inc, Canada and the same has been recognized in the profit and loss account, as the said realized forex loss being capital in nature is disallowed while computing the business income. **However the assessee failed to furnish necessary supportive evidences with regard to sale of preference shares of Lambda Therapeutic Research Inc, Canada as to whether such shares been sold to related parties or not. Also, the assessee failed to submit supportive "Evidence Regarding intimation made to the ROC for sale of such shares.** Therefore, it is clear that the AO while finalizing the assessment order dated 18.03.2021 has not adequately examined this issue and the same in absence of supportive evidences remain unverified even at this stage. Therefore, the assessment order passed by the AO is erroneous in so far prejudicial to the revenue.*

*5.1 With regard to the exempt income of Rs.4,45,24,374/- as dividend received from foreign company, claimed by the assessee as exempt income, **the assessee has submitted before me that the same has been inadvertently disclosed as exempt income in schedule EI at SI. No. 5 of ITR. However, the same has been taxed as per the applicable provision of section 115 BED of the Act as can be seen from the schedule SI of the ITR.***

*6. I have carefully and thoroughly gone through the material available on records and submissions made by the assessee. **As discussed above in para 5, during the course of assessment proceedings, the AO has not verified / examined the issue properly. The assessee has explained the issue but in absence of supportive evidences which assessee failed to produced, the same remained unverified even at this stage.** It is also clear that the assessment order dated 18.03.2021 passed by the AO to be erroneous and prejudicial to the interests of revenue.*

6. Arguments, which were made by the assessee before was that it was clearly pointed out to the Id.Pr.CT that there was no error in the assessment order with respect to both the issues.

With respect to the difference in the value of shares sold during the year, as appearing in the final accounts of the assessee and as disclosed in the returned income, he contended that it was pointed out clearly to the Id.Pr.CIT that there was no anomaly as noted by him. The Id.counsel for the assessee, pointed out that the Id.Pr.CIT had noted that while the balance sheet of the assessee disclosed sale of preferential shares to the tune of Rs.15,94,39,522/-, the computation of income for the impugned year showed sale consideration of the said shares of Rs.14,77,58,824/-. He drew our attention to the value of the shares sold during the year as appearing in the audited balance sheet and stated that he had no dispute with regard to the same. With regard to the figure of sale consideration of the said preferential shares as listed in the computation income, he drew our attention to the computation of the same as under:

2 INCOME FROM CAPITAL GAINS		
2.1 Short Term Capital Gain - Securities		
2.1.1 Units(Others)		
1. Sale Consideration (Date of Transfer:31/03/2018)	:	784500000
(MUTUAL FUND)		
Net Sale Consideration-(A)	:	<u>784500000</u>
Acquisition Cost	:	<u>784500000</u>
Net Aquisition Cost-(B)	:	<u>784500000</u>
2.2 Long Term Capital Gain -Securities		
2.2.1 Preference Shares (Not Listed)		
1. Sale Consideration (Date of Transfer : 31/03/2018)	:	9823434
(Preference Shares (Not Listed))		
Net Sale Consideration-(A)	:	<u>9823434</u>
Acquisition Cost (2013-2014)	:	<u>10600000</u>
Total Cost of Aquisition	:	<u>10600000</u>
Indexed Cost-(B)-(Rs.10600000/220 X 272)	:	<u>13105455</u>
Balance - (A - B)	:	<u>-3282021</u>
Net LTCG(With Indexation)	:	<u>-3282021</u>
2. Sale Consideration (Date of Transfer : 31/03/2018)	:	137935390
(Preference Shares (Not Listed))		
Net Sale Consideration-(A)	:	<u>137935390</u>
Acquisition Cost (2012-2013)	:	<u>148839522</u>
Total Cost of Aquisition	:	<u>148839522</u>
Indexed Cost-(B)-(Rs.148839522/200 X 272)	:	<u>202421750</u>
Balance - (A - B)	:	<u>-64486360</u>
Net LTCG(With Indexation)	:	<u>-64486360</u>
Net LTCG(With Indexation)		
Net LTCG(With out Indexation)		
INCOME FROM CAPITAL GAIN	:	
		-67768381
		0

7. Referring to the above, he pointed out that the Id.Pr.CIT had picked up the figure of sale consideration of unlisted preference shares of Rs.98 lakhs and Rs.137.93 lakhs and arrived at the figure of Rs.147.75 lakhs of preferential shares sold during the year.

He contended that firstly this figure represented, as is evident from the computation of income reproduced above, only the sale consideration of the shares sold. He stated, therefore, that the Id.Pr.CIT was comparing the cost of preferential shares sold during the year as reflected in the balance sheet of Rs.159.43 lakhs to sale consideration of these shares at Rs.147.75 lakhs. He stated that this tantamounted to comparing apples with oranges, and no adverse inference with respect to the assessment order being in any way erroneous for not having examined the issue, therefore, could be derived from the same.

He thereafter pointed out that the computation itself reflected the cost of acquisition of these shares to be that as noted by the Id.Pr.CIT from the balance sheet of the assessee i.e. Rs.159.73 lakhs. He pointed out that cost of acquisition noted in the computation as Rs.106 lakhs and Rs.148.83 lakhs of the unlisted preference shares, added upto Rs.159.43 lakhs, which was the figure of cost of preferential shares sold during the year reflected in the balance sheet by the assessee, as noted by the Id.Pr.CIT also. He therefore stated that there was no anomaly in the amounts of preferential shares reflected as sold during the year in the balance sheet of the assessee, and that in the return of income.

He further pointed out that it was also explained to the Id.Pr.CIT that on account of sale of these shares, the assessee had realized foreign exchange loss of Rs.1,16,80,699/- which had been

recognized in the profit & loss account and added back to the income of the assessee, computed in terms of section 28 of the Act as income from business or profession. He corroborated these facts from the computation of income from business and profession, forming part of the computation of income filed before us as under:

1 INCOME FROM BUSINESS/PROFESSION	(₹)	(₹)	(₹)
1.1 Business : LAMBDA THERAPEUTIC RESEARCH LTD			
Lambda House, Opp. Gujarat High Court, S. G. highway, Gota, Ahmedabad. Gujarat.			
Net Profit before Tax -(where regular books of accounts maintained)	:	<u>513616491</u>	
Additions			
SEC-37-Expenditure by way of penalty or fine for violation of : any law for the time being in force-Interest on TDS	:	36000	
SEC-37-Any other amount not allowable under section 37- Donation Expenses	:	115000	
SEC-37-Any other amount not allowable under section 37- Loss on Sale of Fixed Assets	:	6007619	
SEC-40A-Provision for payment of gratuity-Provision for Gratuity	:	5622858	
SEC-37-Expenditure of capital nature-Forex Gain/Loss- Subsidiary-Pref Shares	:	11680699	
Depreciation as per Profit and Loss Account	:	122725952	
Disallowance U/s 43B			
Any sum payable to an employee as bonus or commission for services rendered-Bonus	:	10513043	
Any sum payable towards leave encashment-Leave Encashment	:	5747861	
Any sum payable by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees-PF	:		
Any sum payable by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees-ESI	:		
Any sum in the nature of tax, duty, cess or fee under any law-PT	:		
Any sum in the nature of tax, duty, cess or fee under any law-GST	:		
TOTAL ADDITIONS U/s.28 TO 44DA	:	<u>162449032</u>	

8. The ld.counsel for the assessee, therefore, contended that having explained to the ld.Pr.CIT that there was, in fact, no anomaly/ difference in the quantum of shares sold by the assessee, as reflected in the balance-sheet, and that as reflected in the computation of income, there was no question of there being any error in the assessment order on account of the AO having not examined the issue.

9. The ld.DR before us was unable to controvert the factual contention made by the ld.counsel for the assessee as above. Though, he contended that the assessee had furnished no documentary evidence with regard to the same.

10. Having heard both the parties on the issue of error found by the ld.Pr.CIT in the assessment order with regard to inadequate inquiry made by the AO on the income returned by the assessee under the head "capital gains" from sale of preferential shares, as stated in the assessment order. Undoubtedly, the error noted by the ld.Pr.CIT was that there was a difference in value of unlisted preference shares shown to be sold by the assessee during the year in its audited balance sheet and that as reflected in the computation of income. The error noted by the ld.Pr.CIT, we find has been arrived at by comparing **cost of acquisition** of these preferential shares as stated in the Balance Sheet with its **sale consideration** reflected in the computation of income. This fact clearly comes out from para 2.1 of the ld.Pr.CIT which is reproduced by the ld.Pr.CIT in his show cause notice.

We are in complete agreement with the ld.counsel for the assessee that this comparison made by the ld.Pr.CIT for arriving at a finding of error in the assessment order is of no consequence. There could be no comparison between the cost of acquisition and the sale consideration of shares to arrive at any finding of anomaly in the amounts of shares sold by the assessee, as reflected in the audited balance sheet, and as reflected in the computation of income. The ld.Pr.CIT clearly has compared the value of shares sold during the year reflected at cost in the balance sheet with the sale consideration of these shares reflected in the return of income. This comparison,

we hold, could not have lead to the finding of any error in the assessment on account of proper inquiry not being done by the AO.

11. Further, the ld.counsel for the assessee has clearly demonstrated from the computation of income that the cost of acquisition was correctly noted in the computation of income, and tallied with that noted by the ld.Pr.CIT of the shares sold during the year. He pointed out from the computation of income that cost of acquisition of shares, on the basis of which the capital gain was computed, was Rs.159.43 crores which was the figure noted by the ld.Pr.CIT in the balance sheet. Thus, it has been clearly demonstrated to us on facts that, actually, there was no anomaly in the figure of preferential shares shown to be sold by the assessee during the year in its audited balance sheet, and that as reflected in the computation of income. For this reason also, the Ld.PCIT having arrived at a finding of error assuming incorrect facts, the assessment order, we hold could not have been held to be erroneous for inadequate inquiry by the AO on the issue.

12. Further, we have noted that the assessee has gone to the extra length to explain to the ld.Pr.CIT the difference between the sale consideration of the shares, and its cost of acquisition, which was noted by the ld.Pr.CIT, pointing out that it was on account of unrealized foreign exchange loss. It was explained that this amount had been debited to the P&L account of the assessee, but added back while computing income of the assessee from business and profession. The Ld.PCIT has completely ignored this explanation which comes out clearly from the computation of income of the assessee also.

Thus, from all the aspects of the matter, we have noted that:

- the assessee had clearly demonstrated that there was no variance in the figure of unlisted preference shares sold during the year as reflected in the balance sheet and that reflected in the computation of income;
- the Id.Pr.CIT had noted the difference making improper comparison, comparing the cost of acquisition of these shares reflected in the balance sheet to the sale consideration of these shares reflected in the computation of income
- and the assessee had gone on to explain even this difference between sale consideration and cost of acquisition to have been duly considered and accounted for in the return of income.

In view of the same, we completely agree with the Id.counsel for the assessee that there was no error in the assessment order on account of non-inquiry/inadequate inquiry relating to the issue of preferential shares sold during the year.

13. We further note from the Id.Pr.CIT's order that after considering the assessee's explanation, as noted by us above, on the issue, he goes to hold the assessment order erroneous for a totally different aspect of the issue. That is, he found the assessment order erroneous for the reason that the assessee did not furnish evidence regarding sale of shares, whether they were sold to the related parties or not, and whether intimation was made to the ROC for the sale of such shares. This was not the anomaly which was noted by him, while exercising jurisdiction under section 263 of the Act, nor do we find, that was ever confronted to the assessee during the revisionary proceedings. Even otherwise we do not find any reasoning in the Id.Pr.CIT's order, as to how the inquiry on the aspect of the shares being sold to the related parties, and/or the

intimation of the shares having sent to ROC, would have in any way resulted in the assessment order being erroneous causing prejudice to the Revenue. There is nothing in the Id.Pr.CIT's order pointing out the adverse impact of non-explanation of these two aspects of the sale of unlisted preferential shares on the computation of income of the assessee.

In the light of the same, therefore, we hold that there is no error as such in the assessment order on the issue of the sale of preferential shares as found by the Ld.PCIT, and the Id.Pr.CIT's order on this issue is set aside.

14. The second issue regarding the dividend income earned from foreign company, noted by the Id.Pr.CIT, as having not been returned to tax, we have observed from the reply of the assessee, as reproduced in the Id.Pr.CIT's order, that the assessee had pointed out the said income to be returned to tax. Before us, during the course of hearing, this fact was pointed out from the computation of income for the impugned year, pointing out that this dividend income which formed part of the profits of the assessee as per its books of accounts, was first excluded from the same, while computing the business income of the assessee under section 28 of the Act, and thereafter, returned to tax as dividend from foreign subsidiary.

The Id.DR was unable to controvert the factual contention of the assessee as above.

15. In view of the same, when the assessee had returned the dividend earned from foreign company to tax, there can be no question of any error in the assessment for non-examining or inadequate inquiry on this issue. The Id.Pr.CIT appears to have

casually stated that the assessee failed to produce with supportive evidence before him during the hearing. But we fail to understand what supportive evidence is required in this case, when these facts were coming out clearly from the computation of income itself, which was part of the assessment record before the ld.Pr.CIT and could have been cross-checked himself.

In view of the same, we hold that the assessment order is not erroneous, even on the aspect of non-examination of the issue of taxability of dividend income earned from foreign company.

16. In view of the above, the order passed by the ld.Pr.CIT, we hold, is not sustainable in law in the absence of any finding of error worth its while on both the aspects of preferential shares sold during the year, and dividend income earned from the foreign company not returned to tax.

Therefore, substantive grounds of the appeal raised by the assessee on the issue, therefore, are allowed.

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

Order pronounced in the Court on 7th February, 2024 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 07/02/2024

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